

114TH CONGRESS
1ST SESSION

S. 1803

To amend subtitle D of the Solid Waste Disposal Act to encourage recovery and beneficial use of coal combustion residuals and establish requirements for the proper management and disposal of coal combustion residuals that are protective of human health and the environment.

IN THE SENATE OF THE UNITED STATES

JULY 16, 2015

Mr. HOEVEN (for himself and Mr. MANCHIN) 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 encourage recovery and beneficial use of coal combustion residuals and establish requirements for the proper management and disposal of coal combustion residuals that are protective of human health and the environment.

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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Improving Coal Combustion Residuals Regulation Act of
6 2015”.

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

- Sec. 1. Short title and table of contents.
- Sec. 2. Management and disposal of coal combustion residuals.
- Sec. 3. 2000 regulatory determination.
- Sec. 4. Technical assistance.
- Sec. 5. Federal Power Act.

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

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

8 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**
 9 **BUSTION RESIDUALS.**

10 “(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-
 11 TION RESIDUALS.—Each State may adopt, implement,
 12 and enforce a coal combustion residuals permit program
 13 in accordance with this section.

14 “(b) STATE ACTIONS.—

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

22 “(2) CERTIFICATION.—

“(A) IN GENERAL.—Not later than 24 months after the date of enactment of this section (except as provided in subparagraph (B) and subsection (f)(1)(A)), in the case of a State that has notified the Administrator that it will implement a coal combustion residuals permit program, the head of the lead State implementing agency shall submit to the Administrator a certification that such coal combustion residuals permit program meets the requirements described in subsection (c).

“(B) EXTENSION.—

“(i) REQUIREMENTS.—The Administrator may extend the deadline for submission of a certification for a State under subparagraph (A) for a period of 12 months if the State submits to the Administrator a request for such an extension that—

“(I) describes the efforts of the State to meet such deadline;

“(II) demonstrates that the legislative or rulemaking procedures of such State render the State unable to meet such deadline; and

1 “(III) provides the Administrator
2 with a detailed schedule for comple-
3 tion and submission of the certifi-
4 cation.

5 “(ii) DETERMINATION.—If the Ad-
6 ministrator does not approve or deny a re-
7 quest submitted under clause (i) by the
8 date that is 30 days after such submission,
9 the request shall be deemed approved.

10 “(C) CONTENTS.—A certification sub-
11 mitted under this paragraph shall include—

12 “(i) a letter identifying the lead State
13 implementing agency, signed by the head
14 of such agency;

15 “(ii) identification of any other State
16 agencies involved with the implementation
17 of the coal combustion residuals permit
18 program;

19 “(iii) an explanation of how the State
20 coal combustion residuals permit program
21 meets the requirements of this section, in-
22 cluding—

23 “(I) a description of the
24 State’s—

1 “(aa) process to inspect or
2 otherwise determine compliance
3 with such permit program;

4 “(bb) process to enforce the
5 requirements of such permit pro-
6 gram;

7 “(cc) public participation
8 process for the promulgation,
9 amendment, or repeal of regula-
10 tions for, and the issuance of
11 permits under, such permit pro-
12 gram; and

13 “(dd) statutes, regulations,
14 or policies pertaining to public
15 access to information, including
16 information on groundwater mon-
17 itoring data, structural stability
18 assessments, emergency action
19 plans, fugitive dust control plans,
20 notifications of closure (including
21 any certification of closure by a
22 qualified professional engineer),
23 and corrective action remedies;
24 and

1 “(II) identification of any
2 changes to the definitions under sec-
3 tion 257.53 of title 40, Code of Fed-
4 eral Regulations, for purposes of the
5 State coal combustion residuals per-
6 mit program, including a reasonable
7 basis for such changes, as required
8 under subsection (l)(4);

9 “(iv) a statement that the State has
10 in effect, at the time of certification, stat-
11 utes or regulations necessary to implement
12 a coal combustion residuals permit pro-
13 gram that meets the requirements de-
14 scribed in subsection (c);

15 “(v) copies of State statutes and regu-
16 lations described in clause (iv);

17 “(vi) a plan for a response by the
18 State to a release at a structure or inactive
19 surface impoundment that has the poten-
20 tial for impact beyond the site on which
21 the structure or inactive surface impound-
22 ment is located; and

23 “(vii) a plan for coordination among
24 States in the event of a release that
25 crosses State lines.

1 “(D) UPDATES.—A State may update the
2 certification as needed to reflect changes to the
3 coal combustion residuals permit program.

4 “(3) MAINTENANCE OF 4005(c) OR 3006 PRO-
5 GRAM.—In order to adopt or implement a coal com-
6 bustion residuals permit program under this section
7 (including pursuant to subsection (f)), the lead State
8 implementing agency shall maintain an approved
9 permit program or other system of prior approval
10 and conditions under section 4005(c) or an author-
11 ized program under section 3006.

12 “(c) REQUIREMENTS FOR A COAL COMBUSTION RE-
13 SIDUALS PERMIT PROGRAM.—A coal combustion residuals
14 permit program shall consist of the following:

15 “(1) GENERAL REQUIREMENTS.—

16 “(A) PERMITS.—The implementing agency
17 shall require that owners or operators of struc-
18 tures apply for and obtain permits incor-
19 porating the applicable requirements of the coal
20 combustion residuals permit program.

21 “(B) PUBLIC AVAILABILITY OF INFORMA-
22 TION.—Except for information with respect to
23 which disclosure is prohibited under section
24 1905 of title 18, United States Code, the imple-
25 menting agency shall ensure that—

1 “(i) documents for permit determina-
2 tions are made publicly available for review
3 and comment under the public participa-
4 tion process of the coal combustion residu-
5 als permit program;

6 “(ii) final determinations on permit
7 applications are made publicly available;

8 “(iii) information on groundwater
9 monitoring data, structural stability as-
10 sessments, emergency action plans, fugitive
11 dust control plans, notifications of closure
12 (including any certification of closure by a
13 qualified professional engineer), and cor-
14 rective action remedies required pursuant
15 to paragraph (2), collected in a manner de-
16 termined appropriate by the implementing
17 agency, is publicly available, including on
18 an Internet website; and

19 “(iv) information regarding the exer-
20 cise by the implementing agency of any
21 discretionary authority granted under this
22 section and not provided for in the rule de-
23 scribed in subsection (l)(1) is made pub-
24 licly available.

25 “(C) AGENCY AUTHORITY.—

1 “(i) IN GENERAL.—The implementing
2 agency shall—

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

8 “(II) conduct or require moni-
9 toring or testing to ensure that struc-
10 tures are in compliance with the re-
11 quirements of the coal combustion re-
12 siduals permit program; and

13 “(III) enter any site or premise
14 at which a structure or inactive coal
15 combustion residuals surface im-
16 poundment is located for the purpose
17 of inspecting such structure or surface
18 impoundment and reviewing relevant
19 records.

20 “(ii) MONITORING AND TESTING.—If
21 monitoring or testing is conducted under
22 clause (i)(II) by or for the implementing
23 agency, the implementing agency shall, if
24 requested, provide to the owner or oper-
25 ator—

1 “(I) a written description of the
2 monitoring or testing completed;

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

8 “(III) a copy of the results of
9 any analysis of samples collected by or
10 for the implementing agency.

11 “(2) CRITERIA.—The implementing agency
12 shall apply the following criteria with respect to
13 structures:

14 “(A) DESIGN REQUIREMENTS.—For new
15 structures, including lateral expansions of exist-
16 ing structures, the criteria regarding design re-
17 quirements described in sections 257.70 and
18 257.72 of title 40, Code of Federal Regulations,
19 as applicable.

20 “(B) GROUNDWATER MONITORING AND
21 CORRECTIVE ACTION.—

22 “(i) IN GENERAL.—Except as pro-
23 vided in clause (ii), for all structures, the
24 criteria regarding groundwater monitoring
25 and corrective action requirements de-

1 scribed in sections 257.90 through 257.98
2 of title 40, Code of Federal Regulations,
3 including—

4 “(I) for the purposes of detection
5 monitoring, the constituents described
6 in appendix III to part 257 of title
7 40, Code of Federal Regulations; and

8 “(II) for the purposes of assess-
9 ment monitoring, establishing a
10 groundwater protection standard, and
11 assessment of corrective measures, the
12 constituents described in appendix IV
13 to part 257 of title 40, Code of Fed-
14 eral Regulations.

15 “(ii) EXCEPTIONS AND ADDITIONAL
16 AUTHORITY.—

17 “(I) ALTERNATIVE POINT OF
18 COMPLIANCE.—Notwithstanding sec-
19 tion 257.91(a)(2) of title 40, Code of
20 Federal Regulations, the imple-
21 menting agency may establish the rel-
22 evant point of compliance for the
23 down-gradient monitoring system as
24 provided in section 258.51(a)(2) of
25 title 40, Code of Federal Regulations.

1 “(II) ALTERNATIVE GROUND-
2 WATER PROTECTION STANDARDS.—
3 Notwithstanding section 257.95(h) of
4 title 40, Code of Federal Regulations,
5 the implementing agency may estab-
6 lish an alternative groundwater pro-
7 tection standard as provided in section
8 258.55(i) of title 40, Code of Federal
9 Regulations.

10 “(III) ABILITY TO DETERMINE
11 THAT CORRECTIVE ACTION IS NOT
12 NECESSARY OR TECHNICALLY FEA-
13 SIBLE.—Notwithstanding section
14 257.97 of title 40, Code of Federal
15 Regulations, the implementing agency
16 may determine that remediation of a
17 release from a structure is not nec-
18 essary as provided in section
19 258.57(e) of title 40, Code of Federal
20 Regulations.

21 “(IV) AUTHORITY RELATING TO
22 RELEASES, OTHER THAN RELEASES
23 TO GROUNDWATER.—Notwithstanding
24 sections 257.90(d) and 257.96(a) of
25 title 40, Code of Federal Regulations,

1 the implementing agency may, with
2 respect to a release from a structure,
3 other than a release to groundwater,
4 authorize, for purposes of complying
5 with this section, remediation of such
6 release in accordance with other appli-
7 cable Federal or State requirements if
8 compliance with such requirements
9 will result in the same level of protec-
10 tion as compliance with the criteria
11 described in sections 257.96 through
12 257.98 of title 40, Code of Federal
13 Regulations, taking into consideration
14 the nature of the release.

15 “(V) GENERAL AUTHORITY RE-
16 LATING TO GROUNDWATER MONI-
17 TORING AND CORRECTIVE ACTION.—
18 Notwithstanding sections 257.90
19 through 257.98 of title 40, Code of
20 Federal Regulations, the imple-
21 menting agency may authorize alter-
22 native groundwater monitoring and
23 corrective action requirements pro-
24 vided that such requirements are no
25 less stringent than the alternative re-

1 quirements authorized to be estab-
2 lished under subpart E of part 258 of
3 title 40, Code of Federal Regulations.

4 “(VI) OPPORTUNITY FOR COR-
5 RECTIVE ACTION FOR UNLINED SUR-
6 FACE IMPOUNDMENTS.—Notwith-
7 standing section 257.101(a)(1) of title
8 40, Code of Federal Regulations, the
9 implementing agency may allow the
10 owner or operator of an existing
11 structure that is an unlined surface
12 impoundment—

13 “(aa) to continue to operate,
14 pursuant to sections 257.96
15 through 257.98 of title 40, Code
16 of Federal Regulations, until the
17 date that is 102 months after the
18 date of enactment of this section;
19 and

20 “(bb) to continue to operate
21 after such date as long as such
22 unlined surface impoundment
23 meets the groundwater protection
24 standard established pursuant to
25 this subparagraph and any other

1 applicable requirement estab-
2 lished pursuant to this section.

3 “(C) CLOSURE.—For all structures, the
4 criteria for closure described in sections
5 257.101, 257.102, and 257.103 of title 40,
6 Code of Federal Regulations, except—

7 “(i) the criteria described in section
8 257.101(a)(1) of title 40, Code of Federal
9 Regulations, shall apply to an existing
10 structure that is an unlined surface im-
11 poundment only if—

12 “(I) the unlined surface im-
13 poundment is not allowed to continue
14 operation pursuant to subparagraph
15 (B)(ii)(VI)(aa); or

16 “(II) in the case of an unlined
17 surface impoundment that is allowed
18 to continue operation pursuant to sub-
19 paragraph (B)(ii)(VI)(aa), the date
20 described in such subparagraph has
21 passed and the unlined surface im-
22 poundment does not meet the require-
23 ments described in subparagraph
24 (B)(ii)(VI)(bb);

“(ii) the criteria described in section 257.101(b)(1) of title 40, Code of Federal Regulations, shall not apply to existing structures, except as provided in subparagraphs (E)(i)(II) and (E)(ii); and

“(iii) if an implementing agency has set a deadline under clause (i) or (ii) of subparagraph (L), the criteria described in section 257.101(b)(2) of title 40, Code of Federal Regulations, shall apply to structures that are surface impoundments only after such deadline.

“(D) POST-CLOSURE.—For all structures, the criteria for post-closure care described in section 257.104 of title 40, Code of Federal Regulations.

“(E) LOCATION RESTRICTIONS.—

“(i) IN GENERAL.—The criteria for location restrictions described in—

“(I) for new structures, including lateral expansions of existing structures, sections 257.60 through 257.64 and 257.3–1 of title 40, Code of Federal Regulations; and

1 “(II) for existing structures, sec-
2 tions 257.64 and 257.3–1 of title 40,
3 Code of Federal Regulations.

4 “(ii) ADDITIONAL AUTHORITY.—The
5 implementing agency may apply the cri-
6 teria described in sections 257.60 through
7 257.63 of title 40, Code of Federal Regula-
8 tions, to existing structures that are sur-
9 face impoundments.

10 “(F) AIR CRITERIA.—For all structures,
11 the criteria for air quality described in section
12 257.80 of title 40, Code of Federal Regulations.

13 “(G) FINANCIAL ASSURANCE.—For all
14 structures, the criteria for financial assurance
15 described in subpart G of part 258 of title 40,
16 Code of Federal Regulations.

17 “(H) SURFACE WATER.—For all struc-
18 tures, the criteria for surface water described in
19 section 257.3–3 of title 40, Code of Federal
20 Regulations.

21 “(I) RECORDKEEPING.—For all structures,
22 the criteria for recordkeeping described in sec-
23 tion 257.105 of title 40, Code of Federal Regu-
24 lations.

1 “(J) RUN-ON AND RUN-OFF CONTROLS.—

2 For all structures that are landfills, sand or
3 gravel pits, or quarries, the criteria for run-on
4 and run-off control described in section 257.81
5 of title 40, Code of Federal Regulations.

6 “(K) HYDROLOGIC AND HYDRAULIC CA-
7 PACITY REQUIREMENTS.—For all structures
8 that are surface impoundments, the criteria for
9 inflow design flood control systems described in
10 section 257.82 of title 40, Code of Federal Reg-
11 ulations.

12 “(L) STRUCTURAL INTEGRITY.—For struc-
13 tures that are surface impoundments, the cri-
14 teria for structural integrity described in sec-
15 tions 257.73 and 257.74 of title 40, Code of
16 Federal Regulations, except that, notwith-
17 standing section 257.73(f)(4) of title 40, Code
18 of Federal Regulations, the implementing agen-
19 cy may provide for—

20 “(i) up to 30 days for an owner or op-
21 erator to complete a safety factor assess-
22 ment when an owner or operator has failed
23 to meet an applicable periodic assessment
24 deadline provided in section 257.73(f) of
25 title 40, Code of Federal Regulations; and

1 “(ii) up to 12 months for an owner or
2 operator to meet the safety factor assess-
3 ment criteria provided in section
4 257.73(e)(1) of title 40, Code of Federal
5 Regulations, if the implementing agency
6 determines, through the initial safety fac-
7 tor assessment, that the structure does not
8 meet such safety factor assessment criteria
9 and that the structure does not pose an
10 immediate threat of release.

11 “(M) INSPECTIONS.—For all structures,
12 the criteria described in sections 257.83 and
13 257.84 of title 40, Code of Federal Regulations.

14 “(3) PERMIT PROGRAM IMPLEMENTATION FOR
15 EXISTING STRUCTURES.—

16 “(A) NOTIFICATION.—Not later than the
17 date on which a State submits a certification
18 under subsection (b)(2), not later than 18
19 months after the Administrator receives notice
20 under subsection (e)(1)(A), or not later than 24
21 months after the date of enactment of this sec-
22 tion with respect to a coal combustion residuals
23 permit program that is being implemented by
24 the Administrator under subsection (e)(3), as

1 applicable, the implementing agency shall notify
2 owners or operators of existing structures of—

3 “(i) the obligation to apply for and
4 obtain a permit under subparagraph (C);
5 and

6 “(ii) the requirements referred to in
7 subparagraph (B)(ii).

8 “(B) COMPLIANCE WITH CERTAIN RE-
9 QUIREMENTS.—

10 “(i) INITIAL DEADLINE FOR CERTAIN
11 REQUIREMENTS.—Not later than 8 months
12 after the date of enactment of this section,
13 the implementing agency shall require own-
14 ers or operators of existing structures to
15 comply with—

16 “(I) the requirements under
17 paragraphs (2)(F), (2)(H), (2)(I), and
18 (2)(M); and

19 “(II) the requirement for a per-
20 manent identification marker under
21 the criteria described in paragraph
22 (2)(L).

23 “(ii) SUBSEQUENT DEADLINE FOR
24 CERTAIN OTHER REQUIREMENTS.—Not
25 later than 12 months after the date on

1 which a State submits a certification under
2 subsection (b)(2), not later than 30
3 months after the Administrator receives
4 notice under subsection (e)(1)(A), or not
5 later than 36 months after the date of en-
6 actment of this section with respect to a
7 coal combustion residuals permit program
8 that is being implemented by the Adminis-
9 trator under subsection (e)(3), as applica-
10 ble, the implementing agency shall require
11 owners or operators of existing structures
12 to comply with—

13 “(I) the requirements under
14 paragraphs (2)(B), (2)(G), (2)(J),
15 (2)(K), and (2)(L); and

16 “(II) the requirement for a writ-
17 ten closure plan under the criteria de-
18 scribed in paragraph (2)(C).

19 “(C) PERMITS.—

20 “(i) PERMIT DEADLINE.—Not later
21 than 48 months after the date on which a
22 State submits a certification under sub-
23 section (b)(2), not later than 66 months
24 after the Administrator receives notice
25 under subsection (e)(1)(A), or not later

1 than 72 months after the date of enact-
2 ment of this section with respect to a coal
3 combustion residuals permit program that
4 is being implemented by the Administrator
5 under subsection (e)(3), as applicable, the
6 implementing agency shall issue, with re-
7 spect to an existing structure, a final per-
8 mit incorporating the applicable require-
9 ments of the coal combustion residuals per-
10 mit program, or a final denial of an appli-
11 cation submitted requesting such a permit.

12 “(ii) APPLICATION DEADLINE.—The
13 implementing agency shall identify, in col-
14 laboration with the owner or operator of an
15 existing structure, a reasonable deadline by
16 which the owner or operator shall submit a
17 permit application under clause (i).

18 “(D) INTERIM OPERATION.—

19 “(i) PRIOR TO DEADLINES.—Unless
20 the implementing agency determines that
21 the structure should close in accordance
22 with the criteria described in paragraph
23 (2)(C), with respect to any period of time
24 on or after the date of enactment of this
25 section but prior to the applicable deadline

in subparagraph (B), the owner or operator of an existing structure may continue to operate such structure until such applicable deadline under any applicable regulations in effect during such period.

“(ii) PRIOR TO PERMIT.—Unless the implementing agency determines that the structure should close in accordance with the criteria described in paragraph (2)(C), if the owner or operator of an existing structure meets the requirements referred to in subparagraph (B) by the applicable deadline in such subparagraph, the owner or operator may operate the structure until such time as the implementing agency issues, under subparagraph (C), a final permit incorporating the requirements of the coal combustion residuals permit program, or a final denial of an application submitted requesting such a permit.

“(4) REQUIREMENTS FOR INACTIVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS.—

“(A) NOTICE.—Not later than 2 months after the date of enactment of this section, each owner or operator of an inactive coal combus-

tion residuals surface impoundment shall submit to the Administrator and the State in which such inactive coal combustion residuals surface impoundment is located a notice stating whether such inactive coal combustion residuals surface impoundment will—

“(i) not later than 3 years after the date of enactment of this section, complete closure in accordance with section 257.100 of title 40, Code of Federal Regulations; or

“(ii) comply with the requirements of the coal combustion residuals permit program applicable to existing structures that are surface impoundments (except as provided in subparagraph (D)(ii)).

“(B) EXTENSION.—In the case of an inactive coal combustion residuals surface impoundment for which the owner or operator submits a notice described in subparagraph (A)(i), the implementing agency may extend the closure deadline provided in such subparagraph by a period of not more than 2 years if the owner or operator of such inactive coal combustion residuals surface impoundment—

1 “(i) demonstrates to the satisfaction
2 of the implementing agency that it is not
3 feasible to complete closure of the inactive
4 coal combustion residuals surface impound-
5 ment in accordance with section 257.100
6 of title 40, Code of Federal Regulations, by
7 the deadline provided in subparagraph
8 (A)(i)—

9 “(I) because of complications
10 stemming from the climate or weath-
11 er, such as unusual amounts of pre-
12 cipitation or a significantly shortened
13 construction season;

14 “(II) because additional time is
15 required to remove the liquid from the
16 inactive coal combustion residuals sur-
17 face impoundment due to the volume
18 of coal combustion residuals contained
19 in the surface impoundment or the
20 characteristics of the coal combustion
21 residuals in such surface impound-
22 ment;

23 “(III) because the geology and
24 terrain surrounding the inactive coal
25 combustion residuals surface im-

1 poundment will affect the amount of
2 material needed to close the inactive
3 coal combustion residuals surface im-
4 poundment; or

5 “(IV) because additional time is
6 required to coordinate with and obtain
7 necessary approvals and permits; and

8 “(ii) demonstrates to the satisfaction
9 of the implementing agency that the inac-
10 tive coal combustion residuals surface im-
11 poundment does not pose an immediate
12 threat of release.

13 “(C) FINANCIAL ASSURANCE.—The imple-
14 menting agency shall require the owner or oper-
15 ator of an inactive surface impoundment that
16 has closed pursuant to this paragraph to per-
17 form post-closure care in accordance with the
18 criteria described in section 257.104(b)(1) of
19 title 40, Code of Federal Regulations, and to
20 provide financial assurance for such post-clo-
21 sure care in accordance with the criteria de-
22 scribed in section 258.72 of title 40, Code of
23 Federal Regulations.

24 “(D) TREATMENT AS STRUCTURE.—

“(i) IN GENERAL.—An inactive coal combustion residuals surface impoundment shall be treated as an existing structure that is a surface impoundment for the purposes of this section, including with respect to the requirements of paragraphs (1) and (2), if—

“(I) the owner or operator does not submit a notice in accordance with subparagraph (A); or

“(II) the owner or operator submits a notice described in subparagraph (A)(ii).

“(ii) INACTIVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS THAT FAIL TO CLOSE.—An inactive coal combustion residuals surface impoundment for which the owner or operator submits a notice described in subparagraph (A)(i) that does not close by the deadline provided under subparagraph (A)(i) or subparagraph (B), as applicable—

“(I) shall be treated as an existing structure for purposes of this section beginning on the date that is the

1 day after such applicable deadline, in-
 2 cluding by—

3 “(aa) being required to com-
 4 ply with the requirements of
 5 paragraph (1), as applicable; and

6 “(bb) being required to com-
 7 ply, beginning on such date, with
 8 each requirement of paragraph
 9 (2); but

10 “(II) shall not be required to
 11 comply with paragraph (3).

12 “(d) FEDERAL REVIEW OF STATE PERMIT PRO-
 13 GRAMS.—

14 “(1) IN GENERAL.—The Administrator shall
 15 provide to a State written notice and an opportunity
 16 to remedy deficiencies in accordance with paragraph
 17 (3) if at any time the State—

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

20 “(B) has not submitted a certification as
 21 required under subsection (b)(2);

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

24 “(D) is not implementing a coal combus-
 25 tion residuals permit program, with respect to

1 which the State has submitted a certification
2 under subsection (b)(2), that meets the require-
3 ments described in subsection (c);

4 “(E) is not implementing a coal combus-
5 tion residuals permit program, with respect to
6 which the State has submitted a certification
7 under subsection (b)(2)—

8 “(i) that is consistent with such cer-
9 tification; and

10 “(ii) for which the State continues to
11 have in effect statutes or regulations nec-
12 essary to implement such program; or

13 “(F) does not make available to the Ad-
14 ministrator, within 90 days of a written re-
15 quest, specific information necessary for the
16 Administrator to ascertain whether the State
17 has satisfied the requirements described in sub-
18 paragraphs (A) through (E).

19 “(2) REQUEST.—If a request described in para-
20 graph (1)(F) is proposed pursuant to a petition to
21 the Administrator, the Administrator shall make the
22 request only if the Administrator does not possess
23 the information necessary to ascertain whether the
24 State has satisfied the requirements described in
25 subparagraphs (A) through (E) of paragraph (1).

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

4 “(A) include findings of the Administrator
 5 detailing any applicable deficiencies described in
 6 subparagraphs (A) through (F) of paragraph
 7 (1); and

8 “(B) identify, in collaboration with the
 9 State, a reasonable deadline by which the State
 10 shall remedy such applicable deficiencies, which
 11 shall be—

12 “(i) in the case of a deficiency de-
 13 scribed in subparagraphs (A) through (E)
 14 of paragraph (1), not earlier than 180
 15 days after the date on which the State re-
 16 ceives the notice; and

17 “(ii) in the case of a deficiency de-
 18 scribed in paragraph (1)(F), not later than
 19 90 days after the date on which the State
 20 receives the notice.

21 “(4) CONSIDERATIONS FOR DETERMINING DE-
 22 FICIENCY OF STATE PERMIT PROGRAM.—In making
 23 a determination whether a State has failed to satisfy
 24 the requirements described in subparagraphs (A)
 25 through (E) of paragraph (1), or a determination

1 under subsection (e)(1)(B), the Administrator shall
2 consider, as appropriate—

3 “(A) whether the State’s statutes or regu-
4 lations to implement a coal combustion residu-
5 als permit program are not sufficient to meet
6 the requirements described in subsection (c) be-
7 cause of—

8 “(i) failure of the State to promulgate
9 or enact new statutes or regulations when
10 necessary; or

11 “(ii) action by a State legislature or
12 court striking down or limiting such State
13 statutes or regulations;

14 “(B) whether the operation of the State
15 coal combustion residuals permit program fails
16 to comply with the requirements of subsection
17 (c) because of—

18 “(i) failure of the State to issue per-
19 mits as required in subsection (c)(1)(A);

20 “(ii) repeated issuance by the State of
21 permits that do not meet the requirements
22 of subsection (c);

23 “(iii) failure of the State to comply
24 with the public participation requirements
25 of this section; or

1 “(iv) failure of the State to implement
 2 corrective action requirements required
 3 under subsection (c)(2)(B); and

4 “(C) whether the enforcement of a State
 5 coal combustion residuals permit program fails
 6 to comply with the requirements of this section
 7 because of—

8 “(i) failure to act on violations of per-
 9 mits, as identified by the State; or

10 “(ii) repeated failure by the State to
 11 inspect or otherwise determine compliance
 12 pursuant to the process identified under
 13 subsection (b)(2)(C)(iii)(I).

14 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

15 “(1) FEDERAL BACKSTOP AUTHORITY.—The
 16 Administrator shall implement a coal combustion re-
 17 siduals permit program for a State if—

18 “(A) the Governor of the State notifies the
 19 Administrator under subsection (b)(1) that the
 20 State will not adopt and implement a permit
 21 program;

22 “(B) the State has received a notice under
 23 subsection (d) and the Administrator deter-
 24 mines, after providing a 30-day period for no-
 25 tice and public comment, that the State has

1 failed, by the deadline identified in the notice
2 under subsection (d)(3)(B), to remedy the defi-
3 ciencies detailed in the notice pursuant to sub-
4 section (d)(3)(A); or

5 “(C) the State informs the Administrator,
6 in writing, that such State will no longer imple-
7 ment such a permit program.

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

12 “(3) OTHER STRUCTURES.—For structures and
13 inactive coal combustion residuals surface impound-
14 ments located on property within the exterior bound-
15 aries of a State that the State does not have author-
16 ity or jurisdiction to regulate, the Administrator
17 shall implement a coal combustion residuals permit
18 program only for those structures and inactive coal
19 combustion residuals surface impoundments.

20 “(4) REQUIREMENTS.—If the Administrator
21 implements a coal combustion residuals permit pro-
22 gram under paragraph (1) or (3), the permit pro-
23 gram shall consist of the requirements described in
24 subsection (c).

25 “(5) ENFORCEMENT.—

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

4 “(i) the authorities referred to in sec-
5 tion 4005(c)(2)(A) shall apply with respect
6 to coal combustion residuals, structures,
7 and inactive coal combustion residuals sur-
8 face impoundments for which the Adminis-
9 trator is implementing the coal combustion
10 residuals permit program; and

11 “(ii) the Administrator may use those
12 authorities to inspect, gather information,
13 and enforce the requirements of this sec-
14 tion in the State.

15 “(B) OTHER STRUCTURES.—If the Admin-
16 istrator implements a coal combustion residuals
17 permit program under paragraph (3)—

18 “(i) the authorities referred to in sec-
19 tion 4005(c)(2)(A) shall apply with respect
20 to coal combustion residuals, structures,
21 and inactive coal combustion residuals sur-
22 face impoundments for which the Adminis-
23 trator is implementing the coal combustion
24 residuals permit program; and

1 “(ii) the Administrator may use those
 2 authorities to inspect, gather information,
 3 and enforce the requirements of this sec-
 4 tion for the structures and inactive coal
 5 combustion residuals surface impound-
 6 ments for which the Administrator is im-
 7 plementing the coal combustion residuals
 8 permit program.

9 “(6) PUBLIC PARTICIPATION PROCESS.—If the
 10 Administrator implements a coal combustion residu-
 11 als permit program under this subsection, the Ad-
 12 ministrator shall provide a 30-day period for the
 13 public participation process required under sub-
 14 section (c)(1)(B)(i).

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

17 “(1) STATE CONTROL.—

18 “(A) NEW ADOPTION, OR RESUMPTION OF,
 19 AND IMPLEMENTATION BY STATE.—For a State
 20 for which the Administrator is implementing a
 21 coal combustion residuals permit program
 22 under subsection (e)(1)(A) or subsection
 23 (e)(1)(C), the State may adopt and implement
 24 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 the
11 Administrator provides for a 30-day
12 period for notice and public comment,
13 that the State coal combustion residu-
14 als permit program meets the require-
15 ments described in subsection (c); and

16 “(II) a timeline for transition to
17 the State coal combustion residuals
18 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 pursuant to sub-
 3 section (d)(3)(A); and

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

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

11 “(II) a timeline for transition to
 12 the State coal combustion residuals
 13 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 notifies
 20 the Administrator that the deficiencies have
 21 been remedied pursuant to paragraph (1)(B)(i),
 22 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 “(g) IMPLEMENTATION DURING TRANSITION.—

4 “(1) EFFECT ON ACTIONS AND ORDERS.—Pro-
5 gram requirements of, and actions taken or orders
6 issued pursuant to, a coal combustion residuals per-
7 mit program shall remain in effect if—

8 “(A) a State takes control of its coal com-
9 bustion residuals permit program from the Ad-
10 ministrator under subsection (f)(1); or

11 “(B) the Administrator takes control of a
12 coal combustion residuals permit program from
13 a State under subsection (e).

14 “(2) CHANGE IN REQUIREMENTS.—Paragraph
15 (1) shall apply to such program requirements, ac-
16 tions, and orders until such time as—

17 “(A) the implementing agency that took
18 control of the coal combustion residuals permit
19 program changes the requirements of the coal
20 combustion residuals permit program with re-
21 spect to the basis for the action or order; or

22 “(B) with respect to an ongoing corrective
23 action, the State or the Administrator, which-
24 ever took the action or issued the order, cer-

1 tifies the completion of the corrective action
2 that is the subject of the action or order.

3 “(3) SINGLE PERMIT PROGRAM.—Except as
4 otherwise provided in this subsection—

5 “(A) if a State adopts and implements a
6 coal combustion residuals permit program
7 under subsection (f), the Administrator shall
8 cease to implement the coal combustion residu-
9 als permit program implemented under sub-
10 section (e) for such State; and

11 “(B) if the Administrator implements a
12 coal combustion residuals permit program for a
13 State under subsection (e)(1), the State shall
14 cease to implement its coal combustion residu-
15 als permit program.

16 “(h) EFFECT ON DETERMINATION UNDER 4005(c)
17 OR 3006.—The Administrator shall not consider the im-
18 plementation of a coal combustion residuals permit pro-
19 gram by the Administrator under subsection (e) in making
20 a determination of approval for a permit program or other
21 system of prior approval and conditions under section
22 4005(c) or of authorization for a program under section
23 3006.

24 “(i) AUTHORITY.—

1 “(1) STATE AUTHORITY.—Nothing in this sec-
 2 tion shall preclude or deny any right of any State to
 3 adopt or enforce any regulation or requirement re-
 4 specting coal combustion residuals that is more
 5 stringent or broader in scope than a regulation or
 6 requirement under this section.

7 “(2) AUTHORITY OF THE ADMINISTRATOR.—

8 “(A) IN GENERAL.—Except as provided in
 9 subsections (d), (e), and (g) of this section and
 10 section 6005, the Administrator shall, with re-
 11 spect to the regulation of coal combustion re-
 12 siduals under this Act, defer to the States pur-
 13 suant to this section.

14 “(B) IMMINENT HAZARD.—Nothing in this
 15 section shall be construed as affecting the au-
 16 thority of the Administrator under section 7003
 17 with respect to coal combustion residuals.

18 “(C) ENFORCEMENT ASSISTANCE ONLY
 19 UPON REQUEST.—Upon request from the head
 20 of a lead State implementing agency, the Ad-
 21 ministrator may provide to such State agency
 22 only the enforcement assistance requested.

23 “(D) CONCURRENT ENFORCEMENT.—Ex-
 24 cept as provided in subparagraph (C) of this
 25 paragraph and subsection (g), the Adminis-

1 trator shall not have concurrent enforcement
 2 authority when a State is implementing a coal
 3 combustion residuals permit program, including
 4 during any period of interim operation de-
 5 scribed in subsection (c)(3)(D).

6 “(3) CITIZEN SUITS.—Nothing in this section
 7 shall be construed to affect the authority of a person
 8 to commence a civil action in accordance with sec-
 9 tion 7002.

10 “(j) MINE RECLAMATION ACTIVITIES.—A coal com-
 11 bustion residuals permit program implemented by the Ad-
 12 ministrators under subsection (e) shall not apply to the uti-
 13 lization, placement, and storage of coal combustion residu-
 14 als at surface or underground coal mining and reclamation
 15 operations.

16 “(k) USE OF COAL COMBUSTION RESIDUALS.—Use
 17 of coal combustion residuals in any of the following ways
 18 shall not be considered to be receipt of coal combustion
 19 residuals for the purposes of this section:

20 “(1) Use as—

21 “(A) engineered structural fill constructed
 22 in accordance with—

23 “(i) ASTM E2277 entitled ‘Standard
 24 Guide for Design and Construction of Coal

1 Ash Structural Fills’, including any
2 amendment or revision to that guidance;

3 “(ii) any other published national
4 standard determined appropriate by the
5 implementing agency; or

6 “(iii) a State standard or program re-
7 lating to—

8 “(I) fill operations for coal com-
9 bustion residuals; or

10 “(II) the management of coal
11 combustion residuals for beneficial
12 use; or

13 “(B) engineered structural fill for—

14 “(i) a building site or foundation;

15 “(ii) a base or embankment for a
16 bridge, roadway, runway, or railroad; or

17 “(iii) a dike, levee, berm, or dam that
18 is not part of a structure.

19 “(2) Storage in a manner that is consistent
20 with the management of raw materials, if the coal
21 combustion residuals being stored are intended to be
22 used in a product or as a raw material.

23 “(3) Beneficial use—

24 “(A) that provides a functional benefit;

1 “(B) that is a substitute for the use of a
2 virgin material;

3 “(C) that meets relevant product specifica-
4 tions and regulatory or design standards; and

5 “(D) if such use involves placement on the
6 land of coal combustion residuals in non-road-
7 way applications, in an amount equal to or
8 greater than the amount described in the defini-
9 tion of beneficial use in section 257.53 of title
10 40, Code of Federal Regulations, for which the
11 person using the coal combustion residuals
12 demonstrates, and keeps records showing, that
13 such use does not result in environmental re-
14 leases to groundwater, surface water, soil, or air
15 that—

16 “(i) are greater than those from a
17 material or product that would be used in-
18 stead of the coal combustion residuals; or

19 “(ii) exceed relevant regulatory and
20 health-based benchmarks for human and
21 ecological receptors.

22 “(l) EFFECT OF RULE.—

23 “(1) IN GENERAL.—With respect to the final
24 rule entitled ‘Hazardous and Solid Waste Manage-
25 ment System; Disposal of Coal Combustion Residu-

1 als from Electric Utilities’ and published in the Fed-
2 eral Register on April 17, 2015 (80 Fed. Reg.
3 21302)—

4 “(A) such rule shall be implemented only
5 through a coal combustion residuals permit pro-
6 gram under this section; and

7 “(B) to the extent that any provision or re-
8 quirement of such rule conflicts, or is incon-
9 sistent, with a provision or requirement of this
10 section, the provision or requirement of this
11 section shall control.

12 “(2) EFFECTIVE DATE.—For purposes of this
13 section, any reference in part 257 of title 40, Code
14 of Federal Regulations, to the effective date con-
15 tained in section 257.51 of such part shall be consid-
16 ered to be a reference to the date of enactment of
17 this section, except that, in the case of any deadline
18 established by such a reference that is in conflict
19 with a deadline established by this section, the dead-
20 line established by this section shall control.

21 “(3) APPLICABILITY OF OTHER REGULA-
22 TIONS.—The application of section 257.52 of title
23 40, Code of Federal Regulations, is not affected by
24 this section.

1 “(4) DEFINITIONS.—The definitions under sec-
 2 tion 257.53 of title 40, Code of Federal Regulations,
 3 shall apply with respect to any criteria described in
 4 subsection (c) the requirements of which are incor-
 5 porated into a coal combustion residuals permit pro-
 6 gram under this section, except—

7 “(A) as provided in paragraph (1); and

8 “(B) a lead State implementing agency
 9 may make changes to such definitions if the
 10 lead State implementing agency—

11 “(i) identifies the changes in the ex-
 12 planation included with the certification
 13 submitted under subsection (b)(2)(C)(iii);
 14 and

15 “(ii) provides in such explanation a
 16 reasonable basis for the changes.

17 “(5) OTHER CRITERIA.—The criteria described
 18 in sections 257.106 and 257.107 of title 40, Code of
 19 Federal Regulations, may be incorporated into a coal
 20 combustion residuals permit program at the discre-
 21 tion of the implementing agency.

22 “(m) DEFINITIONS.—In this section:

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

1 wastes generated by electric utilities and inde-
2 pendent power producers:

3 “(A) The solid wastes listed in section
4 3001(b)(3)(A)(i) that are generated primarily
5 from the combustion of coal, including recover-
6 able materials from such wastes.

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

14 “(C) Fluidized bed combustion wastes that
15 are generated primarily from the combustion of
16 coal.

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.

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 a system of prior
 3 approval and conditions implemented under this sec-
 4 tion to regulate the management and disposal of coal
 5 combustion residuals.

6 “(3) ELECTRIC UTILITY; INDEPENDENT POWER
 7 PRODUCER.—The terms ‘electric utility’ and ‘inde-
 8 pendent power producer’ include only electric utili-
 9 ties and independent power producers that produce
 10 electricity on or after the date of enactment of this
 11 section.

12 “(4) EXISTING STRUCTURE.—The term ‘exist-
 13 ing structure’ means a structure the construction of
 14 which commenced before the date of enactment of
 15 this section.

16 “(5) IMPLEMENTING AGENCY.—The term ‘im-
 17 plementing agency’ means the agency responsible for
 18 implementing a coal combustion residuals permit
 19 program, which shall either be the lead State imple-
 20 menting agency identified under subsection
 21 (b)(2)(C)(i) or the Administrator pursuant to sub-
 22 section (e).

23 “(6) INACTIVE COAL COMBUSTION RESIDUALS
 24 SURFACE IMPOUNDMENT.—The term ‘inactive coal
 25 combustion residuals surface impoundment’ means a

1 surface impoundment, located at an electric utility
 2 or independent power producer, that, as of the date
 3 of enactment of this section—

4 “(A) does not receive coal combustion re-
 5 siduals;

6 “(B) contains coal combustion residuals;
 7 and

8 “(C) contains liquid.

9 “(7) STRUCTURE.—

10 “(A) IN GENERAL.—Except as provided in
 11 subparagraph (B), the term ‘structure’ means a
 12 landfill, surface impoundment, sand or gravel
 13 pit, or quarry that receives coal combustion re-
 14 siduals on or after the date of enactment of this
 15 section.

16 “(B) EXCEPTIONS.—

17 “(i) MUNICIPAL SOLID WASTE LAND-
 18 FILLS.—The term ‘structure’ does not in-
 19 clude a municipal solid waste landfill.

20 “(ii) DE MINIMIS RECEIPT.—The
 21 term ‘structure’ does not include any land-
 22 fill or surface impoundment that receives
 23 only de minimis quantities of coal combus-
 24 tion residuals if the presence of coal com-
 25 bustion residuals is incidental to the mate-

1 rial managed in the landfill or surface im-
2 poundment.

3 “(8) UNLINED SURFACE IMPOUNDMENT.—The
4 term ‘unlined surface impoundment’ means a sur-
5 face impoundment that does not have a liner system
6 described in section 257.71 of title 40, Code of Fed-
7 eral Regulations.”.

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

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

12 **SEC. 3. 2000 REGULATORY DETERMINATION.**

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

22 **SEC. 4. TECHNICAL ASSISTANCE.**

23 Nothing in this Act, or the amendments made by this
24 Act, shall be construed to affect the authority of a State
25 to request, or the Administrator of the Environmental

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

3 **SEC. 5. FEDERAL POWER ACT.**

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

○