113TH CONGRESS
1ST SESSION

H. R. 2218

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

IN THE HOUSE OF REPRESENTATIVES

Mr. McKinley introduced the following bill; which was referred to the Committee on ____________________

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Coal Residuals Reuse and Management Act of 2013”.
(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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

SEC. 2. MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS.

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

“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS.

“(a) STATE PERMIT PROGRAMS FOR COAL COMBUSTION RESIDUALS.—Each State may adopt, implement, and enforce a coal combustion residuals permit program if such State provides the notification required under subsection (b)(1), and the certification required under subsection (b)(2).

“(b) STATE ACTIONS.—

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

“(A) In general.—Not later than 36 months after the date of enactment of this section (except as provided in subsection (f)(1)(A)), in the case of a State that has notified the Administrator that it will implement a coal combustion residuals permit program, the head of the lead State implementing agency shall submit to the Administrator a certification that such coal combustion residuals permit program meets the requirements described in subsection (c).

“(B) Contents.—A certification submitted under this paragraph shall include—

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

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

“(iii) an explanation of how the State coal combustion residuals permit program meets the requirements of this section, including a description of the State’s—
“(I) process to inspect or otherwise determine compliance with such permit program;

“(II) process to enforce the requirements of such permit program;

“(III) public participation process for the promulgation, amendment, or repeal of regulations for, and the issuance of permits under, such permit program;

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

“(V) statutes, regulations, or policies pertaining to structural integrity or dam safety that may be applied to structures through such permit program;

“(iv) a certification that the State has in effect, at the time of certification, statutes or regulations necessary to implement a coal combustion residuals permit program that meets the requirements described in subsection (e); and
“(v) copies of State statutes and regulations described in clause (iv).

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

“(3) Maintenance of 4005(c) or 3006 Program.—In order to adopt or implement a coal combustion residuals permit program under this section (including pursuant to subsection (f)), the State implementing agency shall maintain an approved permit program or other system of prior approval and conditions under section 4005(c) or an authorized program under section 3006.

“(c) Requirements for a Coal Combustion Residuals Permit Program.—A coal combustion residuals permit program shall consist of the following:

“(1) General Requirements.—

“(A) In General.—The implementing agency shall—

“(i) apply the subset of the revised criteria described in paragraph (2) to owners or operators of structures, including surface impoundments, that receive coal combustion residuals on or after the date of enactment of this section;
“(ii) with respect to structures that are receiving coal combustion residuals as of the date of enactment of this section, take the actions required under paragraph (3);

“(iii) impose requirements for surface impoundments that do not meet certain criteria pursuant to paragraph (4); and

“(iv) require that closure of structures occur in accordance with paragraph (5).

“(B) STRUCTURAL INTEGRITY.—

“(i) ENGINEERING CERTIFICATION.— The implementing agency shall require that an independent registered professional engineer certify that—

“(I) the design of each structure that receives coal combustion residuals on or after the date of enactment of this section is in accordance with recognized and generally accepted good engineering practices for containment of the maximum volume of coal combustion residuals and liquids which can be impounded therein; and
“(II) the construction and maintenance of the structure will ensure structural stability.

“(ii) EMERGENCY ACTION PLAN.— The implementing agency shall require that the owner or operator of any structure that is a surface impoundment that receives coal combustion residuals on or after the date of enactment of this section and that is classified by the State as posing a high hazard potential pursuant to the guidelines published by the Federal Emergency Management Agency entitled ‘Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams’ (FEMA Publication Number 333) prepare and maintain an emergency action plan that identifies responsible persons and actions to be taken in the event of a dam safety emergency.

“(iii) INSPECTION.—

““(I) IN GENERAL.—The implementing agency shall require that structures that are surface impoundments that receive coal combustion re-
residuals on or after the date of enactment of this section be inspected not less than annually by an independent registered professional engineer to assure that the design, operation, and maintenance of the surface impoundment is in accordance with recognized and generally accepted good engineering practices for containment of the maximum volume of coal combustion residuals and liquids which can be impounded therein, so as to ensure dam stability.

“(II) POTENTIALLY HAZARDOUS CONDITIONS.—The implementing agency shall require that if an inspection under subclause (I), or a periodic evaluation under clause (iv), reveals a potentially hazardous condition, the owner or operator of the structure shall immediately take action to mitigate the potentially hazardous condition and notify appropriate State and local first responders.
“(iv) Periodic evaluation.—The implementing agency shall require that structures that are surface impoundments that receive coal combustion residuals on or after the date of enactment of this section be periodically evaluated for appearances of structural weakness.

“(v) Deficiency.—

“(I) In general.—If the head of the implementing agency determines that a structure is deficient with respect to the requirements in clause (i), (iii), or (iv), the head of the agency has the authority to require action to correct the deficiency according to a schedule determined by the agency.

“(II) Uncorrected deficiencies.—If a deficiency is not corrected according to the schedule, the head of the implementing agency has the authority to require that the structure close in accordance with paragraph (5).
“(III) DAM SAFETY CONSULTATION.—In the case of a structure that is a surface impoundment, the head of the implementing agency shall, in making a determination under subclause (I), consult with appropriate State dam safety officials.

“(C) LOCATION.—The implementing agency shall require that structures that first receive coal combustion residuals on or after the date of enactment of this section shall be constructed with a base located a minimum of 2 feet above the upper limit of the water table, unless it is demonstrated to the satisfaction of the implementing agency that—

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

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

“(D) WIND DISPERSAL.—

“(i) IN GENERAL.—The implementing agency shall require that owners or operators of structures that receive coal combus-
tion residuals on or after the date of enactment of this section address wind dispersal of dust by requiring cover, or by wetting coal combustion residuals with water to a moisture content that prevents wind dispersal, facilitates compaction, and does not result in free liquids.

“(ii) ALTERNATIVE METHODS.—Subject to the review and approval by the implementing agency, owners or operators of structures that receive coal combustion residuals on or after the date of enactment of this section may propose alternative methods to address wind dispersal of dust that will provide comparable or more effective control of dust.

“(E) PERMITS.—The implementing agency shall require that owners or operators of structures that receive coal combustion residuals on or after the date of enactment of this section apply for and obtain permits incorporating the requirements of the coal combustion residuals permit program.

“(F) PUBLIC AVAILABILITY OF INFORMATION.—Except for information with respect to
which disclosure is prohibited under section 1905 of title 18, United States Code, the implementing agency shall ensure that—

“(i) documents for permit determinations are made available for public review and comment under the public participation process described in subsection (b)(2)(B)(iii)(III) or in subsection (e)(6), as applicable;

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

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

“(G) AGENCY AUTHORITY.—

“(i) IN GENERAL.—The implementing agency has the authority to—

“(I) obtain information necessary to determine whether the owner or operator of a structure is in compliance with the requirements of this subsection;

“(II) conduct or require monitoring and testing to ensure that
structures are in compliance with the requirements of this subsection;

“(III) enter, at reasonable times, any site or premise subject to the coal combustion residuals permit program for the purpose of inspecting structures and reviewing records relevant to the design, operation, and maintenance of structures.

“(ii) MONITORING AND TESTING.—If monitoring or testing is conducted under clause (i)(II) by or for the implementing agency, the implementing agency shall, if requested, provide to the owner or operator—

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

“(II) at the time of sampling, a portion of each sample equal in volume or weight to the portion retained by or for the implementing agency; and

“(III) a copy of the results of any analysis of samples collected by or for the implementing agency.
“(2) REvised CRiteria.—The subset of the revised criteria referred to in paragraph (1)(A)(i) are as follows:

“(A) Design requirements.—For new structures, and lateral expansions of existing structures, that first receive coal combustion residuals on or after the date of enactment of this section, the revised criteria regarding design requirements described in section 258.40 of title 40, Code of Federal Regulations, except that the leachate collection system requirements described in section 258.40(a)(2) of title 40, Code of Federal Regulations, do not apply to structures that are surface impoundments.

“(B) groundwater monitoring and corrective action.—For all structures that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria regarding groundwater monitoring and corrective action requirements described in subpart E of part 258 of title 40, Code of Federal Regulations, except that, for the purposes of this subparagraph, the revised criteria shall also include—
“(i) for the purposes of detection monitoring, the constituents boron, chloride, conductivity, fluoride, mercury, pH, sulfate, sulfide, and total dissolved solids; and

“(ii) for the purposes of assessment monitoring, establishing a groundwater protection standard, and assessment of corrective measures, the constituents aluminum, boron, chloride, fluoride, iron, manganese, molybdenum, pH, sulfate, and total dissolved solids.

“(C) CLOSURE.—For all structures that receive coal combustion residuals on or after the date of enactment of this section, in a manner consistent with paragraph (5), the revised criteria for closure described in subsections (a) through (e) and (h) through (j) of section 258.60 of title 40, Code of Federal Regulations.

“(D) POST-CLOSURE.—For all structures that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for post-closure care described in section 258.61 of title 40, Code of Federal
Regulations, except for the requirement described in subsection (a)(4) of that section.

“(E) LOCATION RESTRICTIONS.—The revised criteria for location restrictions described in—

“(i) for new structures, and lateral expansions of existing structures, that first receive coal combustion residuals on or after the date of enactment of this section, sections 258.11 through 258.15 of title 40, Code of Federal Regulations; and

“(ii) for existing structures that receive coal combustion residuals on or after the date of enactment of this section, sections 258.11 and 258.15 of title 40, Code of Federal Regulations.

“(F) AIR QUALITY.—For all structures that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for air quality described in section 258.24 of title 40, Code of Federal Regulations.

“(G) FINANCIAL ASSURANCE.—For all structures that receive coal combustion residuals on or after the date of enactment of this
section, the revised criteria for financial assur-
ance described in subpart G of part 258 of title

“(H) SURFACE WATER.—For all structures
that receive coal combustion residuals on or
after the date of enactment of this section, the
revised criteria for surface water described in
section 258.27 of title 40, Code of Federal Reg-
ulations.

“(I) RECORDKEEPING.—For all structures
that receive coal combustion residuals on or
after the date of enactment of this section, the
revised criteria for recordkeeping described in
section 258.29 of title 40, Code of Federal Reg-
ulations.

“(J) RUN-ON AND RUN-OFF CONTROL SYS-
TEMS FOR LAND-BASED UNITS.—For all land-
fills and other land-based units, other than sur-
face impoundments, that receive coal combus-
tion residuals on or after the date of enactment
of this section, the revised criteria for run-on
and run-off control systems described in section

“(K) RUN-OFF CONTROL SYSTEMS FOR
SURFACE IMPOUNDMENTS.—For all surface im-

poundments that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for run-off control systems described in section 258.26(a)(2) of title 40, Code of Federal Regulations.

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

“(A) NOTIFICATION.—Not later than the date on which a State submits a certification under subsection (b)(2), not later than 30 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 36 months after the date of enactment of this section with respect to a coal combustion residuals permit program that is being implemented by the Administrator under subsection (e)(3), as applicable, the implementing agency shall notify owners or operators of structures that are receiving coal combustion residuals as of the date of enactment of this section within the State of—

“(i) the obligation to apply for and obtain a permit under subparagraph (C); and
“(ii) the requirements referred to in subparagraph (B).

“(B) COMPLIANCE WITH CERTAIN REQUIREMENTS.—Not later than 12 months after the date on which a State submits a certification under subsection (b)(2), not later than 42 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 48 months after the date of enactment of this section with respect to a coal combustion residuals permit program that is being implemented by the Administrator under subsection (e)(3), as applicable, the implementing agency shall require owners or operators of structures that are receiving coal combustion residuals as of the date of enactment of this section to comply with—

“(i) the requirements under paragraphs (1)(B)(ii), (1)(D), (2)(B), (2)(F), (2)(H), (2)(J), and (2)(K); and

“(ii) the groundwater recordkeeping requirement described in section 258.29(a)(5) of title 40, Code of Federal Regulations.

“(C) PERMITS.—
“(i) PERMIT DEADLINE.—Not later than 48 months after the date on which a State submits a certification under subsection (b)(2), not later than 78 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 84 months after the date of enactment of this section with respect to a coal combustion residuals permit program that is being implemented by the Administrator under subsection (e)(3), as applicable, the implementing agency shall issue, with respect to a structure that is receiving coal combustion residuals as of the date of enactment of this section, a final permit incorporating the requirements of the coal combustion residuals permit program, or a final denial for an application submitted requesting such a permit.

“(ii) APPLICATION DEADLINE.—The implementing agency shall identify, in collaboration with the owner or operator of a structure described in clause (i), a reasonable deadline by which the owner or oper-
ator shall submit a permit application under such clause.

“(D) INTERIM OPERATION.—

“(i) PRIOR TO DEADLINES.—With respect to any period of time on or after the date of enactment of this section but prior to the applicable deadline in subparagraph (B), the owner or operator of a structure that is receiving coal combustion residuals as of the date of enactment of this section may continue to operate such structure until such applicable deadline under the applicable authority in effect.

“(ii) PRIOR TO PERMIT.—Unless the implementing agency determines that the structure should close pursuant to paragraph (5), if the owner or operator of a structure that is receiving coal combustion residuals as of the date of enactment of this section meets the requirements referred to in subparagraph (B) by the applicable deadline in such subparagraph, the owner or operator may operate the structure until such time as the implementing agency issues, under subparagraph (C), a
final permit incorporating the requirements of the coal combustion residuals permit program, or a final denial for an application submitted requesting such a permit.

“(4) REQUIREMENTS FOR SURFACE IMPOUNDMENTS THAT DO NOT MEET CERTAIN CRITERIA.—

“(A) SURFACE IMPOUNDMENTS THAT REQUIRE ASSESSMENT OF CORRECTIVE MEASURES WITHIN 10 YEARS OF THE DATE OF ENACTMENT.—

“(i) IN GENERAL.—In addition to the groundwater monitoring and corrective action requirements described in paragraph (2)(B), the implementing agency shall require a surface impoundment that receives coal combustion residuals on or after the date of enactment of this section to comply with the requirements in clause (ii) of this subparagraph and clauses (i) and (ii) of subparagraph (D) if the surface impoundment—

“(I) does not—

“(aa) have a liner system described in section 258.40(b) of
title 40, Code of Federal Regulations; and

“(bb) meet the design criteria described in section 258.40(a)(1) of title 40, Code of Federal Regulations; and

“(II) within 10 years after the date of enactment of this section, is required under section 258.56(a) of title 40, Code of Federal Regulations, to undergo an assessment of corrective measures for any constituent covered under subpart E of part 258 of title 40, Code of Federal Regulations, or otherwise identified in paragraph (2)(B)(ii) of this subsection, for which assessment groundwater monitoring is required.

“(ii) Deadline to Meet Groundwater Protection Standard.—Except as provided in subparagraph (C), the implementing agency shall require that the groundwater protection standard, for surface impoundments identified in clause (i) of this subparagraph, established by the
implementing agency under section 258.55(h) or 258.55(i) of title 40, Code of Federal Regulations, for any constituent for which corrective measures are required shall be met—

“(I) as soon as practicable at the relevant point of compliance, as described in section 258.40(d) of title 40, Code of Federal Regulations; and

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

“(B) SURFACE IMPOUNDMENTS SUBJECT TO A STATE CORRECTIVE ACTION REQUIREMENT AS OF THE DATE OF ENACTMENT.—

“(i) IN GENERAL.—In addition to the groundwater monitoring and corrective action requirements described in paragraph (2)(B), the implementing agency shall require a surface impoundment that receives coal combustion residuals on or after the date of enactment of this section to comply with the requirements in clause (ii) of this subparagraph and clauses (i) and (ii) of
subparagraph (D) if the surface impoundment—

“(I) does not—

“(aa) have a liner system described in section 258.40(b) of title 40, Code of Federal Regulations; and

“(bb) meet the design criteria described in section 258.40(a)(1) of title 40, Code of Federal Regulations; and

“(II) as of the date of enactment of this section, is subject to a State corrective action requirement.

“(ii) **Deadline to Meet Groundwater Protection Standard.**—Except as provided in subparagraph (C), the implementing agency shall require that the groundwater protection standard, for surface impoundments identified in clause (i) of this subparagraph, established by the implementing agency under section 258.55(h) or 258.55(i) of title 40, Code of Federal Regulations, for any constituent
for which corrective measures are required shall be met—

“(I) as soon as practicable at the relevant point of compliance, as described in section 258.40(d) of title 40, Code of Federal Regulations; and

“(II) not later than 8 years after the date of enactment of this section.

“(C) EXTENSION OF DEADLINE.—

“(i) IN GENERAL.—Except as provided in clause (ii) of this subparagraph, the deadline for meeting a groundwater protection standard under subparagraph (A)(ii) or (B)(ii) may be extended by the implementing agency, after opportunity for public notice and comment under the public participation process described in subsection (b)(2)(B)(iii)(III), or in subsection (c)(6) based on—

“(I) the effectiveness of any interim measures implemented by the owner or operator of the facility under section 258.58(a)(3) of title 40, Code of Federal Regulations;
“(II) the level of progress demonstrated in meeting the groundwater protection standard;

“(III) the potential for other adverse human health or environmental exposures attributable to the contamination from the surface impoundment undergoing corrective action; and

“(IV) the lack of available alternative management capacity for the coal combustion residuals and related materials managed in the impoundment at the facility at which the impoundment is located if the owner or operator has used best efforts, as necessary, to design, obtain any necessary permits, finance, construct, and render operational the alternative management capacity during the time period for meeting a groundwater protection standard in subparagraph (A)(ii) or (B)(ii).

“(ii) Exception.—The deadline under subparagraph (A)(ii) or (B)(ii) shall not be extended if there has been contami-
nation of public or private drinking water systems attributable to a surface impoundment undergoing corrective action, unless the contamination has been addressed by providing a permanent replacement water system.

“(D) ADDITIONAL REQUIREMENTS.—

“(i) CLOSURE.—If the deadline under subparagraph (A)(ii), (B)(ii), or (C) is not satisfied, the surface impoundment shall cease receiving coal combustion residuals and initiate closure under paragraph (5).

“(ii) INTERIM MEASURES.—

“(I) IN GENERAL.—Except as provided in subclause (II), not later than 90 days after the date on which the assessment of corrective measures is initiated, the owner or operator of a surface impoundment described in subparagraph (A) or (B) shall implement interim measures, as necessary, under the factors in section 258.58(a)(3) of title 40, Code of Federal Regulations.
“(II) IMPOUNDMENTS SUBJECT TO STATE CORRECTIVE ACTION REQUIREMENT AS OF THE DATE OF ENACTMENT.—Subclause (I) shall only apply to surface impoundments subject to a State corrective action requirement as of the date of enactment of this section if the owner or operator has not implemented interim measures, as necessary, under the factors in section 258.58(a)(3) of title 40, Code of Federal Regulations.

“(E) SURFACE IMPOUNDMENTS THAT REQUIRE ASSESSMENT OF CORRECTIVE MEASURES MORE THAN 10 YEARS AFTER DATE OF ENACTMENT.—

“(i) IN GENERAL.—In addition to the groundwater monitoring and corrective action requirements described in paragraph (2)(B), the implementing agency shall require a surface impoundment that receives coal combustion residuals on or after the date of enactment of this section to comply with the requirements in clause (ii) if the surface impoundment—
“(I) does not—

“(aa) have a liner system described in section 258.40(b) of title 40, Code of Federal Regulations; and

“(bb) meet the design criteria described in section 258.40(a)(1) of title 40, Code of Federal Regulations; and

“(II) more than 10 years after the date of enactment of this section, is required under section 258.56(a) title 40, Code of Federal Regulations, to undergo an assessment of corrective measures for any constituent covered under subpart E of part 258 of title 40, Code of Federal Regulations, or otherwise identified in paragraph (2)(B)(ii) of this subsection, for which assessment groundwater monitoring is required.

“(ii) REQUIREMENTS.—

“(I) CLOSURE.—The surface impoundments identified in clause (i) shall cease receiving coal combustion
residuals and initiate closure in accordance with paragraph (5) after alternative management capacity at the facility is available for the coal combustion residuals and related materials managed in the impoundment.

“(II) BEST EFFORTS.—The alternative management capacity shall be developed as soon as practicable with the owner or operator using best efforts to design, obtain necessary permits for, finance, construct, and render operational the alternative management capacity.

“(III) ALTERNATIVE CAPACITY MANAGEMENT PLAN.—The owner or operator shall, in collaboration with the implementing agency, prepare a written plan that describes the steps necessary to develop the alternative management capacity and includes a schedule for completion.

“(IV) PUBLIC PARTICIPATION.—The plan described in subclause (III) shall be subject to public notice and
comment under the public participa-
tion process described in subsection
(b)(2)(B)(iii)(III) or in subsection
(e)(6), as applicable.

“(5) CLOSURE.—

“(A) IN GENERAL.—If it is determined by
the implementing agency that a structure
should close because the requirements of a coal
combustion residuals permit program are not
being satisfied with respect to such structure,
or if it is determined by the owner or operator
that a structure should close, the time period
and method for the closure of such structure
shall be set forth in a closure plan that estab-
lishes a deadline for completion of closure as
soon as practicable and that takes into account
the nature and the site-specific characteristics
of the structure to be closed.

“(B) SURFACE IMPOUNDMENT.—In the
case of a surface impoundment, the closure plan
under subparagraph (A) shall require, at a min-
imum, the removal of liquid and the stabiliza-
tion of remaining waste, as necessary to sup-
port the final cover.
“(d) **Federal Review of State Permit Programs.**—

“(1) **In General.**—The Administrator shall provide to a State written notice and an opportunity to remedy deficiencies in accordance with paragraph (3) if at any time the State—

“(A) does not satisfy the notification requirement under subsection (b)(1);

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

“(C) does not satisfy the maintenance requirement under subsection (b)(3);

“(D) is not implementing a coal combustion residuals permit program, with respect to which the State has submitted a certification under subsection (b)(2), that meets the requirements described in subsection (c);

“(E) is not implementing a coal combustion residuals permit program, with respect to which the State has submitted a certification under subsection (b)(2)—

“(i) that is consistent with such certification; and
“(ii) for which the State continues to have in effect statutes or regulations necessary to implement such program; or

“(F) does not make available to the Administrator, within 90 days of a written request, specific information necessary for the Administrator to ascertain whether the State has satisfied the requirements described in subparagraphs (A) through (E).

“(2) REQUEST.—If a request described in paragraph (1)(F) is proposed pursuant to a petition to the Administrator, the Administrator shall only make the request if the Administrator does not possess the information necessary to ascertain whether the State has satisfied the requirements described in subparagraphs (A) through (E) of such paragraph.

“(3) CONTENTS OF NOTICE; DEADLINE FOR RESPONSE.—A notice provided under paragraph (1) shall—

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

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

“(i) in the case of a deficiency described in subparagraphs (A) through (E) of paragraph (1), not earlier than 180 days after the date on which the State receives the notice; and

“(ii) in the case of a deficiency described in paragraph (1)(F), not later than 90 days after the date on which the State receives the notice.

“(4) CRITERIA FOR DETERMINING DEFICIENCY OF STATE PERMIT PROGRAM.—In making a determination whether a State has failed to satisfy the requirements described in subparagraphs (A) through (E) of paragraph (1), or a determination under subsection (e)(1)(B), the Administrator shall consider, as appropriate—

“(A) whether the State’s statutes or regulations to implement a coal combustion residuals permit program are not sufficient to meet the requirements described in subsection (e) because of—
“(i) failure of the State to promulgate
or enact new statutes or regulations when
necessary; or
“(ii) action by a State legislature or
court striking down or limiting such State
statutes or regulations;
“(B) whether the operation of the State
coal combustion residuals permit program fails
to comply with the requirements of subsection
(c) because of—
“(i) failure of the State to issue per-
mits as required in subsection (c)(1)(E);
“(ii) repeated issuance of permits by
the State which do not meet the require-
ments of subsection (c);
“(iii) failure of the State to comply
with the public participation requirements
of this section; or
“(iv) failure of the State to implement
corrective action requirements as described
in subsection (c)(2)(B); and
“(C) whether the enforcement of a State
coal combustion residuals permit program fails
to comply with the requirements of this section
because of—
“(i) failure to act on violations of permits, as identified by the State; or

“(ii) repeated failure by the State to inspect or otherwise determine compliance pursuant to the process identified in subsection (b)(2)(B)(iii)(I).

“(e) IMPLEMENTATION BY ADMINISTRATOR.—

“(1) FEDERAL BACKSTOP AUTHORITY.—The Administrator shall implement a coal combustion residuals permit program for a State only if—

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

“(B) the State has received a notice under subsection (d) and the Administrator determines, after providing a 30-day period for notice and public comment, that the State has failed, by the deadline identified in the notice under subsection (d)(3)(B), to remedy the deficiencies detailed in the notice under subsection (d)(3)(A); or

“(C) the State informs the Administrator, in writing, that such State will no longer implement such a permit program.
“(2) Review.—A State may obtain a review of a determination by the Administrator under this subsection as if the determination was a final regulation for purposes of section 7006.

“(3) Other structures.—For structures that receive coal combustion residuals on or after the date of enactment of this section located on property within the exterior boundaries of a State that the State does not have authority or jurisdiction to regulate, the Administrator shall implement a coal combustion residuals permit program only for those structures.

“(4) Requirements.—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1) or (3), the permit program shall consist of the requirements described in subsection (c).

“(5) Enforcement.—

“(A) In general.—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1)—

“(i) the authorities referred to in section 4005(c)(2)(A) shall apply with respect to coal combustion residuals and structures for which the Administrator is imple-
menting the coal combustion residuals permit program; and

“(ii) the Administrator may use those authorities to inspect, gather information, and enforce the requirements of this section in the State.

“(B) OTHER STRUCTURES.—If the Administrator implements a coal combustion residuals permit program under paragraph (3)—

“(i) the authorities referred to in section 4005(c)(2)(A) shall apply with respect to coal combustion residuals and structures for which the Administrator is implementing the coal combustion residuals permit program; and

“(ii) the Administrator may use those authorities to inspect, gather information, and enforce the requirements of this section for the structures for which the Administrator is implementing the coal combustion residuals permit program.

“(6) PUBLIC PARTICIPATION PROCESS.—If the Administrator implements a coal combustion residuals permit program for a State under this subsection, the Administrator shall provide a 30-day pe-
period for the public participation process required in paragraphs (1)(F)(i), (4)(C)(i), and (4)(E)(ii)(IV) of subsection (c).

“(f) State Control After Implementation by Administrator.—

“(1) State control.—

“(A) New adoption, or resumption of, and implementation by state.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(A), or subsection (e)(1)(C), the State may adopt and implement such a permit program by—

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

“(ii) not later than 6 months after the date of such notification, submitting to the Administrator a certification under subsection (b)(2); and

“(iii) receiving from the Administrator—

“(I) a determination, after providing a 30-day period for notice and public comment, that the State coal
combustion residuals permit program meets the requirements described in subsection (c); and

“(II) a timeline for transition of control of the coal combustion residuals permit program.

“(B) REMEDYING DEFICIENT PERMIT PROGRAM.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(B), the State may adopt and implement such a permit program by—

“(i) remedying only the deficiencies detailed in the notice pursuant to subsection (d)(3)(A); and

“(ii) receiving from the Administrator—

“(I) a determination, after providing a 30-day period for notice and public comment, that the deficiencies detailed in such notice have been remedied; and

“(II) a timeline for transition of control of the coal combustion residuals permit program.
“(2) Review of Determination.—

“(A) Determination Required.—The Administrator shall make a determination under paragraph (1) not later than 90 days after the date on which the State submits a certification under paragraph (1)(A)(ii), or notifies the Administrator that the deficiencies have been remedied pursuant to paragraph (1)(B)(i), as applicable.

“(B) Review.—A State may obtain a review of a determination by the Administrator under paragraph (1) as if such determination was a final regulation for purposes of section 7006.

“(3) Implementation During Transition.—

“(A) Effect on Actions and Orders.—Program requirements of, and actions taken or orders issued pursuant to, a coal combustion residuals permit program shall remain in effect if—

“(i) a State takes control of its coal combustion residuals permit program from the Administrator under paragraph (1); or
“(ii) the Administrator takes control of a coal combustion residuals permit program from a State under subsection (e).

“(B) Change in Requirements.—Paragraph (A) shall apply to such program requirements, actions, and orders until such time as—

“(i) the implementing agency changes the requirements of the coal combustion residuals permit program with respect to the basis for the action or order; or

“(ii) the State or the Administrator, whichever took the action or issued the order, certifies the completion of a corrective action that is the subject of the action or order.

“(4) Single Permit Program.—If a State adopts and implements a coal combustion residuals permit program under this subsection, the Administrator shall cease to implement the permit program implemented under subsection (e)(1) for such State.

“(g) Effect on Determination Under 4005(c) or 3006.—The Administrator shall not consider the implementation of a coal combustion residuals permit program by the Administrator under subsection (e) in making
a determination of approval for a permit program or other
system of prior approval and conditions under section
4005(c) or of authorization for a program under section
3006.

“(h) Authority.—

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

“(2) Authority of the Administrator.—

“(A) In General.—Except as provided in
subsections (d) and (e) and section 6005, the
Administrator shall, with respect to the regula-
tion of coal combustion residuals, defer to the
States pursuant to this section.

“(B) Imminent Hazard.—Nothing in this
section shall be construed as affecting the au-
thority of the Administrator under section 7003
with respect to coal combustion residuals.

“(C) Enforcement Assistance Only
upon Request.—Upon request from the head
of a lead State agency that is implementing a
coal combustion residuals permit program, the
Administrator may provide to such State agency only the enforcement assistance requested.

“(D) CONCURRENT ENFORCEMENT.—Except as provided in subparagraph (C), the Administrator shall not have concurrent enforcement authority when a State is implementing a coal combustion residuals permit program, including during any period of interim operation described in subsection (c)(3)(D).

“(E) OTHER AUTHORITY.—The Administrator shall not have authority to finalize the proposed rule published at pages 35128 through 35264 of volume 75 of the Federal Register (June 21, 2010).

“(F) OTHER RESPONSE AUTHORITY.—Nothing in this section shall be construed as affecting the authority of the Administrator under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) with respect to coal combustion residuals.

“(3) CITIZEN SUITS.—Nothing in this section shall be construed to affect the authority of a person to commence a civil action in accordance with section 7002.
“(i) MINE RECLAMATION ACTIVITIES.—A coal combustion residuals permit program implemented by the Administrator under subsection (e) shall not apply to the utilization, placement, and storage of coal combustion residuals at surface mining and reclamation operations.

“(j) DEFINITIONS.—In this section:

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

“(A) the solid wastes listed in section 3001(b)(3)(A)(i), including recoverable materials from such wastes;

“(B) coal combustion wastes that are co-managed with wastes produced in conjunction with the combustion of coal, provided that such wastes are not segregated and disposed of separately from the coal combustion wastes and comprise a relatively small proportion of the total wastes being disposed in the structure;

“(C) fluidized bed combustion wastes;

“(D) wastes from the co-burning of coal with non-hazardous secondary materials, provided that coal makes up at least 50 percent of the total fuel burned; and
“(E) wastes from the co-burning of coal with materials described in subparagraph (A) that are recovered from monofills.

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

“(3) CODE OF FEDERAL REGULATIONS.—The term ‘Code of Federal Regulations’ means the Code of Federal Regulations (as in effect on the date of enactment of this section) or any successor regulations.

“(4) IMPLEMENTING AGENCY.—The term ‘implementing agency’ means the agency responsible for implementing a coal combustion residuals permit program for a State, which shall either be the lead State implementing agency identified under subsection (b)(2)(B)(i) or the Administrator pursuant to subsection (e).

“(5) PERMIT; PRIOR APPROVAL AND CONDITIONS.—Except as provided in subsections (b)(3) and (g), the terms ‘permit’ and ‘prior approval and
conditions’ mean any authorization, license, or equivalent control document that incorporates the requirements of subsection (c).

“(6) Revised Criteria.—The term ‘revised criteria’ means the criteria promulgated for municipal solid waste landfill units under section 4004(a) and under section 1008(a)(3), as revised under section 4010(c).

“(7) Structure.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘structure’ means a landfill, surface impoundment, or other land-based unit which receives, or is intended to receive, coal combustion residuals.

“(B) De minimis receipt.—The term ‘structure’ does not include any land-based unit that receives only de minimis quantities of coal combustion residuals if the presence of coal combustion residuals is incidental to the material managed in the unit.”.

(b) Conforming Amendment.—The table of contents contained in section 1001 of the Solid Waste Disposal Act is amended by inserting after the item relating to section 4010 the following:

“Sec. 4011. Management and disposal of coal combustion residuals.”.
SEC. 3. 2000 REGULATORY DETERMINATION.

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

SEC. 4. TECHNICAL ASSISTANCE.

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

SEC. 5. FEDERAL POWER ACT.

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