

112TH CONGRESS
2^D SESSION

H. R. 3409

AN ACT

To limit the authority of the Secretary of the Interior to issue regulations before December 31, 2013, under the Surface Mining Control and Reclamation Act of 1977.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Stop the War on Coal Act of 2012”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; Table of contents.

TITLE I—LIMITATION ON AUTHORITY TO ISSUE REGULATIONS
UNDER THE SURFACE MINING CONTROL AND RECLAMATION
ACT OF 1977

Sec. 101. Limitation on authority to issue regulations under the Surface Min-
ing Control and Reclamation Act of 1977.

Sec. 102. Publication of scientific studies for proposed rules.

TITLE II—NO GREENHOUSE GAS REGULATION UNDER THE
CLEAN AIR ACT

Sec. 201. No regulation of emissions of greenhouse gases.

Sec. 202. Preserving one national standard for automobiles.

TITLE III—TRANSPARENCY IN REGULATORY ANALYSIS OF
IMPACTS ON NATION

Sec. 301. Committee for the Cumulative Analysis of Regulations that Impact
Energy and Manufacturing in the United States.

Sec. 302. Analyses.

Sec. 303. Reports; public comment.

Sec. 304. Additional provisions relating to certain rules.

Sec. 305. Consideration of feasibility and cost in establishing national ambient
air quality standards.

TITLE IV—MANAGEMENT AND DISPOSAL OF COAL COMBUSTION
RESIDUALS

Sec. 401. Management and disposal of coal combustion residuals.

Sec. 402. 2000 Regulatory determination.

Sec. 403. Technical assistance.

Sec. 404. Federal Power Act.

TITLE V—PRESERVING STATE AUTHORITY TO MAKE
DETERMINATIONS RELATING TO WATER QUALITY STANDARDS

Sec. 501. State water quality standards.

Sec. 502. Permits for dredged or fill material.

Sec. 503. Deadlines for agency comments.

Sec. 504. Applicability of amendments.

Sec. 505. Reporting on harmful pollutants.

Sec. 506. Pipelines crossing streambeds.

Sec. 507. Impacts of EPA regulatory activity on employment and economic ac-
tivity.

TITLE VI—REGIONAL HAZE REGULATORY RELIEF

Sec. 601. Implementation plans.

Sec. 602. Visibility protection for Federal Class I areas.

TITLE VII—NO REGIONAL HAZE REGULATION ON THE COAL-
POWERED NAVAJO GENERATING STATION

Sec. 701. Limitation on authority to issue regulations.

1 **TITLE I—LIMITATION ON AU-**
 2 **THORITY TO ISSUE REGULA-**
 3 **TIONS UNDER THE SURFACE**
 4 **MINING CONTROL AND REC-**
 5 **LAMATION ACT OF 1977**

6 **SEC. 101. LIMITATION ON AUTHORITY TO ISSUE REGULA-**
 7 **TIONS UNDER THE SURFACE MINING CON-**
 8 **TROL AND RECLAMATION ACT OF 1977.**

9 The Secretary of the Interior may not, before Decem-
 10 ber 31, 2013, issue or approve any proposed or final regu-
 11 lation under the Surface Mining Control and Reclamation
 12 Act of 1977 (30 U.S.C. 1201 et seq.) that would—

13 (1) adversely impact employment in coal mines
 14 in the United States;

15 (2) cause a reduction in revenue received by the
 16 Federal Government or any State, tribal, or local
 17 government, by reducing through regulation the
 18 amount of coal in the United States that is available
 19 for mining;

20 (3) reduce the amount of coal available for do-
 21 mestic consumption or for export;

1 “(3) includes, appropriate to the rule being pro-
2 posed—

3 “(A) use of systematic, empirical methods
4 that draw on observation or experiment;

5 “(B) use of data analyses that are ade-
6 quate to support the general findings;

7 “(C) reliance on measurements or observa-
8 tional methods that provide reliable and gener-
9 alizable findings;

10 “(D) strong claims of causal relationships,
11 only with research designs that eliminate plau-
12 sible competing explanations for observed re-
13 sults, such as, but not limited to, random-as-
14 signment experiments;

15 “(E) presentation of studies and methods
16 in sufficient detail and clarity to allow for rep-
17 lication or, at a minimum, to offer the oppor-
18 tunity to build systematically on the findings of
19 the research;

20 “(F) acceptance by a peer-reviewed journal
21 or critique by a panel of independent experts
22 through a comparably rigorous, objective, and
23 scientific review; and

1 “(G) consistency of findings across mul-
 2 tiple studies or sites to support the generality
 3 of results and conclusions.”.

4 (b) CLERICAL AMENDMENT.—The table of contents
 5 at the end of the first section of such Act is amended by
 6 adding at the end of the items relating to such title the
 7 following:

“Sec. 722. Publication of scientific studies for proposed rules.”.

8 **TITLE II—NO GREENHOUSE GAS**
 9 **REGULATION UNDER THE**
 10 **CLEAN AIR ACT**

11 **SEC. 201. NO REGULATION OF EMISSIONS OF GREENHOUSE**
 12 **GASES.**

13 Title III of the Clean Air Act (42 U.S.C. 7601 et
 14 seq.) is amended by adding at the end the following:

15 **“SEC. 330. NO REGULATION OF EMISSIONS OF GREEN-**
 16 **HOUSE GASES.**

17 “(a) DEFINITION.—In this section, the term ‘green-
 18 house gas’ means any of the following:

19 “(1) Water vapor.

20 “(2) Carbon dioxide.

21 “(3) Methane.

22 “(4) Nitrous oxide.

23 “(5) Sulfur hexafluoride.

24 “(6) Hydrofluorocarbons.

25 “(7) Perfluorocarbons.

1 “(8) Any other substance subject to, or pro-
2 posed to be subject to, regulation, action, or consid-
3 eration under this Act to address climate change.

4 “(b) LIMITATION ON AGENCY ACTION.—

5 “(1) LIMITATION.—

6 “(A) IN GENERAL.—The Administrator
7 may not, under this Act, promulgate any regu-
8 lation concerning, take action relating to, or
9 take into consideration the emission of a green-
10 house gas to address climate change.

11 “(B) AIR POLLUTANT DEFINITION.—The
12 definition of the term ‘air pollutant’ in section
13 302(g) does not include a greenhouse gas. Not-
14 withstanding the previous sentence, such defini-
15 tion may include a greenhouse gas for purposes
16 of addressing concerns other than climate
17 change.

18 “(2) EXCEPTIONS.—Paragraph (1) does not
19 prohibit the following:

20 “(A) Notwithstanding paragraph (4)(B),
21 implementation and enforcement of the rule en-
22 titled ‘Light-Duty Vehicle Greenhouse Gas
23 Emission Standards and Corporate Average
24 Fuel Economy Standards’ (as published at 75
25 Fed. Reg. 25324 (May 7, 2010) and without

1 further revision) and implementation and en-
2 forcement of the rule entitled ‘Greenhouse Gas
3 Emissions Standards and Fuel Efficiency
4 Standards for Medium- and Heavy-Duty En-
5 gines and Vehicles’ (as published at 76 Fed.
6 Reg. 57106 (September 15, 2011) and without
7 further revision).

8 “(B) Implementation and enforcement of
9 section 211(o).

10 “(C) Statutorily authorized Federal re-
11 search, development, demonstration programs
12 and voluntary programs addressing climate
13 change.

14 “(D) Implementation and enforcement of
15 title VI to the extent such implementation or
16 enforcement only involves one or more class I
17 substances or class II substances (as such
18 terms are defined in section 601).

19 “(E) Implementation and enforcement of
20 section 821 (42 U.S.C. 7651k note) of Public
21 Law 101–549 (commonly referred to as the
22 ‘Clean Air Act Amendments of 1990’).

23 “(3) INAPPLICABILITY OF PROVISIONS.—Noth-
24 ing listed in paragraph (2) shall cause a greenhouse
25 gas to be subject to part C of title I (relating to pre-

1 vention of significant deterioration of air quality) or
2 considered an air pollutant for purposes of title V
3 (relating to permits).

4 “(4) CERTAIN PRIOR AGENCY ACTIONS.—The
5 following rules and actions (including any supple-
6 ment or revision to such rules and actions) are re-
7 pealed and shall have no legal effect:

8 “(A) ‘Mandatory Reporting of Greenhouse
9 Gases’, published at 74 Fed. Reg. 56260 (Octo-
10 ber 30, 2009).

11 “(B) ‘Endangerment and Cause or Con-
12 tribute Findings for Greenhouse Gases Under
13 Section 202(a) of the Clean Air Act’, published
14 at 74 Fed. Reg. 66496 (December 15, 2009).

15 “(C) ‘Reconsideration of Interpretation of
16 Regulations That Determine Pollutants Covered
17 by Clean Air Act Permitting Programs’, pub-
18 lished at 75 Fed. Reg. 17004 (April 2, 2010)
19 and the memorandum from Stephen L. John-
20 son, Environmental Protection Agency (EPA)
21 Administrator, to EPA Regional Administra-
22 tors, concerning ‘EPA’s Interpretation of Regu-
23 lations that Determine Pollutants Covered by
24 Federal Prevention of Significant Deterioration
25 (PSD) Permit Program’ (December 18, 2008).

1 “(D) ‘Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule’, published at 75 Fed. Reg. 31514 (June 3, 2010).

5 “(E) ‘Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call’, published at 75 Fed. Reg. 77698 (December 13, 2010).

11 “(F) ‘Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases’, published at 75 Fed. Reg. 81874 (December 29, 2010).

19 “(G) ‘Action to Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan’, published at 75 Fed. Reg. 82246 (December 30, 2010).

1 “(H) ‘Action to Ensure Authority to Im-
2 plement Title V Permitting Programs Under
3 the Greenhouse Gas Tailoring Rule’, published
4 at 75 Fed. Reg. 82254 (December 30, 2010).

5 “(I) ‘Determinations Concerning Need for
6 Error Correction, Partial Approval and Partial
7 Disapproval, and Federal Implementation Plan
8 Regarding Texas Prevention of Significant De-
9 terioration Program’, published at 75 Fed. Reg.
10 82430 (December 30, 2010).

11 “(J) ‘Limitation of Approval of Prevention
12 of Significant Deterioration Provisions Con-
13 cerning Greenhouse Gas Emitting-Sources in
14 State Implementation Plans’, published at 75
15 Fed. Reg. 82536 (December 30, 2010).

16 “(K) ‘Determinations Concerning Need for
17 Error Correction, Partial Approval and Partial
18 Disapproval, and Federal Implementation Plan
19 Regarding Texas Prevention of Significant De-
20 terioration Program; Proposed Rule’, published
21 at 75 Fed. Reg. 82365 (December 30, 2010).

22 “(L) Except for actions listed in paragraph
23 (2), any other Federal action under this Act oc-
24 curring before the date of enactment of this
25 section that constitutes a stationary source per-

1 mitting requirement or an emissions standard
2 for a greenhouse gas to address climate change.

3 “(5) STATE ACTION.—

4 “(A) NO LIMITATION.—This section does
5 not limit or otherwise affect the authority of a
6 State to adopt, amend, enforce, or repeal State
7 laws and regulations pertaining to the emission
8 of a greenhouse gas.

9 “(B) EXCEPTION.—

10 “(i) RULE.—Notwithstanding sub-
11 paragraph (A), any provision described in
12 clause (ii)—

13 “(I) is not federally enforceable;

14 “(II) is not deemed to be a part
15 of Federal law; and

16 “(III) is deemed to be stricken
17 from the plan described in clause
18 (ii)(I) or the program or permit de-
19 scribed in clause (ii)(II), as applicable.

20 “(ii) PROVISION DEFINED.—For pur-
21 poses of clause (i), the term ‘provision’
22 means any provision that—

23 “(I) is contained in a State im-
24 plementation plan under section 110
25 and authorizes or requires a limitation

1 on, or imposes a permit requirement
2 for, the emission of a greenhouse gas
3 to address climate change; or

4 “(II) is part of an operating per-
5 mit program under title V, or a per-
6 mit issued pursuant to title V, and
7 authorizes or requires a limitation on
8 the emission of a greenhouse gas to
9 address climate change.

10 “(C) ACTION BY ADMINISTRATOR.—The
11 Administrator may not approve or make feder-
12 ally enforceable any provision described in sub-
13 paragraph (B)(ii).”.

14 **SEC. 202. PRESERVING ONE NATIONAL STANDARD FOR**
15 **AUTOMOBILES.**

16 (a) FINDING.—Congress finds that the emissions of
17 greenhouse gases from a motor vehicle tailpipe are related
18 to fuel economy.

19 (b) REPORT REQUIRED.—Not later than 60 days
20 after the date of enactment of this Act, the Secretary of
21 Transportation shall submit a report to the Congress that,
22 notwithstanding section 201, assumes the implementation
23 and enforcement of the final rule entitled “2017 and Later
24 Model Year Light-Duty Vehicle Greenhouse Gas Emis-

1 sions and Corporate Average Fuel Economy Standards”
2 (issued on August 28, 2012) and estimates—

3 (1) the total number of jobs that will be lost
4 due to decreased demand by year caused by the rule;

5 (2) the number of additional fatalities and inju-
6 ries that will be caused by the rule; and

7 (3) the additional cost to the economy of the re-
8 dundant regulation of fuel economy and greenhouse
9 gas emissions by the Environmental Protection
10 Agency and State agencies for model years 2011
11 through 2025.

12 (c) CONSULTATION.—Other than to gather basic fac-
13 tual information, the Secretary of Transportation shall not
14 consult with the Administrator of the Environmental Pro-
15 tection Agency or any official from the California Air Re-
16 sources Board in fulfilling the requirement described in
17 subsection (b).

18 (d) AMENDMENT TO THE CLEAN AIR ACT.—Section
19 209(b) of the Clean Air Act (42 U.S.C. 7543) is amended
20 by adding at the end the following:

21 “(4) With respect to standards for emissions of
22 greenhouse gases (as defined in section 330) for model
23 year 2017 or any subsequent model year new motor vehi-
24 cles and new motor vehicle engines—

1 “(A) the Administrator may not waive applica-
2 tion of subsection (a); and

3 “(B) no waiver granted prior to the date of en-
4 actment of this paragraph may be construed to
5 waive the application of subsection (a).”.

6 **TITLE III—TRANSPARENCY IN**
7 **REGULATORY ANALYSIS OF**
8 **IMPACTS ON NATION**

9 **SEC. 301. COMMITTEE FOR THE CUMULATIVE ANALYSIS OF**
10 **REGULATIONS THAT IMPACT ENERGY AND**
11 **MANUFACTURING IN THE UNITED STATES.**

12 (a) **ESTABLISHMENT.**—The President shall establish
13 a committee to be known as the Committee for the Cumu-
14 lative Analysis of Regulations that Impact Energy and
15 Manufacturing in the United States (in this Act referred
16 to as the “Committee”) to analyze and report on the cu-
17 mulative and incremental impacts of certain rules and ac-
18 tions of the Environmental Protection Agency, in accord-
19 ance with sections 302 and 303.

20 (b) **MEMBERS.**—The Committee shall be composed of
21 the following officials (or their designees):

22 (1) The Secretary of Agriculture, acting
23 through the Chief Economist.

1 (2) The Secretary of Commerce, acting through
2 the Chief Economist and the Under Secretary for
3 International Trade.

4 (3) The Secretary of Labor, acting through the
5 Commissioner of the Bureau of Labor Statistics.

6 (4) The Secretary of Energy, acting through
7 the Administrator of the Energy Information Ad-
8 ministration.

9 (5) The Secretary of the Treasury, acting
10 through the Deputy Assistant Secretary for Environ-
11 ment and Energy of the Department of the Treas-
12 ury.

13 (6) The Administrator of the Environmental
14 Protection Agency.

15 (7) The Chairman of the Council of Economic
16 Advisors.

17 (8) The Chairman of the Federal Energy Regu-
18 latory Commission.

19 (9) The Administrator of the Office of Informa-
20 tion and Regulatory Affairs.

21 (10) The Chief Counsel for Advocacy of the
22 Small Business Administration.

23 (11) The Chairman of the United States Inter-
24 national Trade Commission, acting through the Of-
25 fice of Economics.

1 (c) CHAIR.—The Secretary of Commerce shall serve
2 as Chair of the Committee. In carrying out the functions
3 of the Chair, the Secretary of Commerce shall consult with
4 the members serving on the Committee pursuant to para-
5 graphs (5) and (11) of subsection (b).

6 (d) CONSULTATION.—In conducting analyses under
7 section 302 and preparing reports under section 303, the
8 Committee shall consult with, and consider pertinent re-
9 ports issued by, the Electric Reliability Organization cer-
10 tified under section 215(c) of the Federal Power Act (16
11 U.S.C. 824o(c)).

12 (e) TERMINATION.—The Committee shall terminate
13 60 days after submitting its final report pursuant to sec-
14 tion 303(c).

15 **SEC. 302. ANALYSES.**

16 (a) SCOPE.—The Committee shall conduct analyses,
17 for each of the calendar years 2016, 2020, and 2030, of
18 the following:

19 (1) The cumulative impact of covered rules that
20 are promulgated as final regulations on or before
21 January 1, 2013, in combination with covered ac-
22 tions.

23 (2) The cumulative impact of all covered rules
24 (including covered rules that have not been promul-

1 gated as final regulations on or before January 1,
2 2013), in combination with covered actions.

3 (3) The incremental impact of each covered rule
4 not promulgated as a final regulation on or before
5 January 1, 2013, relative to an analytic baseline
6 representing the results of the analysis conducted
7 under paragraph (1).

8 (b) CONTENTS.—The Committee shall include in
9 each analysis conducted under this section the following:

10 (1) Estimates of the impacts of the covered
11 rules and covered actions with regard to—

12 (A) the global economic competitiveness of
13 the United States, particularly with respect to
14 energy intensive and trade sensitive industries;

15 (B) other cumulative costs and cumulative
16 benefits, including evaluation through a general
17 equilibrium model approach;

18 (C) any resulting change in national,
19 State, and regional electricity prices;

20 (D) any resulting change in national,
21 State, and regional fuel prices;

22 (E) the impact on national, State, and re-
23 gional employment during the 5-year period be-
24 ginning on the date of enactment of this Act,
25 and also in the long term, including secondary

1 impacts associated with increased energy prices
2 and facility closures; and

3 (F) the reliability and adequacy of bulk
4 power supply in the United States.

5 (2) Discussion of key uncertainties and assump-
6 tions associated with each estimate.

7 (3) A sensitivity analysis.

8 (4) Discussion, and where feasible an assess-
9 ment, of the cumulative impact of the covered rules
10 and covered actions on—

11 (A) consumers;

12 (B) small businesses;

13 (C) regional economies;

14 (D) State, local, and tribal governments;

15 (E) low-income communities;

16 (F) public health, including health effects
17 associated with regulatory costs;

18 (G) local and industry-specific labor mar-
19 kets; and

20 (H) agriculture,

21 as well as key uncertainties associated with each
22 topic.

23 (c) METHODS.—In conducting analyses under this
24 section, the Committee shall use the best available meth-
25 ods, consistent with guidance from the Office of Informa-

1 tion and Regulatory Affairs and the Office of Management
2 and Budget Circular A-4.

3 (d) DATA.—In conducting analyses under this sec-
4 tion, the Committee—

5 (1) shall use the best data that are available to
6 the public or supplied to the Committee by its mem-
7 bers, including the most recent such data appro-
8 priate for this analysis representing air quality, facil-
9 ity emissions, and installed controls; and

10 (2) is not required to create data or to use data
11 that are not readily accessible.

12 (e) COVERED RULES.—In this section, the term “cov-
13 ered rule” means the following:

14 (1) The following published rules (including any
15 successor or substantially similar rule):

16 (A) The Clean Air Interstate Rule (as de-
17 fined in section 304(a)(4)).

18 (B) “National Ambient Air Quality Stand-
19 ards for Ozone”, published at 73 Fed. Reg.
20 16436 (March 27, 2008).

21 (C) “National Emission Standards for
22 Hazardous Air Pollutants for Major Sources:
23 Industrial, Commercial, and Institutional Boil-
24 ers and Process Heaters”, published at 76 Fed.
25 Reg. 15608 (March 21, 2011).

1 (D) “National Emission Standards for
2 Hazardous Air Pollutants for Area Sources: In-
3 dustrial, Commercial, and Institutional Boil-
4 ers”, published at 76 Fed. Reg. 15554 (March
5 21, 2011).

6 (E) “National Emission Standards for
7 Hazardous Air Pollutants from Coal- and Oil-
8 fired Electric Utility Steam Generating Units
9 and Standards of Performance for Fossil-Fuel-
10 Fired Electric Utility, Industrial-Commercial-
11 Institutional, and Small Industrial-Commercial-
12 Institutional Steam Generating Units”, pub-
13 lished at 77 Fed. Reg. 9304 (February 16,
14 2012).

15 (F) “Hazardous and Solid Waste Manage-
16 ment System; Identification and Listing of Spe-
17 cial Wastes; Disposal of Coal Combustion Re-
18 siduals From Electric Utilities”, published at
19 75 Fed. Reg. 35127 (June 21, 2010).

20 (G) “Primary National Ambient Air Qual-
21 ity Standard for Sulfur Dioxide”, published at
22 75 Fed. Reg. 35520 (June 22, 2010).

23 (H) “Primary National Ambient Air Qual-
24 ity Standards for Nitrogen Dioxide”, published
25 at 75 Fed. Reg. 6474 (February 9, 2010).

1 (I) “National Emission Standards for Haz-
2 arduous Air Pollutants from the Portland Ce-
3 ment Manufacturing Industry and Standards of
4 Performance for Portland Cement Plants”,
5 published at 75 Fed. Reg. 54970 (September 9,
6 2010).

7 (2) The following additional rules or guidelines
8 promulgated on or after January 1, 2009:

9 (A) Any rule or guideline promulgated
10 under section 111(b) or 111(d) of the Clean Air
11 Act (42 U.S.C. 7411(b), 7411(d)) to address
12 climate change.

13 (B) Any rule or guideline promulgated by
14 the Administrator of the Environmental Protec-
15 tion Agency, a State, a local government, or a
16 permitting agency under or as the result of sec-
17 tion 169A or 169B of the Clean Air Act (42
18 U.S.C. 7491, 7492).

19 (C) Any rule establishing or modifying a
20 national ambient air quality standard under
21 section 109 of the Clean Air Act (42 U.S.C.
22 7409).

23 (D) Any rule addressing fuels under title
24 II of the Clean Air Act (42 U.S.C. 7521 et
25 seq.) as described in the Unified Agenda of

1 Federal Regulatory and Deregulatory Actions
2 under Regulatory Identification Number 2060–
3 AQ86, or any substantially similar rule, includ-
4 ing any rule under section 211(v) of the Clean
5 Air Act (42 U.S.C. 7545(v)).

6 (f) COVERED ACTIONS.—In this section, the term
7 “covered action” means any action on or after January
8 1, 2009, by the Administrator of the Environmental Pro-
9 tection Agency, a State, a local government, or a permit-
10 ting agency as a result of the application of part C of title
11 I (relating to prevention of significant deterioration of air
12 quality) or title V (relating to permitting) of the Clean
13 Air Act (42 U.S.C. 7401 et seq.), if such application oc-
14 curs with respect to an air pollutant that is identified as
15 a greenhouse gas in “Endangerment and Cause or Con-
16 tribute Findings for Greenhouse Gases Under Section
17 202(a) of the Clean Air Act”, published at 74 Fed. Reg.
18 66496 (December 15, 2009).

19 **SEC. 303. REPORTS; PUBLIC COMMENT.**

20 (a) PRELIMINARY REPORT.—Not later than March
21 31, 2013, the Committee shall make public and submit
22 to the Committee on Energy and Commerce of the House
23 of Representatives and the Committee on Environment
24 and Public Works of the Senate a preliminary report con-

1 taining the results of the analyses conducted under section
2 302.

3 (b) PUBLIC COMMENT PERIOD.—The Committee
4 shall accept public comments regarding the preliminary re-
5 port submitted under subsection (a) for a period of 120
6 days after such submission.

7 (c) FINAL REPORT.—Not later than September 30,
8 2013, the Committee shall submit to Congress a final re-
9 port containing the analyses conducted under section 302,
10 including any revisions to such analyses made as a result
11 of public comments, and a response to such comments.

12 **SEC. 304. ADDITIONAL PROVISIONS RELATING TO CERTAIN**
13 **RULES.**

14 (a) CROSS-STATE AIR POLLUTION RULE/TRANSPORT
15 RULE.—

16 (1) EARLIER RULES.—The rule entitled “Fed-
17 eral Implementation Plans: Interstate Transport of
18 Fine Particulate Matter and Ozone and Correction
19 of SIP Approvals”, published at 76 Fed. Reg. 48208
20 (August 8, 2011), and any successor or substantially
21 similar rule, shall be of no force or effect, and shall
22 be treated as though such rule had never taken ef-
23 fect.

24 (2) CONTINUED APPLICABILITY OF CLEAN AIR
25 INTERSTATE RULE.—In place of any rule described

1 in paragraph (1), the Administrator of the Environ-
2 mental Protection Agency (in this section referred to
3 as the “Administrator”) shall continue to implement
4 the Clean Air Interstate Rule.

5 (3) ADDITIONAL RULEMAKINGS.—

6 (A) ISSUANCE OF NEW RULES.—The Ad-
7 ministrator—

8 (i) shall not issue any proposed or
9 final rule under section 110(a)(2)(D)(i)(I)
10 or section 126 of the Clean Air Act (42
11 U.S.C. 7410(a)(2)(D)(i)(I), 7426) relating
12 to national ambient air quality standards
13 for ozone or particulate matter (including
14 any modification of the Clean Air Inter-
15 state Rule) before the date that is 3 years
16 after the date on which the Committee
17 submits the final report under section
18 303(e);

19 (ii) in issuing any rule described in
20 clause (i), shall base the rule on actual
21 monitored (and not modeled) data and
22 shall, notwithstanding section
23 110(a)(2)(D)(i)(I), allow the trading of
24 emissions allowances among entities cov-

1 ered by the rule irrespective of the States
2 in which such entities are located;

3 (iii) shall not issue any proposed or
4 final rule under section 109 of the Clean
5 Air Act (42 U.S.C. 7409) that relies upon
6 scientific or technical data that have not
7 been made available to the public; and

8 (iv) shall not issue any proposed or
9 final rule under section 109 of the Clean
10 Air Act (42 U.S.C. 7409), unless the ac-
11 companying regulatory impact analysis, as
12 required under Executive Order No.
13 12866, is peer reviewed in a manner con-
14 sistent with the Office of Management and
15 Budget's "Final Information Quality Bul-
16 letin for Peer Review" and the third edi-
17 tion of the Environmental Protection
18 Agency's "Peer Review Handbook".

19 (B) IMPLEMENTATION SCHEDULE.—In
20 promulgating any final rule described in sub-
21 paragraph (A)(i), the Administrator shall estab-
22 lish a date for State implementation of the
23 standards established by such final rule that is
24 not earlier than 3 years after the date of publi-
25 cation of such final rule.

1 (4) DEFINITION OF CLEAN AIR INTERSTATE
2 RULE.—For purposes of this section, the term
3 “Clean Air Interstate Rule” means the Clean Air
4 Interstate Rule and the rule establishing Federal
5 Implementation Plans for the Clean Air Interstate
6 Rule as promulgated and modified by the Adminis-
7 trator (70 Fed. Reg. 25162 (May 12, 2005), 71
8 Fed. Reg. 25288 (April 28, 2006), 72 Fed. Reg.
9 55657 (October 1, 2007), 72 Fed. Reg. 59190 (Oc-
10 tober 19, 2007), 72 Fed. Reg. 62338 (November 2,
11 2007), 74 Fed. Reg. 56721 (November 3, 2009)).

12 (b) STEAM GENERATING UNIT RULES.—

13 (1) EARLIER RULES.—The proposed rule enti-
14 tled “National Emission Standards for Hazardous
15 Air Pollutants From Coal- and Oil-Fired Electric
16 Utility Steam Generating Units and Standards of
17 Performance for Fossil-Fuel-Fired Electric Utility,
18 Industrial-Commercial- Institutional, and Small In-
19 dustrial-Commercial-Institutional Steam Generating
20 Units” published at 76 Fed. Reg. 24976 (May 3,
21 2011), and any final rule that is based on such pro-
22 posed rule and is issued prior to the date of the en-
23 actment of this Act, shall be of no force and effect,
24 and shall be treated as though such proposed or
25 final rule had never been issued. In conducting anal-

1 yses under section 302(a), the Committee shall ana-
2 lyze the rule described in section 302(e)(1)(E) (in-
3 cluding any successor or substantially similar rule)
4 as if the preceding sentence did not apply to such
5 rule.

6 (2) PROMULGATION OF FINAL RULES.—In
7 place of the rules described in paragraph (1), the
8 Administrator shall—

9 (A) issue regulations establishing national
10 emission standards for coal-and oil-fired electric
11 utility steam generating units under section 112
12 of the Clean Air Act (42 U.S.C. 7412) with re-
13 spect to each hazardous air pollutant for which
14 the Administrator finds such regulations are
15 appropriate and necessary pursuant to sub-
16 section (n)(1)(A) of such section;

17 (B) issue regulations establishing stand-
18 ards of performance for fossil-fuel-fired electric
19 utility, industrial-commercial-institutional, and
20 small industrial-commercial-institutional steam
21 generating units under section 111 of the Clean
22 Air Act (42 U.S.C. 111); and

23 (C) issue the final regulations required by
24 subparagraphs (A) and (B)—

1 (i) after issuing proposed regulations
2 under such subparagraphs;

3 (ii) after consideration of the final re-
4 port submitted under section 303(c); and

5 (iii) not earlier than the date that is
6 12 months after the date on which the
7 Committee submits such report to the Con-
8 gress, or such later date as may be deter-
9 mined by the Administrator.

10 (3) COMPLIANCE PROVISIONS.—

11 (A) ESTABLISHMENT OF COMPLIANCE
12 DATES.—In promulgating the regulations under
13 paragraph (2), the Administrator—

14 (i) shall establish a date for compli-
15 ance with the standards and requirements
16 under such regulations that is not earlier
17 than 5 years after the effective date of the
18 regulations; and

19 (ii) in establishing a date for such
20 compliance, shall take into consideration—

21 (I) the costs of achieving emis-
22 sions reductions;

23 (II) any non-air quality health
24 and environmental impact and energy

1 requirements of the standards and re-
2 quirements;

3 (III) the feasibility of imple-
4 menting the standards and require-
5 ments, including the time needed to—

6 (aa) obtain necessary permit
7 approvals; and

8 (bb) procure, install, and
9 test control equipment;

10 (IV) the availability of equip-
11 ment, suppliers, and labor, given the
12 requirements of the regulations and
13 other proposed or finalized regula-
14 tions; and

15 (V) potential net employment im-
16 pacts.

17 (B) NEW SOURCES.—With respect to the
18 regulations promulgated pursuant to paragraph
19 (2)—

20 (i) the date on which the Adminis-
21 trator proposes a regulation pursuant to
22 paragraph (2)(A) establishing an emission
23 standard under section 112 of the Clean
24 Air Act (42 U.S.C. 7412) shall be treated
25 as the date on which the Administrator

1 first proposes such a regulation for pur-
2 poses of applying the definition of a new
3 source under section 112(a)(4) of such Act
4 (42 U.S.C. 7412(a)(4));

5 (ii) the date on which the Adminis-
6 trator proposes a regulation pursuant to
7 paragraph (2)(B) establishing a standard
8 of performance under section 111 of the
9 Clean Air Act (42 U.S.C. 7411) shall be
10 treated as the date on which the Adminis-
11 trator proposes such a regulation for pur-
12 poses of applying the definition of a new
13 source under section 111(a)(2) of such Act
14 (42 U.S.C. 7411(a)(2));

15 (iii) for purposes of any emission
16 standard or limitation applicable to electric
17 utility steam generating units, the term
18 “new source” means a stationary source
19 for which a preconstruction permit or
20 other preconstruction approval required
21 under the Clean Air Act (42 U.S.C. 7401
22 et seq.) has been issued after the effective
23 date of such emissions standard or limita-
24 tion; and

1 (iv) for purposes of clause (iii), the
2 date of issuance of a preconstruction per-
3 mit or other preconstruction approval is
4 deemed to be the date on which such per-
5 mit or approval is issued to the applicant
6 irrespective of any administrative or judi-
7 cial review occurring after such date.

8 (C) RULE OF CONSTRUCTION.—Nothing in
9 this subsection shall be construed to restrict or
10 otherwise affect the provisions of paragraphs
11 (3)(B) and (4) of section 112(i) of the Clean
12 Air Act (42 U.S.C. 7412(i)).

13 (4) OTHER PROVISIONS.—

14 (A) ESTABLISHMENT OF STANDARDS
15 ACHIEVABLE IN PRACTICE.—The regulations
16 promulgated pursuant to paragraph (2)(A) of
17 this section shall apply section 112(d)(3) of the
18 Clean Air Act (42 U.S.C. 7412(d)(3)) in ac-
19 cordance with the following:

20 (i) NEW SOURCES.—With respect to
21 new sources:

22 (I) The Administrator shall iden-
23 tify the best controlled similar source
24 for each source category or sub-
25 category.

1 (II) The best controlled similar
2 source for a category or subcategory
3 shall be the single source that is de-
4 termined by the Administrator to be
5 the best controlled, in the aggregate,
6 for all of the hazardous air pollutants
7 for which the Administrator intends
8 to issue standards for such source cat-
9 egory or subcategory, under actual op-
10 erating conditions, taking into account
11 the variability in actual source per-
12 formance, source design, fuels, con-
13 trols, ability to measure pollutant
14 emissions, and operating conditions.

15 (ii) EXISTING SOURCES.—With re-
16 spect to existing sources:

17 (I) The Administrator shall iden-
18 tify one group of sources that con-
19 stitutes the best performing 12 per-
20 cent of existing sources for each
21 source category or subcategory.

22 (II) The group constituting the
23 best performing 12 percent of existing
24 sources for a category or subcategory
25 shall be the single group that is deter-

1 mined by the Administrator to be the
2 best performing, in the aggregate, for
3 all of the hazardous air pollutants for
4 which the Administrator intends to
5 issue standards for such source cat-
6 egory or subcategory, under actual op-
7 erating conditions, taking into account
8 the variability in actual source per-
9 formance, source design, fuels, con-
10 trols, ability to measure pollutant
11 emissions, and operating conditions.

12 (B) REGULATORY ALTERNATIVES.—For
13 the regulations promulgated pursuant to para-
14 graph (2) of this section, from among the range
15 of regulatory alternatives authorized under the
16 Clean Air Act (42 U.S.C. 7401 et seq.), includ-
17 ing work practice standards under section
18 112(h) of such Act (42 U.S.C. 7412(h)), the
19 Administrator shall impose the least burden-
20 some, consistent with the purposes of such Act
21 and Executive Order No. 13563 published at 76
22 Fed. Reg. 3821 (January 21, 2011).

1 **SEC. 305. CONSIDERATION OF FEASIBILITY AND COST IN**
2 **ESTABLISHING NATIONAL AMBIENT AIR**
3 **QUALITY STANDARDS.**

4 In establishing any national primary or secondary
5 ambient air quality standard under section 109 of the
6 Clean Air Act (42 U.S.C. 7409), the Administrator of the
7 Environmental Protection Agency shall take into consider-
8 ation feasibility and cost.

9 **TITLE IV—MANAGEMENT AND**
10 **DISPOSAL OF COAL COMBUS-**
11 **TION RESIDUALS**

12 **SEC. 401. MANAGEMENT AND DISPOSAL OF COAL COMBUS-**
13 **TION RESIDUALS.**

14 (a) IN GENERAL.—Subtitle D of the Solid Waste Dis-
15 posal Act (42 U.S.C. 6941 et seq.) is amended by adding
16 at the end the following:

17 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**
18 **BUSTION RESIDUALS.**

19 “(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-
20 TION RESIDUALS.—Each State may adopt and implement
21 a coal combustion residuals permit program.

22 “(b) STATE ACTIONS.—

23 “(1) NOTIFICATION.—Not later than 6 months
24 after the date of enactment of this section (except
25 as provided by the deadline identified under sub-
26 section (d)(3)(B)), the Governor of each State shall

1 notify the Administrator, in writing, whether such
2 State will adopt and implement a coal combustion
3 residuals permit program.

4 “(2) CERTIFICATION.—

5 “(A) IN GENERAL.—Not later than 36
6 months after the date of enactment of this sec-
7 tion (except as provided in subsections (f)(1)(A)
8 and (f)(1)(C)), in the case of a State that has
9 notified the Administrator that it will imple-
10 ment a coal combustion residuals permit pro-
11 gram, the head of the lead State agency respon-
12 sible for implementing the coal combustion re-
13 siduals permit program shall submit to the Ad-
14 ministrator a certification that such coal com-
15 bustion residuals permit program meets the
16 specifications described in subsection (c).

17 “(B) CONTENTS.—A certification sub-
18 mitted under this paragraph shall include—

19 “(i) a letter identifying the lead State
20 agency responsible for implementing the
21 coal combustion residuals permit program,
22 signed by the head of such agency;

23 “(ii) identification of any other State
24 agencies involved with the implementation

1 of the coal combustion residuals permit
2 program;

3 “(iii) a narrative description that pro-
4 vides an explanation of how the State will
5 ensure that the coal combustion residuals
6 permit program meets the requirements of
7 this section, including a description of the
8 State’s—

9 “(I) process to inspect or other-
10 wise determine compliance with such
11 permit program;

12 “(II) process to enforce the re-
13 quirements of such permit program;

14 “(III) public participation proc-
15 ess for the promulgation, amendment,
16 or repeal of regulations for, and the
17 issuance of permits under, such per-
18 mit program; and

19 “(IV) statutes, regulations, or
20 policies pertaining to public access to
21 information, such as groundwater
22 monitoring data;

23 “(iv) a legal certification that the
24 State has, at the time of certification, fully
25 effective statutes or regulations necessary

1 to implement a coal combustion residuals
2 permit program that meets the specifica-
3 tions described in subsection (c); and

4 “(v) copies of State statutes and regu-
5 lations described in clause (iv).

6 “(C) UPDATES.—A State may update the
7 certification as needed to reflect changes to the
8 coal combustion residuals permit program.

9 “(3) MAINTENANCE OF 4005(C) OR 3006 PRO-
10 GRAM.—In order to adopt or implement a coal com-
11 bustion residuals permit program under this section
12 (including pursuant to subsection (f)), the State
13 agency responsible for implementing a coal combus-
14 tion residuals permit program in a State shall main-
15 tain an approved program under section 4005(c) or
16 an authorized program under section 3006.

17 “(c) PERMIT PROGRAM SPECIFICATIONS.—

18 “(1) MINIMUM REQUIREMENTS.—

19 “(A) IN GENERAL.—A coal combustion re-
20 siduals permit program shall apply the revised
21 criteria described in paragraph (2) to owners or
22 operators of structures, including surface im-
23 poundments, that receive coal combustion re-
24 siduals.

25 “(B) STRUCTURAL INTEGRITY.—

1 “(i) ENGINEERING CERTIFICATION.—
2 A coal combustion residuals permit pro-
3 gram shall require that an independent
4 registered professional engineer certify
5 that—

6 “(I) the design of structures is in
7 accordance with recognized and gen-
8 erally accepted good engineering prac-
9 tices for containment of the maximum
10 volume of coal combustion residuals
11 and liquids appropriate for the struc-
12 ture; and

13 “(II) the construction and main-
14 tenance of the structure will ensure
15 dam stability.

16 “(ii) INSPECTION.—A coal combustion
17 residuals permit program shall require that
18 structures that are surface impoundments
19 be inspected not less than annually by an
20 independent registered professional engi-
21 neer to assure that the design, operation,
22 and maintenance of the surface impound-
23 ment is in accordance with recognized and
24 generally accepted good engineering prac-
25 tices for containment of the maximum vol-

1 ume of coal combustion residuals and liq-
2 uids which can be impounded, so as to en-
3 sure dam stability.

4 “(iii) DEFICIENCY.—

5 “(I) IN GENERAL.—If the head
6 of the agency responsible for imple-
7 menting the coal combustion residuals
8 permit program determines that a
9 structure is deficient with respect to
10 the requirements in clauses (i) and
11 (ii), the head of the agency has the
12 authority to require action to correct
13 the deficiency according to a schedule
14 determined by the agency.

15 “(II) UNCORRECTED DEFI-
16 CIENCIES.—If a deficiency is not cor-
17 rected according to the schedule, the
18 head of the agency has the authority
19 to require that the structure close in
20 accordance with subsection (h).

21 “(C) LOCATION.—Each structure that first
22 receives coal combustion residuals after the date
23 of enactment of this section shall be constructed
24 with a base located a minimum of 2 feet above
25 the upper limit of the water table, unless it is

1 demonstrated to the satisfaction of the agency
2 responsible for implementing the coal combus-
3 tion residuals permit program that—

4 “(i) the hydrogeologic characteristics
5 of the structure and surrounding land
6 would preclude such a requirement; and

7 “(ii) the function and integrity of the
8 liner system will not be adversely impacted
9 by contact with the water table.

10 “(D) WIND DISPERSAL.—

11 “(i) IN GENERAL.—The agency re-
12 sponsible for implementing the coal com-
13 bustion residuals permit program shall re-
14 quire that owners or operators of struc-
15 tures address wind dispersal of dust by re-
16 quiring cover, or by wetting coal combus-
17 tion residuals with water to a moisture
18 content that prevents wind dispersal, facili-
19 tates compaction, and does not result in
20 free liquids.

21 “(ii) ALTERNATIVE METHODS.—Sub-
22 ject to the review and approval by the
23 agency, owners or operators of structures
24 may propose alternative methods to ad-
25 dress wind dispersal of dust that will pro-

1 vide comparable or more effective control
2 of dust.

3 “(E) PERMITS.—The agency responsible
4 for implementing the coal combustion residuals
5 permit program shall require that the owner or
6 operator of each structure that receives coal
7 combustion residuals after the date of enact-
8 ment of this section apply for and obtain a per-
9 mit incorporating the requirements of the coal
10 combustion residuals permit program.

11 “(F) STATE NOTIFICATION AND GROUND-
12 WATER MONITORING.—

13 “(i) NOTIFICATION.—Not later than
14 the date on which a State submits a cer-
15 tification under subsection (b)(2), the
16 State shall notify owners or operators of
17 structures within the State of—

18 “(I) the obligation to apply for
19 and obtain a permit under subpara-
20 graph (E); and

21 “(II) the groundwater monitoring
22 requirements applicable to structures
23 under paragraph (2)(A)(ii).

24 “(ii) GROUNDWATER MONITORING.—
25 Not later than 1 year after the date on

1 which a State submits a certification under
2 subsection (b)(2), the State shall require
3 the owner or operator of each structure to
4 comply with the groundwater monitoring
5 requirements under paragraph (2)(A)(ii).

6 “(G) AGENCY REQUIREMENTS.—Except
7 for information described in section 1905 of
8 title 18, United States Code, the agency respon-
9 sible for implementing the coal combustion re-
10 siduals permit program shall ensure that—

11 “(i) documents for permit determina-
12 tions are made available for public review
13 and comment under the public participa-
14 tion process described in subsection
15 (b)(2)(B)(iii)(III);

16 “(ii) final determinations on permit
17 applications are made known to the public;
18 and

19 “(iii) groundwater monitoring data
20 collected under paragraph (2) is publicly
21 available.

22 “(H) AGENCY AUTHORITY.—

23 “(i) IN GENERAL.—The agency re-
24 sponsible for implementing the coal com-

1 bustion residuals permit program has the
2 authority to—

3 “(I) obtain information necessary
4 to determine whether the owner or op-
5 erator of a structure is in compliance
6 with the coal combustion residuals
7 permit program requirements of this
8 section;

9 “(II) conduct or require moni-
10 toring and testing to ensure that
11 structures are in compliance with the
12 coal combustion residuals permit pro-
13 gram requirements of this section;
14 and

15 “(III) enter, at reasonable times,
16 any site or premise subject to the coal
17 combustion residuals permit program
18 for the purpose of inspecting struc-
19 tures and reviewing records relevant
20 to the operation and maintenance of
21 structures.

22 “(ii) MONITORING AND TESTING.—If
23 monitoring or testing is conducted under
24 clause (i)(II) by or for the agency respon-
25 sible for implementing the coal combustion

1 residuals permit program, the agency shall,
2 if requested, provide to the owner or oper-
3 ator—

4 “(I) a written description of the
5 monitoring or testing completed;

6 “(II) at the time of sampling, a
7 portion of each sample equal in vol-
8 ume or weight to the portion retained
9 by or for the agency; and

10 “(III) a copy of the results of
11 any analysis of samples collected by or
12 for the agency.

13 “(I) STATE AUTHORITY.—A State imple-
14 menting a coal combustion residuals permit
15 program has the authority to—

16 “(i) inspect structures; and

17 “(ii) implement and enforce the coal
18 combustion residuals permit program.

19 “(J) REQUIREMENTS FOR SURFACE IM-
20 POUNDMENTS THAT DO NOT MEET CERTAIN
21 CRITERIA.—

22 “(i) IN GENERAL.—In addition to the
23 groundwater monitoring and corrective ac-
24 tion requirements described in paragraph
25 (2)(A)(ii), a coal combustion residuals per-

1 mit program shall require a surface im-
2 poundment that receives coal combustion
3 residuals after the date of enactment of
4 this section to—

5 “(I) comply with the require-
6 ments in clause (ii)(I)(aa) and sub-
7 clauses (II) through (IV) of clause (ii)
8 if the surface impoundment—

9 “(aa) does not—

10 “(AA) have a liner sys-
11 tem described in section
12 258.40(b) of title 40, Code
13 of Federal Regulations; and

14 “(BB) meet the design
15 criteria described in section
16 258.40(a)(1) of title 40,
17 Code of Federal Regula-
18 tions; and

19 “(bb) within 10 years after
20 the date of enactment of this sec-
21 tion, is required under section
22 258.56(a) of title 40, Code of
23 Federal Regulations, to undergo
24 an assessment of corrective meas-
25 ures for any constituent identi-

1 fied in paragraph (2)(A)(ii) for
2 which assessment groundwater
3 monitoring is required; and

4 “(II) comply with the require-
5 ments in clause (ii)(I)(bb) and sub-
6 clauses (II) through (IV) of clause (ii)
7 if the surface impoundment—

8 “(aa) does not—

9 “(AA) have a liner sys-
10 tem described in section
11 258.40(b) of title 40, Code
12 of Federal Regulations; and

13 “(BB) meet the design
14 criteria described in section
15 258.40(a)(1) of title 40,
16 Code of Federal Regula-
17 tions; and

18 “(bb) as of the date of en-
19 actment of this section, is subject
20 to a State corrective action re-
21 quirement.

22 “(ii) REQUIREMENTS.—

23 “(I) DEADLINES.—

24 “(aa) IN GENERAL.—Except
25 as provided in item (bb), sub-

1 clause (IV), and clause (iii), the
2 groundwater protection standard
3 for structures identified in clause
4 (i)(I) established by the agency
5 responsible for implementing the
6 coal combustion residuals permit
7 program under section 258.55(h)
8 or 258.55(i) of title 40, Code of
9 Federal Regulations, for any con-
10 stituent for which corrective
11 measures are required shall be
12 met—

13 “(AA) as soon as prac-
14 ticable at the relevant point
15 of compliance, as described
16 in section 258.40(d) of title
17 40, Code of Federal Regula-
18 tions; and

19 “(BB) not later than
20 10 years after the date of
21 enactment of this section.

22 “(bb) IMPOUNDMENTS SUB-
23 JECT TO STATE CORRECTIVE AC-
24 TION REQUIREMENTS.—Except
25 as provided in subclause (IV), the

1 groundwater protection standard
2 for structures identified in clause
3 (i)(II) established by the agency
4 responsible for implementing the
5 coal combustion residuals permit
6 program under section 258.55(h)
7 or 258.55(i) of title 40, Code of
8 Federal Regulations, for any con-
9 stituent for which corrective
10 measures are required shall be
11 met—

12 “(AA) as soon as prac-
13 ticable at the relevant point
14 of compliance, as described
15 in section 258.40(d) of title
16 40, Code of Federal Regula-
17 tions; and

18 “(BB) not later than 8
19 years after the date of en-
20 actment of this section.

21 “(II) CLOSURE.—If the deadlines
22 under clause (I) are not satisfied, the
23 structure shall cease receiving coal
24 combustion residuals and initiate clo-
25 sure under subsection (h).

1 “(III) INTERIM MEASURES.—

2 “(aa) IN GENERAL.—Except
3 as provided in item (bb), not
4 later than 90 days after the date
5 on which the assessment of cor-
6 rective measures is initiated, the
7 owner or operator shall imple-
8 ment interim measures, as nec-
9 essary, under the factors in sec-
10 tion 258.58(a)(3) of title 40,
11 Code of Federal Regulations.

12 “(bb) IMPOUNDMENTS SUB-
13 JECT TO STATE CORRECTIVE AC-
14 TION REQUIREMENTS.—Item (aa)
15 shall only apply to surface im-
16 poundments subject to a State
17 corrective action requirement as
18 of the date of enactment of this
19 section if the owner or operator
20 has not implemented interim
21 measures, as necessary, under
22 the factors in section
23 258.58(a)(3) of title 40, Code of
24 Federal Regulations.

1 “(IV) EXTENSION OF DEAD-
2 LINE.—

3 “(aa) IN GENERAL.—Except
4 as provided in item (bb), the
5 deadline for meeting a ground-
6 water protection standard under
7 subclause (I) may be extended by
8 the agency responsible for imple-
9 menting the coal combustion re-
10 siduals permit program, after op-
11 portunity for public notice and
12 comment under the public par-
13 ticipation process described in
14 subsection (b)(2)(B)(iii)(III),
15 based on—

16 “(AA) the effectiveness
17 of any interim measures im-
18 plemented by the owner or
19 operator of the facility under
20 section 258.58(a)(3) of title
21 40, Code of Federal Regula-
22 tions;

23 “(BB) the level of
24 progress demonstrated in

1 meeting the groundwater
2 protection standard;

3 “(CC) the potential for
4 other adverse human health
5 or environmental exposures
6 attributable to the contami-
7 nation from the surface im-
8 poundment undergoing cor-
9 rective action; and

10 “(DD) the lack of avail-
11 able alternative management
12 capacity for the coal com-
13 bustion residuals and related
14 materials managed in the
15 impoundment at the facility
16 at which the impoundment
17 is located if the owner or op-
18 erator has used best efforts,
19 as necessary, to design, ob-
20 tain any necessary permits,
21 finance, construct, and
22 render operational the alter-
23 native management capacity
24 during the time period for
25 meeting a groundwater pro-

1 tection standard in sub-
2 clause (I).

3 “(bb) EXCEPTION.—The
4 deadlines under subclause (I)
5 shall not be extended if there has
6 been contamination of public or
7 private drinking water systems
8 attributable to a surface im-
9 poundment undergoing corrective
10 action, unless the contamination
11 has been addressed by providing
12 a permanent replacement water
13 system.

14 “(iii) SUBSEQUENT CLOSURE.—

15 “(I) IN GENERAL.—In addition
16 to the groundwater monitoring and
17 corrective action requirements de-
18 scribed in paragraph (2)(A)(ii), a coal
19 combustion residuals permit program
20 shall require a surface impoundment
21 that receives coal combustion residu-
22 als after the date of enactment of this
23 section to comply with the require-
24 ments in subclause (II) if the surface
25 impoundment—

1 “(aa) does not—

2 “(AA) have a liner sys-
3 tem described in section
4 258.40(b) of title 40, Code
5 of Federal Regulations; and

6 “(BB) meet the design
7 criteria described in section
8 258.40(a)(1) of title 40,
9 Code of Federal Regula-
10 tions;

11 “(bb) more than 10 years
12 after the date of enactment of
13 this section, is required under
14 section 258.56(a) of title 40,
15 Code of Federal Regulations, to
16 undergo an assessment of correc-
17 tive measures for any constituent
18 identified in paragraph (2)(A)(ii)
19 for which assessment ground-
20 water monitoring is required; and

21 “(cc) is not subject to the
22 requirements in clause (ii).

23 “(II) REQUIREMENTS.—

24 “(aa) CLOSURE.—The struc-
25 tures identified in subclause (I)

1 shall cease receiving coal combus-
2 tion residuals and initiate closure
3 in accordance with subsection (h)
4 after alternative management ca-
5 pacity for the coal combustion re-
6 siduals and related materials
7 managed in the impoundment at
8 the facility is available.

9 “(bb) BEST EFFORTS.—The
10 alternative management capacity
11 shall be developed as soon as
12 practicable with the owner or op-
13 erator using best efforts to de-
14 sign, obtain necessary permits, fi-
15 nance, construct, and render
16 operational the alternative man-
17 agement capacity.

18 “(cc) ALTERNATIVE MAN-
19 AGEMENT CAPACITY PLAN.—The
20 owner or operator shall, in col-
21 laboration with the agency re-
22 sponsible for implementing the
23 coal combustion residuals permit
24 program, prepare a written plan
25 that describes the steps necessary

1 to develop the alternative man-
2 agement capacity and includes a
3 schedule for completion.

4 “(dd) PUBLIC PARTICIPA-
5 TION.—The plan described in
6 item (cc) shall be subject to pub-
7 lic notice and comment under the
8 public participation process de-
9 scribed in subsection
10 (b)(2)(B)(iii)(III).

11 “(2) REVISED CRITERIA.—The revised criteria
12 described in this paragraph are—

13 “(A) the revised criteria for design,
14 groundwater monitoring, corrective action, clo-
15 sure, and post-closure, for structures, includ-
16 ing—

17 “(i) for new structures, and lateral ex-
18 pansions of existing structures, that first
19 receive coal combustion residuals after the
20 date of enactment of this section, the re-
21 vised criteria regarding design require-
22 ments described in section 258.40 of title
23 40, Code of Federal Regulations, except
24 that the leachate collection system require-
25 ments described in section 258.40(a)(2) of

1 title 40, Code of Federal Regulations do
2 not apply to structures that are surface
3 impoundments;

4 “(ii) for all structures that receive
5 coal combustion residuals after the date of
6 enactment of this section, the revised cri-
7 teria regarding groundwater monitoring
8 and corrective action requirements de-
9 scribed in subpart E of part 258 of title
10 40, Code of Federal Regulations, except
11 that, for the purposes of this paragraph,
12 the revised criteria shall also include—

13 “(I) for the purposes of detection
14 monitoring, the constituents boron,
15 chloride, conductivity, fluoride, mer-
16 cury, pH, sulfate, sulfide, and total
17 dissolved solids; and

18 “(II) for the purposes of assess-
19 ment monitoring, establishing a
20 groundwater protection standard, and
21 assessment of corrective measures, the
22 constituents aluminum, boron, chlo-
23 ride, fluoride, iron, manganese, molyb-
24 denum, pH, sulfate, and total dis-
25 solved solids;

1 “(iii) for all structures that receive
2 coal combustion residuals after the date of
3 enactment of this section, in a manner
4 consistent with subsection (h), the revised
5 criteria for closure described in subsections
6 (a) through (c) and (h) through (j) of sec-
7 tion 258.60 of title 40, Code of Federal
8 Regulations; and

9 “(iv) for all structures that receive
10 coal combustion residuals after the date of
11 enactment of this section, the revised cri-
12 teria for post-closure care described in sec-
13 tion 258.61 of title 40, Code of Federal
14 Regulations, except for the requirement de-
15 scribed in subsection (a)(4) of that section;

16 “(B) the revised criteria for location re-
17 strictions described in—

18 “(i) for new structures, and lateral ex-
19 pansions of existing structures, that first
20 receive coal combustion residuals after the
21 date of enactment of this section, sections
22 258.11 through 258.15 of title 40, Code of
23 Federal Regulations; and

24 “(ii) for existing structures that re-
25 ceive coal combustion residuals after the

1 date of enactment of this section, sections
2 258.11 and 258.15 of title 40, Code of
3 Federal Regulations;

4 “(C) for all structures that receive coal
5 combustion residuals after the date of enact-
6 ment of this section, the revised criteria for air
7 quality described in section 258.24 of title 40,
8 Code of Federal Regulations;

9 “(D) for all structures that receive coal
10 combustion residuals after the date of enact-
11 ment of this section, the revised criteria for fi-
12 nancial assurance described in subpart G of
13 part 258 of title 40, Code of Federal Regula-
14 tions;

15 “(E) for all structures that receive coal
16 combustion residuals after the date of enact-
17 ment of this section, the revised criteria for sur-
18 face water described in section 258.27 of title
19 40, Code of Federal Regulations;

20 “(F) for all structures that receive coal
21 combustion residuals after the date of enact-
22 ment of this section, the revised criteria for rec-
23 ordkeeping described in section 258.29 of title
24 40, Code of Federal Regulations;

1 “(G) for landfills and other land-based
2 units, other than surface impoundments, that
3 receive coal combustion residuals after the date
4 of enactment of this section, the revised criteria
5 for run-on and run-off control systems de-
6 scribed in section 258.26 of title 40, Code of
7 Federal Regulations; and

8 “(H) for surface impoundments that re-
9 ceive coal combustion residuals after the date of
10 enactment of this section, the revised criteria
11 for run-off control systems described in section
12 258.26(a)(2) of title 40, Code of Federal Regu-
13 lations.

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

16 “(1) IN GENERAL.—The Administrator shall
17 provide to a State written notice and an opportunity
18 to remedy deficiencies in accordance with paragraph
19 (2) 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);

1 “(D) is not implementing a coal combus-
2 tion residuals permit program that—

3 “(i) meets the specifications described
4 in subsection (c); or

5 “(ii)(I) is consistent with the certifi-
6 cation under subsection (b)(2)(B)(iii); and

7 “(II) maintains fully effective
8 statutes or regulations necessary to
9 implement a coal combustion residuals
10 permit program; or

11 “(E) does not make available to the Ad-
12 ministrator, within 90 days of a written re-
13 quest, specific information necessary for the
14 Administrator to ascertain whether the State
15 has complied with subparagraphs (A) through
16 (D).

17 “(2) REQUEST.—If the request described in
18 paragraph (1)(E) is made pursuant to a petition of
19 the Administrator, the Administrator shall only
20 make the request if the Administrator does not pos-
21 sess the information necessary to ascertain whether
22 the State has complied with subparagraphs (A)
23 through (D) of paragraph (1).

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

4 “(A) include findings of the Administrator
5 detailing any applicable deficiencies in—

6 “(i) compliance by the State with the
7 notification requirement under subsection
8 (b)(1);

9 “(ii) compliance by the State with the
10 certification requirement under subsection
11 (b)(2);

12 “(iii) compliance by the State with the
13 maintenance requirement under subsection
14 (b)(3);

15 “(iv) the State coal combustion re-
16 siduals permit program in meeting the
17 specifications described in subsection (c);
18 and

19 “(v) compliance by the State with the
20 request under paragraph (1)(E); and

21 “(B) identify, in collaboration with the
22 State, a reasonable deadline, by which the State
23 shall remedy the deficiencies detailed under
24 subparagraph (A), which shall be—

1 “(i) in the case of a deficiency de-
2 scribed in clauses (i) through (iv) of sub-
3 paragraph (A), not earlier than 180 days
4 after the date on which the State receives
5 the notice; and

6 “(ii) in the case of a deficiency de-
7 scribed in subparagraph (A)(v), not later
8 than 90 days after the date on which the
9 State receives the notice.

10 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

11 “(1) IN GENERAL.—The Administrator shall
12 implement a coal combustion residuals permit pro-
13 gram for a State only if—

14 “(A) the Governor of the State notifies the
15 Administrator under subsection (b)(1) that the
16 State will not adopt and implement a permit
17 program;

18 “(B) the State has received a notice under
19 subsection (d) and the Administrator deter-
20 mines, after providing a 30-day period for no-
21 tice and public comment, that the State has
22 failed, by the deadline identified in the notice
23 under subsection (d)(3)(B), to remedy the defi-
24 ciencies detailed in the notice under subsection
25 (d)(3)(A); or

1 “(C) the State informs the Administrator,
2 in writing, that such State will no longer imple-
3 ment such a permit program.

4 “(2) REVIEW.—A State may obtain a review of
5 a determination by the Administrator under this
6 subsection as if the determination was a final regu-
7 lation for purposes of section 7006.

8 “(3) OTHER STRUCTURES.—For structures lo-
9 cated on property within the exterior boundaries of
10 a State for which the State does not have authority
11 or jurisdiction to regulate, the Administrator shall
12 implement a coal combustion residuals permit pro-
13 gram only for those structures.

14 “(4) REQUIREMENTS.—If the Administrator
15 implements a coal combustion residuals permit pro-
16 gram for a State under paragraph (1) or (3), the
17 permit program shall consist of the specifications de-
18 scribed in subsection (c).

19 “(5) ENFORCEMENT.—

20 “(A) IN GENERAL.—If the Administrator
21 implements a coal combustion residuals permit
22 program for a State under paragraph (1)—

23 “(i) the authorities referred to in sec-
24 tion 4005(c)(2)(A) shall apply with respect
25 to coal combustion residuals and structures

1 for which the Administrator is imple-
2 menting the coal combustion residuals per-
3 mit program; and

4 “(ii) the Administrator may use those
5 authorities to inspect, gather information,
6 and enforce the requirements of this sec-
7 tion in the State.

8 “(B) OTHER STRUCTURES.—If the Admin-
9 istrator implements a coal combustion residuals
10 permit program for a State under paragraph
11 (3)—

12 “(i) the authorities referred to in sec-
13 tion 4005(c)(2)(A) shall apply with respect
14 to coal combustion residuals and structures
15 for which the Administrator is imple-
16 menting the coal combustion residuals per-
17 mit program; and

18 “(ii) the Administrator may use those
19 authorities to inspect, gather information,
20 and enforce the requirements of this sec-
21 tion for the structures for which the Ad-
22 ministrator is implementing the coal com-
23 bustion residuals permit program.

24 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
25 ADMINISTRATOR.—

1 “(1) STATE CONTROL.—

2 “(A) NEW ADOPTION AND IMPLEMENTA-
3 TION BY STATE.—For a State for which the
4 Administrator is implementing a coal combus-
5 tion residuals permit program under subsection
6 (e)(1)(A), the State may adopt and implement
7 such a permit program by—

8 “(i) notifying the Administrator that
9 the State will adopt and implement such a
10 permit program;

11 “(ii) not later than 6 months after the
12 date of such notification, submitting to the
13 Administrator a certification under sub-
14 section (b)(2); and

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

17 “(I) a determination, after pro-
18 viding a 30-day period for notice and
19 public comment that the State coal
20 combustion residuals permit program
21 meets the specifications described in
22 subsection (c); and

23 “(II) a timeline for transition of
24 control of the coal combustion residu-
25 als permit program.

1 “(B) REMEDYING DEFICIENT PERMIT PRO-
2 GRAM.—For a State for which the Adminis-
3 trator is implementing a coal combustion re-
4 siduals permit program under subsection
5 (e)(1)(B), the State may adopt and implement
6 such a permit program by—

7 “(i) remedying only the deficiencies
8 detailed in the notice provided under sub-
9 section (d)(3)(A); and

10 “(ii) receiving from the Adminis-
11 trator—

12 “(I) a determination, after pro-
13 viding a 30-day period for notice and
14 public comment, that the deficiencies
15 detailed in such notice have been rem-
16 edied; and

17 “(II) a timeline for transition of
18 control of the coal combustion residu-
19 als permit program.

20 “(C) RESUMPTION OF IMPLEMENTATION
21 BY STATE.—For a State for which the Adminis-
22 trator is implementing a coal combustion re-
23 siduals permit program under subsection
24 (e)(1)(C), the State may adopt and implement
25 such a permit program by—

1 “(i) notifying the Administrator that
2 the State will adopt and implement such a
3 permit program;

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

8 “(iii) receiving from the Adminis-
9 trator—

10 “(I) a determination, after pro-
11 viding a 30-day period for notice and
12 public comment, that the State coal
13 combustion residuals permit program
14 meets the specifications described in
15 subsection (c); and

16 “(II) a timeline for transition of
17 control of the coal combustion residu-
18 als permit program.

19 “(2) REVIEW OF DETERMINATION.—

20 “(A) DETERMINATION REQUIRED.—The
21 Administrator shall make a determination
22 under paragraph (1) not later than 90 days
23 after the date on which the State submits a cer-
24 tification under paragraph (1)(A)(ii) or
25 (1)(C)(ii), or notifies the Administrator that the

1 deficiencies have been remedied pursuant to
2 paragraph (1)(B)(i), as applicable.

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

8 “(3) IMPLEMENTATION DURING TRANSITION.—

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

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

16 “(ii) the Administrator takes control
17 of a coal combustion residuals permit pro-
18 gram from a State under subsection (e).

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

1 “(i) implements changes to the re-
2 quirements of the coal combustion residu-
3 als permit program with respect to the
4 basis for 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)(1) for such State.

13 “(g) EFFECT ON DETERMINATION UNDER 4005(C)
14 OR 3006.—The Administrator shall not consider the im-
15 plementation of a coal combustion residuals permit pro-
16 gram by the Administrator under subsection (e) in making
17 a determination of approval for a permit program or other
18 system of prior approval and conditions under section
19 4005(c) or of authorization for a program under section
20 3006.

21 “(h) CLOSURE.—

22 “(1) IN GENERAL.—If it is determined, pursu-
23 ant to a coal combustion residuals permit program,
24 that a structure should close, the time period and
25 method for the closure of such structure shall be set

1 forth in a closure plan that establishes a deadline for
2 completion and that takes into account the nature
3 and the site-specific characteristics of the structure
4 to be closed.

5 “(2) SURFACE IMPOUNDMENT.—In the case of
6 a surface impoundment, the closure plan under
7 paragraph (1) shall require, at a minimum, the re-
8 moval of liquid and the stabilization of remaining
9 waste, as necessary to support the final cover.

10 “(i) AUTHORITY.—

11 “(1) STATE AUTHORITY.—Nothing in this sec-
12 tion shall preclude or deny any right of any State to
13 adopt or enforce any regulation or requirement re-
14 specting coal combustion residuals that is more
15 stringent or broader in scope than a regulation or
16 requirement under this section.

17 “(2) AUTHORITY OF THE ADMINISTRATOR.—

18 “(A) IN GENERAL.—Except as provided in
19 subsections (d) and (e) and section 6005, the
20 Administrator shall, with respect to the regula-
21 tion of coal combustion residuals, defer to the
22 States pursuant to this section.

23 “(B) IMMINENT HAZARD.—Nothing in this
24 section shall be construed as affecting the au-

1 thority of the Administrator under section 7003
2 with respect to coal combustion residuals.

3 “(C) ENFORCEMENT ASSISTANCE ONLY
4 UPON REQUEST.—Upon request from the head
5 of a lead State agency that is implementing a
6 coal combustion residuals permit program, the
7 Administrator may provide to such State agen-
8 cy only the enforcement assistance requested.

9 “(D) CONCURRENT ENFORCEMENT.—Ex-
10 cept as provided in subparagraph (C), the Ad-
11 ministrator shall not have concurrent enforce-
12 ment authority when a State is implementing a
13 coal combustion residuals permit program.

14 “(E) OTHER AUTHORITY.—The Adminis-
15 trator shall not have authority to finalize the
16 proposed rule published at pages 35128
17 through 35264 of volume 75 of the Federal
18 Register (June 21, 2010).

19 “(3) CITIZEN SUITS.—Nothing in this section
20 shall be construed to affect the authority of a person
21 to commence a civil action in accordance with sec-
22 tion 7002.

23 “(j) MINE RECLAMATION ACTIVITIES.—A coal com-
24 bustion residuals permit program implemented by the Ad-
25 ministrator under subsection (e) shall not apply to the uti-

1 lization, placement, and storage of coal combustion residu-
2 als at surface mining and reclamation operations.

3 “(k) DEFINITIONS.—In this section:

4 “(1) COAL COMBUSTION RESIDUALS.—The
5 term ‘coal combustion residuals’ means—

6 “(A) the solid wastes listed in section
7 3001(b)(3)(A)(i), including recoverable mate-
8 rials from such wastes;

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

16 “(C) fluidized bed combustion wastes;

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

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

24 “(2) COAL COMBUSTION RESIDUALS PERMIT
25 PROGRAM.—The term ‘coal combustion residuals

1 permit program’ means all of the authorities, activi-
2 ties, and procedures that comprise the system of
3 prior approval and conditions implemented by or for
4 a State to regulate the management and disposal of
5 coal combustion residuals.

6 “(3) CODE OF FEDERAL REGULATIONS.—The
7 term ‘Code of Federal Regulations’ means the Code
8 of Federal Regulations (as in effect on the date of
9 enactment of this section) or any successor regula-
10 tions.

11 “(4) PERMIT; PRIOR APPROVAL AND CONDI-
12 TIONS.—The terms ‘permit’ and ‘prior approval and
13 conditions’ mean any authorization, license, or equiv-
14 alent control document that incorporates the re-
15 quirements and revised criteria described in para-
16 graphs (1) and (2) of subsection (c), respectively.

17 “(5) REVISED CRITERIA.—The term ‘revised
18 criteria’ means the criteria promulgated for munic-
19 ipal solid waste landfill units under section 4004(a)
20 and under section 1008(a)(3), as revised under sec-
21 tion 4010(c).

22 “(6) STRUCTURE.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), the term ‘structure’ means a
25 landfill, surface impoundment, or other land-

1 based unit which may receive coal combustion
2 residuals.

3 “(B) DE MINIMIS RECEIPT.—The term
4 ‘structure’ does not include any land-based unit
5 that receives only de minimis quantities of coal
6 combustion residuals if the presence of coal
7 combustion residuals is incidental to the mate-
8 rial managed in the unit.”.

9 (b) CONFORMING AMENDMENT.—The table of con-
10 tents contained in section 1001 of the Solid Waste Dis-
11 posal Act is amended by inserting after the item relating
12 to section 4010 the following:

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

13 **SEC. 402. 2000 REGULATORY DETERMINATION.**

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

23 **SEC. 403. TECHNICAL ASSISTANCE.**

24 Nothing in this title, or the amendments made by this
25 title, shall be construed to affect the authority of a State

1 to request, or the Administrator of the Environmental
2 Protection Agency to provide, technical assistance under
3 the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

4 **SEC. 404. FEDERAL POWER ACT.**

5 Nothing in this title, or the amendments made by this
6 title, shall be construed to affect the obligations of the
7 owner or operator of a structure (as defined in section
8 4011 of the Solid Waste Disposal Act, as added by this
9 title) under section 215(b)(1) of the Federal Power Act
10 (16 U.S.C. 824o(b)(1)).

11 **TITLE V—PRESERVING STATE**
12 **AUTHORITY TO MAKE DETER-**
13 **MINATIONS RELATING TO**
14 **WATER QUALITY STANDARDS**

15 **SEC. 501. STATE WATER QUALITY STANDARDS.**

16 (a) STATE WATER QUALITY STANDARDS.—Section
17 303(c)(4) of the Federal Water Pollution Control Act (33
18 U.S.C. 1313(c)(4)) is amended—

19 (1) by redesignating subparagraphs (A) and
20 (B) as clauses (i) and (ii), respectively;

21 (2) by striking “(4)” and inserting “(4)(A)”;

22 (3) by striking “The Administrator shall pro-
23 mulgate” and inserting the following:

24 “(B) The Administrator shall promulgate”; and

25 (4) by adding at the end the following:

1 “(C) Notwithstanding subparagraph (A)(ii), the Ad-
2 ministrators may not promulgate a revised or new standard
3 for a pollutant in any case in which the State has sub-
4 mitted to the Administrator and the Administrator has ap-
5 proved a water quality standard for that pollutant, unless
6 the State concurs with the Administrator’s determination
7 that the revised or new standard is necessary to meet the
8 requirements of this Act.”.

9 (b) FEDERAL LICENSES AND PERMITS.—Section
10 401(a) of such Act (33 U.S.C. 1341(a)) is amended by
11 adding at the end the following:

12 “(7) With respect to any discharge, if a State or
13 interstate agency having jurisdiction over the navigable
14 waters at the point where the discharge originates or will
15 originate determines under paragraph (1) that the dis-
16 charge will comply with the applicable provisions of sec-
17 tions 301, 302, 303, 306, and 307, the Administrator may
18 not take any action to supersede the determination.”.

19 (c) STATE NPDES PERMIT PROGRAMS.—Section
20 402(c) of such Act (42 U.S.C. 1342(c)) is amended by
21 adding at the end the following:

22 “(5) LIMITATION ON AUTHORITY OF ADMINIS-
23 TRATOR TO WITHDRAW APPROVAL OF STATE PRO-
24 GRAMS.—The Administrator may not withdraw ap-
25 proval of a State program under paragraph (3) or

1 (4), or limit Federal financial assistance for the
2 State program, on the basis that the Administrator
3 disagrees with the State regarding—

4 “(A) the implementation of any water
5 quality standard that has been adopted by the
6 State and approved by the Administrator under
7 section 303(c); or

8 “(B) the implementation of any Federal
9 guidance that directs the interpretation of the
10 State’s water quality standards.”.

11 (d) LIMITATION ON AUTHORITY OF ADMINISTRATOR
12 TO OBJECT TO INDIVIDUAL PERMITS.—Section 402(d) of
13 such Act (33 U.S.C. 1342(d)) is amended by adding at
14 the end the following:

15 “(5) The Administrator may not object under para-
16 graph (2) to the issuance of a permit by a State on the
17 basis of—

18 “(A) the Administrator’s interpretation of a
19 water quality standard that has been adopted by the
20 State and approved by the Administrator under sec-
21 tion 303(c); or

22 “(B) the implementation of any Federal guid-
23 ance that directs the interpretation of the State’s
24 water quality standards.”.

1 **SEC. 502. PERMITS FOR DREDGED OR FILL MATERIAL.**

2 (a) AUTHORITY OF EPA ADMINISTRATOR.—Section
3 404(c) of the Federal Water Pollution Control Act (33
4 U.S.C. 1344(c)) is amended—

5 (1) by striking “(c)” and inserting “(c)(1)”;

6 and

7 (2) by adding at the end the following:

8 “(2) Paragraph (1) shall not apply to any permit if
9 the State in which the discharge originates or will origi-
10 nate does not concur with the Administrator’s determina-
11 tion that the discharge will result in an unacceptable ad-
12 verse effect as described in paragraph (1).

13 “(3) Following the date of issuance of a permit by
14 the Secretary in accordance with this section, the Adminis-
15 trator may not take any action under paragraph (1) to
16 retroactively invalidate the permit.”.

17 (b) STATE PERMIT PROGRAMS.—The first sentence
18 of section 404(g)(1) of such Act (33 U.S.C. 1344(g)(1))
19 is amended by striking “The Governor of any State desir-
20 ing to administer its own individual and general permit
21 program for the discharge” and inserting “The Governor
22 of any State desiring to administer its own individual and
23 general permit program for some or all of the discharges”.

24 **SEC. 503. DEADLINES FOR AGENCY COMMENTS.**

25 Section 404 of the Federal Water Pollution Control
26 Act (33 U.S.C. 1344) is amended—

1 (1) in subsection (m) by striking “ninetieth
2 day” and inserting “30th day (or the 60th day if ad-
3 ditional time is requested)”; and

4 (2) in subsection (q)—

5 (A) by striking “(q)” and inserting
6 “(q)(1)”; and

7 (B) by adding at the end the following:

8 “(2) The Administrator and the head of a depart-
9 ment or agency referred to in paragraph (1) shall each
10 submit any comments with respect to an application for
11 a permit under subsection (a) or (e) not later than the
12 30th day (or the 60th day if additional time is requested)
13 after the date of receipt of an application for a permit
14 under that subsection.”.

15 **SEC. 504. APPLICABILITY OF AMENDMENTS.**

16 The amendments made by this title shall apply to ac-
17 tions taken on or after the date of enactment of this Act,
18 including actions taken with respect to permit applications
19 that are pending or revised or new standards that are
20 being promulgated as of such date of enactment.

21 **SEC. 505. REPORTING ON HARMFUL POLLUTANTS.**

22 Not later than 1 year after the date of enactment
23 of this Act, and annually thereafter, the Administrator of
24 the Environmental Protection Agency shall submit to Con-
25 gress a report on any increase or reduction in waterborne

1 pathogenic microorganisms (including protozoa, viruses,
2 bacteria, and parasites), toxic chemicals, or toxic metals
3 (such as lead and mercury) in waters regulated by a State
4 under the provisions of this title, including the amend-
5 ments made by this title.

6 **SEC. 506. PIPELINES CROSSING STREAMBEDS.**

7 None of the provisions of this title, including the
8 amendments made by this title, shall be construed to limit
9 the authority of the Administrator of the Environmental
10 Protection Agency, as in effect on the day before the date
11 of enactment of this Act, to regulate a pipeline that
12 crosses a streambed.

13 **SEC. 507. IMPACTS OF EPA REGULATORY ACTIVITY ON EM-**
14 **PLOYMENT AND ECONOMIC ACTIVITY.**

15 (a) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOY-
16 MENT AND ECONOMIC ACTIVITY.—

17 (1) ANALYSIS.—Before taking a covered action,
18 the Administrator shall analyze the impact,
19 disaggregated by State, of the covered action on em-
20 ployment levels and economic activity, including esti-
21 mated job losses and decreased economic activity.

22 (2) ECONOMIC MODELS.—

23 (A) IN GENERAL.—In carrying out para-
24 graph (1), the Administrator shall utilize the
25 best available economic models.

1 (B) ANNUAL GAO REPORT.—Not later
2 than December 31st of each year, the Comp-
3 troller General of the United States shall sub-
4 mit to Congress a report on the economic mod-
5 els used by the Administrator to carry out this
6 subsection.

7 (3) AVAILABILITY OF INFORMATION.—With re-
8 spect to any covered action, the Administrator
9 shall—

10 (A) post the analysis under paragraph (1)
11 as a link on the main page of the public Inter-
12 net Web site of the Environmental Protection
13 Agency; and

14 (B) request that the Governor of any State
15 experiencing more than a de minimis negative
16 impact post such analysis in the Capitol of such
17 State.

18 (b) PUBLIC HEARINGS.—

19 (1) IN GENERAL.—If the Administrator con-
20 cludes under subsection (a)(1) that a covered action
21 will have more than a de minimis negative impact on
22 employment levels or economic activity in a State,
23 the Administrator shall hold a public hearing in each
24 such State at least 30 days prior to the effective
25 date of the covered action.

1 (2) TIME, LOCATION, AND SELECTION.—A pub-
2 lic hearing required under paragraph (1) shall be
3 held at a convenient time and location for impacted
4 residents. In selecting a location for such a public
5 hearing, the Administrator shall give priority to loca-
6 tions in the State that will experience the greatest
7 number of job losses.

8 (c) NOTIFICATION.—If the Administrator concludes
9 under subsection (a)(1) that a covered action will have
10 more than a de minimis negative impact on employment
11 levels or economic activity in any State, the Administrator
12 shall give notice of such impact to the State’s Congres-
13 sional delegation, Governor, and Legislature at least 45
14 days before the effective date of the covered action.

15 (d) DEFINITIONS.—In this section, the following defi-
16 nitions apply:

17 (1) ADMINISTRATOR.—The term “Adminis-
18 trator” means the Administrator of the Environ-
19 mental Protection Agency.

20 (2) COVERED ACTION.—The term “covered ac-
21 tion” means any of the following actions taken by
22 the Administrator under the Federal Water Pollu-
23 tion Control Act (33 U.S.C. 1201 et seq.):

1 (A) Issuing a regulation, policy statement,
2 guidance, response to a petition, or other re-
3 quirement.

4 (B) Implementing a new or substantially
5 altered program.

6 (3) MORE THAN A DE MINIMIS NEGATIVE IM-
7 PACT.—The term “more than a de minimis negative
8 impact” means the following:

9 (A) With respect to employment levels, a
10 loss of more than 100 jobs. Any offsetting job
11 gains that result from the hypothetical creation
12 of new jobs through new technologies or govern-
13 ment employment may not be used in the job
14 loss calculation.

15 (B) With respect to economic activity, a
16 decrease in economic activity of more than
17 \$1,000,000 over any calendar year. Any offset-
18 ting economic activity that results from the hy-
19 pothetical creation of new economic activity
20 through new technologies or government em-
21 ployment may not be used in the economic ac-
22 tivity calculation.

1 **TITLE VI—REGIONAL HAZE**
2 **REGULATORY RELIEF**

3 **SEC. 601. IMPLEMENTATION PLANS.**

4 Section 110 of the Clean Air Act (42 U.S.C. 7410)
5 is amended—

6 (1) in subsection (c), by striking “(c)(1) The
7 Administrator” and all that follows through the end
8 of paragraph (1) and inserting the following:

9 “(c) FEDERAL PLANS.—

10 “(1) PLANS.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (C), unless the conditions de-
13 scribed in subparagraph (B) are met, the Ad-
14 ministrator shall promulgate a Federal imple-
15 mentation plan at any time after the date that
16 is 2 years after the date on which the Adminis-
17 trator—

18 “(i) finds that a State has failed to
19 make a required submission or finds that
20 the plan or plan revision submitted by the
21 State does not satisfy the minimum cri-
22 teria established under subsection
23 (k)(1)(A); or

24 “(ii) disapproves a State implementa-
25 tion plan submission.

1 “(B) CONDITIONS.—The conditions de-
2 scribed in this subparagraph are that, before
3 the date on which the Administrator promul-
4 gates a Federal implementation plan—

5 “(i) a State corrects a deficiency in a
6 State implementation plan or plan revision
7 submitted by the State; and

8 “(ii) the Administrator approves the
9 plan or plan revision.

10 “(C) VISIBILITY PROTECTION PLANS.—In
11 the case of a Federal implementation plan pro-
12 mulgated after the date of enactment of this
13 subparagraph in place of a State implementa-
14 tion plan under section 169A—

15 “(i) the Administrator shall promul-
16 gate such Federal implementation plan
17 only if the Administrator makes a finding
18 that the State submitting the State imple-
19 mentation plan failed to consider the fac-
20 tors described in paragraphs (1) and (2) of
21 section 169A(g) in preparing and submit-
22 ting the plan; and

23 “(ii) compliance with the requirements
24 of such Federal implementation plan shall

1 not be required earlier than 5 years after
2 the date of promulgation.”; and

3 (2) in subsection (k)—

4 (A) by striking paragraph (3) and insert-
5 ing the following:

6 “(3) FULL APPROVAL AND DISAPPROVAL.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraphs (B) and (C), in the case of any
9 submission for which the Administrator is re-
10 quired to act under paragraph (2), the Admin-
11 istrator shall approve the submission as a whole
12 if the submission meets all of the applicable re-
13 quirements of this Act.

14 “(B) REVIEW.—In reviewing any State im-
15 plementation plan submitted pursuant to sec-
16 tion 169A, the Administrator shall limit the re-
17 view only to a determination of whether the
18 State submitting the State implementation plan
19 considered the factors described in paragraphs
20 (1) and (2) of section 169A(g) in preparing and
21 submitting the plan.

22 “(C) VISIBILITY PLANS.—The Adminis-
23 trator shall approve as a whole any implementa-
24 tion plan submitted pursuant to section 169A
25 that was prepared and submitted after consid-

1 eration of the factors described in paragraphs
2 (1) and (2) of section 169A(g).”; and

3 (B) in paragraph (5)—

4 (i) in the first sentence, by striking
5 “Whenever” and inserting the following:

6 “(A) IN GENERAL.—Whenever”; and

7 (ii) by adding at the end the fol-
8 lowing:

9 “(B) VISIBILITY PLANS.—Notwithstanding
10 subparagraph (A), with respect to an implemen-
11 tation plan approved pursuant to section 169A,
12 the Administrator shall only find that such a
13 plan is substantially inadequate to meet stand-
14 ards for air pollutants that cause or contribute
15 to the impairment of visibility, or any other ap-
16 plicable standard or requirement, under that
17 section if the Administrator makes a finding
18 that, in preparing the plan, the submitting
19 State failed to consider the factors described in
20 paragraphs (1) and (2) of section 169A(g).

21 “(C) EXISTING VISIBILITY PLANS.—

22 “(i) REQUEST FOR REVOCATION.—At
23 any time after the date of enactment of
24 this subparagraph—

1 “(I) a State may request that the
2 existing Federal or State implementa-
3 tion plan for the State regarding visi-
4 bility, or any determination made in
5 calendar year 2012 or 2013 of best
6 available retrofit technology pursuant
7 to section 169A, be revoked; and

8 “(II) upon receipt of such a re-
9 quest, the Administrator shall revoke
10 the implementation plan.

11 “(ii) SUBMISSION OF NEW OR RE-
12 VISED PLAN.—Upon a revocation under
13 clause (i)(II), the State that requested the
14 revocation shall, not later than 2 years
15 after such revocation, submit to the Ad-
16 ministrator a new or revised visibility plan
17 in accordance with this Act.”.

18 **SEC. 602. VISIBILITY PROTECTION FOR FEDERAL CLASS I**
19 **AREAS.**

20 Section 169A of the Clean Air Act (42 U.S.C. 7491)
21 is amended—

22 (1) in subsection (b)(2), in the matter pre-
23 ceding subparagraph (A), by striking “as may be
24 necessary” and inserting “as the State determines,
25 at the sole discretion of the State after considering

1 factors described in this section and providing ade-
2 quate opportunity for public comment, may be nec-
3 essary”; and

4 (2) in subsection (g)—

5 (A) by striking paragraph (1) and insert-
6 ing the following:

7 “(1)(A) in determining reasonable progress,
8 there shall be taken into consideration—

9 “(i) the costs of compliance;

10 “(ii) the time necessary for compli-
11 ance;

12 “(iii) the energy and nonair quality
13 environmental impacts of compliance;

14 “(iv) the remaining useful life of any
15 existing source subject to requirements
16 under this section;

17 “(v) the degree of improvement in vis-
18 ibility that may reasonably be anticipated
19 to result from measures described in the
20 applicable implementation plan; and

21 “(vi) the economic impacts to the
22 State (including people of the State);

23 “(B) in consideration of costs of compli-
24 ance pursuant to subparagraph (A)(i), the
25 State may use source-specific cost estimations

1 developed by a licensed professional engineer as
2 an alternate to other methods of estimation ap-
3 proved by the Administrator; and

4 “(C) in consideration of the degree of im-
5 provement in visibility pursuant to subpara-
6 graph (A)(v), the State may use alternate mod-
7 eling techniques or methods than those pre-
8 scribed by the Administrator in the Agency’s
9 ‘Guideline on Air Quality Models’ under appen-
10 dix W to part 51 of title 40, Code of Federal
11 Regulations, and, where available, measured
12 emissions and monitoring data shall be used;”;

13 (B) in paragraph (2)—

14 (i) by striking “(2) in determining
15 best available retrofit technology the
16 State” and inserting the following:

17 “(2) in determining the best available retrofit
18 technology—

19 “(A) the State”;

20 (ii) in subparagraph (A) (as des-
21 ignated by clause (i)), by inserting “the
22 economic impacts to the State (including
23 people of the State),” after “life of the
24 source,”;

1 (iii) by striking “technology;” and in-
2 serting “technology; and”;

3 (iv) by adding at the end the fol-
4 lowing:

5 “(B) in consideration of the costs of com-
6 pliance pursuant to subparagraph (A), the
7 State may use source-specific cost estimations
8 developed by a licensed professional engineer as
9 an alternate to other methods of estimation ap-
10 proved by the Administrator;

11 “(C) with respect to consideration of the
12 degree of improvement in visibility pursuant to
13 subparagraph (A)—

14 “(i) the State may use alternate mod-
15 eling techniques or methods than those
16 prescribed by the Administrator in the
17 Agency’s ‘Guideline on Air Quality Models’
18 under appendix W to part 51 of title 40,
19 Code of Federal Regulations;

20 “(ii) the State may consider the de-
21 gree of improvement in visibility in the
22 mandatory class I Federal area that is
23 most affected by emissions from the source
24 without considering the degree of improve-

1 ment in visibility in any other such area;
2 and

3 “(iii) the Administrator (in any case
4 in which the Administrator has authority
5 to determine emission limitations which re-
6 flect such technology) may not consider the
7 degree of improvement in visibility in any
8 area other than the mandatory class I Fed-
9 eral area that is most affected by emis-
10 sions from the source; and

11 “(D) the determination of best available
12 retrofit technology by the State for any source
13 shall be subject to review by the Administrator,
14 an administrative entity, or a Federal or State
15 court only pursuant to a clearly erroneous
16 standard of review;” and

17 (C) in paragraph (4), by striking “(or the
18 date of promulgation of such a plan revision in
19 the case of action by the Administrator under
20 section 110(c) for purposes of this section)”.

1 **TITLE VII—NO REGIONAL HAZE**
2 **REGULATION ON THE COAL-**
3 **POWERED NAVAJO GENER-**
4 **ATING STATION**

5 **SEC. 701. LIMITATION ON AUTHORITY TO ISSUE REGULA-**
6 **TIONS.**

7 The Administrator of the Environmental Protection
8 Agency shall not promulgate any Federal implementation
9 plan pursuant to section 169A or 169B of the Clean Air
10 Act (42 U.S.C. 7491, 7492; relating to visibility protec-
11 tion) that would—

12 (1) adversely impact employment at the coal-
13 powered Navajo Generating Station or other coal-
14 fired power plants and coal mines on tribal lands in
15 northern Arizona;

16 (2) directly or indirectly diminish the revenue
17 received by the Federal Government or any State,
18 tribal or local government by reducing through regu-
19 lation the amount of coal that is available for mining
20 on Navajo and Hopi Reservation lands;

21 (3) cause a reduction in coal-based revenue to
22 meet financial obligations required by federally au-
23 thorized Indian water rights settlements, pursuant
24 to section 403(f) of the Colorado River Basin
25 Project Act (43 U.S.C. 1543(f)):

1 (4) reduce the amount of coal, or increase the
2 cost of coal, available for the Navajo Generating
3 Station's Federal responsibility to deliver water and
4 power, as authorized by the Colorado River Basin
5 Project Act (43 U.S.C. 1501 et seq.); or

6 (5) expose the United States to liability for tak-
7 ing the value of tribally-owned coal in northern Ari-
8 zona through regulation.

Passed the House of Representatives September 21,
2012.

Attest:

Clerk.

112TH CONGRESS
2^D SESSION

H. R. 3409

AN ACT

To limit the authority of the Secretary of the Interior to issue regulations before December 31, 2013, under the Surface Mining Control and Reclamation Act of 1977.