

# Union Calendar No. 147

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2273

[Report No. 112-226]

To amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 2011

Mr. MCKINLEY (for himself, Mr. WHITFIELD, Mr. RAHALL, Mrs. CAPITO, Mrs. MYRICK, Mr. OLSON, Mrs. LUMMIS, Mr. ROSS of Florida, Mr. BARTON of Texas, Mr. JOHNSON of Ohio, Mr. PITTS, Mr. ROGERS of Kentucky, Mrs. McMORRIS RODGERS, Mr. WOMACK, Mr. SULLIVAN, Mr. PALAZZO, and Mr. BUCSHON) introduced the following bill; which was referred to the Committee on Energy and Commerce

SEPTEMBER 26, 2011

Additional sponsors: Mr. MILLER of Florida, Mr. REHBERG, Mr. COBLE, Mr. TERRY, Mr. SCOTT of South Carolina, Mr. GOSAR, Mr. CRAWFORD, Mr. NUNNELEE, Mr. CAMP, Mr. ROGERS of Alabama, Mr. DENT, Mr. BISHOP of Utah, Mr. ROONEY, Mr. SENSENBRENNER, Mrs. EMERSON, and Mrs. ADAMS

SEPTEMBER 26, 2011

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 22, 2011]

# **A BILL**

To amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4        *This Act may be cited as the “Coal Residuals Reuse*  
5 *and Management Act”.*

6 **SEC. 2. AMENDMENT TO SUBTITLE D OF THE SOLID WASTE**  
7 **DISPOSAL ACT.**

8        *(a) IN GENERAL.—Subtitle D of the Solid Waste Dis-*  
9 *posal Act (42 U.S.C. 6941 et seq.) is amended by adding*  
10 *at the end the following new section:*

11 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**  
12 **BUSTION RESIDUALS.**

13        *“(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-*  
14 *TION RESIDUALS.—Each State may adopt and implement*  
15 *a coal combustion residuals permit program.*

16        *“(b) STATE ACTIONS.—*

17            *“(1) NOTIFICATION.—Not later than 6 months*  
18 *after the date of enactment of this section (except as*  
19 *provided by the deadline identified under subsection*  
20 *(d)(2)(B)), the Governor of each State shall notify the*  
21 *Administrator, in writing, whether such State will*  
22 *adopt and implement a coal combustion residuals*  
23 *permit program.*

24            *“(2) CERTIFICATION.—*

1           “(A) *IN GENERAL.*—Not later than 36  
2           *months after the date of enactment of this section*  
3           *(except as provided in subsections (f)(1)(A) and*  
4           *(f)(1)(C)), in the case of a State that has notified*  
5           *the Administrator that it will implement a coal*  
6           *combustion residuals permit program, the head*  
7           *of the lead State agency responsible for imple-*  
8           *menting the coal combustion residuals permit*  
9           *program shall submit to the Administrator a cer-*  
10           *tification that such coal combustion residuals*  
11           *permit program meets the specifications de-*  
12           *scribed in subsection (c)(1).*

13           “(B) *CONTENTS.*—A certification submitted  
14           under this paragraph shall include—

15                   “(i) a letter identifying the lead State  
16                   agency responsible for implementing the  
17                   coal combustion residuals permit program,  
18                   signed by the head of such agency;

19                   “(ii) identification of any other State  
20                   agencies involved with the implementation  
21                   of the coal combustion residuals permit pro-  
22                   gram;

23                   “(iii) a narrative description that pro-  
24                   vides an explanation of how the State will  
25                   ensure that the coal combustion residuals

1            *permit program meets the requirements of*  
2            *this section;*

3            *“(iv) a legal certification that the State*  
4            *has, at the time of certification, fully effec-*  
5            *tive statutes, regulations, or guidance nec-*  
6            *essary to implement a coal combustion re-*  
7            *siduals permit program that meets the spec-*  
8            *ifications described in subsection (c)(1); and*

9            *“(v) copies of State statutes, regula-*  
10           *tions, and guidance described in clause (iv).*

11           *“(3) MAINTENANCE OF 4005(c) OR 3006 PRO-*  
12           *GRAM.—In order to adopt or implement a coal com-*  
13           *bustion residuals permit program under this section*  
14           *(including pursuant to subsection (f)), the State agen-*  
15           *cy responsible for implementing a coal combustion re-*  
16           *siduals permit program in a State shall maintain an*  
17           *approved program under section 4005(c) or an au-*  
18           *thorized program under section 3006.*

19           *“(c) PERMIT PROGRAM SPECIFICATIONS.—*

20           *“(1) MINIMUM REQUIREMENTS.—The specifica-*  
21           *tions described in this subsection for a coal combus-*  
22           *tion residuals permit program are as follows:*

23           *“(A) The revised criteria described in para-*  
24           *graph (2) shall apply to a coal combustion re-*

1           *siduals permit program, except as provided in*  
2           *paragraph (3).*

3           “(B) *Each structure shall be, in accordance*  
4           *with generally accepted engineering standards*  
5           *for the structural integrity of such structures, de-*  
6           *signed, constructed, and maintained to provide*  
7           *for containment of the maximum volumes of coal*  
8           *combustion residuals appropriate for the struc-*  
9           *ture. If a structure is determined by the head of*  
10           *the agency responsible for implementing the coal*  
11           *combustion residuals permit program to be defi-*  
12           *cient, the head of such agency has authority to*  
13           *require action to correct the deficiency. If the*  
14           *identified deficiency is not corrected, the head of*  
15           *such agency has authority to require that the*  
16           *structure close in accordance with subsection (h).*

17           “(C) *The coal combustion residuals permit*  
18           *program shall apply the revised criteria promul-*  
19           *gated pursuant to section 4010(c) for location,*  
20           *design, groundwater monitoring, corrective ac-*  
21           *tion, financial assurance, closure and post-clo-*  
22           *sure described in paragraph (2) and the speci-*  
23           *fications described in this paragraph to surface*  
24           *impoundments.*

1           “(D) *Constituents for detection monitoring*  
2           *shall include boron, chloride, conductivity, fluo-*  
3           *ride, pH, sulphate, sulfide, and total dissolved*  
4           *solids.*

5           “(E) *If a structure that is classified as pos-*  
6           *ing a high hazard potential pursuant to the*  
7           *guidelines published by the Federal Emergency*  
8           *Management Agency entitled ‘Federal Guidelines*  
9           *for Dam Safety: Hazard Potential Classification*  
10           *System for Dams’ (FEMA Publication Number*  
11           *333) is determined by the head of the agency re-*  
12           *sponsible for implementing the coal combustion*  
13           *residuals permit program to be deficient with re-*  
14           *spect to the structural integrity requirement in*  
15           *subparagraph (B), the head of such agency has*  
16           *authority to require action to correct the defi-*  
17           *ciency. If the identified deficiency is not cor-*  
18           *rected, the head of such agency has authority to*  
19           *require that the structure close in accordance*  
20           *with subsection (h).*

21           “(F) *New structures that first receive coal*  
22           *combustion residuals after the date of enactment*  
23           *of this section shall be constructed with a base lo-*  
24           *cated a minimum of two feet above the upper*  
25           *limit of the natural water table.*

1           “(G) *In the case of a coal combustion re-*  
2           *siduals permit program implemented by a State,*  
3           *the State has the authority to inspect structures*  
4           *and implement and enforce such permit pro-*  
5           *gram.*

6           “(2) *REVISED CRITERIA.—The revised criteria*  
7           *described in this paragraph are—*

8           “(A) *the revised criteria for design, ground-*  
9           *water monitoring, corrective action, closure, and*  
10          *post-closure, for structures, including—*

11          “(i) *for new structures, and lateral ex-*  
12          *pansions of existing structures, that first re-*  
13          *ceive coal combustion residuals after the*  
14          *date of enactment of this section, the revised*  
15          *criteria regarding design requirements de-*  
16          *scribed in section 258.40 of title 40, Code of*  
17          *Federal Regulations; and*

18          “(ii) *for all structures that receive coal*  
19          *combustion residuals after the date of enact-*  
20          *ment of this section, the revised criteria re-*  
21          *garding groundwater monitoring require-*  
22          *ments described in subpart E of part 258 of*  
23          *title 40, Code of Federal Regulations;*

24          “(B) *the revised criteria for location restric-*  
25          *tions described in—*



1           “(i) for new structures, and lateral ex-  
2           pansions of existing structures, that first re-  
3           ceive coal combustion residuals after the  
4           date of enactment of this section, sections  
5           258.11 through 258.15 of title 40, Code of  
6           Federal Regulations; and

7           “(ii) for existing structures that receive  
8           coal combustion residuals after the date of  
9           enactment of this section, sections 258.11  
10          and 258.15 of title 40, Code of Federal Reg-  
11          ulations;

12          “(C) for all structures that receive coal com-  
13          bustion residuals after the date of enactment of  
14          this section, the revised criteria for air quality  
15          described in section 258.24 of title 40, Code of  
16          Federal Regulations; and

17          “(D) for all structures that receive coal com-  
18          bustion residuals after the date of enactment of  
19          this section, the revised criteria for financial as-  
20          surance described in subpart G of part 258 of  
21          title 40, Code of Federal Regulations.

22          “(3) *APPLICABILITY OF CERTAIN REQUIRE-*  
23          *MENTS.—A State may determine that one or more of*  
24          *the requirements of the revised criteria described in*  
25          *paragraph (2) is not needed for the management of*

1 *coal combustion residuals in that State, and may de-*  
2 *cline to apply such requirement as part of its coal*  
3 *combustion residuals permit program. If a State de-*  
4 *clines to apply a requirement under this paragraph,*  
5 *the State shall include in the certification under sub-*  
6 *section (b)(2) a description of such requirement and*  
7 *the reasons such requirement is not needed in the*  
8 *State. If the Administrator determines that a State*  
9 *determination under this paragraph does not accu-*  
10 *ately reflect the needs for the management of coal*  
11 *combustion residuals in the State, the Administrator*  
12 *may treat such State determination as a deficiency*  
13 *under subsection (d).*

14 *“(d) WRITTEN NOTICE AND OPPORTUNITY TO REM-*  
15 *EDY.—*

16 *“(1) IN GENERAL.—The Administrator shall pro-*  
17 *vide to a State written notice and an opportunity to*  
18 *remedy deficiencies in accordance with paragraph (2)*  
19 *if at any time the State—*

20 *“(A) does not satisfy the notification re-*  
21 *quirement under subsection (b)(1);*

22 *“(B) has not submitted a certification*  
23 *under subsection (b)(2);*

24 *“(C) does not satisfy the maintenance re-*  
25 *quirement under subsection (b)(3); or*

1           “(D) is not implementing a coal combustion  
2           residuals permit program that meets the speci-  
3           fications described in subsection (c)(1).

4           “(2) CONTENTS OF NOTICE; DEADLINE FOR RE-  
5           SPONSE.—A notice provided under this subsection  
6           shall—

7           “(A) include findings of the Administrator  
8           detailing any applicable deficiencies in—

9           “(i) compliance by the State with the  
10           notification requirement under subsection  
11           (b)(1);

12           “(ii) compliance by the State with the  
13           certification requirement under subsection  
14           (b)(2);

15           “(iii) compliance by the State with the  
16           maintenance requirement under subsection  
17           (b)(3); and

18           “(iv) the State coal combustion residu-  
19           als permit program in meeting the speci-  
20           fications described in subsection (c)(1); and

21           “(B) identify, in collaboration with the  
22           State, a reasonable deadline, which shall be not  
23           sooner than 6 months after the State receives the  
24           notice, by which the State shall remedy the defi-  
25           ciencies detailed under subparagraph (A).

1       “(e) *IMPLEMENTATION BY ADMINISTRATOR.*—

2               “(1) *IN GENERAL.*—*The Administrator shall im-*  
3       *plement a coal combustion residuals permit program*  
4       *for a State only in the following circumstances:*

5               “(A) *If the Governor of such State notifies*  
6       *the Administrator under subsection (b)(1) that*  
7       *such State will not adopt and implement such a*  
8       *permit program.*

9               “(B) *If such State has received a notice*  
10       *under subsection (d) and, after any review*  
11       *brought by the State under section 7006, fails, by*  
12       *the deadline identified in such notice under sub-*  
13       *section (d)(2)(B), to remedy the deficiencies de-*  
14       *tailed in such notice under subsection (d)(2)(A).*

15               “(C) *If such State informs the Adminis-*  
16       *trator, in writing, that such State will no longer*  
17       *implement such a permit program.*

18               “(2) *REQUIREMENTS.*—*If the Administrator im-*  
19       *plements a coal combustion residuals permit program*  
20       *for a State under paragraph (1), such permit pro-*  
21       *gram shall consist of the specifications described in*  
22       *subsection (c)(1).*

23               “(3) *ENFORCEMENT.*—*If the Administrator im-*  
24       *plements a coal combustion residuals permit program*  
25       *for a State under paragraph (1), the authorities re-*

1       *ferred to in section 4005(c)(2)(A) shall apply with re-*  
2       *spect to coal combustion residuals and structures and*  
3       *the Administrator may use such authorities to in-*  
4       *spect, gather information, and enforce the require-*  
5       *ments of this section in the State.*

6       “(f) *STATE CONTROL AFTER IMPLEMENTATION BY AD-*  
7       *MINISTRATOR.—*

8               “(1) *STATE CONTROL.—*

9                       “(A) *NEW ADOPTION AND IMPLEMENTATION*  
10                      *BY STATE.—For a State for which the Adminis-*  
11                      *trator is implementing a coal combustion residu-*  
12                      *als permit program under subsection (e)(1)(A),*  
13                      *the State may adopt and implement such a per-*  
14                      *mit program by—*

15                               “(i) *notifying the Administrator that*  
16                               *the State will adopt and implement such a*  
17                               *permit program;*

18                               “(ii) *not later than 6 months after the*  
19                               *date of such notification, submitting to the*  
20                               *Administrator a certification under sub-*  
21                               *section (b)(2); and*

22                               “(iii) *receiving from the Adminis-*  
23                               *trator—*

24                                       “(I) *a determination that the*  
25                                       *State coal combustion residuals permit*

1                    *program meets the specifications de-*  
2                    *scribed in subsection (c)(1); and*

3                    *“(II) a timeline for transition of*  
4                    *control of the coal combustion residuals*  
5                    *permit program.*

6                    *“(B) REMEDYING DEFICIENT PERMIT PRO-*  
7                    *GRAM.—For a State for which the Administrator*  
8                    *is implementing a coal combustion residuals per-*  
9                    *mit program under subsection (e)(1)(B), the*  
10                   *State may adopt and implement such a permit*  
11                   *program by—*

12                   *“(i) remedying the deficiencies detailed*  
13                   *in the notice provided under subsection*  
14                   *(d)(2)(A); and*

15                   *“(ii) receiving from the Adminis-*  
16                   *trator—*

17                   *“(I) a determination that the defi-*  
18                   *ciencies detailed in such notice have*  
19                   *been remedied; and*

20                   *“(II) a timeline for transition of*  
21                   *control of the coal combustion residuals*  
22                   *permit program.*

23                   *“(C) RESUMPTION OF IMPLEMENTATION BY*  
24                   *STATE.—For a State for which the Adminis-*  
25                   *trator is implementing a coal combustion residu-*

1            *als permit program under subsection (e)(1)(C),*  
2            *the State may adopt and implement such a per-*  
3            *mit program by—*

4                    *“(i) notifying the Administrator that*  
5                    *the State will adopt and implement such a*  
6                    *permit program;*

7                    *“(ii) not later than 6 months after the*  
8                    *date of such notification, submitting to the*  
9                    *Administrator a certification under sub-*  
10                   *section (b)(2); and*

11                   *“(iii) receiving from the Adminis-*  
12                   *trator—*

13                            *“(I) a determination that the*  
14                            *State coal combustion residuals permit*  
15                            *program meets the specifications de-*  
16                            *scribed in subsection (c)(1); and*

17                            *“(II) a timeline for transition of*  
18                            *control of the coal combustion residuals*  
19                            *permit program.*

20            *“(2) REVIEW OF DETERMINATION.—*

21                            *“(A) DETERMINATION REQUIRED.—The Ad-*  
22                            *ministrator shall make a determination under*  
23                            *paragraph (1) not later than 90 days after the*  
24                            *date on which the State submits a certification*  
25                            *under paragraph (1)(A)(ii) or (1)(C)(ii), or no-*

1           *tifies the Administrator that the deficiencies have*  
2           *been remedied pursuant to paragraph (1)(B)(i),*  
3           *as applicable.*

4           “(B) *REVIEW.—A State may obtain a re-*  
5           *view of a determination by the Administrator*  
6           *under paragraph (1) as if such determination*  
7           *was a final regulation for purposes of section*  
8           *7006.*

9           “(3) *IMPLEMENTATION DURING TRANSITION.—*

10           “(A) *EFFECT ON ACTIONS AND ORDERS.—*  
11           *Actions taken or orders issued pursuant to a coal*  
12           *combustion residuals permit program shall re-*  
13           *main in effect if—*

14                   “(i) *a State takes control of its coal*  
15                   *combustion residuals permit program from*  
16                   *the Administrator under paragraph (1); or*

17                   “(ii) *the Administrator takes control of*  
18                   *a coal combustion residuals permit program*  
19                   *from a State under subsection (e).*

20           “(B) *CHANGE IN REQUIREMENTS.—Sub-*  
21           *paragraph (A) shall apply to such actions and*  
22           *orders until such time as the Administrator or*  
23           *the head of the lead State agency responsible for*  
24           *implementing the coal combustion residuals per-*  
25           *mit program, as applicable—*



1                   “(i) implements changes to the require-  
2                   ments of the coal combustion residuals per-  
3                   mit program with respect to the basis for  
4                   the action or order; or

5                   “(ii) certifies the completion of a cor-  
6                   rective action that is the subject of the ac-  
7                   tion or order.

8                   “(4) SINGLE PERMIT PROGRAM.—If a State  
9                   adopts and implements a coal combustion residuals  
10                  permit program under this subsection, the Adminis-  
11                  trator shall cease to implement the permit program  
12                  implemented under subsection (e) for such State.

13                  “(g) EFFECT ON DETERMINATION UNDER 4005(C) OR  
14                  3006.—The Administrator shall not consider the implemen-  
15                  tation of a coal combustion residuals permit program by  
16                  the Administrator under subsection (e) in making a deter-  
17                  mination of approval for a permit program or other system  
18                  of prior approval and conditions under section 4005(c) or  
19                  of authorization for a program under section 3006.

20                  “(h) CLOSURE.—If it is determined, pursuant to a  
21                  coal combustion residuals permit program, that a structure  
22                  should close, the time period and method for the closure of  
23                  such structure shall be set forth, in a schedule, in a closure  
24                  plan that takes into account the nature and the site-specific  
25                  characteristics of the structure to be closed. In the case of

1 *a surface impoundment, the closure plan shall require, at*  
2 *a minimum, the removal of liquid and the stabilization of*  
3 *remaining waste, as necessary to support the final cover.*

4 “(i) *AUTHORITY.—*

5 “(1) *STATE AUTHORITY.—Nothing in this section*  
6 *shall preclude or deny any right of any State to*  
7 *adopt or enforce any regulation or requirement re-*  
8 *specting coal combustion residuals that is more strin-*  
9 *gent or broader in scope than a regulation or require-*  
10 *ment under this section.*

11 “(2) *AUTHORITY OF THE ADMINISTRATOR.—*

12 “(A) *IN GENERAL.—Except as provided in*  
13 *subsection (e) of this section and section 6005 of*  
14 *this title, the Administrator shall, with respect to*  
15 *the regulation of coal combustion residuals, defer*  
16 *to the States pursuant to this section.*

17 “(B) *IMMINENT HAZARD.—Nothing in this*  
18 *section shall be construed to affect the authority*  
19 *of the Administrator under section 7003 with re-*  
20 *spect to coal combustion residuals.*

21 “(j) *MINE RECLAMATION ACTIVITIES.—A coal combus-*  
22 *tion residuals permit program implemented under sub-*  
23 *section (e) by the Administrator shall not apply to the utili-*  
24 *zation, placement, and storage of coal combustion residuals*  
25 *at surface mining and reclamation operations.*

1       “(k) *DEFINITIONS.—In this section:*

2               “(1) *COAL COMBUSTION RESIDUALS.—The term*  
3       *‘coal combustion residuals’ means—*

4               “(A) *the solid wastes listed in section*  
5               *3001(b)(3)(A)(i), including recoverable materials*  
6               *from such wastes;*

7               “(B) *coal combustion wastes that are co-*  
8               *managed with wastes produced in conjunction*  
9               *with the combustion of coal, provided that such*  
10              *wastes are not segregated and disposed of sepa-*  
11              *rately from the coal combustion wastes and com-*  
12              *prise a relatively small proportion of the total*  
13              *wastes being disposed in the structure;*

14              “(C) *fluidized bed combustion wastes;*

15              “(D) *wastes from the co-burning of coal*  
16              *with non-hazardous secondary materials pro-*  
17              *vided that coal makes up at least 50 percent of*  
18              *the total fuel burned; and*

19              “(E) *wastes from the co-burning of coal*  
20              *with materials described in subparagraph (A)*  
21              *that are recovered from monofills.*

22              “(2) *COAL COMBUSTION RESIDUALS PERMIT PRO-*  
23              *GRAM.—The term ‘coal combustion residuals permit*  
24              *program’ means a permit program or other system of*  
25              *prior approval and conditions that is adopted by or*

1       for a State for the management and disposal of coal  
2       combustion residuals to the extent such activities  
3       occur in structures in such State.

4               “(3) *STRUCTURE*.—The term ‘structure’ means a  
5       landfill, surface impoundment, or other land-based  
6       unit which may receive coal combustion residuals.

7               “(4) *REVISED CRITERIA*.—The term ‘revised cri-  
8       teria’ means the criteria promulgated for municipal  
9       solid waste landfill units under section 4004(a) and  
10       under section 1008(a)(3), as revised under section  
11       4010(c).”.

12       (b) *CONFORMING AMENDMENT*.—The table of contents  
13       contained in section 1001 of the Solid Waste Disposal Act  
14       is amended by inserting after the item relating to section  
15       4010 the following:

      “Sec. 4011. Management and disposal of coal combustion residuals.”.

16       **SEC. 3. 2000 REGULATORY DETERMINATION.**

17       Nothing in this Act, or the amendments made by this  
18       Act, shall be construed to alter in any manner the Environ-  
19       mental Protection Agency’s regulatory determination enti-  
20       tled “Notice of Regulatory Determination on Wastes from  
21       the Combustion of Fossil Fuels”, published at 65 Fed. Reg.  
22       32214 (May 22, 2000), that the fossil fuel combustion wastes  
23       addressed in that determination do not warrant regulation  
24       under subtitle C of the Solid Waste Disposal Act (42 U.S.C.  
25       6921 et seq.).



Union Calendar No. 147

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 2273**

[Report No. 112-226]

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**A BILL**

To amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels.

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SEPTEMBER 26, 2011

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed