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(Original Signature of Member)

114TH CONGRESS  
1ST SESSION

**H. R.** 1734

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

M\_\_\_\_ introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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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 2015”.

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

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

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

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

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

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

14 “(b) STATE ACTIONS.—

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

22 “(2) CERTIFICATION.—

1           “(A) IN GENERAL.—Not later than 24  
2 months after the date of enactment of this sec-  
3 tion (except as provided in subparagraph (B)  
4 and subsection (f)(1)(A)), in the case of a State  
5 that has notified the Administrator that it will  
6 implement a coal combustion residuals permit  
7 program, the head of the lead State imple-  
8 menting agency shall submit to the Adminis-  
9 trator a certification that such coal combustion  
10 residuals permit program meets the require-  
11 ments described in subsection (c).

12           “(B) EXTENSION.—

13           “(i) REQUIREMENTS.—The Adminis-  
14 trator may extend the deadline for submis-  
15 sion of a certification for a State under  
16 subparagraph (A) for a period of 12  
17 months if the State submits to the Admin-  
18 istrator a request for such an extension  
19 that—

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

22           “(II) demonstrates that the legis-  
23 lative or rulemaking procedures of  
24 such State render the State unable  
25 meet such deadline; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15                 “(1) GENERAL REQUIREMENTS.—

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

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

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

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

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

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

25          “(C) AGENCY AUTHORITY.—



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(ii) the criteria described in section  
2 257.101(b)(1) of title 40, Code of Federal  
3 Regulations, shall not apply to existing  
4 structures, except as provided in subpara-  
5 graphs (E)(i)(II) and (E)(ii); and

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

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

17 “(E) LOCATION RESTRICTIONS.—

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

20 “(I) for new structures, including  
21 lateral expansions of existing struc-  
22 tures, sections 257.60 through 257.64  
23 and 257.3–1 of title 40, Code of Fed-  
24 eral Regulations; and



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

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

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

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

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

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

1           “(J) RUN-ON AND RUN-OFF CONTROLS.—  
2           For all structures that are landfills, sand or  
3           gravel pits, or quarries, the criteria for run-on  
4           and run-off control described in section 257.81  
5           of title 40, Code of Federal Regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           “(C) PERMITS.—

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

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

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

18 “(D) INTERIM OPERATION.—

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

1 in subparagraph (B), the owner or oper-  
2 ator of an existing structure may continue  
3 to operate such structure until such appli-  
4 cable deadline under any applicable regula-  
5 tions in effect during such period.

6 “(ii) PRIOR TO PERMIT.—Unless the  
7 implementing agency determines that the  
8 structure should close in accordance with  
9 the criteria described in paragraph (2)(C),  
10 if the owner or operator of an existing  
11 structure meets the requirements referred  
12 to in subparagraph (B) by the applicable  
13 deadline in such subparagraph, the owner  
14 or operator may operate the structure until  
15 such time as the implementing agency  
16 issues, under subparagraph (C), a final  
17 permit incorporating the requirements of  
18 the coal combustion residuals permit pro-  
19 gram, or a final denial of an application  
20 submitted requesting such a permit.

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

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

1           tion residuals surface impoundment shall sub-  
2           mit to the Administrator and the State in which  
3           such inactive coal combustion residuals surface  
4           impoundment is located a notice stating wheth-  
5           er such inactive coal combustion residuals sur-  
6           face impoundment will—

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

11                  “(ii) comply with the requirements of  
12                  the coal combustion residuals permit pro-  
13                  gram applicable to existing structures that  
14                  are surface impoundments (except as pro-  
15                  vided in subparagraph (D)(ii)).

16                  “(B) EXTENSION.—In the case of an inac-  
17                  tive coal combustion residuals surface impound-  
18                  ment for which the owner or operator submits  
19                  a notice described in subparagraph (A)(i), the  
20                  implementing agency may extend the closure  
21                  deadline provided in such subparagraph by a  
22                  period of not more than 2 years if the owner or  
23                  operator of such inactive coal combustion re-  
24                  siduals surface impoundment—



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

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

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

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

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

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

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

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

24                  “(D) TREATMENT AS STRUCTURE.—

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

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

11                       “(II) the owner or operator sub-  
12                       mits a notice described in subpara-  
13                       graph (A)(ii).

14           “(ii) INACTIVE COAL COMBUSTION RE-  
15           SIDUALS SURFACE IMPOUNDMENTS THAT  
16           FAIL TO CLOSE.—An inactive coal combus-  
17           tion residuals surface impoundment for  
18           which the owner or operator submits a no-  
19           tice described in subparagraph (A)(i) that  
20           does not close by the deadline provided  
21           under subparagraph (A)(i) or subpara-  
22           graph (B), as applicable—

23                       “(I) shall be treated as an exist-  
24                       ing structure for purposes of this sec-  
25                       tion beginning on the date that is the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14                   “(e) IMPLEMENTATION BY ADMINISTRATOR.—

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

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

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



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

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

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

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

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

25 “(5) ENFORCEMENT.—

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

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

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

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

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

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

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

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

17                 “(1) STATE CONTROL.—

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

1 “(i) notifying the Administrator that  
2 the State will adopt and implement such a  
3 permit program;

4 “(ii) not later than 6 months after the  
5 date of such notification, submitting to the  
6 Administrator a certification under sub-  
7 section (b)(2); and

8 “(iii) receiving from the Adminis-  
9 trator—

10 “(I) a determination, after the  
11 Administrator provides for a 30-day  
12 period for notice and public comment,  
13 that the State coal combustion residu-  
14 als permit program meets the require-  
15 ments described in subsection (c); and

16 “(II) a timeline for transition to  
17 the State coal combustion residuals  
18 permit program.

19 “(B) REMEDYING DEFICIENT PERMIT PRO-  
20 GRAM.—For a State for which the Adminis-  
21 trator is implementing a coal combustion re-  
22 siduals permit program under subsection  
23 (e)(1)(B), the State may adopt and implement  
24 such a permit program by—

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

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

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

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

14 “(2) REVIEW OF DETERMINATION.—

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

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

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

3           “(g) IMPLEMENTATION DURING TRANSITION.—

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

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

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

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

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

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

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

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

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

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

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

24           “(i) AUTHORITY.—

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

7           “(2) AUTHORITY OF THE ADMINISTRATOR.—

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

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

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

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



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

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

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

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

20                 “(1) Use as—

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

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

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

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

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

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

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

13 “(B) engineered structural fill for—

14 “(i) a building site or foundation;

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

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

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

23 “(3) Beneficial use—

24 “(A) that provides a functional benefit;

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

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

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

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

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

22       “(1) EFFECT OF RULE.—

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

1 als from Electric Utilities’ signed by the Adminis-  
2 trator on December 19, 2014—

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

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

11 “(2) REFERENCES TO THE CODE OF FEDERAL  
12 REGULATIONS.—For purposes of this section, any  
13 reference to a provision of the Code of Federal Reg-  
14 ulations added by the rule described in paragraph  
15 (1) shall be considered to be a reference to such pro-  
16 vision as it is contained in such rule.

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

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

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

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

12                   “(B) a lead State implementing agency  
13           may make changes to such definitions if the  
14           lead State implementing agency—

15                           “(i) identifies the changes in the ex-  
16                           planation included with the certification  
17                           submitted under subsection (b)(2)(C)(iii);  
18                           and

19                           “(ii) provides in such explanation a  
20                           reasonable basis for the changes.

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

1       “(m) DEFINITIONS.—In this section:

2               “(1) COAL COMBUSTION RESIDUALS.—The  
3       term ‘coal combustion residuals’ means the following  
4       wastes generated by electric utilities and inde-  
5       pendent power producers:

6               “(A) The solid wastes listed in section  
7       3001(b)(3)(A)(i) that are generated primarily  
8       from the combustion of coal, including recover-  
9       able materials from such wastes.

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

17              “(C) Fluidized bed combustion wastes that  
18       are generated primarily from the combustion of  
19       coal.

20              “(D) Wastes from the co-burning of coal  
21       with non-hazardous secondary materials, pro-  
22       vided that coal makes up at least 50 percent of  
23       the total fuel burned.

1           “(E) Wastes from the co-burning of coal  
2           with materials described in subparagraph (A)  
3           that are recovered from monofills.

4           “(2) COAL COMBUSTION RESIDUALS PERMIT  
5           PROGRAM.—The term ‘coal combustion residuals  
6           permit program’ means all of the authorities, activi-  
7           ties, and procedures that comprise a system of prior  
8           approval and conditions implemented under this sec-  
9           tion to regulate the management and disposal of coal  
10          combustion residuals.

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

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

21          “(5) IMPLEMENTING AGENCY.—The term ‘im-  
22          plementing agency’ means the agency responsible for  
23          implementing a coal combustion residuals permit  
24          program, which shall either be the lead State imple-  
25          menting agency identified under subsection

1 (b)(2)(C)(i) or the Administrator pursuant to sub-  
2 section (e).

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

9 “(A) does not receive coal combustion re-  
10 siduals;

11 “(B) contains coal combustion residuals;  
12 and

13 “(C) contains liquid.

14 “(7) STRUCTURE.—

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

21 “(B) EXCEPTIONS.—

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



1                   “(ii) 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                   “(8) 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. 2000 REGULATORY DETERMINATION.**

19                  Nothing in this Act, or the amendments made by this  
20                  Act, shall be construed to alter in any manner the Envi-  
21                  ronmental Protection Agency’s regulatory determination  
22                  entitled “Notice of Regulatory Determination on Wastes  
23                  From the Combustion of Fossil Fuels”, published at 65  
24                  Fed. Reg. 32214 (May 22, 2000), that the fossil fuel com-  
25                  bustion wastes addressed in that determination do not

1 warrant regulation under subtitle C of the Solid Waste  
2 Disposal Act (42 U.S.C. 6921 et seq.).

3 **SEC. 4. TECHNICAL ASSISTANCE.**

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

9 **SEC. 5. FEDERAL POWER ACT.**

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