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(Original Signature of Member)

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.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Coal Residuals Reuse and Management Act of 2013”.

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

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

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

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

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

10 “(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-
11 TION RESIDUALS.—Each State may adopt, implement,
12 and enforce a coal combustion residuals permit program
13 if such State provides the notification required under sub-
14 section (b)(1), and the certification required under sub-
15 section (b)(2).

16 “(b) STATE ACTIONS.—

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

1 “(2) CERTIFICATION.—

2 “(A) IN GENERAL.—Not later than 36
3 months after the date of enactment of this sec-
4 tion (except as provided in subsection
5 (f)(1)(A)), in the case of a State that has noti-
6 fied the Administrator that it will implement a
7 coal combustion residuals permit program, the
8 head of the lead State implementing agency
9 shall submit to the Administrator a certification
10 that such coal combustion residuals permit pro-
11 gram meets the requirements described in sub-
12 section (c).

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

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

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

22 “(iii) an explanation of how the State
23 coal combustion residuals permit program
24 meets the requirements of this section, in-
25 cluding a description of the State’s—

1 “(I) process to inspect or other-
2 wise determine compliance with such
3 permit program;

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

6 “(III) public participation proc-
7 ess for the promulgation, amendment,
8 or repeal of regulations for, and the
9 issuance of permits under, such per-
10 mit program;

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

15 “(V) statutes, regulations, or
16 policies pertaining to structural integ-
17 rity or dam safety that may be ap-
18 plied to structures through such per-
19 mit program;

20 “(iv) a certification that the State has
21 in effect, at the time of certification, stat-
22 utes or regulations necessary to implement
23 a coal combustion residuals permit pro-
24 gram that meets the requirements de-
25 scribed in subsection (c); and

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

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

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

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

17 “(1) GENERAL REQUIREMENTS.—

18 “(A) IN GENERAL.—The implementing
19 agency shall—

20 “(i) apply the subset of the revised
21 criteria described in paragraph (2) to own-
22 ers or operators of structures, including
23 surface impoundments, that receive coal
24 combustion residuals on or after the date
25 of enactment of this section;

1 “(ii) with respect to structures that
2 are receiving coal combustion residuals as
3 of the date of enactment of this section,
4 take the actions required under paragraph
5 (3);

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

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

11 “(B) STRUCTURAL INTEGRITY.—

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

16 “(I) the design of each structure
17 that receives coal combustion residu-
18 als on or after the date of enactment
19 of this section is in accordance with
20 recognized and generally accepted
21 good engineering practices for con-
22 tainment of the maximum volume of
23 coal combustion residuals and liquids
24 which can be impounded therein; and

1 “(II) the construction and main-
2 tenance of the structure will ensure
3 structural stability.

4 “(ii) EMERGENCY ACTION PLAN.—
5 The implementing agency shall require
6 that the owner or operator of any structure
7 that is a surface impoundment that re-
8 ceives coal combustion residuals on or after
9 the date of enactment of this section and
10 that is classified by the State as posing a
11 high hazard potential pursuant to the
12 guidelines published by the Federal Emer-
13 gency Management Agency entitled ‘Fed-
14 eral Guidelines for Dam Safety: Hazard
15 Potential Classification System for Dams’
16 (FEMA Publication Number 333) prepare
17 and maintain an emergency action plan
18 that identifies responsible persons and ac-
19 tions to be taken in the event of a dam
20 safety emergency.

21 “(iii) INSPECTION.—

22 “(I) IN GENERAL.—The imple-
23 menting agency shall require that
24 structures that are surface impound-
25 ments that receive coal combustion re-

1 siduals on or after the date of enact-
2 ment of this section be inspected not
3 less than annually by an independent
4 registered professional engineer to as-
5 sure that the design, operation, and
6 maintenance of the surface impound-
7 ment is in accordance with recognized
8 and generally accepted good engineer-
9 ing practices for containment of the
10 maximum volume of coal combustion
11 residuals and liquids which can be im-
12 pounded therein, so as to ensure dam
13 stability.

14 “(II) POTENTIALLY HAZARDOUS
15 CONDITIONS.—The implementing
16 agency shall require that if an inspec-
17 tion under subclause (I), or a periodic
18 evaluation under clause (iv), reveals a
19 potentially hazardous condition, the
20 owner or operator of the structure
21 shall immediately take action to miti-
22 gate the potentially hazardous condi-
23 tion and notify appropriate State and
24 local first responders.

1 “(iv) PERIODIC EVALUATION.—The
2 implementing agency shall require that
3 structures that are surface impoundments
4 that receive coal combustion residuals on
5 or after the date of enactment of this sec-
6 tion be periodically evaluated for appear-
7 ances of structural weakness.

8 “(v) DEFICIENCY.—

9 “(I) IN GENERAL.—If the head
10 of the implementing agency deter-
11 mines that a structure is deficient
12 with respect to the requirements in
13 clause (i), (iii), or (iv), the head of the
14 agency has the authority to require
15 action to correct the deficiency accord-
16 ing to a schedule determined by the
17 agency.

18 “(II) UNCORRECTED DEFICI-
19 ENCIES.—If a deficiency is not cor-
20 rected according to the schedule, the
21 head of the implementing agency has
22 the authority to require that the
23 structure close in accordance with
24 paragraph (5).

1 “(III) DAM SAFETY CONSULTA-
2 TION.—In the case of a structure that
3 is a surface impoundment, the head of
4 the implementing agency shall, in
5 making a determination under sub-
6 clause (I), consult with appropriate
7 State dam safety officials.

8 “(C) LOCATION.—The implementing agen-
9 cy shall require that structures that first receive
10 coal combustion residuals on or after the date
11 of enactment of this section shall be constructed
12 with a base located a minimum of 2 feet above
13 the upper limit of the water table, unless it is
14 demonstrated to the satisfaction of the imple-
15 menting agency that—

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

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

22 “(D) WIND DISPERSAL.—

23 “(i) IN GENERAL.—The implementing
24 agency shall require that owners or opera-
25 tors of structures that receive coal combus-

1 tion residuals on or after the date of enact-
2 ment of this section address wind dispersal
3 of dust by requiring cover, or by wetting
4 coal combustion residuals with water to a
5 moisture content that prevents wind dis-
6 persal, facilitates compaction, and does not
7 result in free liquids.

8 “(ii) ALTERNATIVE METHODS.—Sub-
9 ject to the review and approval by the im-
10 plementing agency, owners or operators of
11 structures that receive coal combustion re-
12 siduals on or after the date of enactment
13 of this section may propose alternative
14 methods to address wind dispersal of dust
15 that will provide comparable or more effec-
16 tive control of dust.

17 “(E) PERMITS.—The implementing agency
18 shall require that owners or operators of struc-
19 tures that receive coal combustion residuals on
20 or after the date of enactment of this section
21 apply for and obtain permits incorporating the
22 requirements of the coal combustion residuals
23 permit program.

24 “(F) PUBLIC AVAILABILITY OF INFORMA-
25 TION.—Except for information with respect to

1 which disclosure is prohibited under section
2 1905 of title 18, United States Code, the imple-
3 menting agency shall ensure that—

4 “(i) documents for permit determina-
5 tions are made available for public review
6 and comment under the public participa-
7 tion process described in subsection
8 (b)(2)(B)(iii)(III) or in subsection (e)(6),
9 as applicable;

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

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

16 “(G) AGENCY AUTHORITY.—

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

19 “(I) obtain information necessary
20 to determine whether the owner or op-
21 erator of a structure is in compliance
22 with the requirements of this sub-
23 section;

24 “(II) conduct or require moni-
25 toring and testing to ensure that

1 structures are in compliance with the
2 requirements of this subsection;

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

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

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

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

23 “(III) a copy of the results of
24 any analysis of samples collected by or
25 for the implementing agency.

1 “(2) REVISED CRITERIA.—The subset of the re-
2 vised criteria referred to in paragraph (1)(A)(i) are
3 as follows:

4 “(A) DESIGN REQUIREMENTS.—For new
5 structures, and lateral expansions of existing
6 structures, that first receive coal combustion re-
7 siduals on or after the date of enactment of this
8 section, the revised criteria regarding design re-
9 quirements described in section 258.40 of title
10 40, Code of Federal Regulations, except that
11 the leachate collection system requirements de-
12 scribed in section 258.40(a)(2) of title 40, Code
13 of Federal Regulations, do not apply to struc-
14 tures that are surface impoundments.

15 “(B) GROUNDWATER MONITORING AND
16 CORRECTIVE ACTION.—For all structures that
17 receive coal combustion residuals on or after the
18 date of enactment of this section, the revised
19 criteria regarding groundwater monitoring and
20 corrective action requirements described in sub-
21 part E of part 258 of title 40, Code of Federal
22 Regulations, except that, for the purposes of
23 this subparagraph, the revised criteria shall also
24 include—

1 “(i) for the purposes of detection
2 monitoring, the constituents boron, chlo-
3 ride, conductivity, fluoride, mercury, pH,
4 sulfate, sulfide, and total dissolved solids;
5 and

6 “(ii) for the purposes of assessment
7 monitoring, establishing a groundwater
8 protection standard, and assessment of
9 corrective measures, the constituents alu-
10 minum, boron, chloride, fluoride, iron,
11 manganese, molybdenum, pH, sulfate, and
12 total dissolved solids.

13 “(C) CLOSURE.—For all structures that
14 receive coal combustion residuals on or after the
15 date of enactment of this section, in a manner
16 consistent with paragraph (5), the revised cri-
17 teria for closure described in subsections (a)
18 through (e) and (h) through (j) of section
19 258.60 of title 40, Code of Federal Regulations.

20 “(D) POST-CLOSURE.—For all structures
21 that receive coal combustion residuals on or
22 after the date of enactment of this section, the
23 revised criteria for post-closure care described
24 in section 258.61 of title 40, Code of Federal

1 Regulations, except for the requirement de-
2 scribed in subsection (a)(4) of that section.

3 “(E) LOCATION RESTRICTIONS.—The re-
4 vised criteria for location restrictions described
5 in—

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

12 “(ii) for existing structures that re-
13 ceive coal combustion residuals on or after
14 the date of enactment of this section, sec-
15 tions 258.11 and 258.15 of title 40, Code
16 of Federal Regulations.

17 “(F) AIR QUALITY.—For all structures
18 that receive coal combustion residuals on or
19 after the date of enactment of this section, the
20 revised criteria for air quality described in sec-
21 tion 258.24 of title 40, Code of Federal Regula-
22 tions.

23 “(G) FINANCIAL ASSURANCE.—For all
24 structures that receive coal combustion residu-
25 als on or after the date of enactment of this

1 section, the revised criteria for financial assur-
2 ance described in subpart G of part 258 of title
3 40, Code of Federal Regulations.

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

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

16 “(J) RUN-ON AND RUN-OFF CONTROL SYS-
17 TEMS FOR LAND-BASED UNITS.—For all land-
18 fills and other land-based units, other than sur-
19 face impoundments, that receive coal combus-
20 tion residuals on or after the date of enactment
21 of this section, the revised criteria for run-on
22 and run-off control systems described in section
23 258.26 of title 40, Code of Federal Regulations.

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

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

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

8 “(A) NOTIFICATION.—Not later than the
9 date on which a State submits a certification
10 under subsection (b)(2), not later than 30
11 months after the Administrator receives notice
12 under subsection (e)(1)(A), or not later than 36
13 months after the date of enactment of this sec-
14 tion with respect to a coal combustion residuals
15 permit program that is being implemented by
16 the Administrator under subsection (e)(3), as
17 applicable, the implementing agency shall notify
18 owners or operators of structures that are re-
19 ceiving coal combustion residuals as of the date
20 of enactment of this section within the State
21 of—

22 “(i) the obligation to apply for and
23 obtain a permit under subparagraph (C);
24 and

1 “(ii) the requirements referred to in
2 subparagraph (B).

3 “(B) COMPLIANCE WITH CERTAIN RE-
4 QUIREMENTS.—Not later than 12 months after
5 the date on which a State submits a certifi-
6 cation under subsection (b)(2), not later than
7 42 months after the Administrator receives no-
8 tice under subsection (e)(1)(A), or not later
9 than 48 months after the date of enactment of
10 this section with respect to a coal combustion
11 residuals permit program that is being imple-
12 mented by the Administrator under subsection
13 (e)(3), as applicable, the implementing agency
14 shall require owners or operators of structures
15 that are receiving coal combustion residuals as
16 of the date of enactment of this section to com-
17 ply with—

18 “(i) the requirements under para-
19 graphs (1)(B)(ii), (1)(D), (2)(B), (2)(F),
20 (2)(H), (2)(J), and (2)(K); and

21 “(ii) the groundwater recordkeeping
22 requirement described in section
23 258.29(a)(5) of title 40, Code of Federal
24 Regulations.

25 “(C) PERMITS.—

1 “(i) PERMIT DEADLINE.—Not later
2 than 48 months after the date on which a
3 State submits a certification under sub-
4 section (b)(2), not later than 78 months
5 after the Administrator receives notice
6 under subsection (e)(1)(A), or not later
7 than 84 months after the date of enact-
8 ment of this section with respect to a coal
9 combustion residuals permit program that
10 is being implemented by the Administrator
11 under subsection (e)(3), as applicable, the
12 implementing agency shall issue, with re-
13 spect to a structure that is receiving coal
14 combustion residuals as of the date of en-
15 actment of this section, a final permit in-
16 corporating the requirements of the coal
17 combustion residuals permit program, or a
18 final denial for an application submitted
19 requesting such a permit.

20 “(ii) APPLICATION DEADLINE.—The
21 implementing agency shall identify, in col-
22 laboration with the owner or operator of a
23 structure described in clause (i), a reason-
24 able deadline by which the owner or oper-

1 ator shall submit a permit application
2 under such clause.

3 “(D) INTERIM OPERATION.—

4 “(i) PRIOR TO DEADLINES.—With re-
5 spect to any period of time on or after the
6 date of enactment of this section but prior
7 to the applicable deadline in subparagraph
8 (B), the owner or operator of a structure
9 that is receiving coal combustion residuals
10 as of the date of enactment of this section
11 may continue to operate such structure
12 until such applicable deadline under the
13 applicable authority in effect.

14 “(ii) PRIOR TO PERMIT.—Unless the
15 implementing agency determines that the
16 structure should close pursuant to para-
17 graph (5), if the owner or operator of a
18 structure that is receiving coal combustion
19 residuals as of the date of enactment of
20 this section meets the requirements re-
21 ferred to in subparagraph (B) by the appli-
22 cable deadline in such subparagraph, the
23 owner or operator may operate the struc-
24 ture until such time as the implementing
25 agency issues, under subparagraph (C), a

1 final permit incorporating the requirements
2 of the coal combustion residuals permit
3 program, or a final denial for an applica-
4 tion submitted requesting such a permit.

5 “(4) REQUIREMENTS FOR SURFACE IMPOUND-
6 MENTS THAT DO NOT MEET CERTAIN CRITERIA.—

7 “(A) SURFACE IMPOUNDMENTS THAT RE-
8 QUIRE ASSESSMENT OF CORRECTIVE MEASURES
9 WITHIN 10 YEARS OF THE DATE OF ENACT-
10 MENT.—

11 “(i) IN GENERAL.—In addition to the
12 groundwater monitoring and corrective ac-
13 tion requirements described in paragraph
14 (2)(B), the implementing agency shall re-
15 quire a surface impoundment that receives
16 coal combustion residuals on or after the
17 date of enactment of this section to comply
18 with the requirements in clause (ii) of this
19 subparagraph and clauses (i) and (ii) of
20 subparagraph (D) if the surface impound-
21 ment—

22 “(I) does not—

23 “(aa) have a liner system
24 described in section 258.40(b) of

1 title 40, Code of Federal Regula-
2 tions; and

3 “(bb) meet the design cri-
4 teria described in section
5 258.40(a)(1) of title 40, Code of
6 Federal Regulations; and

7 “(II) within 10 years after the
8 date of enactment of this section, is
9 required under section 258.56(a) of
10 title 40, Code of Federal Regulations,
11 to undergo an assessment of correc-
12 tive measures for any constituent cov-
13 ered under subpart E of part 258 of
14 title 40, Code of Federal Regulations,
15 or otherwise identified in paragraph
16 (2)(B)(ii) of this subsection, for which
17 assessment groundwater monitoring is
18 required.

19 “(ii) DEADLINE TO MEET GROUND-
20 WATER PROTECTION STANDARD.—Except
21 as provided in subparagraph (C), the im-
22 plementing agency shall require that the
23 groundwater protection standard, for sur-
24 face impoundments identified in clause (i)
25 of this subparagraph, established by the

1 implementing agency under section
2 258.55(h) or 258.55(i) of title 40, Code of
3 Federal Regulations, for any constituent
4 for which corrective measures are required
5 shall be met—

6 “(I) as soon as practicable at the
7 relevant point of compliance, as de-
8 scribed in section 258.40(d) of title
9 40, Code of Federal Regulations; and

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

13 “(B) SURFACE IMPOUNDMENTS SUBJECT
14 TO A STATE CORRECTIVE ACTION REQUIRE-
15 MENT AS OF THE DATE OF ENACTMENT.—

16 “(i) IN GENERAL.—In addition to the
17 groundwater monitoring and corrective ac-
18 tion requirements described in paragraph
19 (2)(B), the implementing agency shall re-
20 quire a surface impoundment that receives
21 coal combustion residuals on or after the
22 date of enactment of this section to comply
23 with the requirements in clause (ii) of this
24 subparagraph and clauses (i) and (ii) of

1 subparagraph (D) if the surface impound-
2 ment—

3 “(I) does not—

4 “(aa) have a liner system
5 described in section 258.40(b) of
6 title 40, Code of Federal Regula-
7 tions; and

8 “(bb) meet the design cri-
9 teria described in section
10 258.40(a)(1) of title 40, Code of
11 Federal Regulations; and

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

15 “(ii) DEADLINE TO MEET GROUND-
16 WATER PROTECTION STANDARD.—Except
17 as provided in subparagraph (C), the im-
18 plementing agency shall require that the
19 groundwater protection standard, for sur-
20 face impoundments identified in clause (i)
21 of this subparagraph, established by the
22 implementing agency under section
23 258.55(h) or 258.55(i) of title 40, Code of
24 Federal Regulations, for any constituent

1 for which corrective measures are required
2 shall be met—

3 “(I) as soon as practicable at the
4 relevant point of compliance, as de-
5 scribed in section 258.40(d) of title
6 40, Code of Federal Regulations; and

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

9 “(C) EXTENSION OF DEADLINE.—

10 “(i) IN GENERAL.—Except as pro-
11 vided in clause (ii) of this subparagraph,
12 the deadline for meeting a groundwater
13 protection standard under subparagraph
14 (A)(ii) or (B)(ii) may be extended by the
15 implementing agency, after opportunity for
16 public notice and comment under the pub-
17 lic participation process described in sub-
18 section (b)(2)(B)(iii)(III), or in subsection
19 (e)(6) based on—

20 “(I) the effectiveness of any in-
21 terim measures implemented by the
22 owner or operator of the facility under
23 section 258.58(a)(3) of title 40, Code
24 of Federal Regulations;

1 “(II) the level of progress dem-
2 onstrated in meeting the groundwater
3 protection standard;

4 “(III) the potential for other ad-
5 verse human health or environmental
6 exposures attributable to the contami-
7 nation from the surface impoundment
8 undergoing corrective action; and

9 “(IV) the lack of available alter-
10 native management capacity for the
11 coal combustion residuals and related
12 materials managed in the impound-
13 ment at the facility at which the im-
14 poundment is located if the owner or
15 operator has used best efforts, as nec-
16 essary, to design, obtain any nec-
17 essary permits, finance, construct, and
18 render operational the alternative
19 management capacity during the time
20 period for meeting a groundwater pro-
21 tection standard in subparagraph
22 (A)(ii) or (B)(ii).

23 “(ii) EXCEPTION.—The deadline
24 under subparagraph (A)(ii) or (B)(ii) shall
25 not be extended if there has been contami-

1 nation of public or private drinking water
2 systems attributable to a surface impound-
3 ment undergoing corrective action, unless
4 the contamination has been addressed by
5 providing a permanent replacement water
6 system.

7 “(D) ADDITIONAL REQUIREMENTS.—

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

13 “(ii) INTERIM MEASURES.—

14 “(I) IN GENERAL.—Except as
15 provided in subelause (II), not later
16 than 90 days after the date on which
17 the assessment of corrective measures
18 is initiated, the owner or operator of
19 a surface impoundment described in
20 subparagraph (A) or (B) shall imple-
21 ment interim measures, as necessary,
22 under the factors in section
23 258.58(a)(3) of title 40, Code of Fed-
24 eral Regulations.

1 “(II) IMPOUNDMENTS SUBJECT
2 TO STATE CORRECTIVE ACTION RE-
3 QUIREMENT AS OF THE DATE OF EN-
4 ACTMENT.—Subclause (I) shall only
5 apply to surface impoundments sub-
6 ject to a State corrective action re-
7 quirement as of the date of enactment
8 of this section if the owner or oper-
9 ator has not implemented interim
10 measures, as necessary, under the fac-
11 tors in section 258.58(a)(3) of title
12 40, Code of Federal Regulations.

13 “(E) SURFACE IMPOUNDMENTS THAT RE-
14 QUIRE ASSESSMENT OF CORRECTIVE MEASURES
15 MORE THAN 10 YEARS AFTER DATE OF ENACT-
16 MENT.—

17 “(i) IN GENERAL.—In addition to the
18 groundwater monitoring and corrective ac-
19 tion requirements described in paragraph
20 (2)(B), the implementing agency shall re-
21 quire a surface impoundment that receives
22 coal combustion residuals on or after the
23 date of enactment of this section to comply
24 with the requirements in clause (ii) if the
25 surface impoundment—

1 “(I) does not—

2 “(aa) have a liner system
3 described in section 258.40(b) of
4 title 40, Code of Federal Regula-
5 tions; and

6 “(bb) meet the design cri-
7 teria described in section
8 258.40(a)(1) of title 40, Code of
9 Federal Regulations; and

10 “(II) more than 10 years after
11 the date of enactment of this section,
12 is required under section 258.56(a)
13 title 40, Code of Federal Regulations,
14 to undergo an assessment of correc-
15 tive measures for any constituent cov-
16 ered under subpart E of part 258 of
17 title 40, Code of Federal Regulations,
18 or otherwise identified in paragraph
19 (2)(B)(ii) of this subsection, for which
20 assessment groundwater monitoring is
21 required.

22 “(ii) REQUIREMENTS.—

23 “(I) CLOSURE.—The surface im-
24 poundments identified in clause (i)
25 shall cease receiving coal combustion

1 residuals and initiate closure in ac-
2 cordance with paragraph (5) after al-
3 ternative management capacity at the
4 facility is available for the coal com-
5 bustion residuals and related mate-
6 rials managed in the impoundment.

7 “(II) BEST EFFORTS.—The al-
8 ternative management capacity shall
9 be developed as soon as practicable
10 with the owner or operator using best
11 efforts to design, obtain necessary
12 permits for, finance, construct, and
13 render operational the alternative
14 management capacity.

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

23 “(IV) PUBLIC PARTICIPATION.—
24 The plan described in subclause (III)
25 shall be subject to public notice and

1 comment under the public participa-
2 tion process described in subsection
3 (b)(2)(B)(iii)(III) or in subsection
4 (e)(6), as applicable.

5 “(5) CLOSURE.—

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

19 “(B) SURFACE IMPOUNDMENT.—In the
20 case of a surface impoundment, the closure plan
21 under subparagraph (A) shall require, at a min-
22 imum, the removal of liquid and the stabiliza-
23 tion of remaining waste, as necessary to sup-
24 port the final cover.

1 “(d) FEDERAL REVIEW OF STATE PERMIT PRO-
2 GRAMS.—

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

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

9 “(B) has not submitted a certification re-
10 quired under subsection (b)(2);

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

13 “(D) is not implementing a coal combus-
14 tion residuals permit program, with respect to
15 which the State has submitted a certification
16 under subsection (b)(2), that meets the require-
17 ments described in subsection (c);

18 “(E) is not implementing a coal combus-
19 tion residuals permit program, with respect to
20 which the State has submitted a certification
21 under subsection (b)(2)—

22 “(i) that is consistent with such cer-
23 tification; and

1 “(ii) for which the State continues to
2 have in effect statutes or regulations nec-
3 essary to implement such program; or

4 “(F) does not make available to the Ad-
5 ministrator, within 90 days of a written re-
6 quest, specific information necessary for the
7 Administrator to ascertain whether the State
8 has satisfied the requirements described in sub-
9 paragraphs (A) through (E).

10 “(2) REQUEST.—If a request described in para-
11 graph (1)(F) is proposed pursuant to a petition to
12 the Administrator, the Administrator shall only
13 make the request if the Administrator does not pos-
14 sess the information necessary to ascertain whether
15 the State has satisfied the requirements described in
16 subparagraphs (A) through (E) of such paragraph.

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

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

24 “(B) identify, in collaboration with the
25 State, a reasonable deadline by which the State

1 shall remedy such applicable deficiencies, which
2 shall be—

3 “(i) in the case of a deficiency de-
4 scribed in subparagraphs (A) through (E)
5 of paragraph (1), not earlier than 180
6 days after the date on which the State re-
7 ceives the notice; and

8 “(ii) in the case of a deficiency de-
9 scribed in paragraph (1)(F), not later than
10 90 days after the date on which the State
11 receives the notice.

12 “(4) CRITERIA FOR DETERMINING DEFICIENCY
13 OF STATE PERMIT PROGRAM.—In making a deter-
14 mination whether a State has failed to satisfy the re-
15 quirements described in subparagraphs (A) through
16 (E) of paragraph (1), or a determination under sub-
17 section (e)(1)(B), the Administrator shall consider,
18 as appropriate—

19 “(A) whether the State’s statutes or regu-
20 lations to implement a coal combustion residu-
21 als permit program are not sufficient to meet
22 the requirements described in subsection (c) be-
23 cause of—

1 “(i) failure of the State to promulgate
2 or enact new statutes or regulations when
3 necessary; or

4 “(ii) action by a State legislature or
5 court striking down or limiting such State
6 statutes or regulations;

7 “(B) whether the operation of the State
8 coal combustion residuals permit program fails
9 to comply with the requirements of subsection
10 (c) because of—

11 “(i) failure of the State to issue per-
12 mits as required in subsection (c)(1)(E);

13 “(ii) repeated issuance of permits by
14 the State which do not meet the require-
15 ments of subsection (c);

16 “(iii) failure of the State to comply
17 with the public participation requirements
18 of this section; or

19 “(iv) failure of the State to implement
20 corrective action requirements as described
21 in subsection (c)(2)(B); and

22 “(C) whether the enforcement of a State
23 coal combustion residuals permit program fails
24 to comply with the requirements of this section
25 because of—

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

3 “(ii) repeated failure by the State to
4 inspect or otherwise determine compliance
5 pursuant to the process identified in sub-
6 section (b)(2)(B)(iii)(I).

7 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

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

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

15 “(B) the State has received a notice under
16 subsection (d) and the Administrator deter-
17 mines, after providing a 30-day period for no-
18 tice and public comment, that the State has
19 failed, by the deadline identified in the notice
20 under subsection (d)(3)(B), to remedy the defi-
21 ciencies detailed in the notice under subsection
22 (d)(3)(A); or

23 “(C) the State informs the Administrator,
24 in writing, that such State will no longer imple-
25 ment such a permit program.

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

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

13 “(4) REQUIREMENTS.—If the Administrator
14 implements a coal combustion residuals permit pro-
15 gram for a State under paragraph (1) or (3), the
16 permit program shall consist of the requirements de-
17 scribed in subsection (c).

18 “(5) ENFORCEMENT.—

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

22 “(i) the authorities referred to in sec-
23 tion 4005(c)(2)(A) shall apply with respect
24 to coal combustion residuals and structures
25 for which the Administrator is imple-

1 menting the coal combustion residuals per-
2 mit program; and

3 “*(ii)* the Administrator may use those
4 authorities to inspect, gather information,
5 and enforce the requirements of this sec-
6 tion in the State.

7 “*(B) OTHER STRUCTURES.*—If the Admin-
8 istrator implements a coal combustion residuals
9 permit program under paragraph (3)—

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

16 “*(ii)* the Administrator may use those
17 authorities to inspect, gather information,
18 and enforce the requirements of this sec-
19 tion for the structures for which the Ad-
20 ministrator is implementing the coal com-
21 bustion residuals permit program.

22 “*(6) PUBLIC PARTICIPATION PROCESS.*—If the
23 Administrator implements a coal combustion residu-
24 als permit program for a State under this sub-
25 section, the Administrator shall provide a 30-day pe-

1 riod for the public participation process required in
2 paragraphs (1)(F)(i), (4)(C)(i), and (4)(E)(ii)(IV) of
3 subsection (c).

4 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
5 ADMINISTRATOR.—

6 “(1) STATE CONTROL.—

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

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

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

21 “(iii) receiving from the Adminis-
22 trator—

23 “(I) a determination, after pro-
24 viding a 30-day period for notice and
25 public comment, that the State coal

1 combustion residuals permit program
2 meets the requirements described in
3 subsection (c); and

4 “(II) a timeline for transition of
5 control of the coal combustion residu-
6 als permit program.

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

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

16 “(ii) receiving from the Adminis-
17 trator—

18 “(I) a determination, after pro-
19 viding a 30-day period for notice and
20 public comment, that the deficiencies
21 detailed in such notice have been rem-
22 edied; and

23 “(II) a timeline for transition of
24 control of the coal combustion residu-
25 als permit program.

1 “(2) REVIEW OF DETERMINATION.—

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

10 “(B) REVIEW.—A State may obtain a re-
11 view of a determination by the Administrator
12 under paragraph (1) as if such determination
13 was a final regulation for purposes of section
14 7006.

15 “(3) IMPLEMENTATION DURING TRANSITION.—

16 “(A) EFFECT ON ACTIONS AND ORDERS.—
17 Program requirements of, and actions taken or
18 orders issued pursuant to, a coal combustion re-
19 siduals permit program shall remain in effect
20 if—

21 “(i) a State takes control of its coal
22 combustion residuals permit program from
23 the Administrator under paragraph (1); or

1 “(ii) the Administrator takes control
2 of a coal combustion residuals permit pro-
3 gram from a State under subsection (e).

4 “(B) CHANGE IN REQUIREMENTS.—Sub-
5 paragraph (A) shall apply to such program re-
6 quirements, actions, and orders until such time
7 as—

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

12 “(ii) the State or the Administrator,
13 whichever took the action or issued the
14 order, certifies the completion of a correc-
15 tive action that is the subject of the action
16 or order.

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

22 “(g) EFFECT ON DETERMINATION UNDER 4005(C)
23 OR 3006.—The Administrator shall not consider the im-
24 plementation of a coal combustion residuals permit pro-
25 gram by the Administrator under subsection (e) in making

1 a determination of approval for a permit program or other
2 system of prior approval and conditions under section
3 4005(e) or of authorization for a program under section
4 3006.

5 “(h) AUTHORITY.—

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

12 “(2) AUTHORITY OF THE ADMINISTRATOR.—

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

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

22 “(C) ENFORCEMENT ASSISTANCE ONLY
23 UPON REQUEST.—Upon request from the head
24 of a lead State agency that is implementing a
25 coal combustion residuals permit program, the

1 Administrator may provide to such State agen-
2 cy only the enforcement assistance requested.

3 “(D) CONCURRENT ENFORCEMENT.—Ex-
4 cept as provided in subparagraph (C), the Ad-
5 ministrator shall not have concurrent enforce-
6 ment authority when a State is implementing a
7 coal combustion residuals permit program, in-
8 cluding during any period of interim operation
9 described in subsection (c)(3)(D).

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

15 “(F) OTHER RESPONSE AUTHORITY.—
16 Nothing in this section shall be construed as af-
17 fecting the authority of the Administrator
18 under the Comprehensive Environmental Re-
19 sponse, Compensation, and Liability Act of
20 1980 (42 U.S.C. 9601 et seq.) with respect to
21 coal combustion residuals.

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

1 “(i) MINE RECLAMATION ACTIVITIES.—A coal com-
2 bustion residuals permit program implemented by the Ad-
3 ministrator under subsection (e) shall not apply to the uti-
4 lization, placement, and storage of coal combustion residu-
5 als at surface mining and reclamation operations.

6 “(j) DEFINITIONS.—In this section:

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

9 “(A) the solid wastes listed in section
10 3001(b)(3)(A)(i), including recoverable mate-
11 rials from such wastes;

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

19 “(C) fluidized bed combustion wastes;

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

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

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

11 “(3) CODE OF FEDERAL REGULATIONS.—The
12 term ‘Code of Federal Regulations’ means the Code
13 of Federal Regulations (as in effect on the date of
14 enactment of this section) or any successor regula-
15 tions.

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

23 “(5) PERMIT; PRIOR APPROVAL AND CONDI-
24 TIONS.—Except as provided in subsections (b)(3)
25 and (g), the terms ‘permit’ and ‘prior approval and

1 conditions' mean any authorization, license, or equiv-
2 alent control document that incorporates the re-
3 quirements of subsection (c).

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

9 “(7) STRUCTURE.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), the term ‘structure’ means a
12 landfill, surface impoundment, or other land-
13 based unit which receives, or is intended to re-
14 ceive, coal combustion residuals.

15 “(B) DE MINIMIS RECEIPT.—The term
16 ‘structure’ does not include any land-based unit
17 that receives only de minimis quantities of coal
18 combustion residuals if the presence of coal
19 combustion residuals is incidental to the mate-
20 rial managed in the unit.”.

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

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

1 **SEC. 3. 2000 REGULATORY DETERMINATION.**

2 Nothing in this Act, or the amendments made by this
3 Act, shall be construed to alter in any manner the Envi-
4 ronmental Protection Agency's regulatory determination
5 entitled "Notice of Regulatory Determination on Wastes
6 From the Combustion of Fossil Fuels", published at 65
7 Fed. Reg. 32214 (May 22, 2000), that the fossil fuel com-
8 bustion wastes addressed in that determination do not
9 warrant regulation under subtitle C of the Solid Waste
10 Disposal Act (42 U.S.C. 6921 et seq.).

11 **SEC. 4. TECHNICAL ASSISTANCE.**

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

17 **SEC. 5. FEDERAL POWER ACT.**

18 Nothing in this Act, or the amendments made by this
19 Act, shall be construed to affect the obligations of an
20 owner or operator of a structure (as defined in section
21 4011 of the Solid Waste Disposal Act, as added by this
22 Act) under section 215(b)(1) of the Federal Power Act
23 (16 U.S.C. 824o(b)(1)).