

112TH CONGRESS
2D SESSION

S. 3512

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

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2012

Mr. HOEVEN (for himself, Mr. CONRAD, Mr. BAUCUS, Mr. McCONNELL, Mr. KOHL, Mr. PORTMAN, Ms. LANDRIEU, Mr. BOOZMAN, Mr. MANCHIN, Mr. BLUNT, Mr. WARNER, Mr. JOHNSON of Wisconsin, Mr. PRYOR, Mr. MORAN, Mrs. McCASKILL, Mr. ALEXANDER, Mr. NELSON of Nebraska, Mr. TOOMEY, Mr. NELSON of Florida, Mr. GRAHAM, Mr. CASEY, Mr. THUNE, Mr. WEBB, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This title may be cited as the “Coal Ash Recycling
5 and Oversight Act of 2012”.

1 **SEC. 2. MANAGEMENT AND DISPOSAL OF COAL COMBUS-**
 2 **TION RESIDUALS.**

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

6 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**
 7 **BUSTION RESIDUALS.**

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

11 “(b) STATE ACTIONS.—

12 “(1) NOTIFICATION.—Not later than 6 months
 13 after the date of enactment of this section (except
 14 as provided by the deadline identified under sub-
 15 section (d)(3)(B)), the Governor of each State shall
 16 notify the Administrator, in writing, whether such
 17 State will adopt and implement a coal combustion
 18 residuals permit program.

19 “(2) CERTIFICATION.—

20 “(A) IN GENERAL.—Not later than 36
 21 months after the date of enactment of this sec-
 22 tion (except as provided in subsections (f)(1)(A)
 23 and (f)(1)(C)), in the case of a State that has
 24 notified the Administrator that it will imple-
 25 ment a coal combustion residuals permit pro-
 26 gram, the head of the lead State agency respon-

1 sible for implementing the coal combustion re-
2 siduals permit program shall submit to the Ad-
3 ministrator a certification that such coal com-
4 bustion residuals permit program meets the
5 specifications described in subsection (c).

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

8 “(i) a letter identifying the lead State
9 agency responsible for implementing the
10 coal combustion residuals permit program,
11 signed by the head of such agency;

12 “(ii) identification of any other State
13 agencies involved with the implementation
14 of the coal combustion residuals permit
15 program;

16 “(iii) a narrative description that pro-
17 vides an explanation of how the State will
18 ensure that the coal combustion residuals
19 permit program meets the requirements of
20 this section, including a description of the
21 State’s—

22 “(I) process to inspect or other-
23 wise determine compliance with such
24 permit program;

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

3 “(III) public participation proc-
4 ess for the promulgation, amendment,
5 or repeal of regulations for, and the
6 issuance of permits under, such per-
7 mit program; and

8 “(IV) statutes, regulations, or
9 policies pertaining to public access to
10 information, such as groundwater
11 monitoring data;

12 “(iv) a legal certification that the
13 State has, at the time of certification, fully
14 effective statutes or regulations necessary
15 to implement a coal combustion residuals
16 permit program that meets the specifica-
17 tions described in subsection (c); and

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

20 “(C) UPDATES.—A State may update the
21 certification as needed to reflect changes to the
22 coal combustion residuals permit program.

23 “(3) MAINTENANCE OF 4005(c) OR 3006 PRO-
24 GRAM.—In order to adopt or implement a coal com-
25 bustion residuals permit program under this section

(including pursuant to subsection (f)), the State agency responsible for implementing a coal combustion residuals permit program in a State shall maintain an approved program under section 4005(c) or an authorized program under section 3006.

“(c) PERMIT PROGRAM SPECIFICATIONS.—

“(1) MINIMUM REQUIREMENTS.—

“(A) IN GENERAL.—A coal combustion residuals permit program shall apply the revised criteria described in paragraph (2) to owners or operators of structures, including surface impoundments, that receive coal combustion residuals.

“(B) STRUCTURAL INTEGRITY.—

“(i) ENGINEERING CERTIFICATION.—

A coal combustion residuals permit program shall require that an independent registered professional engineer certify that—

“(I) the design of structures is in accordance with recognized and generally accepted good engineering practices for containment of the maximum volume of coal combustion residuals

1 and liquids appropriate for the struc-
2 ture; and

3 “(II) the construction and main-
4 tenance of the structure will ensure
5 dam stability.

6 “(ii) INSPECTION.—A coal combustion
7 residuals permit program shall require that
8 structures that are surface impoundments
9 be inspected not less than annually by an
10 independent registered professional engi-
11 neer to assure that the design, operation,
12 and maintenance of the surface impound-
13 ment is in accordance with recognized and
14 generally accepted good engineering prac-
15 tices for containment of the maximum vol-
16 ume of coal combustion residuals and liq-
17 uids which can be impounded, so as to en-
18 sure dam stability.

19 “(iii) DEFICIENCY.—

20 “(I) IN GENERAL.—If the head
21 of the agency responsible for imple-
22 menting the coal combustion residuals
23 permit program determines that a
24 structure is deficient with respect to
25 the requirements in clauses (i) and

1 (ii), the head of the agency has the
 2 authority to require action to correct
 3 the deficiency according to a schedule
 4 determined by the agency.

5 “(II) UNCORRECTED DEFICI-
 6 CIENCIES.—If a deficiency is not cor-
 7 rected according to the schedule, the
 8 head of the agency has the authority
 9 to require that the structure close in
 10 accordance with subsection (h).

11 “(C) LOCATION.—Each structure that first
 12 receives coal combustion residuals after the date
 13 of enactment of this section shall be constructed
 14 with a base located a minimum of 2 feet above
 15 the upper limit of the water table, unless it is
 16 demonstrated to the satisfaction of the agency
 17 responsible for implementing the coal combus-
 18 tion residuals permit program that—

19 “(i) the hydrogeologic characteristics
 20 of the structure and surrounding land
 21 would preclude such a requirement; and

22 “(ii) the function and integrity of the
 23 liner system will not be adversely impacted
 24 by contact with the water table.

25 “(D) WIND DISPERSAL.—

1 “(i) IN GENERAL.—The agency re-
2 sponsible for implementing the coal com-
3 bustion residuals permit program shall re-
4 quire that owners or operators of struc-
5 tures address wind dispersal of dust by re-
6 quiring cover, or by wetting coal combus-
7 tion residuals with water to a moisture
8 content that prevents wind dispersal, facili-
9 tates compaction, and does not result in
10 free liquids.

11 “(ii) ALTERNATIVE METHODS.—Sub-
12 ject to the review and approval by the
13 agency, owners or operators of structures
14 may propose alternative methods to ad-
15 dress wind dispersal of dust that will pro-
16 vide comparable or more effective control
17 of dust.

18 “(E) PERMITS.—The agency responsible
19 for implementing the coal combustion residuals
20 permit program shall require that the owner or
21 operator of each structure that receives coal
22 combustion residuals after the date of enact-
23 ment of this section apply for and obtain a per-
24 mit incorporating the requirements of the coal
25 combustion residuals permit program.

1 “(F) STATE NOTIFICATION AND GROUND-
2 WATER MONITORING.—

3 “(i) NOTIFICATION.—Not later than
4 the date on which a State submits a cer-
5 tification under subsection (b)(2), the
6 State shall notify owners or operators of
7 structures within the State of—

8 “(I) the obligation to apply for
9 and obtain a permit under subpara-
10 graph (E); and

11 “(II) the groundwater monitoring
12 requirements applicable to structures
13 under paragraph (2)(A)(ii).

14 “(ii) GROUNDWATER MONITORING.—
15 Not later than 1 year after the date on
16 which a State submits a certification under
17 subsection (b)(2), the State shall require
18 the owner or operator of each structure to
19 comply with the groundwater monitoring
20 requirements under paragraph (2)(A)(ii).

21 “(G) AGENCY REQUIREMENTS.—Except
22 for information described in section 1905 of
23 title 18, United States Code, the agency respon-
24 sible for implementing the coal combustion re-
25 siduals permit program shall ensure that—

1 “(i) documents for permit determina-
2 tions are made available for public review
3 and comment under the public participa-
4 tion process described in subsection
5 (b)(2)(B)(iii)(III);

6 “(ii) final determinations on permit
7 applications are made known to the public;
8 and

9 “(iii) groundwater monitoring data
10 collected under paragraph (2) is publicly
11 available.

12 “(H) AGENCY AUTHORITY.—

13 “(i) IN GENERAL.—The agency re-
14 sponsible for implementing the coal com-
15 bustion residuals permit program has the
16 authority to—

17 “(I) obtain information necessary
18 to determine whether the owner or op-
19 erator of a structure is in compliance
20 with the coal combustion residuals
21 permit program requirements of this
22 section;

23 “(II) conduct or require moni-
24 toring and testing to ensure that
25 structures are in compliance with the

1 coal combustion residuals permit pro-
2 gram requirements of this section;
3 and

4 “(III) enter, at reasonable times,
5 any site or premise subject to the coal
6 combustion residuals permit program
7 for the purpose of inspecting struc-
8 tures and reviewing records relevant
9 to the operation and maintenance of
10 structures.

11 “(ii) MONITORING AND TESTING.—If
12 monitoring or testing is conducted under
13 clause (i)(II) by or for the agency respon-
14 sible for implementing the coal combustion
15 residuals permit program, the agency shall,
16 if requested, provide to the owner or oper-
17 ator—

18 “(I) a written description of the
19 monitoring or testing completed;

20 “(II) at the time of sampling, a
21 portion of each sample equal in vol-
22 ume or weight to the portion retained
23 by or for the agency; and

1 “(III) a copy of the results of
2 any analysis of samples collected by or
3 for the agency.

4 “(I) STATE AUTHORITY.—A State imple-
5 menting a coal combustion residuals permit
6 program has the authority to—

7 “(i) inspect structures; and

8 “(ii) implement and enforce the coal
9 combustion residuals permit program.

10 “(J) REQUIREMENTS FOR SURFACE IM-
11 POUNDMENTS THAT DO NOT MEET CERTAIN
12 CRITERIA.—

13 “(i) IN GENERAL.—In addition to the
14 groundwater monitoring and corrective ac-
15 tion requirements described in paragraph
16 (2)(A)(ii), a coal combustion residuals per-
17 mit program shall require a surface im-
18 poundment that receives coal combustion
19 residuals after the date of enactment of
20 this section to—

21 “(I) comply with the require-
22 ments in clause (ii)(I)(aa) and sub-
23 clauses (II) through (IV) of clause (ii)
24 if the surface impoundment—

25 “(aa) does not—

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

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

10 “(bb) within 10 years after
11 the date of enactment of this sec-
12 tion, is required under section
13 258.56(a) of title 40, Code of
14 Federal Regulations, to undergo
15 an assessment of corrective meas-
16 ures for any constituent identi-
17 fied in paragraph (2)(A)(ii) for
18 which assessment groundwater
19 monitoring is required; and

20 “(II) comply with the require-
21 ments in clause (ii)(I)(bb) and sub-
22 clauses (II) through (IV) of clause (ii)
23 if the surface impoundment—

24 “(aa) does not—

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

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

10 “(bb) as of the date of en-
 11 actment of this section, is subject
 12 to a State corrective action re-
 13 quirement.

14 “(ii) REQUIREMENTS.—

15 “(I) DEADLINES.—

16 “(aa) IN GENERAL.—Except
 17 as provided in item (bb), sub-
 18 clause (IV), and clause (iii), the
 19 groundwater protection standard
 20 for structures identified in clause
 21 (i)(I) established by the agency
 22 responsible for implementing the
 23 coal combustion residuals permit
 24 program under section 258.55(h)
 25 or 258.55(i) of title 40, Code of

1 Federal Regulations, for any con-
2 stituent for which corrective
3 measures are required shall be
4 met—

5 “(AA) as soon as prac-
6 ticable at the relevant point
7 of compliance, as described
8 in section 258.40(d) of title
9 40, Code of Federal Regula-
10 tions; and

11 “(BB) not later than
12 10 years after the date of
13 enactment of this section.

14 “(bb) IMPOUNDMENTS SUB-
15 JECT TO STATE CORRECTIVE AC-
16 TION REQUIREMENTS.—Except
17 as provided in subclause (IV), the
18 groundwater protection standard
19 for structures identified in clause
20 (i)(II) established by the agency
21 responsible for implementing the
22 coal combustion residuals permit
23 program under section 258.55(h)
24 or 258.55(i) of title 40, Code of
25 Federal Regulations, for any con-

1 stituent for which corrective
2 measures are required shall be
3 met—

4 “(AA) as soon as prac-
5 ticable at the relevant point
6 of compliance, as described
7 in section 258.40(d) of title
8 40, Code of Federal Regula-
9 tions; and

10 “(BB) not later than 8
11 years after the date of en-
12 actment of this section.

13 “(II) CLOSURE.—If the deadlines
14 under clause (I) are not satisfied, the
15 structure shall cease receiving coal
16 combustion residuals and initiate clo-
17 sure under subsection (h).

18 “(III) INTERIM MEASURES.—

19 “(aa) IN GENERAL.—Except
20 as provided in item (bb), not
21 later than 90 days after the date
22 on which the assessment of cor-
23 rective measures is initiated, the
24 owner or operator shall imple-
25 ment interim measures, as nec-

1 necessary, under the factors in sec-
2 tion 258.58(a)(3) of title 40,
3 Code of Federal Regulations.

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

17 “(IV) EXTENSION OF DEAD-
18 LINE.—

19 “(aa) IN GENERAL.—Except
20 as provided in item (bb), the
21 deadline for meeting a ground-
22 water protection standard under
23 subclause (I) may be extended by
24 the agency responsible for imple-
25 menting the coal combustion re-

1 siduals permit program, after op-
2 portunity for public notice and
3 comment under the public par-
4 ticipation process described in
5 subsection (b)(2)(B)(iii)(III),
6 based on—

7 “(AA) the effectiveness
8 of any interim measures im-
9 plemented by the owner or
10 operator of the facility under
11 section 258.58(a)(3) of title
12 40, Code of Federal Regula-
13 tions;

14 “(BB) the level of
15 progress demonstrated in
16 meeting the groundwater
17 protection standard;

18 “(CC) the potential for
19 other adverse human health
20 or environmental exposures
21 attributable to the contami-
22 nation from the surface im-
23 poundment undergoing cor-
24 rective action; and

1 “(DD) the lack of avail-
2 able alternative management
3 capacity for the coal com-
4 bustion residuals and related
5 materials managed in the
6 impoundment at the facility
7 at which the impoundment
8 is located if the owner or op-
9 erator has used best efforts,
10 as necessary, to design, ob-
11 tain any necessary permits,
12 finance, construct, and
13 render operational the alter-
14 native management capacity
15 during the time period for
16 meeting a groundwater pro-
17 tection standard in sub-
18 clause (I).

19 “(bb) EXCEPTION.—The
20 deadlines under subclause (I)
21 shall not be extended if there has
22 been contamination of public or
23 private drinking water systems
24 attributable to a surface im-
25 poundment undergoing corrective

1 action, unless the contamination
2 has been addressed by providing
3 a permanent replacement water
4 system.

5 “(iii) SUBSEQUENT CLOSURE.—

6 “(I) IN GENERAL.—In addition
7 to the groundwater monitoring and
8 corrective action requirements de-
9 scribed in paragraph (2)(A)(ii), a coal
10 combustion residuals permit program
11 shall require a surface impoundment
12 that receives coal combustion residu-
13 als after the date of enactment of this
14 section to comply with the require-
15 ments in subclause (II) if the surface
16 impoundment—

17 “(aa) does not—

18 “(AA) have a liner sys-
19 tem described in section
20 258.40(b) of title 40, Code
21 of Federal Regulations; and

22 “(BB) meet the design
23 criteria described in section
24 258.40(a)(1) of title 40,

1 Code of Federal Regula-
2 tions;

3 “(bb) more than 10 years
4 after the date of enactment of
5 this section, is required under
6 section 258.56(a) of title 40,
7 Code of Federal Regulations, to
8 undergo an assessment of correc-
9 tive measures for any constituent
10 identified in paragraph (2)(A)(ii)
11 for which assessment ground-
12 water monitoring is required; and

13 “(cc) is not subject to the
14 requirements in clause (ii).

15 “(II) REQUIREMENTS.—

16 “(aa) CLOSURE.—The struc-
17 tures identified in subclause (I)
18 shall cease receiving coal combus-
19 tion residuals and initiate closure
20 in accordance with subsection (h)
21 after alternative management ca-
22 pacity for the coal combustion re-
23 siduals and related materials
24 managed in the impoundment at
25 the facility is available.

1 “(bb) BEST EFFORTS.—The
2 alternative management capacity
3 shall be developed as soon as
4 practicable with the owner or op-
5 erator using best efforts to de-
6 sign, obtain necessary permits, fi-
7 nance, construct, and render
8 operational the alternative man-
9 agement capacity.

10 “(cc) ALTERNATIVE MAN-
11 AGEMENT CAPACITY PLAN.—The
12 owner or operator shall, in col-
13 laboration with the agency re-
14 sponsible for implementing the
15 coal combustion residuals permit
16 program, prepare a written plan
17 that describes the steps necessary
18 to develop the alternative man-
19 agement capacity and includes a
20 schedule for completion.

21 “(dd) PUBLIC PARTICIPA-
22 TION.—The plan described in
23 item (cc) shall be subject to pub-
24 lic notice and comment under the
25 public participation process de-

1 scribed in subsection
2 (b)(2)(B)(iii)(III).

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

5 “(A) the revised criteria for design,
6 groundwater monitoring, corrective action, clo-
7 sure, and post-closure, for structures, includ-
8 ing—

9 “(i) for new structures, and lateral ex-
10 pansions of existing structures, that first
11 receive coal combustion residuals after the
12 date of enactment of this section, the re-
13 vised criteria regarding design require-
14 ments described in section 258.40 of title
15 40, Code of Federal Regulations, except
16 that the leachate collection system require-
17 ments described in section 258.40(a)(2) of
18 title 40, Code of Federal Regulations do
19 not apply to structures that are surface
20 impoundments;

21 “(ii) for all structures that receive
22 coal combustion residuals after the date of
23 enactment of this section, the revised cri-
24 teria regarding groundwater monitoring
25 and corrective action requirements de-

scribed in subpart E of part 258 of title 40, Code of Federal Regulations, except that, for the purposes of this paragraph, the revised criteria shall also include—

“(I) for the purposes of detection monitoring, the constituents boron, chloride, conductivity, fluoride, mercury, pH, sulfate, sulfide, and total dissolved solids; and

“(II) for the purposes of assessment monitoring, establishing a groundwater protection standard, and assessment of corrective measures, the constituents aluminum, boron, chloride, fluoride, iron, manganese, molybdenum, pH, sulfate, and total dissolved solids;

“(iii) for all structures that receive coal combustion residuals after the date of enactment of this section, in a manner consistent with subsection (h), the revised criteria for closure described in subsections (a) through (c) and (h) through (j) of section 258.60 of title 40, Code of Federal Regulations; and

1 “(iv) for all structures that receive
2 coal combustion residuals after the date of
3 enactment of this section, the revised cri-
4 teria for post-closure care described in sec-
5 tion 258.61 of title 40, Code of Federal
6 Regulations, except for the requirement de-
7 scribed in subsection (a)(4) of that section;

8 “(B) the revised criteria for location re-
9 strictions described in—

10 “(i) for new structures, and lateral ex-
11 pansions of existing structures, that first
12 receive coal combustion residuals after the
13 date of enactment of this section, sections
14 258.11 through 258.15 of title 40, Code of
15 Federal Regulations; and

16 “(ii) for existing structures that re-
17 ceive coal combustion residuals after the
18 date of enactment of this section, sections
19 258.11 and 258.15 of title 40, Code of
20 Federal Regulations;

21 “(C) for all structures that receive coal
22 combustion residuals after the date of enact-
23 ment of this section, the revised criteria for air
24 quality described in section 258.24 of title 40,
25 Code of Federal Regulations;

1 “(D) for all structures that receive coal
2 combustion residuals after the date of enact-
3 ment of this section, the revised criteria for fi-
4 nancial assurance described in subpart G of
5 part 258 of title 40, Code of Federal Regula-
6 tions;

7 “(E) for all structures that receive coal
8 combustion residuals after the date of enact-
9 ment of this section, the revised criteria for sur-
10 face water described in section 258.27 of title
11 40, Code of Federal Regulations;

12 “(F) for all structures that receive coal
13 combustion residuals after the date of enact-
14 ment of this section, the revised criteria for rec-
15 ordkeeping described in section 258.29 of title
16 40, Code of Federal Regulations;

17 “(G) for landfills and other land-based
18 units, other than surface impoundments, that
19 receive coal combustion residuals after the date
20 of enactment of this section, the revised criteria
21 for run-on and run-off control systems de-
22 scribed in section 258.26 of title 40, Code of
23 Federal Regulations; and

24 “(H) for surface impoundments that re-
25 ceive coal combustion residuals after the date of

1 enactment of this section, the revised criteria
 2 for run-off control systems described in section
 3 258.26(a)(2) of title 40, Code of Federal Regu-
 4 lations.

5 “(d) WRITTEN NOTICE AND OPPORTUNITY TO REM-
 6 EDY.—

7 “(1) IN GENERAL.—The Administrator shall
 8 provide to a State written notice and an opportunity
 9 to remedy deficiencies in accordance with paragraph
 10 (2) if at any time the State—

11 “(A) does not satisfy the notification re-
 12 quirement under subsection (b)(1);

13 “(B) has not submitted a certification
 14 under subsection (b)(2);

15 “(C) does not satisfy the maintenance re-
 16 quirement under subsection (b)(3);

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

19 “(i) meets the specifications described
 20 in subsection (c); or

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

23 “(II) maintains fully effective statutes
 24 or regulations necessary to implement a

1 coal combustion residuals permit program;
 2 or

3 “(E) does not make available to the Ad-
 4 ministrator within 90 days of a written request,
 5 specific information necessary for the Adminis-
 6 trator to ascertain whether the State has com-
 7 plied with subparagraphs (A) through (D).

8 “(2) REQUEST.—If the request described in
 9 paragraph (1)(E) is made pursuant to a petition of
 10 the Administrator, the Administrator shall only
 11 make the request if the Administrator does not pos-
 12 sess the information necessary to ascertain whether
 13 the State has complied with subparagraphs (A)
 14 through (D) of paragraph (1).

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

18 “(A) include findings of the Administrator
 19 detailing any applicable deficiencies in—

20 “(i) compliance by the State with the
 21 notification requirement under subsection
 22 (b)(1);

23 “(ii) compliance by the State with the
 24 certification requirement under subsection
 25 (b)(2);

1 “(iii) compliance by the State with the
2 maintenance requirement under subsection
3 (b)(3);

4 “(iv) the State coal combustion re-
5 siduals permit program in meeting the
6 specifications described in subsection (c);
7 and

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

10 “(B) identify, in collaboration with the
11 State, a reasonable deadline, by which the State
12 shall remedy the deficiencies detailed under
13 subparagraph (A), which shall be—

14 “(i) in the case of a deficiency de-
15 scribed in clauses (i) through (iv) of sub-
16 paragraph (A), not earlier than 180 days
17 after the date on which the State receives
18 the notice; and

19 “(ii) in the case of a deficiency de-
20 scribed in subparagraph (A)(v), not later
21 than 90 days after the date on which the
22 State receives the notice.

23 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

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

4 “(A) the Governor of the State notifies the
5 Administrator under subsection (b)(1) that the
6 State will not adopt and implement a permit
7 program;

8 “(B) the State has received a notice under
9 subsection (d) and the Administrator deter-
10 mines, after providing a 30-day period for no-
11 tice and public comment, that the State has
12 failed, by the deadline identified in the notice
13 under subsection (d)(3)(B), to remedy the defi-
14 ciencies detailed in the notice under subsection
15 (d)(3)(A); or

16 “(C) the State informs the Administrator,
17 in writing, that such State will no longer imple-
18 ment such a permit program.

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

23 “(3) OTHER STRUCTURES.—For structures lo-
24 cated on property within the exterior boundaries of
25 a State for which the State does not have authority

1 or jurisdiction to regulate, the Administrator shall
2 implement a coal combustion residuals permit pro-
3 gram only for those structures.

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

9 “(5) ENFORCEMENT.—

10 “(A) IN GENERAL.—If the Administrator
11 implements a coal combustion residuals permit
12 program for a State under paragraph (1)—

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

19 “(ii) the Administrator may use those
20 authorities to inspect, gather information,
21 and enforce the requirements of this sec-
22 tion in the State.

23 “(B) OTHER STRUCTURES.—If the Admin-
24 istrator implements a coal combustion residuals

1 permit program for a State under paragraph
 2 (3)—

3 “(i) the authorities referred to in sec-
 4 tion 4005(c)(2)(A) shall apply with respect
 5 to coal combustion residuals and structures
 6 for which the Administrator is imple-
 7 menting the coal combustion residuals per-
 8 mit program; and

9 “(ii) the Administrator may use those
 10 authorities to inspect, gather information,
 11 and enforce the requirements of this sec-
 12 tion for the structures for which the Ad-
 13 ministrator is implementing the coal com-
 14 bustion residuals permit program.

15 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
 16 ADMINISTRATOR.—

17 “(1) STATE CONTROL.—

18 “(A) NEW ADOPTION AND IMPLEMENTA-
 19 TION BY STATE.—For a State for which the
 20 Administrator is implementing a coal combus-
 21 tion residuals permit program under subsection
 22 (e)(1)(A), the State may adopt and implement
 23 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 “(B) REMEDYING DEFICIENT PERMIT PRO-
20 GRAM.—For a State for which the Adminis-
21 trator is implementing a coal combustion re-
22 siduals permit program under subsection
23 (e)(1)(B), the State may adopt and implement
24 such a permit program by—

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

4 “(ii) receiving from the Adminis-
5 trator—

6 “(I) a determination, after pro-
7 viding a 30-day period for notice and
8 public comment, that the deficiencies
9 detailed in such notice have been rem-
10 edied; and

11 “(II) a timeline for transition of
12 control of the coal combustion residu-
13 als permit program.

14 “(C) RESUMPTION OF IMPLEMENTATION
15 BY STATE.—For a State for which the Adminis-
16 trator is implementing a coal combustion re-
17 siduals permit program under subsection
18 (e)(1)(C), the State may adopt and implement
19 such a permit program by—

20 “(i) notifying the Administrator that
21 the State will adopt and implement such a
22 permit program;

23 “(ii) not later than 6 months after the
24 date of such notification, submitting to the

1 Administrator a certification under sub-
2 section (b)(2); and

3 “(iii) receiving from the Adminis-
4 trator—

5 “(I) a determination, after pro-
6 viding a 30-day period for notice and
7 public comment, that the State coal
8 combustion residuals permit program
9 meets the specifications described in
10 subsection (c); and

11 “(II) a timeline for transition of
12 control of the coal combustion residu-
13 als permit program.

14 “(2) REVIEW OF DETERMINATION.—

15 “(A) DETERMINATION REQUIRED.—The
16 Administrator shall make a determination
17 under paragraph (1) not later than 90 days
18 after the date on which the State submits a cer-
19 tification under paragraph (1)(A)(ii) or
20 (1)(C)(ii), or notifies the Administrator that the
21 deficiencies have been remedied pursuant to
22 paragraph (1)(B)(i), as applicable.

23 “(B) REVIEW.—A State may obtain a re-
24 view of a determination by the Administrator
25 under paragraph (1) as if such determination

1 was a final regulation for purposes of section
2 7006.

3 “(3) IMPLEMENTATION DURING TRANSITION.—

4 “(A) EFFECT ON ACTIONS AND ORDERS.—

5 Actions taken or orders issued pursuant to a
6 coal combustion residuals permit program shall
7 remain in effect if—

8 “(i) a State takes control of its coal
9 combustion residuals permit program from
10 the Administrator under paragraph (1); or

11 “(ii) the Administrator takes control
12 of a coal combustion residuals permit pro-
13 gram from a State under subsection (e).

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

20 “(i) implements changes to the re-
21 quirements of the coal combustion residu-
22 als permit program with respect to the
23 basis for the action or order; or

1 “(ii) certifies the completion of a cor-
 2 rective action that is the subject of the ac-
 3 tion or order.

4 “(4) SINGLE PERMIT PROGRAM.—If a State
 5 adopts and implements a coal combustion residuals
 6 permit program under this subsection, the Adminis-
 7 trator shall cease to implement the permit program
 8 implemented under subsection (e)(1) for such State.

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

17 “(h) CLOSURE.—

18 “(1) IN GENERAL.—If it is determined, pursu-
 19 ant to a coal combustion residuals permit program,
 20 that a structure should close, the time period and
 21 method for the closure of such structure shall be set
 22 forth in a closure plan that establishes a deadline for
 23 completion and that takes into account the nature
 24 and the site-specific characteristics of the structure
 25 to be closed.

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

6 “(i) AUTHORITY.—

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

13 “(2) AUTHORITY OF THE ADMINISTRATOR.—

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

19 “(B) IMMINENT HAZARD.—Nothing in this
 20 section shall be construed as affecting the au-
 21 thority of the Administrator under section 7003
 22 with respect to coal combustion residuals.

23 “(C) ENFORCEMENT ASSISTANCE ONLY
 24 UPON REQUEST.—Upon request from the head
 25 of a lead State agency that is implementing a

1 coal combustion residuals permit program, the
 2 Administrator may provide to such State agen-
 3 cy only the enforcement assistance requested.

4 “(D) CONCURRENT ENFORCEMENT.—Ex-
 5 cept as provided in subparagraph (C), the Ad-
 6 ministrator shall not have concurrent enforce-
 7 ment authority when a State is implementing a
 8 coal combustion residuals permit program.

9 “(E) OTHER AUTHORITY.—The Adminis-
 10 trator shall not have authority to finalize the
 11 proposed rule published at pages 35128
 12 through 35264 of volume 75 of the Federal
 13 Register (June 21, 2010).

14 “(3) CITIZEN SUITS.—Nothing in this section
 15 shall be construed to affect the authority of a person
 16 to commence a civil action in accordance with sec-
 17 tion 7002.

18 “(j) MINE RECLAMATION ACTIVITIES.—A coal com-
 19 bustion residuals permit program implemented by the Ad-
 20 ministrator under subsection (e) shall not apply to the uti-
 21 lization, placement, and storage of coal combustion residu-
 22 als at surface mining and reclamation operations.

23 “(k) DEFINITIONS.—In this section:

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

1 “(A) the solid wastes listed in section
2 3001(b)(3)(A)(i), including recoverable mate-
3 rials from such wastes;

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

11 “(C) fluidized bed combustion wastes;

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

16 “(E) wastes from the co-burning of coal
17 with materials described in subparagraph (A)
18 that are recovered from monofills.

19 “(2) COAL COMBUSTION RESIDUALS PERMIT
20 PROGRAM.—The term ‘coal combustion residuals
21 permit program’ means all of the authorities, activi-
22 ties, and procedures that comprise the system of
23 prior approval and conditions implemented by or for
24 a State to regulate the management and disposal of
25 coal combustion residuals.

1 “(3) CODE OF FEDERAL REGULATIONS.—The
 2 term ‘Code of Federal Regulations’ means the Code
 3 of Federal Regulations (as in effect on the date of
 4 enactment of this section) or any successor regula-
 5 tions.

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

12 “(5) REVISED CRITERIA.—The term ‘revised
 13 criteria’ means the criteria promulgated for munic-
 14 ipal solid waste landfill units under section 4004(a)
 15 and under section 1008(a)(3), as revised under sec-
 16 tion 4010(c).

17 “(6) STRUCTURE.—

18 “(A) IN GENERAL.—Except as provided in
 19 subparagraph (B), the term ‘structure’ means a
 20 landfill, surface impoundment, or other land-
 21 based unit which may receive coal combustion
 22 residuals.

23 “(B) DE MINIMIS RECEIPT.—The term
 24 ‘structure’ does not include any land-based unit
 25 that receives only de minimis quantities of coal

1 combustion residuals if the presence of coal
2 combustion residuals is incidental to the mate-
3 rial managed in the unit.”.

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

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

8 **SEC. 3. 2000 REGULATORY DETERMINATION.**

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

18 **SEC. 4. TECHNICAL ASSISTANCE.**

19 Nothing in this Act, or the amendments made by this
20 Act, shall be construed to affect the authority of a State
21 to request, or the Administrator of the Environmental
22 Protection Agency to provide, technical assistance under
23 the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

1 **SEC. 5. FEDERAL POWER ACT.**

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

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