

SEPTEMBER 12, 2012

**RULES COMMITTEE PRINT 112-32**  
**TEXT OF H.R. 3409, COAL MINER EMPLOYMENT**  
**AND DOMESTIC ENERGY INFRASTRUCTURE**  
**PROTECTION ACT**

[Showing the text of H.R. 3409, as ordered reported by the Committee on Natural Resources; H.R. 910, H.R. 2401, and H.R. 2273 as passed the House, along with changes recommended by the chair of the Committee on Energy and Commerce; and H.R. 2018 as passed the House.]

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Stop the War on Coal Act of 2012”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title; Table of contents.

**TITLE I—LIMITATION ON AUTHORITY TO ISSUE REGULATIONS  
UNDER THE SURFACE MINING CONTROL AND RECLAMATION  
ACT OF 1977.**

Sec. 101. Limitation on authority to issue regulations under the Surface Mining Control and Reclamation Act of 1977.

**TITLE II—NO GREENHOUSE GAS REGULATION UNDER THE  
CLEAN AIR ACT**

Sec. 201. No regulation of emissions of greenhouse gases.

Sec. 202. Preserving one national standard for automobiles.

**TITLE III—TRANSPARENCY IN REGULATORY ANALYSIS OF  
IMPACTS ON NATION**

Sec. 301. Committee for the Cumulative Analysis of Regulations that Impact Energy and Manufacturing in the United States.

Sec. 302. Analyses.

Sec. 303. Reports; public comment.

Sec. 304. Additional provisions relating to certain rules.

Sec. 305. Consideration of feasibility and cost in establishing national ambient air quality standards.

TITLE IV—MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS

Sec. 401. Management and disposal of coal combustion residuals.

Sec. 402. 2000 Regulatory determination.

Sec. 403. Technical assistance.

Sec. 404. Federal Power Act.

TITLE V—PRESERVING STATE AUTHORITY TO MAKE DETERMINATIONS RELATING TO WATER QUALITY STANDARDS

Sec. 501. State water quality standards.

Sec. 502. Permits for dredged or fill material.

Sec. 503. Deadlines for agency comments.

Sec. 504. Applicability of amendments.

Sec. 505. Reporting on harmful pollutants.

Sec. 506. Pipelines crossing streambeds.

Sec. 507. Impacts of EPA regulatory activity on employment and economic activity.

1 **TITLE I—LIMITATION ON AU-**  
2 **THORITY TO ISSUE REGULA-**  
3 **TIONS UNDER THE SURFACE**  
4 **MINING CONTROL AND REC-**  
5 **LAMATION ACT OF 1977.**

6 **SEC. 101. LIMITATION ON AUTHORITY TO ISSUE REGULA-**  
7 **TIONS UNDER THE SURFACE MINING CON-**  
8 **TROL AND RECLAMATION ACT OF 1977.**

9 The Secretary of the Interior may not, before Decem-  
10 ber 31, 2013, issue or approve any proposed or final regu-  
11 lation under the Surface Mining Control and Reclamation  
12 Act of 1977 (30 U.S.C. 1201 et seq.) that would—

13 (1) adversely impact employment in coal mines  
14 in the United States;

1           (2) cause a reduction in revenue received by the  
2           Federal Government or any State, tribal, or local  
3           government, by reducing through regulation the  
4           amount of coal in the United States that is available  
5           for mining;

6           (3) reduce the amount of coal available for do-  
7           mestic consumption or for export;

8           (4) designate any area as unsuitable for surface  
9           coal mining and reclamation operations; or

10          (5) expose the United States to liability for tak-  
11          ing the value of privately owned coal through regula-  
12          tion.

13 **TITLE II—NO GREENHOUSE GAS**  
14 **REGULATION UNDER THE**  
15 **CLEAN AIR ACT**

16 **SEC. 201. NO REGULATION OF EMISSIONS OF GREENHOUSE**  
17 **GASES.**

18          Title III of the Clean Air Act (42 U.S.C. 7601 et  
19 seq.) is amended by adding at the end the following:

20 **“SEC. 330. NO REGULATION OF EMISSIONS OF GREEN-**  
21 **HOUSE GASES.**

22          “(a) DEFINITION.—In this section, the term ‘green-  
23 house gas’ means any of the following:

24                 “(1) Water vapor.

25                 “(2) Carbon dioxide.

1 “(3) Methane.

2 “(4) Nitrous oxide.

3 “(5) Sulfur hexafluoride.

4 “(6) Hydrofluorocarbons.

5 “(7) Perfluorocarbons.

6 “(8) Any other substance subject to, or pro-  
7 posed to be subject to, regulation, action, or consid-  
8 eration under this Act to address climate change.

9 “(b) LIMITATION ON AGENCY ACTION.—

10 “(1) LIMITATION.—

11 “(A) IN GENERAL.—The Administrator  
12 may not, under this Act, promulgate any regu-  
13 lation concerning, take action relating to, or  
14 take into consideration the emission of a green-  
15 house gas to address climate change.

16 “(B) AIR POLLUTANT DEFINITION.—The  
17 definition of the term ‘air pollutant’ in section  
18 302(g) does not include a greenhouse gas. Not-  
19 withstanding the previous sentence, such defini-  
20 tion may include a greenhouse gas for purposes  
21 of addressing concerns other than climate  
22 change.

23 “(2) EXCEPTIONS.—Paragraph (1) does not  
24 prohibit the following:

1           “(A) Notwithstanding paragraph (4)(B),  
2           implementation and enforcement of the rule en-  
3           titled ‘Light-Duty Vehicle Greenhouse Gas  
4           Emission Standards and Corporate Average  
5           Fuel Economy Standards’ (as published at 75  
6           Fed. Reg. 25324 (May 7, 2010) and without  
7           further revision) and implementation and en-  
8           forcement of the rule entitled ‘Greenhouse Gas  
9           Emissions Standards and Fuel Efficiency  
10          Standards for Medium- and Heavy-Duty En-  
11          gines and Vehicles’ (as published at 76 Fed.  
12          Reg. 57106 (September 15, 2011) and without  
13          further revision).

14          “(B) Implementation and enforcement of  
15          section 211(o).

16          “(C) Statutorily authorized Federal re-  
17          search, development, demonstration programs  
18          and voluntary programs addressing climate  
19          change.

20          “(D) Implementation and enforcement of  
21          title VI to the extent such implementation or  
22          enforcement only involves one or more class I  
23          substances or class II substances (as such  
24          terms are defined in section 601).

1           “(E) Implementation and enforcement of  
2           section 821 (42 U.S.C. 7651k note) of Public  
3           Law 101–549 (commonly referred to as the  
4           ‘Clean Air Act Amendments of 1990’).

5           “(3) INAPPLICABILITY OF PROVISIONS.—Noth-  
6           ing listed in paragraph (2) shall cause a greenhouse  
7           gas to be subject to part C of title I (relating to pre-  
8           vention of significant deterioration of air quality) or  
9           considered an air pollutant for purposes of title V  
10          (relating to permits).

11          “(4) CERTAIN PRIOR AGENCY ACTIONS.—The  
12          following rules and actions (including any supple-  
13          ment or revision to such rules and actions) are re-  
14          pealed and shall have no legal effect:

15                 “(A) ‘Mandatory Reporting of Greenhouse  
16                 Gases’, published at 74 Fed. Reg. 56260 (Octo-  
17                 ber 30, 2009).

18                 “(B) ‘Endangerment and Cause or Con-  
19                 tribute Findings for Greenhouse Gases Under  
20                 Section 202(a) of the Clean Air Act’, published  
21                 at 74 Fed. Reg. 66496 (December 15, 2009).

22                 “(C) ‘Reconsideration of Interpretation of  
23                 Regulations That Determine Pollutants Covered  
24                 by Clean Air Act Permitting Programs’, pub-  
25                 lished at 75 Fed. Reg. 17004 (April 2, 2010)

1 and the memorandum from Stephen L. John-  
2 son, Environmental Protection Agency (EPA)  
3 Administrator, to EPA Regional Administra-  
4 tors, concerning ‘EPA’s Interpretation of Regu-  
5 lations that Determine Pollutants Covered by  
6 Federal Prevention of Significant Deterioration  
7 (PSD) Permit Program’ (December 18, 2008).

8 “(D) ‘Prevention of Significant Deteriora-  
9 tion and Title V Greenhouse Gas Tailoring  
10 Rule’, published at 75 Fed. Reg. 31514 (June  
11 3, 2010).

12 “(E) ‘Action To Ensure Authority To  
13 Issue Permits Under the Prevention of Signifi-  
14 cant Deterioration Program to Sources of  
15 Greenhouse Gas Emissions: Finding of Sub-  
16 stantial Inadequacy and SIP Call’, published at  
17 75 Fed. Reg. 77698 (December 13, 2010).

18 “(F) ‘Action To Ensure Authority To  
19 Issue Permits Under the Prevention of Signifi-  
20 cant Deterioration Program to Sources of  
21 Greenhouse Gas Emissions: Finding of Failure  
22 To Submit State Implementation Plan Revi-  
23 sions Required for Greenhouse Gases’, pub-  
24 lished at 75 Fed. Reg. 81874 (December 29,  
25 2010).

1           “(G) ‘Action to Ensure Authority To Issue  
2           Permits Under the Prevention of Significant  
3           Deterioration Program to Sources of Green-  
4           house Gas Emissions: Federal Implementation  
5           Plan’, published at 75 Fed. Reg. 82246 (De-  
6           cember 30, 2010).

7           “(H) ‘Action to Ensure Authority to Im-  
8           plement Title V Permitting Programs Under  
9           the Greenhouse Gas Tailoring Rule’, published  
10          at 75 Fed. Reg. 82254 (December 30, 2010).

11          “(I) ‘Determinations Concerning Need for  
12          Error Correction, Partial Approval and Partial  
13          Disapproval, and Federal Implementation Plan  
14          Regarding Texas Prevention of Significant De-  
15          terioration Program’, published at 75 Fed. Reg.  
16          82430 (December 30, 2010).

17          “(J) ‘Limitation of Approval of Prevention  
18          of Significant Deterioration Provisions Con-  
19          cerning Greenhouse Gas Emitting-Sources in  
20          State Implementation Plans’, published at 75  
21          Fed. Reg. 82536 (December 30, 2010).

22          “(K) ‘Determinations Concerning Need for  
23          Error Correction, Partial Approval and Partial  
24          Disapproval, and Federal Implementation Plan  
25          Regarding Texas Prevention of Significant De-



1           terioration Program; Proposed Rule’, published  
2           at 75 Fed. Reg. 82365 (December 30, 2010).

3           “(L) Except for actions listed in paragraph  
4           (2), any other Federal action under this Act oc-  
5           curring before the date of enactment of this  
6           section that constitutes a stationary source per-  
7           mitting requirement or an emissions standard  
8           for a greenhouse gas to address climate change.

9           “(5) STATE ACTION.—

10           “(A) NO LIMITATION.—This section does  
11           not limit or otherwise affect the authority of a  
12           State to adopt, amend, enforce, or repeal State  
13           laws and regulations pertaining to the emission  
14           of a greenhouse gas.

15           “(B) EXCEPTION.—

16           “(i) RULE.—Notwithstanding sub-  
17           paragraph (A), any provision described in  
18           clause (ii)—

19                   “(I) is not federally enforceable;

20                   “(II) is not deemed to be a part  
21                   of Federal law; and

22                   “(III) is deemed to be stricken  
23                   from the plan described in clause  
24                   (ii)(I) or the program or permit de-  
25                   scribed in clause (ii)(II), as applicable.

1           “(ii) PROVISION DEFINED.—For pur-  
2           poses of clause (i), the term ‘provision’  
3           means any provision that—

4                   “(I) is contained in a State im-  
5                   plementation plan under section 110  
6                   and authorizes or requires a limitation  
7                   on, or imposes a permit requirement  
8                   for, the emission of a greenhouse gas  
9                   to address climate change; or

10                   “(II) is part of an operating per-  
11                   mit program under title V, or a per-  
12                   mit issued pursuant to title V, and  
13                   authorizes or requires a limitation on  
14                   the emission of a greenhouse gas to  
15                   address climate change.

16                   “(C) ACTION BY ADMINISTRATOR.—The  
17                   Administrator may not approve or make feder-  
18                   ally enforceable any provision described in sub-  
19                   paragraph (B)(ii).”.

20 **SEC. 202. PRESERVING ONE NATIONAL STANDARD FOR**  
21 **AUTOMOBILES.**

22           Section 209(b) of the Clean Air Act (42 U.S.C. 7543)  
23 is amended by adding at the end the following:

24           “(4) With respect to standards for emissions of  
25 greenhouse gases (as defined in section 330) for model

1 year 2017 or any subsequent model year new motor vehi-  
2 cles and new motor vehicle engines—

3 “(A) the Administrator may not waive applica-  
4 tion of subsection (a); and

5 “(B) no waiver granted prior to the date of en-  
6 actment of this paragraph may be construed to  
7 waive the application of subsection (a).”.

8 **TITLE III—TRANSPARENCY IN**  
9 **REGULATORY ANALYSIS OF**  
10 **IMPACTS ON NATION**

11 **SEC. 301. COMMITTEE FOR THE CUMULATIVE ANALYSIS OF**  
12 **REGULATIONS THAT IMPACT ENERGY AND**  
13 **MANUFACTURING IN THE UNITED STATES.**

14 (a) **ESTABLISHMENT.**—The President shall establish  
15 a committee to be known as the Committee for the Cumu-  
16 lative Analysis of Regulations that Impact Energy and  
17 Manufacturing in the United States (in this Act referred  
18 to as the “Committee”) to analyze and report on the cu-  
19 mulative and incremental impacts of certain rules and ac-  
20 tions of the Environmental Protection Agency, in accord-  
21 ance with sections 302 and 303.

22 (b) **MEMBERS.**—The Committee shall be composed of  
23 the following officials (or their designees):

24 (1) The Secretary of Agriculture, acting  
25 through the Chief Economist.

1           (2) The Secretary of Commerce, acting through  
2           the Chief Economist and the Under Secretary for  
3           International Trade.

4           (3) The Secretary of Labor, acting through the  
5           Commissioner of the Bureau of Labor Statistics.

6           (4) The Secretary of Energy, acting through  
7           the Administrator of the Energy Information Ad-  
8           ministration.

9           (5) The Secretary of the Treasury, acting  
10          through the Deputy Assistant Secretary for Environ-  
11          ment and Energy of the Department of the Treas-  
12          ury.

13          (6) The Administrator of the Environmental  
14          Protection Agency.

15          (7) The Chairman of the Council of Economic  
16          Advisors.

17          (8) The Chairman of the Federal Energy Regu-  
18          latory Commission.

19          (9) The Administrator of the Office of Informa-  
20          tion and Regulatory Affairs.

21          (10) The Chief Counsel for Advocacy of the  
22          Small Business Administration.

23          (11) The Chairman of the United States Inter-  
24          national Trade Commission, acting through the Of-  
25          fice of Economics.

1 (c) CHAIR.—The Secretary of Commerce shall serve  
2 as Chair of the Committee. In carrying out the functions  
3 of the Chair, the Secretary of Commerce shall consult with  
4 the members serving on the Committee pursuant to para-  
5 graphs (5) and (11) of subsection (b).

6 (d) CONSULTATION.—In conducting analyses under  
7 section 302 and preparing reports under section 303, the  
8 Committee shall consult with, and consider pertinent re-  
9 ports issued by, the Electric Reliability Organization cer-  
10 tified under section 215(c) of the Federal Power Act (16  
11 U.S.C. 824o(c)).

12 (e) TERMINATION.—The Committee shall terminate  
13 60 days after submitting its final report pursuant to sec-  
14 tion 303(c).

15 **SEC. 302. ANALYSES.**

16 (a) SCOPE.—The Committee shall conduct analyses,  
17 for each of the calendar years 2016, 2020, and 2030, of  
18 the following:

19 (1) The cumulative impact of covered rules that  
20 are promulgated as final regulations on or before  
21 January 1, 2013, in combination with covered ac-  
22 tions.

23 (2) The cumulative impact of all covered rules  
24 (including covered rules that have not been promul-

1 gated as final regulations on or before January 1,  
2 2013), in combination with covered actions.

3 (3) The incremental impact of each covered rule  
4 not promulgated as a final regulation on or before  
5 January 1, 2013, relative to an analytic baseline  
6 representing the results of the analysis conducted  
7 under paragraph (1).

8 (b) CONTENTS.—The Committee shall include in  
9 each analysis conducted under this section the following:

10 (1) Estimates of the impacts of the covered  
11 rules and covered actions with regard to—

12 (A) the global economic competitiveness of  
13 the United States, particularly with respect to  
14 energy intensive and trade sensitive industries;

15 (B) other cumulative costs and cumulative  
16 benefits, including evaluation through a general  
17 equilibrium model approach;

18 (C) any resulting change in national,  
19 State, and regional electricity prices;

20 (D) any resulting change in national,  
21 State, and regional fuel prices;

22 (E) the impact on national, State, and re-  
23 gional employment during the 5-year period be-  
24 ginning on the date of enactment of this Act,  
25 and also in the long term, including secondary

1 impacts associated with increased energy prices  
2 and facility closures; and

3 (F) the reliability and adequacy of bulk  
4 power supply in the United States.

5 (2) Discussion of key uncertainties and assump-  
6 tions associated with each estimate.

7 (3) A sensitivity analysis.

8 (4) Discussion, and where feasible an assess-  
9 ment, of the cumulative impact of the covered rules  
10 and covered actions on—

11 (A) consumers;

12 (B) small businesses;

13 (C) regional economies;

14 (D) State, local, and tribal governments;

15 (E) low-income communities;

16 (F) public health;

17 (G) local and industry-specific labor mar-  
18 kets; and

19 (H) agriculture,

20 as well as key uncertainties associated with each  
21 topic.

22 (c) METHODS.—In conducting analyses under this  
23 section, the Committee shall use the best available meth-  
24 ods, consistent with guidance from the Office of Informa-

1 tion and Regulatory Affairs and the Office of Management  
2 and Budget Circular A-4.

3 (d) DATA.—In conducting analyses under this sec-  
4 tion, the Committee—

5 (1) shall use the best data that are available to  
6 the public or supplied to the Committee by its mem-  
7 bers, including the most recent such data appro-  
8 priate for this analysis representing air quality, facil-  
9 ity emissions, and installed controls; and

10 (2) is not required to create data or to use data  
11 that are not readily accessible.

12 (e) COVERED RULES.—In this section, the term “cov-  
13 ered rule” means the following:

14 (1) The following published rules (including any  
15 successor or substantially similar rule):

16 (A) The Clean Air Interstate Rule (as de-  
17 fined in section 304(a)(4)).

18 (B) “National Ambient Air Quality Stand-  
19 ards for Ozone”, published at 73 Fed. Reg.  
20 16436 (March 27, 2008).

21 (C) “National Emission Standards for  
22 Hazardous Air Pollutants for Major Sources:  
23 Industrial, Commercial, and Institutional Boil-  
24 ers and Process Heaters”, published at 76 Fed.  
25 Reg. 15608 (March 21, 2011).



1 (D) “National Emission Standards for  
2 Hazardous Air Pollutants for Area Sources: In-  
3 dustrial, Commercial, and Institutional Boil-  
4 ers”, published at 76 Fed. Reg. 15554 (March  
5 21, 2011).

6 (E) “National Emission Standards for  
7 Hazardous Air Pollutants from Coal- and Oil-  
8 fired Electric Utility Steam Generating Units  
9 and Standards of Performance for Fossil-Fuel-  
10 Fired Electric Utility, Industrial-Commercial-  
11 Institutional, and Small Industrial-Commercial-  
12 Institutional Steam Generating Units”, pub-  
13 lished at 77 Fed. Reg. 9304 (February 16,  
14 2012).

15 (F) “Hazardous and Solid Waste Manage-  
16 ment System; Identification and Listing of Spe-  
17 cial Wastes; Disposal of Coal Combustion Re-  
18 siduals From Electric Utilities”, published at  
19 75 Fed. Reg. 35127 (June 21, 2010).

20 (G) “Primary National Ambient Air Qual-  
21 ity Standard for Sulfur Dioxide”, published at  
22 75 Fed. Reg. 35520 (June 22, 2010).

23 (H) “Primary National Ambient Air Qual-  
24 ity Standards for Nitrogen Dioxide”, published  
25 at 75 Fed. Reg. 6474 (February 9, 2010).

1 (I) “National Emission Standards for Haz-  
2 arduous Air Pollutants from the Portland Ce-  
3 ment Manufacturing Industry and Standards of  
4 Performance for Portland Cement Plants”,  
5 published at 75 Fed. Reg. 54970 (September 9,  
6 2010).

7 (2) The following additional rules or guidelines  
8 promulgated on or after January 1, 2009:

9 (A) Any rule or guideline promulgated  
10 under section 111(b) or 111(d) of the Clean Air  
11 Act (42 U.S.C. 7411(b), 7411(d)) to address  
12 climate change.

13 (B) Any rule or guideline promulgated by  
14 the Administrator of the Environmental Protec-  
15 tion Agency, a State, a local government, or a  
16 permitting agency under or as the result of sec-  
17 tion 169A or 169B of the Clean Air Act (42  
18 U.S.C. 7491, 7492).

19 (C) Any rule establishing or modifying a  
20 national ambient air quality standard under  
21 section 109 of the Clean Air Act (42 U.S.C.  
22 7409).

23 (D) Any rule addressing fuels under title  
24 II of the Clean Air Act (42 U.S.C. 7521 et  
25 seq.) as described in the Unified Agenda of

1 Federal Regulatory and Deregulatory Actions  
2 under Regulatory Identification Number 2060–  
3 AQ86, or any substantially similar rule, includ-  
4 ing any rule under section 211(v) of the Clean  
5 Air Act (42 U.S.C. 7545(v)).

6 (f) COVERED ACTIONS.—In this section, the term  
7 “covered action” means any action on or after January  
8 1, 2009, by the Administrator of the Environmental Pro-  
9 tection Agency, a State, a local government, or a permit-  
10 ting agency as a result of the application of part C of title  
11 I (relating to prevention of significant deterioration of air  
12 quality) or title V (relating to permitting) of the Clean  
13 Air Act (42 U.S.C. 7401 et seq.), if such application oc-  
14 curs with respect to an air pollutant that is identified as  
15 a greenhouse gas in “Endangerment and Cause or Con-  
16 tribute Findings for Greenhouse Gases Under Section  
17 202(a) of the Clean Air Act”, published at 74 Fed. Reg.  
18 66496 (December 15, 2009).

19 **SEC. 303. REPORTS; PUBLIC COMMENT.**

20 (a) PRELIMINARY REPORT.—Not later than March  
21 31, 2013, the Committee shall make public and submit  
22 to the Committee on Energy and Commerce of the House  
23 of Representatives and the Committee on Environment  
24 and Public Works of the Senate a preliminary report con-

1 taining the results of the analyses conducted under section  
2 302.

3 (b) PUBLIC COMMENT PERIOD.—The Committee  
4 shall accept public comments regarding the preliminary re-  
5 port submitted under subsection (a) for a period of 120  
6 days after such submission.

7 (c) FINAL REPORT.—Not later than September 30,  
8 2013, the Committee shall submit to Congress a final re-  
9 port containing the analyses conducted under section 302,  
10 including any revisions to such analyses made as a result  
11 of public comments, and a response to such comments.

12 **SEC. 304. ADDITIONAL PROVISIONS RELATING TO CERTAIN**  
13 **RULES.**

14 (a) CROSS-STATE AIR POLLUTION RULE/TRANSPORT  
15 RULE.—

16 (1) EARLIER RULES.—The rule entitled “Fed-  
17 eral Implementation Plans: Interstate Transport of  
18 Fine Particulate Matter and Ozone and Correction  
19 of SIP Approvals”, published at 76 Fed. Reg. 48208  
20 (August 8, 2011), and any successor or substantially  
21 similar rule, shall be of no force or effect, and shall  
22 be treated as though such rule had never taken ef-  
23 fect.

24 (2) CONTINUED APPLICABILITY OF CLEAN AIR  
25 INTERSTATE RULE.—In place of any rule described

1 in paragraph (1), the Administrator of the Environ-  
2 mental Protection Agency (in this section referred to  
3 as the “Administrator”) shall continue to implement  
4 the Clean Air Interstate Rule.

5 (3) ADDITIONAL RULEMAKINGS.—

6 (A) ISSUANCE OF NEW RULES.—The Ad-  
7 ministrator—

8 (i) shall not issue any proposed or  
9 final rule under section 110(a)(2)(D)(i)(I)  
10 or section 126 of the Clean Air Act (42  
11 U.S.C. 7410(a)(2)(D)(i)(I), 7426) relating  
12 to national ambient air quality standards  
13 for ozone or particulate matter (including  
14 any modification of the Clean Air Inter-  
15 state Rule) before the date that is 3 years  
16 after the date on which the Committee  
17 submits the final report under section  
18 303(e); and

19 (ii) in issuing any rule described in  
20 clause (i), shall base the rule on actual  
21 monitored (and not modeled) data and  
22 shall, notwithstanding section  
23 110(a)(2)(D)(i)(I), allow the trading of  
24 emissions allowances among entities cov-

1           ered by the rule irrespective of the States  
2           in which such entities are located.

3           (B) IMPLEMENTATION SCHEDULE.—In  
4           promulgating any final rule described in sub-  
5           paragraph (A)(i), the Administrator shall estab-  
6           lish a date for State implementation of the  
7           standards established by such final rule that is  
8           not earlier than 3 years after the date of publi-  
9           cation of such final rule.

10          (4) DEFINITION OF CLEAN AIR INTERSTATE  
11          RULE.—For purposes of this section, the term  
12          “Clean Air Interstate Rule” means the Clean Air  
13          Interstate Rule and the rule establishing Federal  
14          Implementation Plans for the Clean Air Interstate  
15          Rule as promulgated and modified by the Adminis-  
16          trator (70 Fed. Reg. 25162 (May 12, 2005), 71  
17          Fed. Reg. 25288 (April 28, 2006), 72 Fed. Reg.  
18          55657 (October 1, 2007), 72 Fed. Reg. 59190 (Oc-  
19          tober 19, 2007), 72 Fed. Reg. 62338 (November 2,  
20          2007), 74 Fed. Reg. 56721 (November 3, 2009)).

21          (b) STEAM GENERATING UNIT RULES.—

22          (1) EARLIER RULES.—The proposed rule enti-  
23          tled “National Emission Standards for Hazardous  
24          Air Pollutants From Coal- and Oil-Fired Electric  
25          Utility Steam Generating Units and Standards of

1 Performance for Fossil-Fuel-Fired Electric Utility,  
2 Industrial-Commercial- Institutional, and Small In-  
3 dustrial-Commercial-Institutional Steam Generating  
4 Units” published at 76 Fed. Reg. 24976 (May 3,  
5 2011), and any final rule that is based on such pro-  
6 posed rule and is issued prior to the date of the en-  
7 actment of this Act, shall be of no force and effect,  
8 and shall be treated as though such proposed or  
9 final rule had never been issued. In conducting anal-  
10 yses under section 302(a), the Committee shall ana-  
11 lyze the rule described in section 302(e)(1)(E) (in-  
12 cluding any successor or substantially similar rule)  
13 as if the preceding sentence did not apply to such  
14 rule.

15 (2) PROMULGATION OF FINAL RULES.—In  
16 place of the rules described in paragraph (1), the  
17 Administrator shall—

18 (A) issue regulations establishing national  
19 emission standards for coal-and oil-fired electric  
20 utility steam generating units under section 112  
21 of the Clean Air Act (42 U.S.C. 7412) with re-  
22 spect to each hazardous air pollutant for which  
23 the Administrator finds such regulations are  
24 appropriate and necessary pursuant to sub-  
25 section (n)(1)(A) of such section;

1 (B) issue regulations establishing stand-  
2 ards of performance for fossil-fuel-fired electric  
3 utility, industrial-commercial-institutional, and  
4 small industrial-commercial-institutional steam  
5 generating units under section 111 of the Clean  
6 Air Act (42 U.S.C. 111); and

7 (C) issue the final regulations required by  
8 subparagraphs (A) and (B)—

9 (i) after issuing proposed regulations  
10 under such subparagraphs;

11 (ii) after consideration of the final re-  
12 port submitted under section 303(c); and

13 (iii) not earlier than the date that is  
14 12 months after the date on which the  
15 Committee submits such report to the Con-  
16 gress, or such later date as may be deter-  
17 mined by the Administrator.

18 (3) COMPLIANCE PROVISIONS.—

19 (A) ESTABLISHMENT OF COMPLIANCE  
20 DATES.—In promulgating the regulations under  
21 paragraph (2), the Administrator—

22 (i) shall establish a date for compli-  
23 ance with the standards and requirements  
24 under such regulations that is not earlier



1 than 5 years after the effective date of the  
2 regulations; and

3 (ii) in establishing a date for such  
4 compliance, shall take into consideration—

5 (I) the costs of achieving emis-  
6 sions reductions;

7 (II) any non-air quality health  
8 and environmental impact and energy  
9 requirements of the standards and re-  
10 quirements;

11 (III) the feasibility of imple-  
12 menting the standards and require-  
13 ments, including the time needed to—

14 (aa) obtain necessary permit  
15 approvals; and

16 (bb) procure, install, and  
17 test control equipment;

18 (IV) the availability of equip-  
19 ment, suppliers, and labor, given the  
20 requirements of the regulations and  
21 other proposed or finalized regula-  
22 tions; and

23 (V) potential net employment im-  
24 pacts.

1 (B) NEW SOURCES.—With respect to the  
2 regulations promulgated pursuant to paragraph  
3 (2)—

4 (i) the date on which the Adminis-  
5 trator proposes a regulation pursuant to  
6 paragraph (2)(A) establishing an emission  
7 standard under section 112 of the Clean  
8 Air Act (42 U.S.C. 7412) shall be treated  
9 as the date on which the Administrator  
10 first proposes such a regulation for pur-  
11 poses of applying the definition of a new  
12 source under section 112(a)(4) of such Act  
13 (42 U.S.C. 7412(a)(4));

14 (ii) the date on which the Adminis-  
15 trator proposes a regulation pursuant to  
16 paragraph (2)(B) establishing a standard  
17 of performance under section 111 of the  
18 Clean Air Act (42 U.S.C. 7411) shall be  
19 treated as the date on which the Adminis-  
20 trator proposes such a regulation for pur-  
21 poses of applying the definition of a new  
22 source under section 111(a)(2) of such Act  
23 (42 U.S.C. 7411(a)(2));

24 (iii) for purposes of any emission  
25 standard or limitation applicable to electric

1 utility steam generating units, the term  
2 “new source” means a stationary source  
3 for which a preconstruction permit or  
4 other preconstruction approval required  
5 under the Clean Air Act (42 U.S.C. 7401  
6 et seq.) has been issued after the effective  
7 date of such emissions standard or limita-  
8 tion; and

9 (iv) for purposes of clause (iii), the  
10 date of issuance of a preconstruction per-  
11 mit or other preconstruction approval is  
12 deemed to be the date on which such per-  
13 mit or approval is issued to the applicant  
14 irrespective of any administrative or judi-  
15 cial review occurring after such date.

16 (C) RULE OF CONSTRUCTION.—Nothing in  
17 this subsection shall be construed to restrict or  
18 otherwise affect the provisions of paragraphs  
19 (3)(B) and (4) of section 112(i) of the Clean  
20 Air Act (42 U.S.C. 7412(i)).

21 (4) OTHER PROVISIONS.—

22 (A) ESTABLISHMENT OF STANDARDS  
23 ACHIEVABLE IN PRACTICE.—The regulations  
24 promulgated pursuant to paragraph (2)(A) of  
25 this section shall apply section 112(d)(3) of the

1 Clean Air Act (42 U.S.C. 7412(d)(3)) in ac-  
2 cordance with the following:

3 (i) NEW SOURCES.—With respect to  
4 new sources:

5 (I) The Administrator shall iden-  
6 tify the best controlled similar source  
7 for each source category or sub-  
8 category.

9 (II) The best controlled similar  
10 source for a category or subcategory  
11 shall be the single source that is de-  
12 termined by the Administrator to be  
13 the best controlled, in the aggregate,  
14 for all of the hazardous air pollutants  
15 for which the Administrator intends  
16 to issue standards for such source cat-  
17 egory or subcategory, under actual op-  
18 erating conditions, taking into account  
19 the variability in actual source per-  
20 formance, source design, fuels, con-  
21 trols, ability to measure pollutant  
22 emissions, and operating conditions.

23 (ii) EXISTING SOURCES.—With re-  
24 spect to existing sources:

1 (I) The Administrator shall identify  
2 tify one group of sources that con-  
3 stitutes the best performing 12 per-  
4 cent of existing sources for each  
5 source category or subcategory.

6 (II) The group constituting the  
7 best performing 12 percent of existing  
8 sources for a category or subcategory  
9 shall be the single group that is deter-  
10 mined by the Administrator to be the  
11 best performing, in the aggregate, for  
12 all of the hazardous air pollutants for  
13 which the Administrator intends to  
14 issue standards for such source cat-  
15 egory or subcategory, under actual op-  
16 erating conditions, taking into account  
17 the variability in actual source per-  
18 formance, source design, fuels, con-  
19 trols, ability to measure pollutant  
20 emissions, and operating conditions.

21 (B) REGULATORY ALTERNATIVES.—For  
22 the regulations promulgated pursuant to para-  
23 graph (2) of this section, from among the range  
24 of regulatory alternatives authorized under the  
25 Clean Air Act (42 U.S.C. 7401 et seq.), includ-

1           ing work practice standards under section  
2           112(h) of such Act (42 U.S.C. 7412(h)), the  
3           Administrator shall impose the least burden-  
4           some, consistent with the purposes of such Act  
5           and Executive Order No. 13563 published at 76  
6           Fed. Reg. 3821 (January 21, 2011).

7   **SEC. 305. CONSIDERATION OF FEASIBILITY AND COST IN**  
8                   **ESTABLISHING NATIONAL AMBIENT AIR**  
9                   **QUALITY STANDARDS.**

10          In establishing any national primary or secondary  
11       ambient air quality standard under section 109 of the  
12       Clean Air Act (42 U.S.C. 7409), the Administrator of the  
13       Environmental Protection Agency shall take into consider-  
14       ation feasibility and cost.

15   **TITLE IV—MANAGEMENT AND**  
16           **DISPOSAL OF COAL COMBUS-**  
17           **TION RESIDUALS**

18   **SEC. 401. MANAGEMENT AND DISPOSAL OF COAL COMBUS-**  
19                   **TION RESIDUALS.**

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

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

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

6 “(b) STATE ACTIONS.—

7 “(1) NOTIFICATION.—Not later than 6 months  
8 after the date of enactment of this section (except  
9 as provided by the deadline identified under sub-  
10 section (d)(3)(B)), the Governor of each State shall  
11 notify the Administrator, in writing, whether such  
12 State will adopt and implement a coal combustion  
13 residuals permit program.

14 “(2) CERTIFICATION.—

15 “(A) IN GENERAL.—Not later than 36  
16 months after the date of enactment of this sec-  
17 tion (except as provided in subsections (f)(1)(A)  
18 and (f)(1)(C)), in the case of a State that has  
19 notified the Administrator that it will imple-  
20 ment a coal combustion residuals permit pro-  
21 gram, the head of the lead State agency respon-  
22 sible for implementing the coal combustion re-  
23 siduals permit program shall submit to the Ad-  
24 ministrator a certification that such coal com-  
25 bustion residuals permit program meets the  
26 specifications described in subsection (c).

1           “(B) CONTENTS.—A certification sub-  
2           mitted under this paragraph shall include—

3                   “(i) a letter identifying the lead State  
4                   agency responsible for implementing the  
5                   coal combustion residuals permit program,  
6                   signed by the head of such agency;

7                   “(ii) identification of any other State  
8                   agencies involved with the implementation  
9                   of the coal combustion residuals permit  
10                  program;

11                  “(iii) a narrative description that pro-  
12                  vides an explanation of how the State will  
13                  ensure that the coal combustion residuals  
14                  permit program meets the requirements of  
15                  this section, including a description of the  
16                  State’s—

17                           “(I) process to inspect or other-  
18                           wise determine compliance with such  
19                           permit program;

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

22                           “(III) public participation proc-  
23                           ess for the promulgation, amendment,  
24                           or repeal of regulations for, and the



1 issuance of permits under, such per-  
2 mit program; and

3 “(IV) statutes, regulations, or  
4 policies pertaining to public access to  
5 information, such as groundwater  
6 monitoring data;

7 “(iv) a legal certification that the  
8 State has, at the time of certification, fully  
9 effective statutes or regulations necessary  
10 to implement a coal combustion residuals  
11 permit program that meets the specifica-  
12 tions described in subsection (c); and

13 “(v) copies of State statutes and regu-  
14 lations described in clause (iv).

15 “(C) UPDATES.—A State may update the  
16 certification as needed to reflect changes to the  
17 coal combustion residuals permit program.

18 “(3) MAINTENANCE OF 4005(C) OR 3006 PRO-  
19 GRAM.—In order to adopt or implement a coal com-  
20 bustion residuals permit program under this section  
21 (including pursuant to subsection (f)), the State  
22 agency responsible for implementing a coal combus-  
23 tion residuals permit program in a State shall main-  
24 tain an approved program under section 4005(c) or  
25 an authorized program under section 3006.

1 “(c) PERMIT PROGRAM SPECIFICATIONS.—

2 “(1) MINIMUM REQUIREMENTS.—

3 “(A) IN GENERAL.—A coal combustion re-  
4 siduals permit program shall apply the revised  
5 criteria described in paragraph (2) to owners or  
6 operators of structures, including surface im-  
7 poundments, that receive coal combustion re-  
8 siduals.

9 “(B) STRUCTURAL INTEGRITY.—

10 “(i) ENGINEERING CERTIFICATION.—  
11 A coal combustion residuals permit pro-  
12 gram shall require that an independent  
13 registered professional engineer certify  
14 that—

15 “(I) the design of structures is in  
16 accordance with recognized and gen-  
17 erally accepted good engineering prac-  
18 tices for containment of the maximum  
19 volume of coal combustion residuals  
20 and liquids appropriate for the struc-  
21 ture; and

22 “(II) the construction and main-  
23 tenance of the structure will ensure  
24 dam stability.

1                   “(ii) INSPECTION.—A coal combustion  
2                   residuals permit program shall require that  
3                   structures that are surface impoundments  
4                   be inspected not less than annually by an  
5                   independent registered professional engi-  
6                   neer to assure that the design, operation,  
7                   and maintenance of the surface impound-  
8                   ment is in accordance with recognized and  
9                   generally accepted good engineering prac-  
10                  tices for containment of the maximum vol-  
11                  ume of coal combustion residuals and liq-  
12                  uids which can be impounded, so as to en-  
13                  sure dam stability.

14                  “(iii) DEFICIENCY.—

15                         “(I) IN GENERAL.—If the head  
16                         of the agency responsible for imple-  
17                         menting the coal combustion residuals  
18                         permit program determines that a  
19                         structure is deficient with respect to  
20                         the requirements in clauses (i) and  
21                         (ii), the head of the agency has the  
22                         authority to require action to correct  
23                         the deficiency according to a schedule  
24                         determined by the agency.

1                   “(II)    UNCORRECTED    DEFI-  
2                   CIENCIES.—If a deficiency is not cor-  
3                   rected according to the schedule, the  
4                   head of the agency has the authority  
5                   to require that the structure close in  
6                   accordance with subsection (h).

7                   “(C) LOCATION.—Each structure that first  
8                   receives coal combustion residuals after the date  
9                   of enactment of this section shall be constructed  
10                  with a base located a minimum of 2 feet above  
11                  the upper limit of the water table, unless it is  
12                  demonstrated to the satisfaction of the agency  
13                  responsible for implementing the coal combus-  
14                  tion residuals permit program that—

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

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

21                  “(D) WIND DISPERSAL.—

22                  “(i) IN GENERAL.—The agency re-  
23                  sponsible for implementing the coal com-  
24                  bustion residuals permit program shall re-  
25                  quire that owners or operators of struc-

1           tures address wind dispersal of dust by re-  
2           quiring cover, or by wetting coal combus-  
3           tion residuals with water to a moisture  
4           content that prevents wind dispersal, facili-  
5           tates compaction, and does not result in  
6           free liquids.

7           “(ii) ALTERNATIVE METHODS.—Sub-  
8           ject to the review and approval by the  
9           agency, owners or operators of structures  
10          may propose alternative methods to ad-  
11          dress wind dispersal of dust that will pro-  
12          vide comparable or more effective control  
13          of dust.

14          “(E) PERMITS.—The agency responsible  
15          for implementing the coal combustion residuals  
16          permit program shall require that the owner or  
17          operator of each structure that receives coal  
18          combustion residuals after the date of enact-  
19          ment of this section apply for and obtain a per-  
20          mit incorporating the requirements of the coal  
21          combustion residuals permit program.

22          “(F) STATE NOTIFICATION AND GROUND-  
23          WATER MONITORING.—

24          “(i) NOTIFICATION.—Not later than  
25          the date on which a State submits a cer-

1                   tification under subsection (b)(2), the  
2                   State shall notify owners or operators of  
3                   structures within the State of—

4                   “(I) the obligation to apply for  
5                   and obtain a permit under subpara-  
6                   graph (E); and

7                   “(II) the groundwater monitoring  
8                   requirements applicable to structures  
9                   under paragraph (2)(A)(ii).

10                  “(ii) GROUNDWATER MONITORING.—  
11                  Not later than 1 year after the date on  
12                  which a State submits a certification under  
13                  subsection (b)(2), the State shall require  
14                  the owner or operator of each structure to  
15                  comply with the groundwater monitoring  
16                  requirements under paragraph (2)(A)(ii).

17                  “(G) AGENCY REQUIREMENTS.—Except  
18                  for information described in section 1905 of  
19                  title 18, United States Code, the agency respon-  
20                  sible for implementing the coal combustion re-  
21                  siduals permit program shall ensure that—

22                  “(i) documents for permit determina-  
23                  tions are made available for public review  
24                  and comment under the public participa-

1                   tion process described in subsection  
2                   (b)(2)(B)(iii)(III);

3                   “(ii) final determinations on permit  
4                   applications are made known to the public;  
5                   and

6                   “(iii) groundwater monitoring data  
7                   collected under paragraph (2) is publicly  
8                   available.

9                   “(H) AGENCY AUTHORITY.—

10                   “(i) IN GENERAL.—The agency re-  
11                   sponsible for implementing the coal com-  
12                   bustion residuals permit program has the  
13                   authority to—

14                   “(I) obtain information necessary  
15                   to determine whether the owner or op-  
16                   erator of a structure is in compliance  
17                   with the coal combustion residuals  
18                   permit program requirements of this  
19                   section;

20                   “(II) conduct or require moni-  
21                   toring and testing to ensure that  
22                   structures are in compliance with the  
23                   coal combustion residuals permit pro-  
24                   gram requirements of this section;  
25                   and

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

8                   “(ii) MONITORING AND TESTING.—If  
9                   monitoring or testing is conducted under  
10                  clause (i)(II) by or for the agency respon-  
11                  sible for implementing the coal combustion  
12                  residuals permit program, the agency shall,  
13                  if requested, provide to the owner or oper-  
14                  ator—

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

17                   “(II) at the time of sampling, a  
18                   portion of each sample equal in vol-  
19                   ume or weight to the portion retained  
20                   by or for the agency; and

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



1           “(I) STATE AUTHORITY.—A State imple-  
2           menting a coal combustion residuals permit  
3           program has the authority to—

4                   “(i) inspect structures; and

5                   “(ii) implement and enforce the coal  
6           combustion residuals permit program.

7           “(J) REQUIREMENTS FOR SURFACE IM-  
8           POUNDMENTS THAT DO NOT MEET CERTAIN  
9           CRITERIA.—

10                   “(i) IN GENERAL.—In addition to the  
11           groundwater monitoring and corrective ac-  
12           tion requirements described in paragraph  
13           (2)(A)(ii), a coal combustion residuals per-  
14           mit program shall require a surface im-  
15           poundment that receives coal combustion  
16           residuals after the date of enactment of  
17           this section to—

18                   “(I) comply with the require-  
19           ments in clause (ii)(I)(aa) and sub-  
20           clauses (II) through (IV) of clause (ii)  
21           if the surface impoundment—

22                           “(aa) does not—

23                                   “(AA) have a liner sys-  
24           tem described in section

1 258.40(b) of title 40, Code  
2 of Federal Regulations; and  
3 “(BB) meet the design  
4 criteria described in section  
5 258.40(a)(1) of title 40,  
6 Code of Federal Regula-  
7 tions; and

8 “(bb) within 10 years after  
9 the date of enactment of this sec-  
10 tion, is required under section  
11 258.56(a) of title 40, Code of  
12 Federal Regulations, to undergo  
13 an assessment of corrective meas-  
14 ures for any constituent identi-  
15 fied in paragraph (2)(A)(ii) for  
16 which assessment groundwater  
17 monitoring is required; and

18 “(II) comply with the require-  
19 ments in clause (ii)(I)(bb) and sub-  
20 clauses (II) through (IV) of clause (ii)  
21 if the surface impoundment—

22 “(aa) does not—

23 “(AA) have a liner sys-  
24 tem described in section

1                   258.40(b) of title 40, Code  
2                   of Federal Regulations; and  
3                   “(BB) meet the design  
4                   criteria described in section  
5                   258.40(a)(1) of title 40,  
6                   Code of Federal Regula-  
7                   tions; and

8                   “(bb) as of the date of en-  
9                   actment of this section, is subject  
10                  to a State corrective action re-  
11                  quirement.

12                  “(ii) REQUIREMENTS.—

13                  “(I) DEADLINES.—

14                  “(aa) IN GENERAL.—Except  
15                  as provided in item (bb), sub-  
16                  clause (IV), and clause (iii), the  
17                  groundwater protection standard  
18                  for structures identified in clause  
19                  (i)(I) established by the agency  
20                  responsible for implementing the  
21                  coal combustion residuals permit  
22                  program under section 258.55(h)  
23                  or 258.55(i) of title 40, Code of  
24                  Federal Regulations, for any con-  
25                  stituent for which corrective

1 measures are required shall be  
2 met—

3 “(AA) as soon as prac-  
4 ticable at the relevant point  
5 of compliance, as described  
6 in section 258.40(d) of title  
7 40, Code of Federal Regula-  
8 tions; and

9 “(BB) not later than  
10 10 years after the date of  
11 enactment of this section.

12 “(bb) IMPOUNDMENTS SUB-  
13 JECT TO STATE CORRECTIVE AC-  
14 TION REQUIREMENTS.—Except  
15 as provided in subclause (IV), the  
16 groundwater protection standard  
17 for structures identified in clause  
18 (i)(II) established by the agency  
19 responsible for implementing the  
20 coal combustion residuals permit  
21 program under section 258.55(h)  
22 or 258.55(i) of title 40, Code of  
23 Federal Regulations, for any con-  
24 stituent for which corrective

1 measures are required shall be  
2 met—

3 “(AA) as soon as prac-  
4 ticable at the relevant point  
5 of compliance, as described  
6 in section 258.40(d) of title  
7 40, Code of Federal Regula-  
8 tions; and

9 “(BB) not later than 8  
10 years after the date of en-  
11 actment of this section.

12 “(II) CLOSURE.—If the deadlines  
13 under clause (I) are not satisfied, the  
14 structure shall cease receiving coal  
15 combustion residuals and initiate clo-  
16 sure under subsection (h).

17 “(III) INTERIM MEASURES.—

18 “(aa) IN GENERAL.—Except  
19 as provided in item (bb), not  
20 later than 90 days after the date  
21 on which the assessment of cor-  
22 rective measures is initiated, the  
23 owner or operator shall imple-  
24 ment interim measures, as nec-  
25 essary, under the factors in sec-

1 tion 258.58(a)(3) of title 40,  
2 Code of Federal Regulations.

3 “(bb) IMPOUNDMENTS SUB-  
4 JECT TO STATE CORRECTIVE AC-  
5 TION REQUIREMENTS.—Item (aa)  
6 shall only apply to surface im-  
7 poundments subject to a State  
8 corrective action requirement as  
9 of the date of enactment of this  
10 section if the owner or operator  
11 has not implemented interim  
12 measures, as necessary, under  
13 the factors in section  
14 258.58(a)(3) of title 40, Code of  
15 Federal Regulations.

16 “(IV) EXTENSION OF DEAD-  
17 LINE.—

18 “(aa) IN GENERAL.—Except  
19 as provided in item (bb), the  
20 deadline for meeting a ground-  
21 water protection standard under  
22 subclause (I) may be extended by  
23 the agency responsible for imple-  
24 menting the coal combustion re-  
25 siduals permit program, after op-

1 portunity for public notice and  
2 comment under the public par-  
3 ticipation process described in  
4 subsection (b)(2)(B)(iii)(III),  
5 based on—

6 “(AA) the effectiveness  
7 of any interim measures im-  
8 plemented by the owner or  
9 operator of the facility under  
10 section 258.58(a)(3) of title  
11 40, Code of Federal Regula-  
12 tions;

13 “(BB) the level of  
14 progress demonstrated in  
15 meeting the groundwater  
16 protection standard;

17 “(CC) the potential for  
18 other adverse human health  
19 or environmental exposures  
20 attributable to the contami-  
21 nation from the surface im-  
22 poundment undergoing cor-  
23 rective action; and

24 “(DD) the lack of avail-  
25 able alternative management

1 capacity for the coal com-  
2 bustion residuals and related  
3 materials managed in the  
4 impoundment at the facility  
5 at which the impoundment  
6 is located if the owner or op-  
7 erator has used best efforts,  
8 as necessary, to design, ob-  
9 tain any necessary permits,  
10 finance, construct, and  
11 render operational the alter-  
12 native management capacity  
13 during the time period for  
14 meeting a groundwater pro-  
15 tection standard in sub-  
16 clause (I).

17 “(bb) EXCEPTION.—The  
18 deadlines under subclause (I)  
19 shall not be extended if there has  
20 been contamination of public or  
21 private drinking water systems  
22 attributable to a surface im-  
23 poundment undergoing corrective  
24 action, unless the contamination  
25 has been addressed by providing



1 a permanent replacement water  
2 system.

3 “(iii) SUBSEQUENT CLOSURE.—

4 “(I) IN GENERAL.—In addition  
5 to the groundwater monitoring and  
6 corrective action requirements de-  
7 scribed in paragraph (2)(A)(ii), a coal  
8 combustion residuals permit program  
9 shall require a surface impoundment  
10 that receives coal combustion residu-  
11 als after the date of enactment of this  
12 section to comply with the require-  
13 ments in subclause (II) if the surface  
14 impoundment—

15 “(aa) does not—

16 “(AA) have a liner sys-  
17 tem described in section  
18 258.40(b) of title 40, Code  
19 of Federal Regulations; and

20 “(BB) meet the design  
21 criteria described in section  
22 258.40(a)(1) of title 40,  
23 Code of Federal Regula-  
24 tions;

1 “(bb) more than 10 years  
2 after the date of enactment of  
3 this section, is required under  
4 section 258.56(a) of title 40,  
5 Code of Federal Regulations, to  
6 undergo an assessment of correc-  
7 tive measures for any constituent  
8 identified in paragraph (2)(A)(ii)  
9 for which assessment ground-  
10 water monitoring is required; and

11 “(cc) is not subject to the  
12 requirements in clause (ii).

13 “(II) REQUIREMENTS.—

14 “(aa) CLOSURE.—The struc-  
15 tures identified in subclause (I)  
16 shall cease receiving coal combus-  
17 tion residuals and initiate closure  
18 in accordance with subsection (h)  
19 after alternative management ca-  
20 pacity for the coal combustion re-  
21 siduals and related materials  
22 managed in the impoundment at  
23 the facility is available.

24 “(bb) BEST EFFORTS.—The  
25 alternative management capacity

1 shall be developed as soon as  
2 practicable with the owner or op-  
3 erator using best efforts to de-  
4 sign, obtain necessary permits, fi-  
5 nance, construct, and render  
6 operational the alternative man-  
7 agement capacity.

8 “(cc) ALTERNATIVE MAN-  
9 AGEMENT CAPACITY PLAN.—The  
10 owner or operator shall, in col-  
11 laboration with the agency re-  
12 sponsible for implementing the  
13 coal combustion residuals permit  
14 program, prepare a written plan  
15 that describes the steps necessary  
16 to develop the alternative man-  
17 agement capacity and includes a  
18 schedule for completion.

19 “(dd) PUBLIC PARTICIPA-  
20 TION.—The plan described in  
21 item (cc) shall be subject to pub-  
22 lic notice and comment under the  
23 public participation process de-  
24 scribed in subsection  
25 (b)(2)(B)(iii)(III).

1           “(2) REVISED CRITERIA.—The revised criteria  
2 described in this paragraph are—

3           “(A) the revised criteria for design,  
4 groundwater monitoring, corrective action, clo-  
5 sure, and post-closure, for structures, includ-  
6 ing—

7           “(i) for new structures, and lateral ex-  
8 pansions of existing structures, that first  
9 receive coal combustion residuals after the  
10 date of enactment of this section, the re-  
11 vised criteria regarding design require-  
12 ments described in section 258.40 of title  
13 40, Code of Federal Regulations, except  
14 that the leachate collection system require-  
15 ments described in section 258.40(a)(2) of  
16 title 40, Code of Federal Regulations do  
17 not apply to structures that are surface  
18 impoundments;

19           “(ii) for all structures that receive  
20 coal combustion residuals after the date of  
21 enactment of this section, the revised cri-  
22 teria regarding groundwater monitoring  
23 and corrective action requirements de-  
24 scribed in subpart E of part 258 of title  
25 40, Code of Federal Regulations, except

1 that, for the purposes of this paragraph,  
2 the revised criteria shall also include—

3 “(I) for the purposes of detection  
4 monitoring, the constituents boron,  
5 chloride, conductivity, fluoride, mer-  
6 cury, pH, sulfate, sulfide, and total  
7 dissolved solids; 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 aluminum, boron, chlo-  
13 ride, fluoride, iron, manganese, molyb-  
14 denum, pH, sulfate, and total dis-  
15 solved solids;

16 “(iii) for all structures that receive  
17 coal combustion residuals after the date of  
18 enactment of this section, in a manner  
19 consistent with subsection (h), the revised  
20 criteria for closure described in subsections  
21 (a) through (c) and (h) through (j) of sec-  
22 tion 258.60 of title 40, Code of Federal  
23 Regulations; and

24 “(iv) for all structures that receive  
25 coal combustion residuals after the date of

1 enactment of this section, the revised cri-  
2 teria for post-closure care described in sec-  
3 tion 258.61 of title 40, Code of Federal  
4 Regulations, except for the requirement de-  
5 scribed in subsection (a)(4) of that section;

6 “(B) the revised criteria for location re-  
7 strictions described in—

8 “(i) for new structures, and lateral ex-  
9 pansions of existing structures, that first  
10 receive coal combustion residuals after the  
11 date of enactment of this section, sections  
12 258.11 through 258.15 of title 40, Code of  
13 Federal Regulations; and

14 “(ii) for existing structures that re-  
15 ceive coal combustion residuals after the  
16 date of enactment of this section, sections  
17 258.11 and 258.15 of title 40, Code of  
18 Federal Regulations;

19 “(C) for all structures that receive coal  
20 combustion residuals after the date of enact-  
21 ment of this section, the revised criteria for air  
22 quality described in section 258.24 of title 40,  
23 Code of Federal Regulations;

24 “(D) for all structures that receive coal  
25 combustion residuals after the date of enact-

1           ment of this section, the revised criteria for fi-  
2           nancial assurance described in subpart G of  
3           part 258 of title 40, Code of Federal Regula-  
4           tions;

5           “(E) for all structures that receive coal  
6           combustion residuals after the date of enact-  
7           ment of this section, the revised criteria for sur-  
8           face water described in section 258.27 of title  
9           40, Code of Federal Regulations;

10          “(F) for all structures that receive coal  
11          combustion residuals after the date of enact-  
12          ment of this section, the revised criteria for rec-  
13          ordkeeping described in section 258.29 of title  
14          40, Code of Federal Regulations;

15          “(G) for landfills and other land-based  
16          units, other than surface impoundments, that  
17          receive coal combustion residuals after the date  
18          of enactment of this section, the revised criteria  
19          for run-on and run-off control systems de-  
20          scribed in section 258.26 of title 40, Code of  
21          Federal Regulations; and

22          “(H) for surface impoundments that re-  
23          ceive coal combustion residuals after the date of  
24          enactment of this section, the revised criteria  
25          for run-off control systems described in section

1           258.26(a)(2) of title 40, Code of Federal Regu-  
2           lations.

3           “(d) WRITTEN NOTICE AND OPPORTUNITY TO REM-  
4 EDY.—

5           “(1) IN GENERAL.—The Administrator shall  
6           provide to a State written notice and an opportunity  
7           to remedy deficiencies in accordance with paragraph  
8           (2) if at any time the State—

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

11                   “(B) has not submitted a certification  
12                   under subsection (b)(2);

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

15                   “(D) is not implementing a coal combus-  
16                   tion residuals permit program that—

17                           “(i) meets the specifications described  
18                           in subsection (c); or

19                           “(ii)(I) is consistent with the certifi-  
20                           cation under subsection (b)(2)(B)(iii); and

21                                   “(II) maintains fully effective  
22                                   statutes or regulations necessary to  
23                                   implement a coal combustion residuals  
24                                   permit program; or



1           “(E) does not make available to the Ad-  
2           ministrator, within 90 days of a written re-  
3           quest, specific information necessary for the  
4           Administrator to ascertain whether the State  
5           has complied with subparagraphs (A) through  
6           (D).

7           “(2) REQUEST.—If the request described in  
8           paragraph (1)(E) is made pursuant to a petition of  
9           the Administrator, the Administrator shall only  
10          make the request if the Administrator does not pos-  
11          sess the information necessary to ascertain whether  
12          the State has complied with subparagraphs (A)  
13          through (D) of paragraph (1).

14          “(3) CONTENTS OF NOTICE; DEADLINE FOR RE-  
15          SPONSE.—A notice provided under this subsection  
16          shall—

17                 “(A) include findings of the Administrator  
18                 detailing any applicable deficiencies in—

19                         “(i) compliance by the State with the  
20                         notification requirement under subsection  
21                         (b)(1);

22                         “(ii) compliance by the State with the  
23                         certification requirement under subsection  
24                         (b)(2);

1                   “(iii) compliance by the State with the  
2                   maintenance requirement under subsection  
3                   (b)(3);

4                   “(iv) the State coal combustion re-  
5                   siduals permit program in meeting the  
6                   specifications described in subsection (c);  
7                   and

8                   “(v) compliance by the State with the  
9                   request under paragraph (1)(E); and

10                   “(B) identify, in collaboration with the  
11                   State, a reasonable deadline, by which the State  
12                   shall remedy the deficiencies detailed under  
13                   subparagraph (A), which shall be—

14                   “(i) in the case of a deficiency de-  
15                   scribed in clauses (i) through (iv) of sub-  
16                   paragraph (A), not earlier than 180 days  
17                   after the date on which the State receives  
18                   the notice; and

19                   “(ii) in the case of a deficiency de-  
20                   scribed in subparagraph (A)(v), not later  
21                   than 90 days after the date on which the  
22                   State receives the notice.

23                   “(e) IMPLEMENTATION BY ADMINISTRATOR.—

1           “(1) IN GENERAL.—The Administrator shall  
2           implement a coal combustion residuals permit pro-  
3           gram for a State only 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 under subsection  
15          (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 lo-  
24          cated on property within the exterior boundaries of  
25          a State for which the State does not have authority

1 or jurisdiction to regulate, the Administrator shall  
2 implement a coal combustion residuals permit pro-  
3 gram only for those structures.

4 “(4) REQUIREMENTS.—If the Administrator  
5 implements a coal combustion residuals permit pro-  
6 gram for a State under paragraph (1) or (3), the  
7 permit program shall consist of the specifications de-  
8 scribed in subsection (c).

9 “(5) ENFORCEMENT.—

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

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

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

23 “(B) OTHER STRUCTURES.—If the Admin-  
24 istrator implements a coal combustion residuals

1 permit program for a State under paragraph  
2 (3)—

3 “(i) the authorities referred to in sec-  
4 tion 4005(c)(2)(A) shall apply with respect  
5 to coal combustion residuals and structures  
6 for which the Administrator is imple-  
7 menting the coal combustion residuals per-  
8 mit program; and

9 “(ii) the Administrator may use those  
10 authorities to inspect, gather information,  
11 and enforce the requirements of this sec-  
12 tion for the structures for which the Ad-  
13 ministrator is implementing the coal com-  
14 bustion residuals permit program.

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

17 “(1) STATE CONTROL.—

18 “(A) NEW ADOPTION AND IMPLEMENTA-  
19 TION BY STATE.—For a State for which the  
20 Administrator is implementing a coal combus-  
21 tion residuals permit program under subsection  
22 (e)(1)(A), the State may adopt and implement  
23 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 pro-  
11                   viding a 30-day period for notice and  
12                   public comment that the State coal  
13                   combustion residuals permit program  
14                   meets the specifications described in  
15                   subsection (c); and

16                   “(II) a timeline for transition of  
17                   control of the coal combustion residu-  
18                   als 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 provided under sub-  
3 section (d)(3)(A); and

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

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

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

14                   “(C) RESUMPTION OF IMPLEMENTATION  
15 BY STATE.—For a State for which the Adminis-  
16 trator is implementing a coal combustion re-  
17 siduals permit program under subsection  
18 (e)(1)(C), the State may adopt and implement  
19 such a permit program by—

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

23                   “(ii) not later than 6 months after the  
24 date of such notification, submitting to the

1 Administrator a certification under sub-  
2 section (b)(2); and

3 “(iii) receiving from the Adminis-  
4 trator—

5 “(I) a determination, after pro-  
6 viding a 30-day period for notice and  
7 public comment, that the State coal  
8 combustion residuals permit program  
9 meets the specifications described in  
10 subsection (c); and

11 “(II) a timeline for transition of  
12 control of the coal combustion residu-  
13 als 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  
20 (1)(C)(ii), or notifies the Administrator that the  
21 deficiencies have been remedied pursuant to  
22 paragraph (1)(B)(i), 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 “(3) IMPLEMENTATION DURING TRANSITION.—

4 “(A) EFFECT ON ACTIONS AND ORDERS.—

5 Actions taken or orders issued pursuant to a  
6 coal combustion residuals permit program shall  
7 remain in effect if—

8 “(i) a State takes control of its coal  
9 combustion residuals permit program from  
10 the Administrator under paragraph (1); or

11 “(ii) the Administrator takes control  
12 of a coal combustion residuals permit pro-  
13 gram from a State under subsection (e).

14 “(B) CHANGE IN REQUIREMENTS.—Sub-  
15 paragraph (A) shall apply to such actions and  
16 orders until such time as the Administrator or  
17 the head of the lead State agency responsible  
18 for implementing the coal combustion residuals  
19 permit program, as applicable—

20 “(i) implements changes to the re-  
21 quirements of the coal combustion residu-  
22 als permit program with respect to the  
23 basis for the action or order; or

1                   “(ii) certifies the completion of a cor-  
2                   rective action that is the subject of the ac-  
3                   tion or order.

4                   “(4) SINGLE PERMIT PROGRAM.—If a State  
5                   adopts and implements a coal combustion residuals  
6                   permit program under this subsection, the Adminis-  
7                   trator shall cease to implement the permit program  
8                   implemented under subsection (e)(1) for such State.

9                   “(g) EFFECT ON DETERMINATION UNDER 4005(C)  
10                  OR 3006.—The Administrator shall not consider the im-  
11                  plementation of a coal combustion residuals permit pro-  
12                  gram by the Administrator under subsection (e) in making  
13                  a determination of approval for a permit program or other  
14                  system of prior approval and conditions under section  
15                  4005(e) or of authorization for a program under section  
16                  3006.

17                  “(h) CLOSURE.—

18                  “(1) IN GENERAL.—If it is determined, pursu-  
19                  ant to a coal combustion residuals permit program,  
20                  that a structure should close, the time period and  
21                  method for the closure of such structure shall be set  
22                  forth in a closure plan that establishes a deadline for  
23                  completion and that takes into account the nature  
24                  and the site-specific characteristics of the structure  
25                  to be closed.

1           “(2) SURFACE IMPOUNDMENT.—In the case of  
2 a surface impoundment, the closure plan under  
3 paragraph (1) shall require, at a minimum, the re-  
4 moval of liquid and the stabilization of remaining  
5 waste, as necessary to support the final cover.

6           “(i) AUTHORITY.—

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

13           “(2) AUTHORITY OF THE ADMINISTRATOR.—

14           “(A) IN GENERAL.—Except as provided in  
15 subsections (d) and (e) and section 6005, the  
16 Administrator shall, with respect to the regula-  
17 tion of coal combustion residuals, defer to the  
18 States pursuant to this section.

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

23           “(C) ENFORCEMENT ASSISTANCE ONLY  
24 UPON REQUEST.—Upon request from the head  
25 of a lead State agency that is implementing a

1 coal combustion residuals permit program, the  
2 Administrator may provide to such State agen-  
3 cy only the enforcement assistance requested.

4 “(D) CONCURRENT ENFORCEMENT.—Ex-  
5 cept as provided in subparagraph (C), the Ad-  
6 ministrator shall not have concurrent enforce-  
7 ment authority when a State is implementing a  
8 coal combustion residuals permit program.

9 “(E) OTHER AUTHORITY.—The Adminis-  
10 trator shall not have authority to finalize the  
11 proposed rule published at pages 35128  
12 through 35264 of volume 75 of the Federal  
13 Register (June 21, 2010).

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 mining and reclamation operations.

23 “(k) DEFINITIONS.—In this section:

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

1           “(A) the solid wastes listed in section  
2           3001(b)(3)(A)(i), including recoverable mate-  
3           rials from such wastes;

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

11          “(C) fluidized bed combustion wastes;

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

16          “(E) wastes from the co-burning of coal  
17          with materials described in subparagraph (A)  
18          that are recovered from monofills.

19          “(2) COAL COMBUSTION RESIDUALS PERMIT  
20          PROGRAM.—The term ‘coal combustion residuals  
21          permit program’ means all of the authorities, activi-  
22          ties, and procedures that comprise the system of  
23          prior approval and conditions implemented by or for  
24          a State to regulate the management and disposal of  
25          coal combustion residuals.

1           “(3) CODE OF FEDERAL REGULATIONS.—The  
2 term ‘Code of Federal Regulations’ means the Code  
3 of Federal Regulations (as in effect on the date of  
4 enactment of this section) or any successor regula-  
5 tions.

6           “(4) PERMIT; PRIOR APPROVAL AND CONDI-  
7 TIONS.—The terms ‘permit’ and ‘prior approval and  
8 conditions’ mean any authorization, license, or equiv-  
9 alent control document that incorporates the re-  
10 quirements and revised criteria described in para-  
11 graphs (1) and (2) of subsection (c), respectively.

12           “(5) REVISED CRITERIA.—The term ‘revised  
13 criteria’ means the criteria promulgated for munic-  
14 ipal solid waste landfill units under section 4004(a)  
15 and under section 1008(a)(3), as revised under sec-  
16 tion 4010(c).

17           “(6) STRUCTURE.—

18           “(A) IN GENERAL.—Except as provided in  
19 subparagraph (B), the term ‘structure’ means a  
20 landfill, surface impoundment, or other land-  
21 based unit which may receive coal combustion  
22 residuals.

23           “(B) DE MINIMIS RECEIPT.—The term  
24 ‘structure’ does not include any land-based unit  
25 that receives only de minimis quantities of coal

1 combustion residuals if the presence of coal  
2 combustion residuals is incidental to the mate-  
3 rial managed in the unit.”.

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

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

8 **SEC. 402. 2000 REGULATORY DETERMINATION.**

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

18 **SEC. 403. TECHNICAL ASSISTANCE.**

19 Nothing in this title, or the amendments made by this  
20 title, shall be construed to affect the authority of a State  
21 to request, or the Administrator of the Environmental  
22 Protection Agency to provide, technical assistance under  
23 the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

1 **SEC. 404. FEDERAL POWER ACT.**

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

8 **TITLE V—PRESERVING STATE**  
9 **AUTHORITY TO MAKE DETER-**  
10 **MINATIONS RELATING TO**  
11 **WATER QUALITY STANDARDS**

12 **SEC. 501. STATE WATER QUALITY STANDARDS.**

13 (a) STATE WATER QUALITY STANDARDS.—Section  
14 303(c)(4) of the Federal Water Pollution Control Act (33  
15 U.S.C. 1313(c)(4)) is amended—

16 (1) by redesignating subparagraphs (A) and  
17 (B) as clauses (i) and (ii), respectively;

18 (2) by striking “(4)” and inserting “(4)(A)”;

19 (3) by striking “The Administrator shall pro-  
20 mulgate” and inserting the following:

21 “(B) The Administrator shall promulgate”; and

22 (4) by adding at the end the following:

23 “(C) Notwithstanding subparagraph (A)(ii), the Ad-  
24 ministrator may not promulgate a revised or new standard  
25 for a pollutant in any case in which the State has sub-  
26 mitted to the Administrator and the Administrator has ap-



1 proved a water quality standard for that pollutant, unless  
2 the State concurs with the Administrator's determination  
3 that the revised or new standard is necessary to meet the  
4 requirements of this Act.”.

5 (b) FEDERAL LICENSES AND PERMITS.—Section  
6 401(a) of such Act (33 U.S.C. 1341(a)) is amended by  
7 adding at the end the following:

8 “(7) With respect to any discharge, if a State or  
9 interstate agency having jurisdiction over the navigable  
10 waters at the point where the discharge originates or will  
11 originate determines under paragraph (1) that the dis-  
12 charge will comply with the applicable provisions of sec-  
13 tions 301, 302, 303, 306, and 307, the Administrator may  
14 not take any action to supersede the determination.”.

15 (c) STATE NPDES PERMIT PROGRAMS.—Section  
16 402(c) of such Act (42 U.S.C. 1342(c)) is amended by  
17 adding at the end the following:

18 “(5) LIMITATION ON AUTHORITY OF ADMINIS-  
19 TRATOR TO WITHDRAW APPROVAL OF STATE PRO-  
20 GRAMS.—The Administrator may not withdraw ap-  
21 proval of a State program under paragraph (3) or  
22 (4), or limit Federal financial assistance for the  
23 State program, on the basis that the Administrator  
24 disagrees with the State regarding—

1           “(A) the implementation of any water  
2           quality standard that has been adopted by the  
3           State and approved by the Administrator under  
4           section 303(c); or

5           “(B) the implementation of any Federal  
6           guidance that directs the interpretation of the  
7           State’s water quality standards.”.

8           (d) **LIMITATION ON AUTHORITY OF ADMINISTRATOR**  
9 **TO OBJECT TO INDIVIDUAL PERMITS.**—Section 402(d) of  
10 such Act (33 U.S.C. 1342(d)) is amended by adding at  
11 the end the following:

12           “(5) The Administrator may not object under para-  
13 graph (2) to the issuance of a permit by a State on the  
14 basis of—

15           “(A) the Administrator’s interpretation of a  
16           water quality standard that has been adopted by the  
17           State and approved by the Administrator under sec-  
18           tion 303(c); or

19           “(B) the implementation of any Federal guid-  
20           ance that directs the interpretation of the State’s  
21           water quality standards.”.

22 **SEC. 502. PERMITS FOR DREDGED OR FILL MATERIAL.**

23           (a) **AUTHORITY OF EPA ADMINISTRATOR.**—Section  
24 404(c) of the Federal Water Pollution Control Act (33  
25 U.S.C. 1344(c)) is amended—

1 (1) by striking “(c)” and inserting “(c)(1)”;

2 and

3 (2) by adding at the end the following:

4 “(2) Paragraph (1) shall not apply to any permit if  
5 the State in which the discharge originates or will origi-  
6 nate does not concur with the Administrator’s determina-  
7 tion that the discharge will result in an unacceptable ad-  
8 verse effect as described in paragraph (1).”.

9 (b) STATE PERMIT PROGRAMS.—The first sentence  
10 of section 404(g)(1) of such Act (33 U.S.C. 1344(g)(1))  
11 is amended by striking “The Governor of any State desir-  
12 ing to administer its own individual and general permit  
13 program for the discharge” and inserting “The Governor  
14 of any State desiring to administer its own individual and  
15 general permit program for some or all of the discharges”.

16 **SEC. 503. DEADLINES FOR AGENCY COMMENTS.**

17 Section 404 of the Federal Water Pollution Control  
18 Act (33 U.S.C. 1344) is amended—

19 (1) in subsection (m) by striking “ninetieth  
20 day” and inserting “30th day (or the 60th day if ad-  
21 ditional time is requested)”; and

22 (2) in subsection (q)—

23 (A) by striking “(q)” and inserting  
24 “(q)(1)”; and

25 (B) by adding at the end the following:

1           “(2) The Administrator and the head of a depart-  
2 ment or agency referred to in paragraph (1) shall each  
3 submit any comments with respect to an application for  
4 a permit under subsection (a) or (e) not later than the  
5 30th day (or the 60th day if additional time is requested)  
6 after the date of receipt of an application for a permit  
7 under that subsection.”.

8 **SEC. 504. APPLICABILITY OF AMENDMENTS.**

9           The amendments made by this title shall apply to ac-  
10 tions taken on or after the date of enactment of this Act,  
11 including actions taken with respect to permit applications  
12 that are pending or revised or new standards that are  
13 being promulgated as of such date of enactment.

14 **SEC. 505. REPORTING ON HARMFUL POLLUTANTS.**

15           Not later than 1 year after the date of enactment  
16 of this Act, and annually thereafter, the Administrator of  
17 the Environmental Protection Agency shall submit to Con-  
18 gress a report on any increase or reduction in waterborne  
19 pathogenic microorganisms (including protozoa, viruses,  
20 bacteria, and parasites), toxic chemicals, or toxic metals  
21 (such as lead and mercury) in waters regulated by a State  
22 under the provisions of this title, including the amend-  
23 ments made by this title.

1 **SEC. 506. PIPELINES CROSSING STREAMBEDS.**

2 None of the provisions of this title, including the  
3 amendments made by this title, shall be construed to limit  
4 the authority of the Administrator of the Environmental  
5 Protection Agency, as in effect on the day before the date  
6 of enactment of this Act, to regulate a pipeline that  
7 crosses a streambed.

8 **SEC. 507. IMPACTS OF EPA REGULATORY ACTIVITY ON EM-**  
9 **PLOYMENT AND ECONOMIC ACTIVITY.**

10 (a) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOY-  
11 MENT AND ECONOMIC ACTIVITY.—

12 (1) ANALYSIS.—Before taking a covered action,  
13 the Administrator shall analyze the impact,  
14 disaggregated by State, of the covered action on em-  
15 ployment levels and economic activity, including esti-  
16 mated job losses and decreased economic activity.

17 (2) ECONOMIC MODELS.—

18 (A) IN GENERAL.—In carrying out para-  
19 graph (1), the Administrator shall utilize the  
20 best available economic models.

21 (B) ANNUAL GAO REPORT.—Not later  
22 than December 31st of each year, the Comp-  
23 troller General of the United States shall sub-  
24 mit to Congress a report on the economic mod-  
25 els used by the Administrator to carry out this  
26 subsection.

1           (3) AVAILABILITY OF INFORMATION.—With re-  
2       spect to any covered action, the Administrator  
3       shall—

4           (A) post the analysis under paragraph (1)  
5       as a link on the main page of the public Inter-  
6       net Web site of the Environmental Protection  
7       Agency; and

8           (B) request that the Governor of any State  
9       experiencing more than a de minimis negative  
10      impact post such analysis in the Capitol of such  
11      State.

12      (b) PUBLIC HEARINGS.—

13           (1) IN GENERAL.—If the Administrator con-  
14      cludes under subsection (a)(1) that a covered action  
15      will have more than a de minimis negative impact on  
16      employment levels or economic activity in a State,  
17      the Administrator shall hold a public hearing in each  
18      such State at least 30 days prior to the effective  
19      date of the covered action.

20           (2) TIME, LOCATION, AND SELECTION.—A pub-  
21      lic hearing required under paragraph (1) shall be  
22      held at a convenient time and location for impacted  
23      residents. In selecting a location for such a public  
24      hearing, the Administrator shall give priority to loca-

1 tions in the State that will experience the greatest  
2 number of job losses.

3 (c) NOTIFICATION.—If the Administrator concludes  
4 under subsection (a)(1) that a covered action will have  
5 more than a de minimis negative impact on employment  
6 levels or economic activity in any State, the Administrator  
7 shall give notice of such impact to the State’s Congres-  
8 sional delegation, Governor, and Legislature at least 45  
9 days before the effective date of the covered action.

10 (d) DEFINITIONS.—In this section, the following defi-  
11 nitions apply:

12 (1) ADMINISTRATOR.—The term “Adminis-  
13 trator” means the Administrator of the Environ-  
14 mental Protection Agency.

15 (2) COVERED ACTION.—The term “covered ac-  
16 tion” means any of the following actions taken by  
17 the Administrator under the Federal Water Pollu-  
18 tion Control Act (33 U.S.C. 1201 et seq.):

19 (A) Issuing a regulation, policy statement,  
20 guidance, response to a petition, or other re-  
21 quirement.

22 (B) Implementing a new or substantially  
23 altered program.

1           (3) MORE THAN A DE MINIMIS NEGATIVE IM-  
2           PACT.—The term “more than a de minimis negative  
3           impact” means the following:

4                   (A) With respect to employment levels, a  
5                   loss of more than 100 jobs. Any offsetting job  
6                   gains that result from the hypothetical creation  
7                   of new jobs through new technologies or govern-  
8                   ment employment may not be used in the job  
9                   loss calculation.

10                   (B) With respect to economic activity, a  
11                   decrease in economic activity of more than  
12                   \$1,000,000 over any calendar year. Any offset-  
13                   ting economic activity that results from the hy-  
14                   pothetical creation of new economic activity  
15                   through new technologies or government em-  
16                   ployment may not be used in the economic ac-  
17                   tivity calculation.

