

# Union Calendar No. 107

113TH CONGRESS  
1ST SESSION

# H. R. 2218

[Report No. 113-148]

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.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 2013

Mr. MCKINLEY (for himself, Mr. PETERSON, Mr. WHITFIELD, Mr. ENYART, Mr. ROGERS of Kentucky, Mr. BARROW of Georgia, Mr. RAHALL, Mr. KIND, Mr. JOHNSON of Ohio, Mr. CUELLAR, Mr. STUTZMAN, Mr. WALZ, Mrs. CAPITO, Mr. WOMACK, Mr. HARPER, Ms. JENKINS, Mr. GIBBS, Mrs. BLACKBURN, Mr. NUNNELEE, Mr. GOSAR, Mr. BARLETTA, Mr. MATHESON, Mr. STIVERS, Mr. LONG, Mr. GUTHRIE, Mr. BARR, Mr. ROKITA, Mrs. ELLMERS, Mr. YOUNG of Indiana, Mr. BUCSHON, Mrs. LUMMIS, Mr. RENACCI, Mr. BISHOP of Georgia, Mr. THOMPSON of Mississippi, Mr. SHIMKUS, and Mr. KELLY of Pennsylvania) introduced the following bill; which was referred to the Committee on Energy and Commerce

JULY 10, 2013

Additional sponsors: Mr. BILIRAKIS, Mr. OLSON, Mr. SALMON, Mr. RYAN of Ohio, Mrs. WALORSKI, Mr. RODNEY DAVIS of Illinois, Mr. KINZINGER of Illinois, Mr. ROSS, Mr. SCHOCK, Mr. HUIZENGA of Michigan, Mr. DAINES, Mr. MURPHY of Pennsylvania, Mr. CRAMER, Mr. FRANKS of Arizona, Mr. VISCLOSKEY, Mr. TERRY, Mr. KLINE, Mr. KING of New York, and Mr. COTTON

JULY 10, 2013

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

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

[For text of introduced bill, see copy of bill as introduced on June 3, 2013]

# **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 *“Coal Residuals Reuse and Management Act of 2013”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents for*  
 7 *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.*

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

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

13 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**  
 14 **BUSTION RESIDUALS.**

15 *“(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-*  
 16 *TION RESIDUALS.*—*Each State may adopt, implement, and*  
 17 *enforce a coal combustion residuals permit program if such*  
 18 *State provides the notification required under subsection*  
 19 *(b)(1), and the certification required under subsection*  
 20 *(b)(2).*

21 *“(b) STATE ACTIONS.*—

22 *“(1) NOTIFICATION.*—*Not later than 6 months*  
 23 *after the date of enactment of this section (except as*

1       *provided by the deadline identified under subsection*  
2       *(d)(3)(B)), the Governor of each State shall notify the*  
3       *Administrator, in writing, whether such State will*  
4       *adopt and implement a coal combustion residuals*  
5       *permit program.*

6               “(2) *CERTIFICATION.—*

7                       “(A) *IN GENERAL.—Not later than 36*  
8                       *months after the date of enactment of this section*  
9                       *(except as provided in subsection (f)(1)(A)), in*  
10                      *the case of a State that has notified the Adminis-*  
11                      *trator that it will implement a coal combustion*  
12                      *residuals permit program, the head of the lead*  
13                      *State implementing agency shall submit to the*  
14                      *Administrator a certification that such coal com-*  
15                      *bustion residuals permit program meets the re-*  
16                      *quirements described in subsection (c).*

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

19                               “(i) *a letter identifying the lead State*  
20                               *implementing agency, signed by the head of*  
21                               *such agency;*

22                               “(ii) *identification of any other State*  
23                               *agencies involved with the implementation*  
24                               *of the coal combustion residuals permit pro-*  
25                               *gram;*

1           “(iii) an explanation of how the State  
2 coal combustion residuals permit program  
3 meets the requirements of this section, in-  
4 cluding a description of the State’s—

5                   “(I) process to inspect or other-  
6 wise determine compliance with such  
7 permit program;

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

10                   “(III) public participation process  
11 for the promulgation, amendment, or  
12 repeal of regulations for, and the  
13 issuance of permits under, such permit  
14 program;

15                   “(IV) statutes, regulations, or  
16 policies pertaining to public access to  
17 information, such as groundwater  
18 monitoring data; and

19                   “(V) statutes, regulations, or poli-  
20 cies pertaining to structural integrity  
21 or dam safety that may be applied to  
22 structures through such permit pro-  
23 gram;

24                   “(iv) a certification that the State has  
25 in effect, at the time of certification, stat-

1            *utes or regulations necessary to implement*  
 2            *a coal combustion residuals permit program*  
 3            *that meets the requirements described in*  
 4            *subsection (c); and*

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

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

10           *“(3) MAINTENANCE OF 4005(c) OR 3006 PRO-*  
 11           *GRAM.—In order to adopt or implement a coal com-*  
 12           *bus-tion residuals permit program under this section*  
 13           *(including pursuant to subsection (f)), the State im-*  
 14           *plementing agency shall maintain an approved per-*  
 15           *mit program or other system of prior approval and*  
 16           *conditions under section 4005(c) or an authorized*  
 17           *program under section 3006.*

18           *“(c) REQUIREMENTS FOR A COAL COMBUSTION RE-*  
 19           *SIDUALS PERMIT PROGRAM.—A coal combustion residuals*  
 20           *permit program shall consist of the following:*

21           *“(1) GENERAL REQUIREMENTS.—*

22           *“(A) IN GENERAL.—The implementing*  
 23           *agency shall—*

24           *“(i) apply the subset of the revised cri-*  
 25           *teria described in paragraph (2) to owners*

1           or operators of structures, including surface  
2           impoundments, that receive coal combustion  
3           residuals on or after the date of enactment  
4           of this section;

5           “(ii) with respect to structures that are  
6           receiving coal combustion residuals as of the  
7           date of enactment of this section, take the  
8           actions required under paragraph (3);

9           “(iii) impose requirements for surface  
10          impoundments that do not meet certain cri-  
11          teria pursuant to paragraph (4); and

12          “(iv) require that closure of structures  
13          occur in accordance with paragraph (5).

14          “(B) *STRUCTURAL INTEGRITY.*—

15                 “(i) *ENGINEERING CERTIFICATION.*—  
16                 The implementing agency shall require that  
17                 an independent registered professional engi-  
18                 neer certify that—

19                         “(I) the design of each structure  
20                         that receives coal combustion residuals  
21                         on or after the date of enactment of  
22                         this section is in accordance with rec-  
23                         ognized and generally accepted good  
24                         engineering practices for containment  
25                         of the maximum volume of coal com-

1                    *bustion residuals and liquids which*  
2                    *can be impounded therein; and*

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

6                    “(ii) *EMERGENCY ACTION PLAN.—The*  
7                    *implementing agency shall require that the*  
8                    *owner or operator of any structure that is*  
9                    *a surface impoundment that receives coal*  
10                    *combustion residuals on or after the date of*  
11                    *enactment of this section and that is classi-*  
12                    *fied by the State as posing a high hazard*  
13                    *potential pursuant to the guidelines pub-*  
14                    *lished by the Federal Emergency Manage-*  
15                    *ment Agency entitled ‘Federal Guidelines*  
16                    *for Dam Safety: Hazard Potential Classi-*  
17                    *fication System for Dams’ (FEMA Publica-*  
18                    *tion Number 333) prepare and maintain an*  
19                    *emergency action plan that identifies re-*  
20                    *sponsible persons and actions to be taken in*  
21                    *the event of a dam safety emergency.*

22                    “(iii) *INSPECTION.—*

23                    “(I) *IN GENERAL.—The imple-*  
24                    *menting agency shall require that*  
25                    *structures that are surface impound-*



1                    *ments that receive coal combustion re-*  
2                    *siduals on or after the date of enact-*  
3                    *ment of this section be inspected not*  
4                    *less than annually by an independent*  
5                    *registered professional engineer to as-*  
6                    *sure that the design, operation, and*  
7                    *maintenance of the surface impound-*  
8                    *ment is in accordance with recognized*  
9                    *and generally accepted good engineer-*  
10                   *ing practices for containment of the*  
11                   *maximum volume of coal combustion*  
12                   *residuals and liquids which can be im-*  
13                   *pounded therein, so as to ensure dam*  
14                   *stability.*

15                   *“(II) POTENTIALLY HAZARDOUS*  
16                   *CONDITIONS.—The implementing agen-*  
17                   *cy shall require that if an inspection*  
18                   *under subclause (I), or a periodic eval-*  
19                   *uation under clause (iv), reveals a po-*  
20                   *tentially hazardous condition, the*  
21                   *owner or operator of the structure shall*  
22                   *immediately take action to mitigate*  
23                   *the potentially hazardous condition*  
24                   *and notify appropriate State and local*  
25                   *first responders.*

1           “(iv) *PERIODIC EVALUATION.*—*The im-*  
2           *plementing agency shall require that struc-*  
3           *tures that are surface impoundments that*  
4           *receive coal combustion residuals on or after*  
5           *the date of enactment of this section be peri-*  
6           *odically evaluated for appearances of struc-*  
7           *tural weakness.*

8           “(v) *DEFICIENCY.*—

9           “(I) *IN GENERAL.*—*If the head of*  
10          *the implementing agency determines*  
11          *that a structure is deficient with re-*  
12          *spect to the requirements in clause (i),*  
13          *(iii), or (iv), the head of the agency has*  
14          *the authority to require action to cor-*  
15          *rect the deficiency according to a*  
16          *schedule determined by the agency.*

17          “(II)     *UNCORRECTED     DEFI-*  
18          *CIENCIES.*—*If a deficiency is not cor-*  
19          *rected according to the schedule, the*  
20          *head of the implementing agency has*  
21          *the authority to require that the struc-*  
22          *ture close in accordance with para-*  
23          *graph (5).*

24          “(III) *DAM SAFETY CONSULTA-*  
25          *TION.*—*In the case of a structure that*

1            *is a surface impoundment, the head of*  
2            *the implementing agency shall, in*  
3            *making a determination under sub-*  
4            *clause (I), consult with appropriate*  
5            *State dam safety officials.*

6            *“(C) LOCATION.—The implementing agency*  
7            *shall require that structures that first receive*  
8            *coal combustion residuals on or after the date of*  
9            *enactment of this section shall be constructed*  
10           *with a base located a minimum of 2 feet above*  
11           *the upper limit of the water table, unless it is*  
12           *demonstrated to the satisfaction of the imple-*  
13           *menting agency that—*

14           *“(i) the hydrogeologic characteristics of*  
15           *a structure and surrounding land would*  
16           *preclude such a requirement; and*

17           *“(ii) the function and integrity of the*  
18           *liner system will not be adversely impacted*  
19           *by contact with the water table.*

20           *“(D) WIND DISPERSAL.—*

21           *“(i) IN GENERAL.—The implementing*  
22           *agency shall require that owners or opera-*  
23           *tors of structures that receive coal combus-*  
24           *tion residuals on or after the date of enact-*  
25           *ment of this section address wind dispersal*

1           *of dust by requiring cover, or by wetting*  
2           *coal combustion residuals with water to a*  
3           *moisture content that prevents wind dis-*  
4           *persal, facilitates compaction, and does not*  
5           *result in free liquids.*

6           “(ii) *ALTERNATIVE METHODS.—Sub-*  
7           *ject to the review and approval by the im-*  
8           *plementing agency, owners or operators of*  
9           *structures that receive coal combustion re-*  
10           *siduals on or after the date of enactment of*  
11           *this section may propose alternative meth-*  
12           *ods to address wind dispersal of dust that*  
13           *will provide comparable or more effective*  
14           *control of dust.*

15           “(E) *PERMITS.—The implementing agency*  
16           *shall require that owners or operators of struc-*  
17           *tures that receive coal combustion residuals on or*  
18           *after the date of enactment of this section apply*  
19           *for and obtain permits incorporating the re-*  
20           *quirements of the coal combustion residuals per-*  
21           *mit program.*

22           “(F) *PUBLIC AVAILABILITY OF INFORMA-*  
23           *TION.—Except for information with respect to*  
24           *which disclosure is prohibited under section 1905*

1           of title 18, United States Code, the implementing  
2           agency shall ensure that—

3                   “(i) documents for permit determina-  
4                   tions are made available for public review  
5                   and comment under the public participa-  
6                   tion process described in subsection  
7                   (b)(2)(B)(iii)(III) or in subsection (e)(6), as  
8                   applicable;

9                   “(ii) final determinations on permit  
10                  applications are made known to the public;  
11                  and

12                  “(iii) groundwater monitoring data  
13                  collected under paragraph (2) is publicly  
14                  available.

15           “(G) AGENCY AUTHORITY.—

16                   “(i) IN GENERAL.—The implementing  
17                  agency has the authority to—

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

23                           “(II) conduct or require moni-  
24                           toring and testing to ensure that struc-

1            *tures are in compliance with the re-*  
2            *quirements of this subsection; and*

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

10           *“(ii) MONITORING AND TESTING.—If*  
11           *monitoring or testing is conducted under*  
12           *clause (i)(II) by or for the implementing*  
13           *agency, the implementing agency shall, if*  
14           *requested, provide to the owner or oper-*  
15           *ator—*

16           *“(I) a written description of the*  
17           *monitoring or testing completed;*

18           *“(II) at the time of sampling, a*  
19           *portion of each sample equal in volume*  
20           *or weight to the portion retained by or*  
21           *for the implementing agency; and*

22           *“(III) a copy of the results of any*  
23           *analysis of samples collected by or for*  
24           *the implementing agency.*

1           “(2) *REVISED CRITERIA.*—*The subset of the re-*  
2 *vised criteria referred to in paragraph (1)(A)(i) are*  
3 *as follows:*

4           “(A) *DESIGN REQUIREMENTS.*—*For new*  
5 *structures, and lateral expansions of existing*  
6 *structures, that first receive coal combustion re-*  
7 *siduals on or after the date of enactment of this*  
8 *section, the revised criteria regarding design re-*  
9 *quirements described in section 258.40 of title*  
10 *40, Code of Federal Regulations, except that the*  
11 *leachate collection system requirements described*  
12 *in section 258.40(a)(2) of title 40, Code of Fed-*  
13 *eral Regulations, do not apply to structures that*  
14 *are surface impoundments.*

15           “(B) *GROUNDWATER MONITORING AND COR-*  
16 *RECTIVE ACTION.*—*For all structures that receive*  
17 *coal combustion residuals on or after the date of*  
18 *enactment of this section, the revised criteria re-*  
19 *garding groundwater monitoring and corrective*  
20 *action requirements described in subpart E of*  
21 *part 258 of title 40, Code of Federal Regulations,*  
22 *except that, for the purposes of this subpara-*  
23 *graph, the revised criteria shall also include—*

24           “(i) *for the purposes of detection moni-*  
25 *toring, the constituents boron, chloride, con-*

1           ductivity, fluoride, mercury, pH, sulfate,  
2           sulfide, and total dissolved solids; and

3           “(ii) for the purposes of assessment  
4           monitoring, establishing a groundwater pro-  
5           tection standard, and assessment of correc-  
6           tive measures, the constituents aluminum,  
7           boron, chloride, fluoride, iron, manganese,  
8           molybdenum, pH, sulfate, and total dis-  
9           solved solids.

10          “(C) CLOSURE.—For all structures that re-  
11          ceive coal combustion residuals on or after the  
12          date of enactment of this section, in a manner  
13          consistent with paragraph (5), the revised cri-  
14          teria for closure described in subsections (a)  
15          through (c) and (h) through (j) of section 258.60  
16          of title 40, Code of Federal Regulations.

17          “(D) POST-CLOSURE.—For all structures  
18          that receive coal combustion residuals on or after  
19          the date of enactment of this section, the revised  
20          criteria for post-closure care described in section  
21          258.61 of title 40, Code of Federal Regulations,  
22          except for the requirement described in subsection  
23          (a)(4) of that section.



1           “(E) *LOCATION RESTRICTIONS.*—*The re-*  
2           *vised criteria for location restrictions described*  
3           *in—*

4                   “(i) *for new structures, and lateral ex-*  
5                   *panctions of existing structures, that first re-*  
6                   *ceive coal combustion residuals on or after*  
7                   *the date of enactment of this section, sec-*  
8                   *tions 258.11 through 258.15 of title 40,*  
9                   *Code of Federal Regulations; and*

10                   “(ii) *for existing structures that receive*  
11                   *coal combustion residuals on or after the*  
12                   *date of enactment of this section, sections*  
13                   *258.11 and 258.15 of title 40, Code of Fed-*  
14                   *eral Regulations.*

15           “(F) *AIR QUALITY.*—*For all structures that*  
16           *receive coal combustion residuals on or after the*  
17           *date of enactment of this section, the revised cri-*  
18           *teria for air quality described in section 258.24*  
19           *of title 40, Code of Federal Regulations.*

20           “(G) *FINANCIAL ASSURANCE.*—*For all*  
21           *structures that receive coal combustion residuals*  
22           *on or after the date of enactment of this section,*  
23           *the revised criteria for financial assurance de-*  
24           *scribed in subpart G of part 258 of title 40, Code*  
25           *of Federal Regulations.*

1           “(H) *SURFACE WATER.*—*For all structures*  
2           *that receive coal combustion residuals on or after*  
3           *the date of enactment of this section, the revised*  
4           *criteria for surface water described in section*  
5           *258.27 of title 40, Code of Federal Regulations.*

6           “(I) *RECORDKEEPING.*—*For all structures*  
7           *that receive coal combustion residuals on or after*  
8           *the date of enactment of this section, the revised*  
9           *criteria for recordkeeping described in section*  
10           *258.29 of title 40, Code of Federal Regulations.*

11           “(J) *RUN-ON AND RUN-OFF CONTROL SYS-*  
12           *TEMS FOR LAND-BASED UNITS.*—*For all landfills*  
13           *and other land-based units, other than surface*  
14           *impoundments, that receive coal combustion re-*  
15           *siduals on or after the date of enactment of this*  
16           *section, the revised criteria for run-on and run-*  
17           *off control systems described in section 258.26 of*  
18           *title 40, Code of Federal Regulations.*

19           “(K) *RUN-OFF CONTROL SYSTEMS FOR SUR-*  
20           *FACE IMPOUNDMENTS.*—*For all surface im-*  
21           *pondments that receive coal combustion residu-*  
22           *als on or after the date of enactment of this sec-*  
23           *tion, the revised criteria for run-off control sys-*  
24           *tems described in section 258.26(a)(2) of title 40,*  
25           *Code of Federal Regulations.*

1           “(3) *PERMIT PROGRAM IMPLEMENTATION FOR*  
2           *EXISTING STRUCTURES.*—

3           “(A) *NOTIFICATION.*—*Not later than the*  
4           *date on which a State submits a certification*  
5           *under subsection (b)(2), not later than 30 months*  
6           *after the Administrator receives notice under*  
7           *subsection (e)(1)(A), or not later than 36 months*  
8           *after the date of enactment of this section with*  
9           *respect to a coal combustion residuals permit*  
10           *program that is being implemented by the Ad-*  
11           *ministrator under subsection (e)(3), as applica-*  
12           *ble, the implementing agency shall notify owners*  
13           *or operators of structures that are receiving coal*  
14           *combustion residuals as of the date of enactment*  
15           *of this section within the State of—*

16                   “(i) *the obligation to apply for and ob-*  
17                   *tain a permit under subparagraph (C); and*

18                   “(ii) *the requirements referred to in*  
19                   *subparagraph (B).*

20           “(B) *COMPLIANCE WITH CERTAIN REQUIRE-*  
21           *MENTS.*—*Not later than 12 months after the date*  
22           *on which a State submits a certification under*  
23           *subsection (b)(2), not later than 42 months after*  
24           *the Administrator receives notice under sub-*  
25           *section (e)(1)(A), or not later than 48 months*

1           *after the date of enactment of this section with*  
2           *respect to a coal combustion residuals permit*  
3           *program that is being implemented by the Ad-*  
4           *ministrator under subsection (e)(3), as applica-*  
5           *ble, the implementing agency shall require own-*  
6           *ers or operators of structures that are receiving*  
7           *coal combustion residuals as of the date of enact-*  
8           *ment of this section to comply with—*

9                   *“(i) the requirements under para-*  
10                   *graphs (1)(B)(ii) and (iii), (1)(D), (2)(B),*  
11                   *(2)(F), (2)(H), (2)(J), and (2)(K); and*

12                   *“(ii) the groundwater recordkeeping re-*  
13                   *quirement described in section 258.29(a)(5)*  
14                   *of title 40, Code of Federal Regulations.*

15           “(C) *PERMITS.—*

16                   *“(i) PERMIT DEADLINE.—Not later*  
17                   *than 48 months after the date on which a*  
18                   *State submits a certification under sub-*  
19                   *section (b)(2), not later than 78 months*  
20                   *after the Administrator receives notice*  
21                   *under subsection (e)(1)(A), or not later than*  
22                   *84 months after the date of enactment of*  
23                   *this section with respect to a coal combus-*  
24                   *tion residuals permit program that is being*  
25                   *implemented by the Administrator under*

1            *subsection (e)(3), as applicable, the imple-*  
2            *menting agency shall issue, with respect to*  
3            *a structure that is receiving coal combustion*  
4            *residuals as of the date of enactment of this*  
5            *section, a final permit incorporating the re-*  
6            *quirements of the coal combustion residuals*  
7            *permit program, or a final denial for an*  
8            *application submitted requesting such a*  
9            *permit.*

10            *“(i) APPLICATION DEADLINE.—The*  
11            *implementing agency shall identify, in col-*  
12            *laboration with the owner or operator of a*  
13            *structure described in clause (i), a reason-*  
14            *able deadline by which the owner or oper-*  
15            *ator shall submit a permit application*  
16            *under such clause.*

17            *“(D) INTERIM OPERATION.—*

18            *“(i) PRIOR TO DEADLINES.—With re-*  
19            *spect to any period of time on or after the*  
20            *date of enactment of this section but prior*  
21            *to the applicable deadline in subparagraph*  
22            *(B), the owner or operator of a structure*  
23            *that is receiving coal combustion residuals*  
24            *as of the date of enactment of this section*  
25            *may continue to operate such structure*

1           *until such applicable deadline under the ap-*  
2           *plicable authority in effect.*

3           “(ii) *PRIOR TO PERMIT.—Unless the*  
4           *implementing agency determines that the*  
5           *structure should close pursuant to para-*  
6           *graph (5), if the owner or operator of a*  
7           *structure that is receiving coal combustion*  
8           *residuals as of the date of enactment of this*  
9           *section meets the requirements referred to in*  
10          *subparagraph (B) by the applicable dead-*  
11          *line in such subparagraph, the owner or op-*  
12          *erator may operate the structure until such*  
13          *time as the implementing agency issues,*  
14          *under subparagraph (C), a final permit in-*  
15          *corporating the requirements of the coal*  
16          *combustion residuals permit program, or a*  
17          *final denial for an application submitted*  
18          *requesting such a permit.*

19          “(4) *REQUIREMENTS FOR SURFACE IMPOUND-*  
20          *MENTS THAT DO NOT MEET CERTAIN CRITERIA.—*

21                 “(A) *SURFACE IMPOUNDMENTS THAT RE-*  
22                 *QUIRE ASSESSMENT OF CORRECTIVE MEASURES*  
23                 *WITHIN 10 YEARS OF THE DATE OF ENACT-*  
24                 *MENT.—*

1           “(i) *IN GENERAL.*—*In addition to the*  
2           *groundwater monitoring and corrective ac-*  
3           *tion requirements described in paragraph*  
4           *(2)(B), the implementing agency shall re-*  
5           *quire a surface impoundment that receives*  
6           *coal combustion residuals on or after the*  
7           *date of enactment of this section to comply*  
8           *with the requirements in clause (ii) of this*  
9           *subparagraph and clauses (i) and (ii) of*  
10           *subparagraph (D) if the surface impound-*  
11           *ment—*

12                   “(I) *does not—*

13                           “(aa) *have a liner system de-*  
14                           *scribed in section 258.40(b) of*  
15                           *title 40, Code of Federal Regula-*  
16                           *tions; and*

17                           “(bb) *meet the design criteria*  
18                           *described in section 258.40(a)(1)*  
19                           *of title 40, Code of Federal Regu-*  
20                           *lations; and*

21                   “(II) *within 10 years after the*  
22           *date of enactment of this section, is re-*  
23           *quired under section 258.56(a) of title*  
24           *40, Code of Federal Regulations, to un-*  
25           *dergo an assessment of corrective meas-*

1                   ures for any constituent covered under  
2                   subpart E of part 258 of title 40, Code  
3                   of Federal Regulations, or otherwise  
4                   identified in paragraph (2)(B)(ii) of  
5                   this subsection, for which assessment  
6                   groundwater monitoring is required.

7                   “(i) *DEADLINE TO MEET GROUND-*  
8                   *WATER PROTECTION STANDARD.—Except as*  
9                   *provided in subparagraph (C), the imple-*  
10                  *menting agency shall require that the*  
11                  *groundwater protection standard, for sur-*  
12                  *face impoundments identified in clause (i)*  
13                  *of this subparagraph, established by the im-*  
14                  *plementing agency under section 258.55(h)*  
15                  *or 258.55(i) of title 40, Code of Federal*  
16                  *Regulations, for any constituent for which*  
17                  *corrective measures are required shall be*  
18                  *met—*

19                  “(I) *as soon as practicable at the*  
20                  *relevant point of compliance, as de-*  
21                  *scribed in section 258.40(d) of title 40,*  
22                  *Code of Federal Regulations; and*

23                  “(II) *not later than 10 years after*  
24                  *the date of enactment of this section.*



1                   “(B) *SURFACE IMPOUNDMENTS SUBJECT TO*  
2                   *A STATE CORRECTIVE ACTION REQUIREMENT AS*  
3                   *OF THE DATE OF ENACTMENT.*—

4                   “(i) *IN GENERAL.*—*In addition to the*  
5                   *groundwater monitoring and corrective ac-*  
6                   *tion requirements described in paragraph*  
7                   *(2)(B), the implementing agency shall re-*  
8                   *quire a surface impoundment that receives*  
9                   *coal combustion residuals on or after the*  
10                   *date of enactment of this section to comply*  
11                   *with the requirements in clause (ii) of this*  
12                   *subparagraph and clauses (i) and (ii) of*  
13                   *subparagraph (D) if the surface impound-*  
14                   *ment—*

15                   “(I) *does not—*

16                   “(aa) *have a liner system de-*  
17                   *scribed in section 258.40(b) of*  
18                   *title 40, Code of Federal Regula-*  
19                   *tions; and*

20                   “(bb) *meet the design criteria*  
21                   *described in section 258.40(a)(1)*  
22                   *of title 40, Code of Federal Regu-*  
23                   *lations; and*

1                   “(II) as of the date of enactment  
2                   of this section, is subject to a State cor-  
3                   rective action requirement.

4                   “(i) *DEADLINE TO MEET GROUND-*  
5                   *WATER PROTECTION STANDARD.—Except as*  
6                   *provided in subparagraph (C), the imple-*  
7                   *menting agency shall require that the*  
8                   *groundwater protection standard, for sur-*  
9                   *face impoundments identified in clause (i)*  
10                   *of this subparagraph, established by the im-*  
11                   *plementing agency under section 258.55(h)*  
12                   *or 258.55(i) of title 40, Code of Federal*  
13                   *Regulations, for any constituent for which*  
14                   *corrective measures are required shall be*  
15                   *met—*

16                   “(I) as soon as practicable at the  
17                   relevant point of compliance, as de-  
18                   scribed in section 258.40(d) of title 40,  
19                   Code of Federal Regulations; and

20                   “(II) not later than 8 years after  
21                   the date of enactment of this section.

22                   “(C) *EXTENSION OF DEADLINE.—*

23                   “(i) *IN GENERAL.—Except as provided*  
24                   *in clause (ii) of this subparagraph, the*  
25                   *deadline for meeting a groundwater protec-*

1            *tion standard under subparagraph (A)(ii)*  
2            *or (B)(ii) may be extended by the imple-*  
3            *menting agency, after opportunity for pub-*  
4            *lic notice and comment under the public*  
5            *participation process described in subsection*  
6            *(b)(2)(B)(iii)(III), or in subsection (e)(6)*  
7            *based on—*

8                    *“(I) the effectiveness of any in-*  
9                    *terim measures implemented by the*  
10                   *owner or operator of the facility under*  
11                   *section 258.58(a)(3) of title 40, Code of*  
12                   *Federal Regulations;*

13                   *“(II) the level of progress dem-*  
14                   *onstrated in meeting the groundwater*  
15                   *protection standard;*

16                   *“(III) the potential for other ad-*  
17                   *verse human health or environmental*  
18                   *exposures attributable to the contami-*  
19                   *nation from the surface impoundment*  
20                   *undergoing corrective action; and*

21                   *“(IV) the lack of available alter-*  
22                   *native management capacity for the*  
23                   *coal combustion residuals and related*  
24                   *materials managed in the impound-*  
25                   *ment at the facility at which the im-*

1                    *poundment is located if the owner or*  
2                    *operator has used best efforts, as nec-*  
3                    *essary, to design, obtain any necessary*  
4                    *permits, finance, construct, and render*  
5                    *operational the alternative manage-*  
6                    *ment capacity during the time period*  
7                    *for meeting a groundwater protection*  
8                    *standard in subparagraph (A)(ii) or*  
9                    *(B)(ii).*

10                    *“(i) EXCEPTION.—The deadline under*  
11                    *subparagraph (A)(ii) or (B)(ii) shall not be*  
12                    *extended if there has been contamination of*  
13                    *public or private drinking water systems*  
14                    *attributable to a surface impoundment un-*  
15                    *dergoing corrective action, unless the con-*  
16                    *tamination has been addressed by providing*  
17                    *a permanent replacement water system.*

18                    *“(D) ADDITIONAL REQUIREMENTS.—*

19                    *“(i) CLOSURE.—If the deadline under*  
20                    *subparagraph (A)(ii), (B)(ii), or (C) is not*  
21                    *satisfied, the surface impoundment shall*  
22                    *cease receiving coal combustion residuals*  
23                    *and initiate closure under paragraph (5).*

24                    *“(i) INTERIM MEASURES.—*

1           “(I) *IN GENERAL.*—*Except as pro-*  
2           *vided in subclause (II), not later than*  
3           *90 days after the date on which the as-*  
4           *essment of corrective measures is initi-*  
5           *ated, the owner or operator of a surface*  
6           *impoundment described in subpara-*  
7           *graph (A) or (B) shall implement in-*  
8           *terim measures, as necessary, under*  
9           *the factors in section 258.58(a)(3) of*  
10           *title 40, Code of Federal Regulations.*

11           “(II) *IMPOUNDMENTS SUBJECT TO*  
12           *STATE CORRECTIVE ACTION REQUIRE-*  
13           *MENT AS OF THE DATE OF ENACT-*  
14           *MENT.*—*Subclause (I) shall only apply*  
15           *to surface impoundments subject to a*  
16           *State corrective action requirement as*  
17           *of the date of enactment of this section*  
18           *if the owner or operator has not imple-*  
19           *mented interim measures, as necessary,*  
20           *under the factors in section*  
21           *258.58(a)(3) of title 40, Code of Fed-*  
22           *eral Regulations.*

23           “(E) *SURFACE IMPOUNDMENTS THAT RE-*  
24           *QUIRE ASSESSMENT OF CORRECTIVE MEASURES*

1 MORE THAN 10 YEARS AFTER DATE OF ENACT-  
2 MENT.—

3 “(i) *IN GENERAL.*—*In addition to the*  
4 *groundwater monitoring and corrective ac-*  
5 *tion requirements described in paragraph*  
6 *(2)(B), the implementing agency shall re-*  
7 *quire a surface impoundment that receives*  
8 *coal combustion residuals on or after the*  
9 *date of enactment of this section to comply*  
10 *with the requirements in clause (ii) if the*  
11 *surface impoundment—*

12 “(I) *does not—*

13 “(aa) *have a liner system de-*  
14 *scribed in section 258.40(b) of*  
15 *title 40, Code of Federal Regula-*  
16 *tions; and*

17 “(bb) *meet the design criteria*  
18 *described in section 258.40(a)(1)*  
19 *of title 40, Code of Federal Regu-*  
20 *lations; and*

21 “(II) *more than 10 years after the*  
22 *date of enactment of this section, is re-*  
23 *quired under section 258.56(a) title 40,*  
24 *Code of Federal Regulations, to under-*  
25 *go an assessment of corrective measures*

1           *for any constituent covered under sub-*  
2           *part E of part 258 of title 40, Code of*  
3           *Federal Regulations, or otherwise iden-*  
4           *tified in paragraph (2)(B)(ii) of this*  
5           *subsection, for which assessment*  
6           *groundwater monitoring is required.*

7           “(i) *REQUIREMENTS.—*

8                     “(I) *CLOSURE.—The surface im-*  
9                     *poundments identified in clause (i)*  
10                    *shall cease receiving coal combustion*  
11                    *residuals and initiate closure in ac-*  
12                    *cordance with paragraph (5) after al-*  
13                    *ternative management capacity at the*  
14                    *facility is available for the coal com-*  
15                    *bustion residuals and related materials*  
16                    *managed in the impoundment.*

17                    “(II) *BEST EFFORTS.—The alter-*  
18                    *native management capacity shall be*  
19                    *developed as soon as practicable with*  
20                    *the owner or operator using best efforts*  
21                    *to design, obtain necessary permits for,*  
22                    *finance, construct, and render oper-*  
23                    *ational the alternative management ca-*  
24                    *capacity.*

1                   “(III) *ALTERNATIVE CAPACITY*  
2                   *MANAGEMENT PLAN.*—*The owner or op-*  
3                   *erator shall, in collaboration with the*  
4                   *implementing agency, prepare a writ-*  
5                   *ten plan that describes the steps nec-*  
6                   *essary to develop the alternative man-*  
7                   *agement capacity and includes a*  
8                   *schedule for completion.*

9                   “(IV) *PUBLIC PARTICIPATION.*—  
10                  *The plan described in subclause (III)*  
11                  *shall be subject to public notice and*  
12                  *comment under the public participa-*  
13                  *tion process described in subsection*  
14                  *(b)(2)(B)(iii)(III) or in subsection*  
15                  *(e)(6), as applicable.*

16                  “(5) *CLOSURE.*—

17                  “(A) *IN GENERAL.*—*If it is determined by*  
18                  *the implementing agency that a structure should*  
19                  *close because the requirements of a coal combus-*  
20                  *tion residuals permit program are not being sat-*  
21                  *isfied with respect to such structure, or if it is*  
22                  *determined by the owner or operator that a*  
23                  *structure should close, the time period and meth-*  
24                  *od for the closure of such structure shall be set*  
25                  *forth in a closure plan that establishes a dead-*



1           *line for completion of closure as soon as prac-*  
2           *ticable and that takes into account the nature*  
3           *and the site-specific characteristics of the struc-*  
4           *ture to be closed.*

5           “(B) *SURFACE IMPOUNDMENT.*—*In the case*  
6           *of a surface impoundment, the closure plan*  
7           *under subparagraph (A) shall require, at a min-*  
8           *imum, the removal of liquid and the stabiliza-*  
9           *tion of remaining waste, as necessary to support*  
10          *the final cover.*

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

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

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

19                         “(B) *has not submitted a certification re-*  
20                         *quired under subsection (b)(2);*

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

23                         “(D) *is not implementing a coal combustion*  
24                         *residuals permit program, with respect to which*  
25                         *the State has submitted a certification under*

1            *subsection (b)(2), that meets the requirements de-*  
2            *scribed in subsection (c);*

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

7            *“(i) that is consistent with such certifi-*  
8            *cation; and*

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

12           *“(F) does not make available to the Admin-*  
13           *istrator, within 90 days of a written request,*  
14           *specific information necessary for the Adminis-*  
15           *trator to ascertain whether the State has satis-*  
16           *fied the requirements described in subparagraphs*  
17           *(A) through (E).*

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

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 (1);*  
7                     *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) of*  
14                    *paragraph (1), not earlier than 180 days*  
15                    *after the date on which the State receives*  
16                    *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) *CRITERIA FOR DETERMINING DEFICIENCY*  
22           *OF STATE PERMIT PROGRAM.—In making a deter-*  
23           *mination whether a State has failed to satisfy the re-*  
24           *quirements described in subparagraphs (A) through*  
25           *(E) of paragraph (1), or a determination under sub-*

1        *section (e)(1)(B), the Administrator shall consider, as*  
2        *appropriate—*

3                *“(A) whether the State’s statutes or regula-*  
4                *tions to implement a coal combustion residuals*  
5                *permit program are not sufficient to meet the re-*  
6                *quirements described in subsection (c) because*  
7                *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 coal*  
15                *combustion residuals permit program fails to*  
16                *comply with the requirements of subsection (c)*  
17                *because of—*

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

20                        *“(ii) repeated issuance of permits by*  
21                        *the State which do not meet the require-*  
22                        *ments 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 as described  
3                   in subsection (c)(2)(B); and

4                   “(C) whether the enforcement of a State coal  
5                   combustion residuals permit program fails to  
6                   comply with the requirements of this section be-  
7                   cause 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 in sub-  
13                   section (b)(2)(B)(iii)(I).

14                   “(e) IMPLEMENTATION BY ADMINISTRATOR.—

15                   “(1) FEDERAL BACKSTOP AUTHORITY.—The Ad-  
16                   ministrator shall implement a coal combustion re-  
17                   siduals permit program for a State only 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 determines,  
24                   after providing a 30-day period for notice and  
25                   public comment, that the State has failed, by the

1           *deadline identified in the notice under subsection*  
2           *(d)(3)(B), to remedy the deficiencies detailed in*  
3           *the notice under subsection (d)(3)(A); or*

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

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

11          *“(3) OTHER STRUCTURES.—For structures that*  
12          *receive coal combustion residuals on or after the date*  
13          *of enactment of this section located on property with-*  
14          *in the exterior boundaries of a State that the State*  
15          *does not have authority or jurisdiction to regulate, the*  
16          *Administrator shall implement a coal combustion re-*  
17          *siduals permit program only for those structures.*

18          *“(4) REQUIREMENTS.—If the Administrator im-*  
19          *plements a coal combustion residuals permit program*  
20          *for a State under paragraph (1) or (3), the permit*  
21          *program shall consist of the requirements described in*  
22          *subsection (c).*

23          *“(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 and structures*  
7                   *for which the Administrator is imple-*  
8                   *menting the coal combustion residuals per-*  
9                   *mit program; and*

10                   “(ii) *the Administrator may use those*  
11                   *authorities to inspect, gather information,*  
12                   *and enforce the requirements of this section*  
13                   *in the State.*

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

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

23                   “(ii) *the Administrator may use those*  
24                   *authorities to inspect, gather information,*  
25                   *and enforce the requirements of this section*

1           *for the structures for which the Adminis-*  
2           *trator is implementing the coal combustion*  
3           *residuals permit program.*

4           “(6) *PUBLIC PARTICIPATION PROCESS.—If the*  
5           *Administrator implements a coal combustion residu-*  
6           *als permit program for a State under this subsection,*  
7           *the Administrator shall provide a 30-day period for*  
8           *the public participation process required in para-*  
9           *graphs (1)(F)(i), (4)(C)(i), and (4)(E)(ii)(IV) of sub-*  
10          *section (c).*

11          “(f) *STATE CONTROL AFTER IMPLEMENTATION BY AD-*  
12          *MINISTRATOR.—*

13                 “(1) *STATE CONTROL.—*

14                         “(A) *NEW ADOPTION, OR RESUMPTION OF,*  
15                         *AND IMPLEMENTATION BY STATE.—For a State*  
16                         *for which the Administrator is implementing a*  
17                         *coal combustion residuals permit program under*  
18                         *subsection (e)(1)(A), or subsection (e)(1)(C), the*  
19                         *State may adopt and implement such a permit*  
20                         *program by—*

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

24   “(ii) *not later than 6 months after the*  
25   *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 requirements described in  
10 subsection (c); and

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

14 “(B) REMEDYING DEFICIENT PERMIT PRO-  
15 GRAM.—For a State for which the Administrator  
16 is implementing a coal combustion residuals per-  
17 mit program under subsection (e)(1)(B), the  
18 State may adopt and implement such a permit  
19 program by—

20 “(i) remedying only the deficiencies de-  
21 tailed in the notice pursuant to subsection  
22 (d)(3)(A); and

23 “(ii) receiving from the Adminis-  
24 trator—

1                   “(I) a determination, after pro-  
2                   viding a 30-day period for notice and  
3                   public comment, that the deficiencies  
4                   detailed in such notice have been rem-  
5                   edied; and

6                   “(II) a timeline for transition of  
7                   control of the coal combustion residuals  
8                   permit program.

9                   “(2) REVIEW OF DETERMINATION.—

10                   “(A) DETERMINATION REQUIRED.—The Ad-  
11                   ministrators shall make a determination under  
12                   paragraph (1) not later than 90 days after the  
13                   date on which the State submits a certification  
14                   under paragraph (1)(A)(ii), or notifies the Ad-  
15                   ministrators that the deficiencies have been rem-  
16                   edied pursuant to paragraph (1)(B)(i), as appli-  
17                   cable.

18                   “(B) REVIEW.—A State may obtain a re-  
19                   view of a determination by the Administrator  
20                   under paragraph (1) as if such determination  
21                   was a final regulation for purposes of section  
22                   7006.

23                   “(3) IMPLEMENTATION DURING TRANSITION.—

24                   “(A) EFFECT ON ACTIONS AND ORDERS.—  
25                   Program requirements of, and actions taken or

1 orders issued pursuant to, a coal combustion re-  
2 siduals permit program shall remain in effect  
3 if—

4 “(i) a State takes control of its coal  
5 combustion residuals permit program from  
6 the Administrator under paragraph (1); or

7 “(ii) the Administrator takes control of  
8 a coal combustion residuals permit program  
9 from a State under subsection (e).

10 “(B) CHANGE IN REQUIREMENTS.—Sub-  
11 paragraph (A) shall apply to such program re-  
12 quirements, actions, and orders until such time  
13 as—

14 “(i) the implementing agency changes  
15 the requirements of the coal combustion re-  
16 siduals permit program with respect to the  
17 basis for the action or order; or

18 “(ii) the State or the Administrator,  
19 whichever took the action or issued the  
20 order, certifies the completion of a corrective  
21 action that is the subject of the action or  
22 order.

23 “(4) SINGLE PERMIT PROGRAM.—If a State  
24 adopts and implements a coal combustion residuals  
25 permit program under this subsection, the Adminis-

1        *trator shall cease to implement the permit program*  
2        *implemented under subsection (e)(1) for such State.*

3        “(g) *EFFECT ON DETERMINATION UNDER 4005(c) OR*  
4        *3006.—The Administrator shall not consider the implemen-*  
5        *tation of a coal combustion residuals permit program by*  
6        *the Administrator under subsection (e) in making a deter-*  
7        *mination of approval for a permit program or other system*  
8        *of prior approval and conditions under section 4005(c) or*  
9        *of authorization for a program under section 3006.*

10        “(h) *AUTHORITY.—*

11                “(1) *STATE AUTHORITY.—Nothing in this section*  
12        *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 strin-*  
15        *gent or broader in scope than a regulation or require-*  
16        *ment 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 Ad-*  
20        *ministrator shall, with respect to the regulation*  
21        *of coal combustion residuals, defer to the States*  
22        *pursuant to this section.*

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

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

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

9            “(D) *CONCURRENT ENFORCEMENT.—Except*  
10           *as provided in subparagraph (C), the Adminis-*  
11           *trator shall not have concurrent enforcement au-*  
12           *thority when a State is implementing a coal*  
13           *combustion residuals permit program, including*  
14           *during any period of interim operation described*  
15           *in subsection (c)(3)(D).*

16           “(E) *OTHER AUTHORITY.—The Adminis-*  
17           *trator shall not have authority to finalize the*  
18           *proposed rule published at pages 35128 through*  
19           *35264 of volume 75 of the Federal Register (June*  
20           *21, 2010).*

21           “(F) *OTHER RESPONSE AUTHORITY.—Noth-*  
22           *ing in this section shall be construed as affecting*  
23           *the authority of the Administrator under the*  
24           *Comprehensive Environmental Response, Com-*  
25           *ensation, and Liability Act of 1980 (42 U.S.C.*

1           9601 *et seq.*) with respect to coal combustion re-  
2           siduals.

3           “(3) *CITIZEN SUITS.*—Nothing in this section  
4           shall be construed to affect the authority of a person  
5           to commence a civil action in accordance with section  
6           7002.

7           “(i) *MINE RECLAMATION ACTIVITIES.*—A coal combus-  
8           tion residuals permit program implemented by the Admin-  
9           istrator under subsection (e) shall not apply to the utiliza-  
10          tion, placement, and storage of coal combustion residuals  
11          at surface mining and reclamation operations.

12          “(j) *DEFINITIONS.*—In this section:

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

15                         “(A) the solid wastes listed in section  
16                         3001(b)(3)(A)(i), including recoverable materials  
17                         from such wastes;

18                         “(B) coal combustion wastes that are co-  
19                         managed with wastes produced in conjunction  
20                         with the combustion of coal, provided that such  
21                         wastes are not segregated and disposed of sepa-  
22                         rately from the coal combustion wastes and com-  
23                         prise a relatively small proportion of the total  
24                         wastes being disposed in the structure;

25                         “(C) fluidized bed combustion wastes;

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

5           “(E) wastes from the co-burning of coal  
6           with materials described in subparagraph (A)  
7           that are recovered from monofills.

8           “(2) COAL COMBUSTION RESIDUALS PERMIT PRO-  
9           GRAM.—The term ‘coal combustion residuals permit  
10          program’ means all of the authorities, activities, and  
11          procedures that comprise the system of prior approval  
12          and conditions implemented by or for a State to regu-  
13          late the management and disposal of coal combustion  
14          residuals.

15          “(3) CODE OF FEDERAL REGULATIONS.—The  
16          term ‘Code of Federal Regulations’ means the Code of  
17          Federal Regulations (as in effect on the date of enact-  
18          ment of this section) or any successor regulations.

19          “(4) IMPLEMENTING AGENCY.—The term ‘imple-  
20          menting agency’ means the agency responsible for im-  
21          plementing a coal combustion residuals permit pro-  
22          gram for a State, which shall either be the lead State  
23          implementing agency identified under subsection  
24          (b)(2)(B)(i) or the Administrator pursuant to sub-  
25          section (e).

1           “(5) *PERMIT; PRIOR APPROVAL AND CONDI-*  
2           *TIONS.—Except as provided in subsections (b)(3) and*  
3           *(g), the terms ‘permit’ and ‘prior approval and condi-*  
4           *tions’ mean any authorization, license, or equivalent*  
5           *control document that incorporates the requirements*  
6           *of subsection (c).*

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

12           “(7) *STRUCTURE.—*

13           “(A) *IN GENERAL.—Except as provided in*  
14           *subparagraph (B), the term ‘structure’ means a*  
15           *landfill, surface impoundment, or other land-*  
16           *based unit which receives, or is intended to re-*  
17           *ceive, coal combustion residuals.*

18           “(B) *DE MINIMIS RECEIPT.—The term*  
19           *‘structure’ does not include any land-based unit*  
20           *that receives only de minimis quantities of coal*  
21           *combustion residuals if the presence of coal com-*  
22           *bustion residuals is incidental to the material*  
23           *managed in the unit.”.*

24           “(b) *CONFORMING AMENDMENT.—The table of contents*  
25           *contained in section 1001 of the Solid Waste Disposal Act*



1 *is amended by inserting after the item relating to section*  
2 *4010 the following:*

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

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

4 *Nothing in this Act, or the amendments made by this*  
5 *Act, shall be construed to alter in any manner the Environ-*  
6 *mental Protection Agency’s regulatory determination enti-*  
7 *tled “Notice of Regulatory Determination on Wastes From*  
8 *the Combustion of Fossil Fuels”, published at 65 Fed. Reg.*  
9 *32214 (May 22, 2000), that the fossil fuel combustion wastes*  
10 *addressed in that determination do not warrant regulation*  
11 *under subtitle C of the Solid Waste Disposal Act (42 U.S.C.*  
12 *6921 et seq.).*

13 **SEC. 4. TECHNICAL ASSISTANCE.**

14 *Nothing in this Act, or the amendments made by this*  
15 *Act, shall be construed to affect the authority of a State*  
16 *to request, or the Administrator of the Environmental Pro-*  
17 *tection Agency to provide, technical assistance under the*  
18 *Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).*

19 **SEC. 5. FEDERAL POWER ACT.**

20 *Nothing in this Act, or the amendments made by this*  
21 *Act, shall be construed to affect the obligations of an owner*  
22 *or operator of a structure (as defined in section 4011 of*  
23 *the Solid Waste Disposal Act, as added by this Act) under*  
24 *section 215(b)(1) of the Federal Power Act (16 U.S.C.*  
25 *8240(b)(1)).*

Union Calendar No. 107

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

**H. R. 2218**

[Report No. 113-148]

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## **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.

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JULY 10, 2013

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