

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

M____. _____ introduced the following bill; which was referred to the Committee on _____

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) described 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)(4);

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

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

17 “(vi) a plan for a response by the
18 State to a release at a structure that has
19 the potential for impact beyond the site on
20 which the structure is located; and

21 “(vii) a plan for coordination among
22 States in the event of a release that
23 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 available for public 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 known to the public;
8 and

9 “(iii) information on groundwater
10 monitoring data, structural stability as-
11 sessments, emergency action plans, fugitive
12 dust control plans, notifications of closure
13 (including any certification of closure by a
14 qualified professional engineer), and cor-
15 rective action remedies required pursuant
16 to paragraph (2) is publicly available.

17 “(C) AGENCY AUTHORITY.—

18 “(i) IN GENERAL.—The implementing
19 agency may—

20 “(I) obtain information necessary
21 to determine whether the owner or op-
22 erator of a structure is in compliance
23 with the requirements of the coal com-
24 bustion residuals permit program;

1 “(II) conduct or require moni-
2 toring or testing to ensure that struc-
3 tures are in compliance with the re-
4 quirements of the coal combustion re-
5 siduals permit program; and

6 “(III) enter, at reasonable times,
7 any site or premise at which a struc-
8 ture or inactive coal combustion re-
9 siduals surface impoundment is lo-
10 cated for the purpose of inspecting
11 such structure or surface impound-
12 ment and reviewing relevant records.

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

19 “(I) a written description of the
20 monitoring or testing completed;

21 “(II) at the time of sampling, a
22 portion of each sample equal in vol-
23 ume or weight to the portion retained
24 by or for the implementing agency;
25 and

1 “(III) a copy of the results of
2 any analysis of samples collected by or
3 for the implementing agency.

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

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

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

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

22 “(I) for the purposes of detection
23 monitoring, the constituents described
24 in appendix III to part 257 of title
25 40, Code of Federal Regulations; and

1 “(II) for the purposes of assess-
2 ment monitoring, establishing a
3 groundwater protection standard, and
4 assessment of corrective measures, the
5 constituents described in appendix IV
6 to part 257 of title 40, Code of Fed-
7 eral Regulations.

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

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

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

1 258.55(i) of title 40, Code of Federal
2 Regulations.

3 “(III) ABILITY TO DETERMINE
4 THAT CORRECTIVE ACTION IS NOT
5 NECESSARY OR TECHNICALLY FEA-
6 SIBLE.—Notwithstanding section
7 257.97 of title 40, Code of Federal
8 Regulations, the implementing agency
9 may determine that remediation of a
10 release from a structure is not nec-
11 essary as provided in section
12 258.57(e) of title 40, Code of Federal
13 Regulations.

14 “(IV) AUTHORITY RELATING TO
15 RELEASES, OTHER THAN RELEASES
16 TO GROUNDWATER.—Notwithstanding
17 sections 257.90(d) and 257.96(a) of
18 title 40, Code of Federal Regulations,
19 the implementing agency shall, with
20 respect to a release from a structure,
21 other than a release to groundwater,
22 determine whether compliance with
23 the criteria described in sections
24 257.96 through 257.98 of title 40,
25 Code of Federal Regulations, shall be

1 required, taking into consideration the
2 nature of the release and any other
3 State and Federal requirements appli-
4 cable to the release.

5 “(V) GENERAL AUTHORITY RE-
6 LATING TO GROUNDWATER MONI-
7 TORING AND CORRECTIVE ACTION.—
8 Notwithstanding sections 257.90
9 through 257.98 of title 40, Code of
10 Federal Regulations, the imple-
11 menting agency may authorize alter-
12 native groundwater monitoring and
13 corrective action requirements pro-
14 vided that such requirements are no
15 less stringent than the alternative re-
16 quirements authorized to be estab-
17 lished under subpart E of part 258 of
18 title 40, Code of Federal Regulations.

19 “(VI) OPPORTUNITY FOR COR-
20 RECTIVE ACTION FOR UNLINED SUR-
21 FACE IMPOUNDMENTS.—Notwith-
22 standing section 257.101(a)(1) of title
23 40, Code of Federal Regulations, the
24 implementing agency may allow the
25 owner or operator of an existing

1 structure that is an unlined surface
2 impoundment—

3 “(aa) to continue to operate,
4 pursuant to sections 257.96
5 through 257.98 of title 40, Code
6 of Federal Regulations, until the
7 date that is 102 months after the
8 date of enactment of this section;
9 and

10 “(bb) to continue to operate
11 after such date as long as such
12 unlined surface impoundment
13 meets the groundwater protection
14 standard established pursuant to
15 this subparagraph and any other
16 applicable requirement estab-
17 lished pursuant to this section.

18 “(C) CLOSURE.—For all structures, the
19 criteria for closure described in sections
20 257.101, 257.102, and 257.103 of title 40,
21 Code of Federal Regulations, except—

22 “(i) the criteria described in section
23 257.101(a)(1) of title 40, Code of Federal
24 Regulations, shall apply to an existing

1 structure that is an unlined surface im-
2 poundment only if—

3 “(I) the unlined surface im-
4 poundment is not allowed to continue
5 operation pursuant to subparagraph
6 (B)(ii)(VI)(aa); or

7 “(II) in the case of an unlined
8 surface impoundment that is allowed
9 to continue operation pursuant to sub-
10 paragraph (B)(ii)(VI)(aa), the date
11 described in such subparagraph has
12 passed and the unlined surface im-
13 poundment does not meet the require-
14 ments described in subparagraph
15 (B)(ii)(VI)(bb);

16 “(ii) the criteria described in section
17 257.101(b)(1) of title 40, Code of Federal
18 Regulations, shall not apply to existing
19 structures, except as provided in subpara-
20 graph (E)(ii); and

21 “(iii) if an implementing agency has
22 set a deadline under clause (i) or (ii) of
23 subparagraph (L), the criteria described in
24 section 257.101(b)(2) of title 40, Code of
25 Federal Regulations, shall apply to struc-

1 tures that are surface impoundments only
2 after such deadline.

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

7 “(E) LOCATION RESTRICTIONS.—The cri-
8 teria for location restrictions described in—

9 “(i) for new structures, including lat-
10 eral expansions of existing structures, sec-
11 tions 257.60 through 257.64 and 257.3–1
12 of title 40, Code of Federal Regulations;
13 and

14 “(ii) for existing structures, sections
15 257.64 and 257.3–1 of title 40, Code of
16 Federal Regulations.

17 “(F) AIR CRITERIA.—For all structures,
18 the criteria for air quality described in section
19 257.80 of title 40, Code of Federal Regulations.

20 “(G) FINANCIAL ASSURANCE.—For all
21 structures, the criteria for financial assurance
22 described in subpart G of part 258 of title 40,
23 Code of Federal Regulations.

24 “(H) SURFACE WATER.—For all struc-
25 tures, the criteria for surface water described in

1 section 257.3–3 of title 40, Code of Federal
2 Regulations.

3 “(I) RECORDKEEPING.—For all structures,
4 the criteria for recordkeeping described in sec-
5 tion 257.105 of title 40, Code of Federal Regu-
6 lations.

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

12 “(K) HYDROLOGIC AND HYDRAULIC CA-
13 PACITY REQUIREMENTS.—For all structures
14 that are surface impoundments, the criteria for
15 inflow design flood control systems described in
16 section 257.82 of title 40, Code of Federal Reg-
17 ulations.

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

1 “(i) up to 30 days for an owner or op-
2 erator to complete a safety factor assess-
3 ment when an owner or operator has failed
4 to meet an applicable periodic assessment
5 deadline provided in section 257.73(f) of
6 title 40, Code of Federal Regulations; and

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

17 “(M) INSPECTIONS.—For all structures,
18 the criteria described in sections 257.83 and
19 257.84 of title 40, Code of Federal Regulations.

20 “(3) PERMIT PROGRAM IMPLEMENTATION FOR
21 EXISTING STRUCTURES.—

22 “(A) NOTIFICATION.—Not later than the
23 date on which a State submits a certification
24 under subsection (b)(2), not later than 18
25 months after the Administrator receives notice

1 under subsection (e)(1)(A), or not later than 24
2 months after the date of enactment of this sec-
3 tion with respect to a coal combustion residuals
4 permit program that is being implemented by
5 the Administrator under subsection (e)(3), as
6 applicable, the implementing agency shall notify
7 owners or operators of existing structures of—

8 “(i) the obligation to apply for and
9 obtain a permit under subparagraph (C);
10 and

11 “(ii) the requirements referred to in
12 subparagraph (B).

13 “(B) COMPLIANCE WITH CERTAIN RE-
14 QUIREMENTS.—Not later than 12 months after
15 the date on which a State submits a certifi-
16 cation under subsection (b)(2), not later than
17 30 months after the Administrator receives no-
18 tice under subsection (e)(1)(A), or not later
19 than 36 months after the date of enactment of
20 this section with respect to a coal combustion
21 residuals permit program that is being imple-
22 mented by the Administrator under subsection
23 (e)(3), as applicable, the implementing agency
24 shall require owners or operators of existing
25 structures to comply with—

1 “(i) the requirements under para-
2 graphs (2)(B), (2)(F), (2)(H), (2)(I),
3 (2)(J), (2)(K), and (2)(L); and

4 “(ii) the requirement for a written clo-
5 sure plan under the criteria described in
6 paragraph (2)(C).

7 “(C) PERMITS.—

8 “(i) PERMIT DEADLINE.—Not later
9 than 48 months after the date on which a
10 State submits a certification under sub-
11 section (b)(2), not later than 66 months
12 after the Administrator receives notice
13 under subsection (e)(1)(A), or not later
14 than 72 months after the date of enact-
15 ment of this section with respect to a coal
16 combustion residuals permit program that
17 is being implemented by the Administrator
18 under subsection (e)(3), as applicable, the
19 implementing agency shall issue, with re-
20 spect to an existing structure, a final per-
21 mit incorporating the applicable require-
22 ments of the coal combustion residuals per-
23 mit program, or a final denial of an appli-
24 cation submitted requesting such a permit.

1 “(ii) APPLICATION DEADLINE.—The
2 implementing agency shall identify, in col-
3 laboration with the owner or operator of an
4 existing structure, a reasonable deadline by
5 which the owner or operator shall submit a
6 permit application under clause (i).

7 “(D) INTERIM OPERATION.—

8 “(i) PRIOR TO DEADLINES.—Unless
9 the implementing agency determines that
10 the structure should close in accordance
11 with the criteria described in paragraph
12 (2)(C), with respect to any period of time
13 on or after the date of enactment of this
14 section but prior to the applicable deadline
15 in subparagraph (B), the owner or oper-
16 ator of an existing structure may continue
17 to operate such structure until such appli-
18 cable deadline under the applicable author-
19 ity in effect.

20 “(ii) PRIOR TO PERMIT.—Unless the
21 implementing agency determines that the
22 structure should close in accordance with
23 the criteria described in paragraph (2)(C),
24 if the owner or operator of an existing
25 structure meets the requirements referred

1 to in subparagraph (B) by the applicable
2 deadline in such subparagraph, the owner
3 or operator may operate the structure until
4 such time as the implementing agency
5 issues, under subparagraph (C), a final
6 permit incorporating the requirements of
7 the coal combustion residuals permit pro-
8 gram, or a final denial of an application
9 submitted requesting such a permit.

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

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

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

1 “(ii) comply with the requirements of
2 the coal combustion residuals permit pro-
3 gram applicable to existing structures that
4 are surface impoundments (except as pro-
5 vided in subparagraph (D)(ii)).

6 “(B) EXTENSION.—In the case of an inac-
7 tive coal combustion residuals surface impound-
8 ment for which the owner or operator submits
9 a notice described in subparagraph (A)(i), the
10 implementing agency may extend the closure
11 deadline provided in such subparagraph by a
12 period of not more than 2 years if the owner or
13 operator of such inactive coal combustion re-
14 siduals surface impoundment—

15 “(i) demonstrates to the satisfaction
16 of the implementing agency that it is not
17 feasible to complete closure of the inactive
18 coal combustion residuals surface impound-
19 ment in accordance with section 257.100
20 of title 40, Code of Federal Regulations, by
21 the deadline provided in subparagraph
22 (A)(i)—

23 “(I) because of complications
24 stemming from the climate or weath-
25 er, such as unusual amounts of pre-

1 precipitation or a significantly shortened
2 construction season;

3 “(II) because additional time is
4 required to remove the liquid from the
5 inactive coal combustion residuals sur-
6 face impoundment due to the volume
7 of coal combustion residuals contained
8 in the surface impoundment or the
9 characteristics of the coal combustion
10 residuals in such surface impound-
11 ment;

12 “(III) because the geology and
13 terrain surrounding the inactive coal
14 combustion residuals surface im-
15 poundment will affect the amount of
16 material needed to close the inactive
17 coal combustion residuals surface im-
18 poundment; or

19 “(IV) because additional time is
20 required to coordinate with and obtain
21 necessary approvals and permits; and

22 “(ii) demonstrates to the satisfaction
23 of the implementing agency that the inae-
24 tive coal combustion residuals surface im-

1 poundment does not pose an immediate
2 threat of release.

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

14 “(D) TREATMENT AS STRUCTURE.—

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

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

1 “(II) the owner or operator sub-
2 mits a notice described in subpara-
3 graph (A)(ii); or

4 “(III) in the case of an inactive
5 coal combustion residuals surface im-
6 poundment for which the owner or op-
7 erator submits a notice described in
8 subparagraph (A)(i), the inactive coal
9 combustion residuals surface im-
10 poundment does not close by the
11 deadline provided under subparagraph
12 (A)(i) or subparagraph (B), as appli-
13 cable.

14 “(ii) EXCEPTION.—Paragraph (3)
15 shall not apply with respect to an inactive
16 coal combustion residuals surface impound-
17 ment that is treated as an existing struc-
18 ture pursuant to clause (i)(III).

19 “(d) FEDERAL REVIEW OF STATE PERMIT PRO-
20 GRAMS.—

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

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

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

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

7 “(D) is not implementing a coal combus-
8 tion residuals permit program, with respect to
9 which the State has submitted a certification
10 under subsection (b)(2), that meets the require-
11 ments described in subsection (c);

12 “(E) is not implementing a coal combus-
13 tion residuals permit program, with respect to
14 which the State has submitted a certification
15 under subsection (b)(2)—

16 “(i) that is consistent with such cer-
17 tification; and

18 “(ii) for which the State continues to
19 have in effect statutes or regulations nec-
20 essary to implement such program; or

21 “(F) does not make available to the Ad-
22 ministrator, within 90 days of a written re-
23 quest, specific information necessary for the
24 Administrator to ascertain whether the State

1 has satisfied the requirements described in sub-
2 paragraphs (A) through (E).

3 “(2) REQUEST.—If a request described in para-
4 graph (1)(F) is proposed pursuant to a petition to
5 the Administrator, the Administrator shall make the
6 request only if the Administrator does not possess
7 the information necessary to ascertain whether the
8 State has satisfied the requirements described in
9 subparagraphs (A) through (E) of paragraph (1).

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

13 “(A) include findings of the Administrator
14 detailing any applicable deficiencies described in
15 subparagraphs (A) through (F) of paragraph
16 (1); and

17 “(B) identify, in collaboration with the
18 State, a reasonable deadline by which the State
19 shall remedy such applicable deficiencies, which
20 shall be—

21 “(i) in the case of a deficiency de-
22 scribed in subparagraphs (A) through (E)
23 of paragraph (1), not earlier than 180
24 days after the date on which the State re-
25 ceives the notice; and

1 “(ii) in the case of a deficiency de-
2 scribed in paragraph (1)(F), not later than
3 90 days after the date on which the State
4 receives the notice.

5 “(4) CONSIDERATIONS FOR DETERMINING DE-
6 FICIENCY OF STATE PERMIT PROGRAM.—In making
7 a determination whether a State has failed to satisfy
8 the requirements described in subparagraphs (A)
9 through (E) of paragraph (1), or a determination
10 under subsection (e)(1)(B), the Administrator shall
11 consider, as appropriate—

12 “(A) whether the State’s statutes or regu-
13 lations to implement a coal combustion residu-
14 als permit program are not sufficient to meet
15 the requirements described in subsection (e) be-
16 cause of—

17 “(i) failure of the State to promulgate
18 or enact new statutes or regulations when
19 necessary; or

20 “(ii) action by a State legislature or
21 court striking down or limiting such State
22 statutes or regulations;

23 “(B) whether the operation of the State
24 coal combustion residuals permit program fails

1 to comply with the requirements of subsection
2 (c) because of—

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

5 “(ii) repeated issuance by the State of
6 permits that do not meet the requirements
7 of subsection (c);

8 “(iii) failure of the State to comply
9 with the public participation requirements
10 of this section; or

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

14 “(C) whether the enforcement of a State
15 coal combustion residuals permit program fails
16 to comply with the requirements of this section
17 because of—

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

20 “(ii) repeated failure by the State to
21 inspect or otherwise determine compliance
22 pursuant to the process identified under
23 subsection (b)(2)(C)(iii)(I).

24 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

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

4 “(A) the Governor of the State notifies the
5 Administrator under subsection (b)(1) that the
6 State will not adopt and implement a permit
7 program;

8 “(B) the State has received a notice under
9 subsection (d) and the Administrator deter-
10 mines, after providing a 30-day period for no-
11 tice and public comment, that the State has
12 failed, by the deadline identified in the notice
13 under subsection (d)(3)(B), to remedy the defi-
14 ciencies detailed in the notice pursuant to sub-
15 section (d)(3)(A); or

16 “(C) the State informs the Administrator,
17 in writing, that such State will no longer imple-
18 ment such a permit program.

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

23 “(3) OTHER STRUCTURES.—For structures and
24 inactive coal combustion residuals surface impound-
25 ments located on property within the exterior bound-

1 aries of a State that the State does not have author-
2 ity or jurisdiction to regulate, the Administrator
3 shall implement a coal combustion residuals permit
4 program only for those structures and inactive coal
5 combustion residuals surface impoundments.

6 “(4) REQUIREMENTS.—If the Administrator
7 implements a coal combustion residuals permit pro-
8 gram under paragraph (1) or (3), the permit pro-
9 gram shall consist of the requirements described in
10 subsection (c).

11 “(5) ENFORCEMENT.—

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

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

22 “(ii) the Administrator may use those
23 authorities to inspect, gather information,
24 and enforce the requirements of this sec-
25 tion in the State.

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

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 for the structures and inactive coal
15 combustion residuals surface impound-
16 ments for which the Administrator is im-
17 plementing the coal combustion residuals
18 permit program.

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

1 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
2 ADMINISTRATOR.—

3 “(1) STATE CONTROL.—

4 “(A) NEW ADOPTION, OR RESUMPTION OF,
5 AND IMPLEMENTATION BY STATE.—For a State
6 for which the Administrator is implementing a
7 coal combustion residuals permit program
8 under subsection (e)(1)(A) or subsection
9 (e)(1)(C), the State may adopt and implement
10 such a permit program by—

11 “(i) notifying the Administrator that
12 the State will adopt and implement such a
13 permit program;

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

18 “(iii) receiving from the Adminis-
19 trator—

20 “(I) a determination, after the
21 Administrator provides for a 30-day
22 period for notice and public comment,
23 that the State coal combustion residu-
24 als permit program meets the require-
25 ments described in subsection (c); and

1 “(II) a timeline for transition to
2 the State coal combustion residuals
3 permit program.

4 “(B) REMEDYING DEFICIENT PERMIT PRO-
5 GRAM.—For a State for which the Adminis-
6 trator is implementing a coal combustion re-
7 siduals permit program under subsection
8 (e)(1)(B), the State may adopt and implement
9 such a permit program by—

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

13 “(ii) receiving from the Adminis-
14 trator—

15 “(I) a determination, after the
16 Administrator provides for a 30-day
17 period for notice and public comment,
18 that the deficiencies detailed in such
19 notice have been remedied; and

20 “(II) a timeline for transition to
21 the State coal combustion residuals
22 permit program.

23 “(2) REVIEW OF DETERMINATION.—

24 “(A) DETERMINATION REQUIRED.—The
25 Administrator shall make a determination

1 under paragraph (1) not later than 90 days
2 after the date on which the State submits a cer-
3 tification under paragraph (1)(A)(ii), or notifies
4 the Administrator that the deficiencies have
5 been remedied pursuant to paragraph (1)(B)(i),
6 as applicable.

7 “(B) REVIEW.—A State may obtain a re-
8 view of a determination by the Administrator
9 under paragraph (1) as if such determination
10 was a final regulation for purposes of section
11 7006.

12 “(g) IMPLEMENTATION DURING TRANSITION.—

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

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

20 “(B) the Administrator takes control of a
21 coal combustion residuals permit program from
22 a State under subsection (e).

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

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

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

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

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

19 “(B) if the Administrator implements a
20 coal combustion residuals permit program for a
21 State under subsection (e)(1), the State shall
22 cease to implement its coal combustion residu-
23 als permit program.

24 “(h) EFFECT ON DETERMINATION UNDER 4005(c)
25 OR 3006.—The Administrator shall not consider the im-

1 plementation of a coal combustion residuals permit pro-
2 gram by the Administrator under subsection (e) in making
3 a determination of approval for a permit program or other
4 system of prior approval and conditions under section
5 4005(c) or of authorization for a program under section
6 3006.

7 “(i) AUTHORITY.—

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

14 “(2) AUTHORITY OF THE ADMINISTRATOR.—

15 “(A) IN GENERAL.—Except as provided in
16 subsections (d), (e), and (g) of this section and
17 section 6005, the Administrator shall, with re-
18 spect to the regulation of coal combustion re-
19 siduals under this Act, defer to the States pur-
20 suant to this section.

21 “(B) IMMINENT HAZARD.—Nothing in this
22 section shall be construed as affecting the au-
23 thority of the Administrator under section 7003
24 with respect to coal combustion residuals.

1 “(C) ENFORCEMENT ASSISTANCE ONLY
2 UPON REQUEST.—Upon request from the head
3 of a lead State implementing agency, the Ad-
4 ministrator may provide to such State agency
5 only the enforcement assistance requested.

6 “(D) CONCURRENT ENFORCEMENT.—Ex-
7 cept as provided in subparagraph (C) of this
8 paragraph and subsection (g), the Adminis-
9 trator shall not have concurrent enforcement
10 authority when a State is implementing a coal
11 combustion residuals permit program, including
12 during any period of interim operation de-
13 scribed in subsection (c)(3)(D).

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

18 “(j) MINE RECLAMATION ACTIVITIES.—A coal com-
19 bustion residuals permit program implemented by the Ad-
20 ministrator under subsection (e) shall not apply to the uti-
21 lization, placement, and storage of coal combustion residu-
22 als at surface or underground mining and reclamation op-
23 erations.

24 “(k) USE OF COAL COMBUSTION RESIDUALS.—Use
25 of coal combustion residuals in the following ways shall

1 not be considered to be receipt of coal combustion residu-
2 als for the purposes of this section:

3 “(1) Use as—

4 “(A) engineered structural fill constructed
5 in accordance with—

6 “(i) ASTM E2277 entitled ‘Standard
7 Guide for Design and Construction of Coal
8 Ash Structural Fills’, including any
9 amendment or revision to that guidance; or

10 “(ii) a State standard or program re-
11 lating to—

12 “(I) fill operations for coal com-
13 bustion residuals; or

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

17 “(B) engineered structural fill for—

18 “(i) a building site or foundation;

19 “(ii) a base or embankment for a
20 bridge, roadway, runway, or railroad; or

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

23 “(2) Storage in a manner that is consistent
24 with the management of raw materials, if the coal

1 combustion residuals being stored are intended to be
2 used in a product or as a raw material.

3 “(3) Beneficial use—

4 “(A) that provides a functional benefit;

5 “(B) that is a substitute for the use of a
6 virgin material;

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

9 “(D) if such use is an unencapsulated use
10 involving placement on the land of 12,400 tons
11 or more in non-roadway applications, for which
12 the person using the coal combustion residuals
13 demonstrates, and keeps records showing, that
14 such use does not result in environmental re-
15 leases to groundwater, surface water, soil, or air
16 that—

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

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

23 “(1) EFFECT OF EXISTING RULE.—

24 “(1) IN GENERAL.—With respect to the final
25 rule entitled ‘Hazardous and Solid Waste Manage-

1 ment System; Disposal of Coal Combustion Residu-
2 als from Electric Utilities’ signed by the Adminis-
3 trator on December 19, 2014—

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

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

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

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

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

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

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

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

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

17 “(5) OTHER CRITERIA.—The criteria described
18 in sections 257.71, 257.106, and 257.107 of title 40,
19 Code of Federal Regulations may be incorporated
20 into a coal combustion residuals permit program at
21 the discretion of the implementing agency.

22 “(m) DEFINITIONS.—In this section:

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

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

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

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

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

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

21 “(E) Wastes from the co-burning of coal
22 with materials described in subparagraph (A)
23 that are recovered from monofills.

24 “(2) COAL COMBUSTION RESIDUALS PERMIT
25 PROGRAM.—The term ‘coal combustion residuals

1 permit program’ means all of the authorities, activi-
2 ties, and procedures that comprise a system of prior
3 approval and conditions implemented under this sec-
4 tion to regulate the management and disposal of coal
5 combustion residuals.

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

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

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

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

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

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

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

8 “(C) contains liquid.

9 “(7) STRUCTURE.—

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

16 “(B) EXCEPTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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