

114TH CONGRESS  
2D SESSION

# H. R. 5788

To amend the Solid Waste Disposal Act to provide for the management and disposal of coal combustion residuals, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2016

Mr. MCKINLEY introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Solid Waste Disposal Act to provide for the management and disposal of coal combustion residuals, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Improving Coal Com-  
5 bustion Residuals Regulation Act of 2016”.

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

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

1 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**  
2 **BUSTION RESIDUALS.**

3 “(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-  
4 TION RESIDUALS.—Each State may adopt and implement  
5 a coal combustion residuals permit program in accordance  
6 with this section.

7 “(b) STATE ACTIONS.—

8 “(1) NOTIFICATION.—Not later than 6 months  
9 after the date of enactment of this section, the Gov-  
10 ernor of each State shall notify the Administrator,  
11 in writing, whether such State will adopt and imple-  
12 ment a coal combustion residuals permit program.

13 “(2) APPLICATION FOR, AND APPROVAL OF,  
14 STATE COAL COMBUSTION RESIDUALS PERMIT PRO-  
15 GRAM.—

16 “(A) IN GENERAL.—Not later than 24  
17 months after the date of enactment of this sec-  
18 tion, each State that has notified the Adminis-  
19 trator that it will adopt and implement a coal  
20 combustion residuals permit program under  
21 paragraph (1) shall submit to the Adminis-  
22 trator an application for such coal combustion  
23 residuals permit program for review and ap-  
24 proval by the Administrator.

1           “(B) CONTENTS OF APPLICATION.—An ap-  
2           plication submitted under this paragraph shall  
3           include—

4                   “(i) a letter identifying the lead State  
5                   implementing agency, signed by the head  
6                   of such agency;

7                   “(ii) identification of any other State  
8                   agencies to be involved with the implemen-  
9                   tation of the coal combustion residuals per-  
10                  mit program;

11                  “(iii) an explanation of how the State  
12                  coal combustion residuals permit program  
13                  will meet the requirements of this section,  
14                  including—

15                          “(I) a description of the  
16                          State’s—

17                                  “(aa) process to inspect or  
18                                  otherwise determine compliance  
19                                  with such permit program;

20                                  “(bb) process to enforce the  
21                                  requirements of such permit pro-  
22                                  gram, including any enforcement  
23                                  of the requirements of subsection  
24                                  (c)(3)(A);

1           “(cc) public participation  
2 process for the promulgation,  
3 amendment, or repeal of regula-  
4 tions for, and the issuance of  
5 permits under, such permit pro-  
6 gram;

7           “(dd) process for judicial re-  
8 view;

9           “(ee) proposed or existing  
10 statutes, regulations, or policies  
11 pertaining to public access to in-  
12 formation, including information  
13 on groundwater monitoring data,  
14 structural stability assessments,  
15 emergency action plans, fugitive  
16 dust control plans, notifications  
17 of closure (including any certifi-  
18 cation of closure by a qualified  
19 professional engineer), and cor-  
20 rective action remedies; and

21           “(ff) proposed coordination  
22 plan under subsection (c)(1)(C);  
23 and

24           “(II) if a State proposes to apply  
25 a definition different from a definition

1 included in section 257.53 of title 40,  
2 Code of Federal Regulations, for pur-  
3 poses of the State coal combustion re-  
4 siduals permit program, an expla-  
5 nation of such application, including  
6 an explanation of the reasonable basis  
7 for applying such different definition,  
8 in accordance with subsection (i)(4);

9 “(iv) a statement that the State has  
10 in effect, at the time of application, 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) copies of any proposed forms  
18 used to administer the coal combustion re-  
19 siduals permit program; and

20 “(vii) such other information as the  
21 Administrator may require.

22 “(C) APPROVAL.—

23 “(i) IN GENERAL.—The Administrator  
24 may approve an application for a State  
25 coal combustion residuals permit program

1           only if the Administrator determines that  
2           such application demonstrates that the coal  
3           combustion residuals permit program  
4           meets the requirements described in sub-  
5           section (c).

6           “(ii) EVIDENCE OF ADEQUACY.—In  
7           evaluating an application for a State coal  
8           combustion residuals permit program  
9           under this paragraph, the Administrator  
10          shall consider a State’s approved permit  
11          program or other system of prior approval  
12          and conditions under section 4005(c) or  
13          authorized program under section 3006 as  
14          evidence regarding the State’s ability to ef-  
15          fectively implement a coal combustion re-  
16          siduals program.

17          “(iii) ADOPTION BY STATE.—A State  
18          may adopt and implement a coal combus-  
19          tion residuals permit program if, not later  
20          than 90 days after receipt of a complete  
21          application under this paragraph (includ-  
22          ing a revised application under subpara-  
23          graph (D))—

24                  “(I) the Administrator publishes  
25                  in the Federal Register a notice of the

1 Administrator's decision to approve  
2 such application; or

3 “(II) the Administrator does not  
4 publish in the Federal Register a no-  
5 tice of the Administrator's decision to  
6 approve or deny such application, in  
7 which case such application shall be  
8 deemed approved.

9 “(D) REVISED APPLICATION.—If the Ad-  
10 ministrator denies an initial application for a  
11 State coal combustion residuals program under  
12 this paragraph—

13 “(i) the Administrator shall notify the  
14 State of the reasons for such denial; and

15 “(ii) the State may, not later than 60  
16 days after the date of such notification,  
17 submit to the Administrator a revised ap-  
18 plication for such coal combustion residu-  
19 als permit program for review and ap-  
20 proval by the Administrator.

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

24 “(1) GENERAL REQUIREMENTS.—

1           “(A) PERMITS.—The implementing agency  
2 shall require that owners or operators of struc-  
3 tures apply for and obtain permits incor-  
4 porating the applicable requirements of the coal  
5 combustion residuals permit program.

6           “(B) PUBLIC AVAILABILITY OF INFORMA-  
7 TION.—The implementing agency shall ensure  
8 that—

9           “(i) documents for permit determina-  
10 tions are made publicly available for review  
11 and comment under the public participa-  
12 tion process of the coal combustion residu-  
13 als permit program;

14           “(ii) final determinations on permit  
15 applications are made publicly available;  
16 and

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

23           “(C) COORDINATION PLAN.—The imple-  
24 menting agency shall develop and maintain a

1 plan for coordination among States in the event  
2 of a release that crosses State lines.

3 “(2) CRITERIA.—The implementing agency  
4 shall apply the following criteria with respect to  
5 structures:

6 “(A) DESIGN REQUIREMENTS.—For new  
7 structures, including lateral expansions of exist-  
8 ing structures, the criteria regarding design re-  
9 quirements described in sections 257.70  
10 through 257.72 of title 40, Code of Federal  
11 Regulations, as applicable.

12 “(B) GROUNDWATER MONITORING AND  
13 CORRECTIVE ACTION.—

14 “(i) IN GENERAL.—Except as pro-  
15 vided in clause (ii), for all structures, the  
16 criteria regarding groundwater monitoring  
17 and corrective action requirements de-  
18 scribed in sections 257.90 through 257.98  
19 of title 40, Code of Federal Regulations,  
20 including—

21 “(I) for the purposes of detection  
22 monitoring, the constituents described  
23 in appendix III to part 257 of such  
24 title; and

1 “(II) for the purposes of assess-  
2 ment monitoring, establishing a  
3 groundwater protection standard, and  
4 assessment of corrective measures, the  
5 constituents described in appendix IV  
6 to part 257 of such title.

7 “(ii) EXCEPTIONS AND ADDITIONAL  
8 AUTHORITY.—

9 “(I) ALTERNATIVE POINT OF  
10 COMPLIANCE.—Notwithstanding sec-  
11 tion 257.91(a)(2) of title 40, Code of  
12 Federal Regulations, the imple-  
13 menting agency may establish the rel-  
14 evant point of compliance for the  
15 down-gradient monitoring system as  
16 provided in section 258.51(a)(2) of  
17 such title.

18 “(II) ALTERNATIVE GROUND-  
19 WATER PROTECTION STANDARDS.—  
20 Notwithstanding section 257.95(h) of  
21 title 40, Code of Federal Regulations,  
22 the implementing agency may estab-  
23 lish an alternative groundwater pro-  
24 tection standard as provided in section  
25 258.55(i) of such title.

1                   “(III) ABILITY TO DETERMINE  
2                   THAT CORRECTIVE ACTION IS NOT  
3                   NECESSARY OR TECHNICALLY FEA-  
4                   SIBLE.—Notwithstanding section  
5                   257.97 of title 40, Code of Federal  
6                   Regulations, the implementing agency  
7                   may determine that remediation of a  
8                   release to groundwater from a struc-  
9                   ture is not necessary as provided in  
10                  section 258.57(e) of such title.

11                  “(C) CLOSURE.—For all structures, the  
12                  criteria for closure described in sections  
13                  257.101, 257.102, and 257.103 of title 40,  
14                  Code of Federal Regulations, except the criteria  
15                  described in section 257.101(b)(1) of such title  
16                  shall not apply to existing structures that com-  
17                  ply with the criteria described in section 257.60  
18                  of such title by making a demonstration in ac-  
19                  cordance with subparagraph (E) of this para-  
20                  graph.

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

1           “(E) LOCATION RESTRICTIONS.—For all  
2 structures, the criteria for location restrictions  
3 described in sections 257.60 through 257.64 of  
4 title 40, Code of Federal Regulations, except—

5           “(i) for existing structures that are  
6 landfills, sections 257.60 through 257.63  
7 shall not apply; and

8           “(ii) the owner or operator of an ex-  
9 isting structure that is a surface impound-  
10 ment may comply with the criteria de-  
11 scribed in section 257.60 of such title by  
12 demonstrating that—

13           “(I) the design and construction  
14 of the existing structure that is a sur-  
15 face impoundment will prevent an  
16 intermittent, recurring, or sustained  
17 hydraulic connection between any por-  
18 tion of the base of the structure and  
19 the upper limit of the uppermost aqui-  
20 fer; and

21           “(II) the existing structure that  
22 is a surface impoundment is designed  
23 and constructed to prevent the release  
24 of the constituents listed in appen-  
25 dices III and IV to part 257 of such

1 title at levels above the groundwater  
2 protection standards established under  
3 this section.

4 “(F) AIR CRITERIA.—For all structures,  
5 the criteria for air quality described in section  
6 257.80 of title 40, Code of Federal Regulations.

7 “(G) FINANCIAL ASSURANCE.—For all  
8 structures, the criteria for financial assurance  
9 described in subpart G of part 258 of title 40,  
10 Code of Federal Regulations.

11 “(H) RECORDKEEPING.—For all struc-  
12 tures, the criteria for recordkeeping described  
13 in section 257.105 of title 40, Code of Federal  
14 Regulations.

15 “(I) RUN-ON AND RUN-OFF CONTROLS.—  
16 For all structures that are landfills, sand or  
17 gravel pits, or quarries, the criteria for run-on  
18 and run-off control described in section 257.81  
19 of title 40, Code of Federal Regulations.

20 “(J) HYDROLOGIC AND HYDRAULIC CAPAC-  
21 ITY REQUIREMENTS.—For all structures that  
22 are surface impoundments, the criteria for in-  
23 flow design flood control systems described in  
24 section 257.82 of title 40, Code of Federal Reg-  
25 ulations.

1           “(K) STRUCTURAL INTEGRITY.—For  
2 structures that are surface impoundments, the  
3 criteria for structural integrity described in sec-  
4 tions 257.73 and 257.74 of title 40, Code of  
5 Federal Regulations.

6           “(L) INSPECTIONS.—For all structures,  
7 the criteria described in sections 257.83 and  
8 257.84 of title 40, Code of Federal Regulations.

9           “(M) PUBLIC AVAILABILITY OF INFORMA-  
10 TION.—For all structures, the criteria described  
11 in section 257.107 of title 40, Code of Federal  
12 Regulations.

13           “(N) NOTIFICATION.—For all structures,  
14 the criteria described in section 257.106 of title  
15 40, Code of Federal Regulations.

16           “(3) PERMIT PROGRAM IMPLEMENTATION FOR  
17 EXISTING STRUCTURES.—

18           “(A) COMPLIANCE WITH CERTAIN RE-  
19 QUIREMENTS.—

20           “(i) INITIAL DEADLINES.—The State,  
21 in the case of a State that has notified the  
22 Administrator under subsection (b)(1) that  
23 it will adopt and implement a coal combus-  
24 tion residuals permit program, or the Ad-  
25 ministrator, in the case of each other

1 State, shall require owners or operators of  
2 existing structures to comply with—

3 “(I) as of October 19, 2015, the  
4 requirements under paragraphs  
5 (2)(F), (2)(H), and (2)(L);

6 “(II) not later than 6 months  
7 after the date of enactment of this  
8 section, the requirement under para-  
9 graph (2)(G); and

10 “(III) not later than 12 months  
11 after the date of enactment of this  
12 section, the requirements under para-  
13 graphs (2)(A), (2)(I), (2)(J), (2)(K),  
14 and the requirement for a written clo-  
15 sure plan under the criteria described  
16 in paragraph 2(C).

17 “(ii) SUBSEQUENT DEADLINES.—The  
18 implementing agency shall require owners  
19 or operators of existing structures to com-  
20 ply with—

21 “(I) not later than 24 months  
22 after the date of enactment of this  
23 section, the requirements under para-  
24 graph (2)(B); and

1                   “(II) not later than 36 months  
2                   after the date of enactment of this  
3                   section, the requirements under para-  
4                   graph (2)(E).

5                   “(B) PERMITS.—Not later than 72 months  
6                   after the date of enactment of this section, the  
7                   implementing agency shall issue, with respect to  
8                   an existing structure, a final permit incor-  
9                   porating the applicable requirements of the coal  
10                  combustion residuals permit program, or a final  
11                  denial of an application submitted requesting  
12                  such a permit.

13                  “(C) EFFECT OF COMPLIANCE.—

14                  “(i) INTERIM REQUIREMENTS.—Prior  
15                  to the date on which a final permit or final  
16                  denial is issued under subparagraph (B),  
17                  compliance with the requirements of sub-  
18                  paragraph (A), as determined by the State  
19                  or Administrator, as applicable, shall con-  
20                  stitute compliance with the requirements of  
21                  this section and the rule described in sub-  
22                  section (i)(1) for the purpose of enforce-  
23                  ment.

24                  “(ii) FINAL PERMIT.—Compliance  
25                  with a final permit issued by the imple-

1           menting agency, as determined by the im-  
2           plementing agency, shall constitute compli-  
3           ance with this section and the rule de-  
4           scribed in subsection (i)(1) for the purpose  
5           of enforcement.

6           “(4) REQUIREMENTS FOR INACTIVE COAL COM-  
7           BUSTION RESIDUALS SURFACE IMPOUNDMENTS.—

8           “(A) NOTICE.—Not later than 2 months  
9           after the date of enactment of this section, each  
10          owner or operator of an inactive coal combus-  
11          tion residuals surface impoundment shall sub-  
12          mit to the Administrator and the State in which  
13          such inactive coal combustion residuals surface  
14          impoundment is located a notice stating wheth-  
15          er such inactive coal combustion residuals sur-  
16          face impoundment will—

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

21                 “(ii) comply with the requirements of  
22                 the coal combustion residuals permit pro-  
23                 gram applicable to existing structures that  
24                 are surface impoundments (except as pro-  
25                 vided in subparagraph (C)(ii)).

1           “(B) FINANCIAL ASSURANCE.—The imple-  
2           menting agency shall require the owner or oper-  
3           ator of an inactive surface impoundment that  
4           has closed pursuant to this paragraph to per-  
5           form post-closure care in accordance with the  
6           criteria described in section 257.104(b)(1) of  
7           title 40, Code of Federal Regulations, and to  
8           provide financial assurance for such post-clo-  
9           sure care in accordance with the criteria de-  
10          scribed in section 258.72 of such title.

11           “(C) TREATMENT AS STRUCTURE.—

12           “(i) IN GENERAL.—An inactive coal  
13           combustion residuals surface impoundment  
14           shall be treated as an existing structure  
15           that is a surface impoundment for the pur-  
16           poses of this section, including with respect  
17           to the requirements of paragraphs (1) and  
18           (2), if—

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

22                   “(II) the owner or operator sub-  
23                   mits a notice described in subpara-  
24                   graph (A)(ii).

1           “(ii) INACTIVE COAL COMBUSTION RE-  
2           SIDUALS SURFACE IMPOUNDMENTS THAT  
3           FAIL TO CLOSE.—An inactive coal combus-  
4           tion residuals surface impoundment for  
5           which the owner or operator submits a no-  
6           tice described in subparagraph (A)(i) that  
7           does not close by the deadline provided  
8           under subparagraph (A)(i) shall be treated  
9           as an existing structure for purposes of  
10          this section beginning on the date that is  
11          the day after such applicable deadline, in-  
12          cluding by—

13                   “(I) being required to comply  
14                   with the requirements of paragraph  
15                   (1), as applicable; and

16                   “(II) being required to comply,  
17                   beginning on such date, with each re-  
18                   quirement of paragraph (2).

19          “(d) IMPLEMENTATION BY ADMINISTRATOR.—

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

23                   “(A) the Governor of the State notifies the  
24          Administrator under subsection (b)(1) that the

1 State will not adopt and implement a coal com-  
2 bustion residuals permit program;

3 “(B) the State fails to submit a notifica-  
4 tion or an application by the applicable deadline  
5 under subsection (b);

6 “(C) the Administrator denies an applica-  
7 tion submitted by a State under subsection  
8 (b)(2) and, if applicable, any revised application  
9 submitted by the State under subparagraph (E)  
10 of such subsection;

11 “(D) the State informs the Administrator,  
12 in writing, that such State will no longer imple-  
13 ment such a permit program; or

14 “(E) the Administrator withdraws approval  
15 of a State coal combustion residuals program  
16 after the Administrator—

17 “(i) determines that the State is not  
18 implementing a coal combustion residuals  
19 permit program approved under this sec-  
20 tion in accordance with the requirements  
21 of this section;

22 “(ii) notifies the State of such deter-  
23 mination, including the reasons for such  
24 determination and the particular defi-  
25 ciencies that need to be remedied; and

1                   “(iii) after allowing the State to take  
2                   actions to remedy such deficiencies within  
3                   a reasonable time, not to exceed 90 days,  
4                   the Administrator determines that the  
5                   State has not remedied such deficiencies.

6                   “(2) REVIEW.—A State may obtain a review of  
7                   a determination by the Administrator under para-  
8                   graph (1)(E)(iii) as if the determination were a final  
9                   regulation for purposes of section 7006.

10                  “(3) INDIAN COUNTRY.—The Administrator  
11                  shall implement a coal combustion residuals permit  
12                  program in Indian country.

13                  “(4) REQUIREMENTS.—If the Administrator  
14                  implements a coal combustion residuals permit pro-  
15                  gram under paragraph (1) or (3), the permit pro-  
16                  gram shall consist of the requirements described in  
17                  subsection (c).

18                  “(5) ENFORCEMENT.—If the Administrator im-  
19                  plements a coal combustion residuals permit pro-  
20                  gram for a State under paragraph (1) or in Indian  
21                  country under paragraph (3)—

22                         “(A) the authorities referred to in section  
23                         4005(c)(2)(A) shall apply with respect to coal  
24                         combustion residuals, structures, and inactive  
25                         coal combustion residuals surface impound-

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

4                   “(B) the Administrator may use those au-  
5           thorities to inspect, gather information, and en-  
6           force the requirements of this section in the  
7           State or Indian country.

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

14                   “(e) STATE CONTROL AFTER IMPLEMENTATION BY  
15          ADMINISTRATOR.—

16                   “(1) NEW ADOPTION BY STATE.—For a State  
17          for which the Administrator is implementing a coal  
18          combustion residuals permit program under sub-  
19          paragraphs (A) through (D) of subsection (d), the  
20          State may adopt and implement such a permit pro-  
21          gram through the application process described in  
22          subsection (b)(2) (notwithstanding the deadline de-  
23          scribed in subparagraph (A) of such subsection). An  
24          application submitted pursuant to this paragraph

1 shall include a timeline for transition to the State  
2 coal combustion residuals permit program.

3 “(2) RESUMPTION AFTER REMEDYING DEFICI-  
4 CIENT PERMIT PROGRAM.—

5 “(A) PROCESS.—For a State for which the  
6 Administrator is implementing a coal combus-  
7 tion residuals permit program under subpara-  
8 graph (E) of subsection (d)(1), the State may  
9 adopt and implement such a permit program  
10 if—

11 “(i) the State remedies only the defi-  
12 ciencies included in the notice described in  
13 such subparagraph; and

14 “(ii) by the date that is 90 days after  
15 the date on which the State notifies the  
16 Administrator that the deficiencies have  
17 been remedied—

18 “(I) the Administrator publishes  
19 in the Federal Register—

20 “(aa) a determination, after  
21 providing a 30-day period for no-  
22 tice and public comment, that the  
23 deficiencies included in such no-  
24 tice have been remedied; and

1                   “(bb) a timeline for transi-  
2                   tion to the State coal combustion  
3                   residuals permit program; or

4                   “(II) the Administrator does not  
5                   publish in the Federal Register a de-  
6                   termination regarding whether the de-  
7                   ficiencies included in such notice been  
8                   remedied, in which case such defi-  
9                   ciencies shall be deemed remedied.

10                   “(B) REVIEW.—A State may obtain a re-  
11                   view of a determination by the Administrator  
12                   under this paragraph as if such determination  
13                   were a final regulation for purposes of section  
14                   7006.

15                   “(f) IMPLEMENTATION DURING TRANSITION.—

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

20                   “(A) a State takes control of its coal com-  
21                   bustion residuals permit program from the Ad-  
22                   ministrator under subsection (e); or

23                   “(B) the Administrator takes control of a  
24                   coal combustion residuals permit program from  
25                   a State under subsection (d).

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

4           “(A) the implementing agency that took  
5 control of the coal combustion residuals permit  
6 program changes the requirements of the coal  
7 combustion residuals permit program with re-  
8 spect to the basis for the action or order; or

9           “(B) with respect to an ongoing corrective  
10 action, the State or the Administrator, which-  
11 ever took the action or issued the order, cer-  
12 tifies the completion of the corrective action  
13 that is the subject of the action or order.

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

16           “(A) if a State adopts and implements a  
17 coal combustion residuals permit program  
18 under subsection (e), the Administrator shall  
19 cease to implement the coal combustion residu-  
20 als permit program implemented under sub-  
21 section (d) for such State; and

22           “(B) if the Administrator implements a  
23 coal combustion residuals permit program for a  
24 State under subsection (d)(1), the State shall

1           cease to implement its coal combustion residu-  
2           als permit program.

3           “(g) AUTHORITY.—

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

10          “(2) AUTHORITY OF THE ADMINISTRATOR.—

11           “(A) IN GENERAL.—Except as provided in  
12           subsections (d) and (f) of this section and sec-  
13           tion 6005, the Administrator shall, with respect  
14           to the regulation of coal combustion residuals  
15           under this Act, defer to the States pursuant to  
16           this section.

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

21           “(C) ENFORCEMENT ASSISTANCE ONLY  
22           UPON REQUEST.—Upon request from the head  
23           of a lead State implementing agency, the Ad-  
24           ministrator may, including through the use of  
25           the authorities referred to in section

1           4005(c)(2)(A), provide to such State agency  
2           only the enforcement assistance requested.

3           “(D) CONCURRENT ENFORCEMENT.—Ex-  
4           cept as provided in subparagraph (C) of this  
5           paragraph and subsection (f), the Administrator  
6           shall not have concurrent enforcement authority  
7           when a State is implementing a coal combustion  
8           residuals permit program, including during any  
9           period of interim operation described in sub-  
10          section (c)(3)(C).

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

15          “(h) USE OF COAL COMBUSTION RESIDUALS.—

16          “(1) IN GENERAL.—Except as provided in para-  
17          graph (2), use of coal combustion residuals in any  
18          of the following ways, and storage prior to such use,  
19          shall not be considered to be receipt of coal combus-  
20          tion residuals for the purposes of this section:

21                  “(A) Use as—

22                          “(i) engineered structural fill con-  
23                          structed in accordance with—

24                                  “(I) ASTM E2277 entitled  
25                                  ‘Standard Guide for Design and Con-

1 construction of Coal Ash Structural  
2 Fills’, including any amendment or re-  
3 vision to that guidance;

4 “(II) any other published na-  
5 tional standard determined appro-  
6 priate by the implementing agency, in-  
7 cluding standards issued by the Amer-  
8 ican Association of State and High-  
9 way Transportation Officials and the  
10 Federal Highway Administration; or

11 “(III) a State standard or pro-  
12 gram relating to—

13 “(aa) fill operations for coal  
14 combustion residuals; or

15 “(bb) the management of  
16 coal combustion residuals for  
17 beneficial use; or

18 “(ii) engineered structural fill for—

19 “(I) a building site or foundation;

20 “(II) a base or embankment for  
21 a bridge, roadway, runway, or rail-  
22 road; or

23 “(III) a dike, levee, berm, or dam  
24 that is not part of a structure.

25 “(B) Beneficial use—

1 “(i) that provides a functional benefit;

2 “(ii) that is a substitute for the use of  
3 a virgin material; and

4 “(iii) that meets relevant product  
5 specifications and regulatory or design  
6 standards, if any, including standards  
7 issued by voluntary consensus standards  
8 bodies such as ASTM International and  
9 the American Concrete Institute.

10 “(2) EXCEPTION.—With respect to a use de-  
11 scribed in paragraph (1) that involves placement on  
12 the land of coal combustion residuals in non-road-  
13 way and non-highway applications, the implementing  
14 agency may, on a case-by-case basis, determine that  
15 long-term storage of coal combustion residuals at the  
16 generating facility for such a use or permanent  
17 unencapsulated use of very large volumes of coal  
18 combustion residuals constitutes receipt of coal com-  
19 bustion residuals for the purposes of this section if  
20 the storage or use results in releases of hazardous  
21 constituents to groundwater, surface water, soil, or  
22 air—

23 “(A) in greater amounts than those that  
24 would occur from long-term storage or use of a

1 material that would be used instead of coal  
2 combustion residuals; or

3 “(B) that exceed relevant regulatory and  
4 health-based benchmarks, as determined by the  
5 implementing agency.

6 “(i) EFFECT OF RULE.—

7 “(1) IN GENERAL.—With respect to the final  
8 rule entitled ‘Hazardous and Solid Waste Manage-  
9 ment System; Disposal of Coal Combustion Residu-  
10 als from Electric Utilities’ and published in the Fed-  
11 eral Register on April 17, 2015 (80 Fed. Reg.  
12 21302)—

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

16 “(B) to the extent that any provision or re-  
17 quirement of such rule conflicts, or is incon-  
18 sistent, with a provision or requirement of this  
19 section, the provision or requirement of this  
20 section shall control.

21 “(2) EFFECTIVE DATE.—For purposes of this  
22 section, any reference in part 257 of title 40, Code  
23 of Federal Regulations, to the effective date of such  
24 part shall be considered to be a reference to the date  
25 of enactment of this section, except that, in the case

1 of any deadline established by such a reference that  
2 is in conflict with a deadline established by this sec-  
3 tion, the deadline established by this section shall  
4 control.

5 “(3) APPLICABILITY OF OTHER REGULA-  
6 TIONS.—The application of section 257.52 of title  
7 40, Code of Federal Regulations, is not affected by  
8 this section.

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

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

16 “(B) a lead State implementing agency  
17 may apply different definitions if—

18 “(i) the different definitions do not  
19 conflict with the definitions in subsection  
20 (j); and

21 “(ii) the lead State implementing  
22 agency—

23 “(I) identifies the different defi-  
24 nitions in the explanation included

1 with the application submitted under  
2 subsection (b)(2); and

3 “(II) provides in such expla-  
4 nation a reasonable basis for the ap-  
5 plication of the different definitions.

6 “(j) DEFINITIONS.—In this section:

7 “(1) COAL COMBUSTION RESIDUALS.—The  
8 term ‘coal combustion residuals’ means the following  
9 wastes generated by electric utilities and inde-  
10 pendent power producers:

11 “(A) The solid wastes listed in section  
12 3001(b)(3)(A)(i) that are generated primarily  
13 from the combustion of coal, including recover-  
14 able materials from such wastes.

15 “(B) Coal combustion wastes that are co-  
16 managed with wastes produced in conjunction  
17 with the combustion of coal, provided that such  
18 wastes are not segregated and disposed of sepa-  
19 rately from the coal combustion wastes and  
20 comprise a relatively small proportion of the  
21 total wastes being disposed in the structure.

22 “(C) Fluidized bed combustion wastes that  
23 are generated primarily from the combustion of  
24 coal.

1           “(D) Wastes from the co-burning of coal  
2           with nonhazardous secondary materials, pro-  
3           vided that coal makes up at least 50 percent of  
4           the total fuel burned.

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  
9           PROGRAM.—The term ‘coal combustion residuals  
10          permit program’ means all of the authorities, activi-  
11          ties, and procedures that comprise a system of prior  
12          approval and conditions implemented under this sec-  
13          tion to regulate the management and disposal of coal  
14          combustion residuals.

15          “(3) ELECTRIC UTILITY; INDEPENDENT POWER  
16          PRODUCER.—The terms ‘electric utility’ and ‘inde-  
17          pendent power producer’ include only electric utili-  
18          ties and independent power producers that produce  
19          electricity on or after the date of enactment of this  
20          section.

21          “(4) EXISTING STRUCTURE.—The term ‘exist-  
22          ing structure’ means a structure the construction of  
23          which commenced before the date of enactment of  
24          this section.

1           “(5) IMPLEMENTING AGENCY.—The term ‘im-  
2           plementing agency’ means the agency responsible for  
3           implementing a coal combustion residuals permit  
4           program, which shall either be the lead State imple-  
5           menting agency identified under subsection  
6           (b)(2)(B)(i) or the Administrator pursuant to sub-  
7           section (d).

8           “(6) INACTIVE COAL COMBUSTION RESIDUALS  
9           SURFACE IMPOUNDMENT.—The term ‘inactive coal  
10          combustion residuals surface impoundment’ means a  
11          surface impoundment, located at an electric utility  
12          or independent power producer, that, as of the date  
13          of enactment of this section—

14                 “(A) does not receive coal combustion re-  
15                 siduals;

16                 “(B) contains coal combustion residuals;  
17                 and

18                 “(C) contains liquid.

19          “(7) INDIAN COUNTRY.—The term ‘Indian  
20          country’ has the meaning given that term in section  
21          1151 of title 18, United States Code.

22          “(8) STRUCTURE.—

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

1 pit, or quarry that receives coal combustion re-  
2 siduals on or after the date of enactment of this  
3 section.

4 “(B) EXCEPTIONS.—

5 “(i) MUNICIPAL SOLID WASTE LAND-  
6 FILLS.—The term ‘structure’ does not in-  
7 clude a municipal solid waste landfill meet-  
8 ing the revised criteria promulgated under  
9 section 4010(c).

10 “(ii) COAL MINES.—The term ‘struc-  
11 ture’ does not include the location of sur-  
12 face coal mining and reclamation oper-  
13 ations or surface coal mining operations  
14 (as those terms are defined in section 701  
15 of the Surface Mining Control and Rec-  
16 lamation Act of 1977 (30 U.S.C. 1291)) or  
17 an active or abandoned underground coal  
18 mine.

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

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

3                   “(9) 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. EFFECT ON REGULATORY DETERMINATIONS.**

13                  Nothing in this Act, or the amendments made by this  
14                  Act, shall be construed to alter in any manner the effect  
15                  on coal combustion residuals (as defined in section 4011  
16                  of the Solid Waste Disposal Act, as added by this Act)  
17                  of the Environmental Protection Agency’s regulatory de-  
18                  terminations entitled—

19                  (1) “Notice of Regulatory Determination on  
20                  Wastes From the Combustion of Fossil Fuels”, pub-  
21                  lished at 65 Fed. Reg. 32214 (May 22, 2000); and

22                  (2) “Final Regulatory Determination on Four  
23                  Large-Volume Wastes From the Combustion of Coal  
24                  by Electric Utility Power Plants”, published at 58  
25                  Fed. Reg. 42466 (August 9, 1993).

1 **SEC. 4. TECHNICAL ASSISTANCE.**

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

7 **SEC. 5. FEDERAL POWER ACT.**

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

○