

114TH CONGRESS  
2D SESSION

# S. 2446

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 SENATE OF THE UNITED STATES

JANUARY 19, 2016

Mr. HOEVEN (for himself and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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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.

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

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Improving Coal Combustion Residuals Regulation Act of  
6 2016”.

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

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

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

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

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

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

14 “(b) STATE ACTIONS.—

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

20 “(2) APPLICATION FOR, AND APPROVAL OF,  
 21 STATE COAL COMBUSTION RESIDUALS PERMIT PRO-  
 22 GRAM.—

1           “(A) IN GENERAL.—Not later than 24  
2 months after the date of enactment of this sec-  
3 tion, each State that has notified the Adminis-  
4 trator that it will adopt and implement a coal  
5 combustion residuals permit program under  
6 paragraph (1) shall submit to the Adminis-  
7 trator an application for such coal combustion  
8 residuals permit program for review and ap-  
9 proval by the Administrator.

10           “(B) CONTENTS OF APPLICATION.—An ap-  
11 plication submitted under this paragraph shall  
12 include—

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

16           “(ii) identification of any other State  
17 agencies to be involved with the implemen-  
18 tation of the coal combustion residuals per-  
19 mit program;

20           “(iii) an explanation of how the State  
21 coal combustion residuals permit program  
22 will meet the requirements of this section,  
23 including—

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

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

4           “(bb) process to enforce the  
5 requirements of such permit pro-  
6 gram, including any enforcement  
7 of the requirements of subsection  
8 (c)(3)(A);

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

15           “(dd) process for judicial re-  
16 view;

17           “(ee) proposed or existing  
18 statutes, regulations, or policies  
19 pertaining to public access to in-  
20 formation, including information  
21 on groundwater monitoring data,  
22 structural stability assessments,  
23 emergency action plans, fugitive  
24 dust control plans, notifications  
25 of closure (including any certifi-

1 cation of closure by a qualified  
2 professional engineer), and cor-  
3 rective action remedies; and

4 “(ff) proposed coordination  
5 plan under subsection (c)(1)(C);  
6 and

7 “(II) if a State proposes to apply  
8 a definition different from a definition  
9 included in section 257.53 of title 40,  
10 Code of Federal Regulations, for pur-  
11 poses of the State coal combustion re-  
12 siduals permit program, an expla-  
13 nation of such application, including  
14 an explanation of the reasonable basis  
15 for applying such different definition,  
16 in accordance with subsection (i)(4);

17 “(iv) a statement that the State has  
18 in effect, at the time of application, stat-  
19 utes or regulations necessary to implement  
20 a coal combustion residuals permit pro-  
21 gram that meets the requirements de-  
22 scribed in subsection (c);

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

1           “(vi) copies of any proposed forms  
2 used to administer the coal combustion re-  
3 siduals permit program; and

4           “(vii) such other information as the  
5 Administrator may require.

6           “(C) APPROVAL.—

7           “(i) IN GENERAL.—The Administrator  
8 may approve an application for a State  
9 coal combustion residuals permit program  
10 only if the Administrator determines that  
11 such application demonstrates that the coal  
12 combustion residuals permit program  
13 meets the requirements described in sub-  
14 section (c).

15           “(ii) EVIDENCE OF ADEQUACY.—In  
16 evaluating an application for a State coal  
17 combustion residuals permit program  
18 under this paragraph, the Administrator  
19 shall consider a State’s approved permit  
20 program or other system of prior approval  
21 and conditions under section 4005(c) or  
22 authorized program under section 3006 as  
23 evidence regarding the State’s ability to ef-  
24 fectively implement a coal combustion re-  
25 siduals program.

1           “(iii) ADOPTION BY STATE.—A State  
2           may adopt and implement a coal combus-  
3           tion residuals permit program if, not later  
4           than 90 days after receipt of a complete  
5           application under this paragraph (includ-  
6           ing a revised application under subpara-  
7           graph (D))—

8                   “(I) the Administrator publishes  
9                   in the Federal Register a notice of the  
10                  Administrator’s decision to approve  
11                  such application; or

12                   “(II) the Administrator does not  
13                  publish in the Federal Register a no-  
14                  tice of the Administrator’s decision to  
15                  approve or deny such application, in  
16                  which case such application shall be  
17                  deemed approved.

18           “(D) REVISED APPLICATION.—If the Ad-  
19           ministrator denies an initial application for a  
20           State coal combustion residuals program under  
21           this paragraph—

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

24                   “(ii) the State may, not later than 60  
25                  days after the date of such notification,

1 submit to the Administrator a revised ap-  
2 plication for such coal combustion residu-  
3 als permit program for review and ap-  
4 proval by the Administrator.

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

8 “(1) GENERAL REQUIREMENTS.—

9 “(A) PERMITS.—The implementing agency  
10 shall require that owners or operators of struc-  
11 tures apply for and obtain permits incor-  
12 porating the applicable requirements of the coal  
13 combustion residuals permit program.

14 “(B) PUBLIC AVAILABILITY OF INFORMA-  
15 TION.—The implementing agency shall ensure  
16 that—

17 “(i) documents for permit determina-  
18 tions are made publicly available for review  
19 and comment under the public participa-  
20 tion process of the coal combustion residu-  
21 als permit program;

22 “(ii) final determinations on permit  
23 applications are made publicly available;  
24 and



1           “(iii) information regarding the exer-  
2           cise by the implementing agency of any  
3           discretionary authority granted under this  
4           section and not provided for in the rule de-  
5           scribed in subsection (i)(1) is made pub-  
6           licly available.

7           “(C) COORDINATION PLAN.—The imple-  
8           menting agency shall develop and maintain a  
9           plan for coordination among States in the event  
10          of a release that crosses State lines.

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

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

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

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

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

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

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

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

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

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

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

19                   “(C) CLOSURE.—For all structures, the  
20 criteria for closure described in sections  
21 257.101, 257.102, and 257.103 of title 40,  
22 Code of Federal Regulations, except the criteria  
23 described in section 257.101(b)(1) of such title  
24 shall not apply to existing structures that com-  
25 ply with the criteria described in section 257.60

1 of such title by making a demonstration in ac-  
2 cordance with subparagraph (E) of this para-  
3 graph.

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

8 “(E) LOCATION RESTRICTIONS.—For all  
9 structures, the criteria for location restrictions  
10 described in sections 257.60 through 257.64 of  
11 title 40, Code of Federal Regulations, except—

12 “(i) for existing structures that are  
13 landfills, sections 257.60 through 257.63  
14 shall not apply; and

15 “(ii) the owner or operator of an ex-  
16 isting structure that is a surface impound-  
17 ment may comply with the criteria de-  
18 scribed in section 257.60 of such title by  
19 demonstrating that—

20 “(I) the design and construction  
21 of the existing structure that is a sur-  
22 face impoundment will prevent an  
23 intermittent, recurring, or sustained  
24 hydraulic connection between any por-  
25 tion of the base of the structure and

1 the upper limit of the uppermost aqui-  
2 fer; and

3 “(II) the existing structure that  
4 is a surface impoundment is designed  
5 and constructed to prevent the release  
6 of the constituents listed in appen-  
7 dices III and IV to part 257 of such  
8 title at levels above the groundwater  
9 protection standards established under  
10 this section.

11 “(F) AIR CRITERIA.—For all structures,  
12 the criteria for air quality described in section  
13 257.80 of title 40, Code of Federal Regulations.

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

18 “(H) RECORDKEEPING.—For all struc-  
19 tures, the criteria for recordkeeping described  
20 in section 257.105 of title 40, Code of Federal  
21 Regulations.

22 “(I) RUN-ON AND RUN-OFF CONTROLS.—  
23 For all structures that are landfills, sand or  
24 gravel pits, or quarries, the criteria for run-on

1 and run-off control described in section 257.81  
2 of title 40, Code of Federal Regulations.

3 “(J) HYDROLOGIC AND HYDRAULIC CAPAC-  
4 ITY REQUIREMENTS.—For all structures that  
5 are surface impoundments, the criteria for in-  
6 flow design flood control systems described in  
7 section 257.82 of title 40, Code of Federal Reg-  
8 ulations.

9 “(K) STRUCTURAL INTEGRITY.—For  
10 structures that are surface impoundments, the  
11 criteria for structural integrity described in sec-  
12 tions 257.73 and 257.74 of title 40, Code of  
13 Federal Regulations.

14 “(L) INSPECTIONS.—For all structures,  
15 the criteria described in sections 257.83 and  
16 257.84 of title 40, Code of Federal Regulations.

17 “(M) PUBLIC AVAILABILITY OF INFORMA-  
18 TION.—For all structures, the criteria described  
19 in section 257.107 of title 40, Code of Federal  
20 Regulations.

21 “(N) NOTIFICATION.—For all structures,  
22 the criteria described in section 257.106 of title  
23 40, Code of Federal Regulations.

24 “(3) PERMIT PROGRAM IMPLEMENTATION FOR  
25 EXISTING STRUCTURES.—

1           “(A) COMPLIANCE WITH CERTAIN RE-  
2           QUIREMENTS.—

3           “(i) INITIAL DEADLINES.—The State,  
4           in the case of a State that has notified the  
5           Administrator under subsection (b)(1) that  
6           it will adopt and implement a coal combus-  
7           tion residuals permit program, or the Ad-  
8           ministrator, in the case of each other  
9           State, shall require owners or operators of  
10          existing structures to comply with—

11           “(I) as of October 19, 2015, the  
12          requirements under paragraphs  
13          (2)(F), (2)(H), and (2)(L);

14           “(II) not later than 6 months  
15          after the date of enactment of this  
16          section, the requirement under para-  
17          graph (2)(G); and

18           “(III) not later than 12 months  
19          after the date of enactment of this  
20          section, the requirements under para-  
21          graphs (2)(A), (2)(I), (2)(J), (2)(K),  
22          and the requirement for a written clo-  
23          sure plan under the criteria described  
24          in paragraph 2(C).

1           “(ii) SUBSEQUENT DEADLINES.—The  
2           implementing agency shall require owners  
3           or operators of existing structures to com-  
4           ply with—

5                   “(I) not later than 24 months  
6                   after the date of enactment of this  
7                   section, the requirements under para-  
8                   graph (2)(B); and

9                   “(II) not later than 36 months  
10                  after the date of enactment of this  
11                  section, the requirements under para-  
12                  graph (2)(E).

13           “(B) PERMITS.—Not later than 72 months  
14           after the date of enactment of this section, the  
15           implementing agency shall issue, with respect to  
16           an existing structure, a final permit incor-  
17           porating the applicable requirements of the coal  
18           combustion residuals permit program, or a final  
19           denial of an application submitted requesting  
20           such a permit.

21           “(C) EFFECT OF COMPLIANCE.—

22                   “(i) INTERIM REQUIREMENTS.—Prior  
23                   to the date on which a final permit or final  
24                   denial is issued under subparagraph (B),  
25                   compliance with the requirements of sub-



1 paragraph (A), as determined by the State  
2 or Administrator, as applicable, shall con-  
3 stitute compliance with the requirements of  
4 this section and the rule described in sub-  
5 section (i)(1) for the purpose of enforce-  
6 ment.

7 “(ii) FINAL PERMIT.—Compliance  
8 with a final permit issued by the imple-  
9 menting agency, as determined by the im-  
10 plementing agency, shall constitute compli-  
11 ance with this section and the rule de-  
12 scribed in subsection (i)(1) for the purpose  
13 of enforcement.

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

16 “(A) NOTICE.—Not later than 2 months  
17 after the date of enactment of this section, each  
18 owner or operator of an inactive coal combus-  
19 tion residuals surface impoundment shall sub-  
20 mit to the Administrator and the State in which  
21 such inactive coal combustion residuals surface  
22 impoundment is located a notice stating wheth-  
23 er such inactive coal combustion residuals sur-  
24 face impoundment will—

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

5           “(ii) comply with the requirements of  
6           the coal combustion residuals permit pro-  
7           gram applicable to existing structures that  
8           are surface impoundments (except as pro-  
9           vided in subparagraph (C)(ii)).

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

20          “(C) TREATMENT AS STRUCTURE.—

21          “(i) IN GENERAL.—An inactive coal  
22          combustion residuals surface impoundment  
23          shall be treated as an existing structure  
24          that is a surface impoundment for the pur-  
25          poses of this section, including with respect

1 to the requirements of paragraphs (1) and  
2 (2), if—

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

6 “(II) the owner or operator sub-  
7 mits a notice described in subpara-  
8 graph (A)(ii).

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

21 “(I) being required to comply  
22 with the requirements of paragraph  
23 (1), as applicable; and

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

4           “(d) IMPLEMENTATION BY ADMINISTRATOR.—

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

8                   “(A) the Governor of the State notifies the  
9           Administrator under subsection (b)(1) that the  
10          State will not adopt and implement a coal com-  
11          bustion residuals permit program;

12                   “(B) the State fails to submit a notifica-  
13          tion or an application by the applicable deadline  
14          under subsection (b);

15                   “(C) the Administrator denies an applica-  
16          tion submitted by a State under subsection  
17          (b)(2) and, if applicable, any revised application  
18          submitted by the State under subparagraph (E)  
19          of such subsection;

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

23                   “(E) the Administrator withdraws approval  
24          of a State coal combustion residuals program  
25          after the Administrator—

1           “(i) determines that the State is not  
2           implementing a coal combustion residuals  
3           permit program approved under this sec-  
4           tion in accordance with the requirements  
5           of this section;

6           “(ii) notifies the State of such deter-  
7           mination, including the reasons for such  
8           determination and the particular defi-  
9           ciencies that need to be remedied; and

10           “(iii) after allowing the State to take  
11           actions to remedy such deficiencies within  
12           a reasonable time, not to exceed 90 days,  
13           the Administrator determines that the  
14           State has not remedied such deficiencies.

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

19           “(3) INDIAN COUNTRY.—The Administrator  
20           shall implement a coal combustion residuals permit  
21           program in Indian country.

22           “(4) REQUIREMENTS.—If the Administrator  
23           implements a coal combustion residuals permit pro-  
24           gram under paragraph (1) or (3), the permit pro-

1       gram shall consist of the requirements described in  
2       subsection (c).

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

7               “(A) the authorities referred to in section  
8       4005(c)(2)(A) shall apply with respect to coal  
9       combustion residuals, structures, and inactive  
10      coal combustion residuals surface impound-  
11      ments for which the Administrator is imple-  
12      menting the coal combustion residuals permit  
13      program; and

14              “(B) the Administrator may use those au-  
15      thorities to inspect, gather information, and en-  
16      force the requirements of this section in the  
17      State or Indian country.

18              “(6) PUBLIC PARTICIPATION PROCESS.—If the  
19      Administrator implements a coal combustion residu-  
20      als permit program under this subsection, the Ad-  
21      ministrator shall provide a 30-day period for the  
22      public participation process required under sub-  
23      section (c)(1)(B)(i).

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

1           “(1) NEW ADOPTION BY STATE.—For a State  
2           for which the Administrator is implementing a coal  
3           combustion residuals permit program under sub-  
4           paragraphs (A) through (D) of subsection (d), the  
5           State may adopt and implement such a permit pro-  
6           gram through the application process described in  
7           subsection (b)(2) (notwithstanding the deadline de-  
8           scribed in subparagraph (A) of such subsection). An  
9           application submitted pursuant to this paragraph  
10          shall include a timeline for transition to the State  
11          coal combustion residuals permit program.

12           “(2) RESUMPTION AFTER REMEDYING DEFICI-  
13          CIENT PERMIT PROGRAM.—

14           “(A) PROCESS.—For a State for which the  
15          Administrator is implementing a coal combus-  
16          tion residuals permit program under subpara-  
17          graph (E) of subsection (d)(1), the State may  
18          adopt and implement such a permit program  
19          if—

20                   “(i) the State remedies only the defi-  
21                   ciencies included in the notice described in  
22                   such subparagraph; and

23                   “(ii) by the date that is 90 days after  
24                   the date on which the State notifies the

1 Administrator that the deficiencies have  
2 been remedied—

3 “(I) the Administrator publishes  
4 in the Federal Register—

5 “(aa) a determination, after  
6 providing a 30-day period for no-  
7 tice and public comment, that the  
8 deficiencies included in such no-  
9 tice have been remedied; and

10 “(bb) a timeline for transi-  
11 tion to the State coal combustion  
12 residuals permit program; or

13 “(II) the Administrator does not  
14 publish in the Federal Register a de-  
15 termination regarding whether the de-  
16 ficiencies included in such notice been  
17 remedied, in which case such defi-  
18 ciencies shall be deemed remedied.

19 “(B) REVIEW.—A State may obtain a re-  
20 view of a determination by the Administrator  
21 under this paragraph as if such determination  
22 were a final regulation for purposes of section  
23 7006.

24 “(f) IMPLEMENTATION DURING TRANSITION.—



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

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

8                   “(B) the Administrator takes control of a  
9                   coal combustion residuals permit program from  
10                  a State under subsection (d).

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

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

19                   “(B) with respect to an ongoing corrective  
20                   action, the State or the Administrator, which-  
21                   ever took the action or issued the order, cer-  
22                   tifies the completion of the corrective action  
23                   that is the subject of the action or order.

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

1           “(A) if a State adopts and implements a  
2 coal combustion residuals permit program  
3 under subsection (e), the Administrator shall  
4 cease to implement the coal combustion residu-  
5 als permit program implemented under sub-  
6 section (d) for such State; and

7           “(B) if the Administrator implements a  
8 coal combustion residuals permit program for a  
9 State under subsection (d)(1), the State shall  
10 cease to implement its coal combustion residu-  
11 als permit program.

12       “(g) AUTHORITY.—

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

19           “(2) AUTHORITY OF THE ADMINISTRATOR.—

20           “(A) IN GENERAL.—Except as provided in  
21 subsections (d) and (f) of this section and sec-  
22 tion 6005, the Administrator shall, with respect  
23 to the regulation of coal combustion residuals  
24 under this Act, defer to the States pursuant to  
25 this section.

1           “(B) IMMINENT HAZARD.—Nothing in this  
2 section shall be construed as affecting the au-  
3 thority of the Administrator under section 7003  
4 with respect to coal combustion residuals.

5           “(C) ENFORCEMENT ASSISTANCE ONLY  
6 UPON REQUEST.—Upon request from the head  
7 of a lead State implementing agency, the Ad-  
8 ministrator may, including through the use of  
9 the authorities referred to in section  
10 4005(c)(2)(A), provide to such State agency  
11 only the enforcement assistance requested.

12           “(D) CONCURRENT ENFORCEMENT.—Ex-  
13 cept as provided in subparagraph (C) of this  
14 paragraph and subsection (f), the Administrator  
15 shall not have concurrent enforcement authority  
16 when a State is implementing a coal combustion  
17 residuals permit program, including during any  
18 period of interim operation described in sub-  
19 section (c)(3)(C).

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

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

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

6           “(A) Use as—

7           “(i) engineered structural fill con-  
8 structed in accordance with—

9           “(I) ASTM E2277 entitled  
10           ‘Standard Guide for Design and Con-  
11           struction of Coal Ash Structural  
12           Fills’, including any amendment or re-  
13           vision to that guidance;

14           “(II) any other published na-  
15           tional standard determined appro-  
16           priate by the implementing agency, in-  
17           cluding standards issued by the Amer-  
18           ican Association of State and High-  
19           way Transportation Officials and the  
20           Federal Highway Administration; or

21           “(III) a State standard or pro-  
22           gram relating to—

23           “(aa) fill operations for coal  
24           combustion residuals; or

1                   “(bb) the management of  
2                   coal combustion residuals for  
3                   beneficial use; or

4                   “(ii) engineered structural fill for—

5                   “(I) a building site or foundation;

6                   “(II) a base or embankment for  
7                   a bridge, roadway, runway, or rail-  
8                   road; or

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

11                 “(B) Beneficial use—

12                 “(i) that provides a functional benefit;

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

15                 “(iii) that meets relevant product  
16                 specifications and regulatory or design  
17                 standards, if any, including standards  
18                 issued by voluntary consensus standards  
19                 bodies such as ASTM International and  
20                 the American Concrete Institute.

21                 “(2) EXCEPTION.—With respect to a use de-  
22                 scribed in paragraph (1) that involves placement on  
23                 the land of coal combustion residuals in non-road-  
24                 way and non-highway applications, the implementing  
25                 agency may, on a case-by-case basis, determine that

1 long-term storage of coal combustion residuals at the  
2 generating facility for such a use or permanent  
3 unencapsulated use of very large volumes of coal  
4 combustion residuals constitutes receipt of coal com-  
5 bustion residuals for the purposes of this section if  
6 the storage or use results in releases of hazardous  
7 constituents to groundwater, surface water, soil, or  
8 air—

9 “(A) in greater amounts than those that  
10 would occur from long-term storage or use of a  
11 material that would be used instead of coal  
12 combustion residuals; or

13 “(B) that exceed relevant regulatory and  
14 health-based benchmarks, as determined by the  
15 implementing agency.

16 “(i) EFFECT OF RULE.—

17 “(1) IN GENERAL.—With respect to the final  
18 rule entitled ‘Hazardous and Solid Waste Manage-  
19 ment System; Disposal of Coal Combustion Residu-  
20 als from Electric Utilities’ and published in the Fed-  
21 eral Register on April 17, 2015 (80 Fed. Reg.  
22 21302)—

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

1           “(B) to the extent that any provision or re-  
2           quirement of such rule conflicts, or is incon-  
3           sistent, with a provision or requirement of this  
4           section, the provision or requirement of this  
5           section shall control.

6           “(2) EFFECTIVE DATE.—For purposes of this  
7           section, any reference in part 257 of title 40, Code  
8           of Federal Regulations, to the effective date of such  
9           part shall be considered to be a reference to the date  
10          of enactment of this section, except that, in the case  
11          of any deadline established by such a reference that  
12          is in conflict with a deadline established by this sec-  
13          tion, the deadline established by this section shall  
14          control.

15          “(3) APPLICABILITY OF OTHER REGULA-  
16          TIONS.—The application of section 257.52 of title  
17          40, Code of Federal Regulations, is not affected by  
18          this section.

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

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

1           “(B) a lead State implementing agency  
2 may apply different definitions if—

3           “(i) the different definitions do not  
4 conflict with the definitions in subsection  
5 (j); and

6           “(ii) the lead State implementing  
7 agency—

8           “(I) identifies the different defi-  
9 nitions in the explanation included  
10 with the application submitted under  
11 subsection (b)(2); and

12           “(II) provides in such expla-  
13 nation a reasonable basis for the ap-  
14 plication of the different definitions.

15       “(j) DEFINITIONS.—In this section:

16           “(1) COAL COMBUSTION RESIDUALS.—The  
17 term ‘coal combustion residuals’ means the following  
18 wastes generated by electric utilities and inde-  
19 pendent power producers:

20           “(A) The solid wastes listed in section  
21 3001(b)(3)(A)(i) that are generated primarily  
22 from the combustion of coal, including recover-  
23 able materials from such wastes.

24           “(B) Coal combustion wastes that are co-  
25 managed with wastes produced in conjunction



1 with the combustion of coal, provided that such  
2 wastes are not segregated and disposed of sepa-  
3 rately from the coal combustion wastes and  
4 comprise a relatively small proportion of the  
5 total wastes being disposed in the structure.

6 “(C) Fluidized bed combustion wastes that  
7 are generated primarily from the combustion of  
8 coal.

9 “(D) Wastes from the co-burning of coal  
10 with non-hazardous secondary materials, pro-  
11 vided that coal makes up at least 50 percent of  
12 the total fuel burned.

13 “(E) Wastes from the co-burning of coal  
14 with materials described in subparagraph (A)  
15 that are recovered from monofills.

16 “(2) COAL COMBUSTION RESIDUALS PERMIT  
17 PROGRAM.—The term ‘coal combustion residuals  
18 permit program’ means all of the authorities, activi-  
19 ties, and procedures that comprise a system of prior  
20 approval and conditions implemented under this sec-  
21 tion to regulate the management and disposal of coal  
22 combustion residuals.

23 “(3) ELECTRIC UTILITY; INDEPENDENT POWER  
24 PRODUCER.—The terms ‘electric utility’ and ‘inde-  
25 pendent power producer’ include only electric utili-

1 ties and independent power producers that produce  
2 electricity on or after the date of enactment of this  
3 section.

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

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

15 “(6) INACTIVE COAL COMBUSTION RESIDUALS  
16 SURFACE IMPOUNDMENT.—The term ‘inactive coal  
17 combustion residuals surface impoundment’ means a  
18 surface impoundment, located at an electric utility  
19 or independent power producer, that, as of the date  
20 of enactment of this section—

21 “(A) does not receive coal combustion re-  
22 siduals;

23 “(B) contains coal combustion residuals;

24 and

25 “(C) contains liquid.

1           “(7) INDIAN COUNTRY.—The term ‘Indian  
2 country’ has the meaning given that term in section  
3 1151 of title 18, United States Code.

4           “(8) STRUCTURE.—

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

11           “(B) EXCEPTIONS.—

12           “(i) MUNICIPAL SOLID WASTE LAND-  
13 FILLS.—The term ‘structure’ does not in-  
14 clude a municipal solid waste landfill meet-  
15 ing the revised criteria promulgated under  
16 section 4010(c).

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

1                   “(iii) DE MINIMIS RECEIPT.—The  
 2                   term ‘structure’ does not include any land-  
 3                   fill or surface impoundment that receives  
 4                   only de minimis quantities of coal combus-  
 5                   tion residuals if the presence of coal com-  
 6                   bustion residuals is incidental to the mate-  
 7                   rial managed in the landfill or surface im-  
 8                   poundment.

9                   “(9) UNLINED SURFACE IMPOUNDMENT.—The  
 10                  term ‘unlined surface impoundment’ means a sur-  
 11                  face impoundment that does not have a liner system  
 12                  described in section 257.71 of title 40, Code of Fed-  
 13                  eral Regulations.”.

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

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

18                  **SEC. 3. EFFECT ON REGULATORY DETERMINATIONS.**

19                  Nothing in this Act, or the amendments made by this  
 20                  Act, shall be construed to alter in any manner the effect  
 21                  on coal combustion residuals (as defined in section 4011  
 22                  of the Solid Waste Disposal Act, as added by this Act)  
 23                  of the Environmental Protection Agency’s regulatory de-  
 24                  terminations entitled—

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

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

8       **SEC. 4. TECHNICAL ASSISTANCE.**

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

14      **SEC. 5. FEDERAL POWER ACT.**

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

○