

112TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels.

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IN THE SENATE OF THE UNITED STATES

Mr. HOEVEN (for himself, Mr. CONRAD, Mr. BAUCUS, Mr. McCONNELL, Mr. KOHL, Mr. PORTMAN, Ms. LANDRIEU, Mr. BOOZMAN, Mr. MANCHIN, Mr. BLUNT, Mr. WARNER, Mr. JOHNSON of Wisconsin, Mr. PRYOR, Mr. MORAN, Mrs. McCASKILL, Mr. ALEXANDER, Mr. NELSON of Nebraska, Mr. TOOMEY, Mr. NELSON of Florida, Mr. GRAHAM, Mr. CASEY, Mr. THUNE, Mr. WEBB, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels.

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.**

4 This title may be cited as the “Coal Ash Recycling  
5 and Oversight Act of 2012”.

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

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

6 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**  
7 **BUSTION RESIDUALS.**

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

11 “(b) STATE ACTIONS.—

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

19 “(2) CERTIFICATION.—

20 “(A) IN GENERAL.—Not later than 36  
21 months after the date of enactment of this sec-  
22 tion (except as provided in subsections (f)(1)(A)  
23 and (f)(1)(C)), in the case of a State that has  
24 notified the Administrator that it will imple-  
25 ment a coal combustion residuals permit pro-  
26 gram, the head of the lead State agency respon-

1           sible for implementing the coal combustion re-  
2           siduals permit program shall submit to the Ad-  
3           ministrators a certification that such coal com-  
4           bustion residuals permit program meets the  
5           specifications described in subsection (c).

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

8                   “(i) a letter identifying the lead State  
9                   agency responsible for implementing the  
10                  coal combustion residuals permit program,  
11                  signed by the head of such agency;

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

16                  “(iii) a narrative description that pro-  
17                  vides an explanation of how the State will  
18                  ensure that the coal combustion residuals  
19                  permit program meets the requirements of  
20                  this section, including a description of the  
21                  State’s—

22                   “(I) process to inspect or other-  
23                   wise determine compliance with such  
24                   permit program;

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

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

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

12                  “(iv) a legal certification that the  
13                  State has, at the time of certification, fully  
14                  effective statutes or regulations necessary  
15                  to implement a coal combustion residuals  
16                  permit program that meets the specifica-  
17                  tions described in subsection (c); and

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

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

23                  “(3) MAINTENANCE OF 4005(C) OR 3006 PRO-  
24                  GRAM.—In order to adopt or implement a coal com-  
25                  bustion residuals permit program under this section

1 (including pursuant to subsection (f)), the State  
2 agency responsible for implementing a coal combus-  
3 tion residuals permit program in a State shall main-  
4 tain an approved program under section 4005(c) or  
5 an authorized program under section 3006.

6 “(c) PERMIT PROGRAM SPECIFICATIONS.—

7 “(1) MINIMUM REQUIREMENTS.—

8 “(A) IN GENERAL.—A coal combustion re-  
9 siduals permit program shall apply the revised  
10 criteria described in paragraph (2) to owners or  
11 operators of structures, including surface im-  
12 poundments, that receive coal combustion re-  
13 siduals.

14 “(B) STRUCTURAL INTEGRITY.—

15 “(i) ENGINEERING CERTIFICATION.—

16 A coal combustion residuals permit pro-  
17 gram shall require that an independent  
18 registered professional engineer certify  
19 that—

20 “(I) the design of structures is in  
21 accordance with recognized and gen-  
22 erally accepted good engineering prac-  
23 tices for containment of the maximum  
24 volume of coal combustion residuals

1 and liquids appropriate for the struc-  
2 ture; and

3 “(II) the construction and main-  
4 tenance of the structure will ensure  
5 dam stability.

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

19 “(iii) DEFICIENCY.—

20 “(I) IN GENERAL.—If the head  
21 of the agency responsible for imple-  
22 menting the coal combustion residuals  
23 permit program determines that a  
24 structure is deficient with respect to  
25 the requirements in clauses (i) and

1 (ii), the head of the agency has the  
2 authority to require action to correct  
3 the deficiency according to a schedule  
4 determined by the agency.

5 “(II) UNCORRECTED DEFICI-  
6 CIENCIES.—If a deficiency is not cor-  
7 rected according to the schedule, the  
8 head of the agency has the authority  
9 to require that the structure close in  
10 accordance with subsection (h).

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

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

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

25 “(D) WIND DISPERSAL.—

1                   “(i) IN GENERAL.—The agency re-  
2                   sponsible for implementing the coal com-  
3                   bustion residuals permit program shall re-  
4                   quire that owners or operators of struc-  
5                   tures address wind dispersal of dust by re-  
6                   quiring cover, or by wetting coal combus-  
7                   tion residuals with water to a moisture  
8                   content that prevents wind dispersal, facili-  
9                   tates compaction, and does not result in  
10                  free liquids.

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

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



1                   “(F) STATE NOTIFICATION AND GROUND-  
2 WATER MONITORING.—

3                   “(i) NOTIFICATION.—Not later than  
4 the date on which a State submits a cer-  
5 tification under subsection (b)(2), the  
6 State shall notify owners or operators of  
7 structures within the State of—

8                   “(I) the obligation to apply for  
9 and obtain a permit under subpara-  
10 graph (E); and

11                   “(II) the groundwater monitoring  
12 requirements applicable to structures  
13 under paragraph (2)(A)(ii).

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

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



1 coal combustion residuals permit pro-  
2 gram requirements of this section;  
3 and

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

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

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

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

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

4                   “(I) STATE AUTHORITY.—A State imple-  
5                   menting a coal combustion residuals permit  
6                   program has the authority to—

7                   “(i) inspect structures; and

8                   “(ii) implement and enforce the coal  
9                   combustion residuals permit program.

10                  “(J) REQUIREMENTS FOR SURFACE IM-  
11                  POUNDMENTS THAT DO NOT MEET CERTAIN  
12                  CRITERIA.—

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

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

25                  “(aa) does not—

1 “(AA) have a liner sys-  
2 tem described in section  
3 258.40(b) of title 40, Code  
4 of Federal Regulations; and

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

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

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

24 “(aa) does not—

1 “(AA) have a liner sys-  
2 tem described in section  
3 258.40(b) of title 40, Code  
4 of Federal Regulations; and

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

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

14 “(ii) REQUIREMENTS.—

15 “(I) DEADLINES.—

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

1 Federal Regulations, for any con-  
2 stituent for which corrective  
3 measures are required shall be  
4 met—

5 “(AA) as soon as prac-  
6 ticable at the relevant point  
7 of compliance, as described  
8 in section 258.40(d) of title  
9 40, Code of Federal Regula-  
10 tions; and

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

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

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

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

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

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

18                   “(III) INTERIM MEASURES.—

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



1            essary, under the factors in sec-  
2            tion 258.58(a)(3) of title 40,  
3            Code of Federal Regulations.

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

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

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

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

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

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

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

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

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

1 action, unless the contamination  
2 has been addressed by providing  
3 a permanent replacement water  
4 system.

5 “(iii) SUBSEQUENT CLOSURE.—

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

17 “(aa) does not—

18 “(AA) have a liner sys-  
19 tem described in section  
20 258.40(b) of title 40, Code  
21 of Federal Regulations; and

22 “(BB) meet the design  
23 criteria described in section  
24 258.40(a)(1) of title 40,

1 Code of Federal Regula-  
2 tions;

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

13 “(cc) is not subject to the  
14 requirements in clause (ii).

15 “(II) REQUIREMENTS.—

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

1                   “(bb) BEST EFFORTS.—The  
2 alternative management capacity  
3 shall be developed as soon as  
4 practicable with the owner or op-  
5 erator using best efforts to de-  
6 sign, obtain necessary permits, fi-  
7 nance, construct, and render  
8 operational the alternative man-  
9 agement capacity.

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

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

1                                   scribed            in            subsection  
2                                   (b)(2)(B)(iii)(III).

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

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

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

21                   “(ii) for all structures that receive  
22 coal combustion residuals after the date of  
23 enactment of this section, the revised cri-  
24 teria regarding groundwater monitoring  
25 and corrective action requirements de-

1 scribed in subpart E of part 258 of title  
2 40, Code of Federal Regulations, except  
3 that, for the purposes of this paragraph,  
4 the revised criteria shall also include—

5 “(I) for the purposes of detection  
6 monitoring, the constituents boron,  
7 chloride, conductivity, fluoride, mer-  
8 cury, pH, sulfate, sulfide, and total  
9 dissolved solids; and

10 “(II) for the purposes of assess-  
11 ment monitoring, establishing a  
12 groundwater protection standard, and  
13 assessment of corrective measures, the  
14 constituents aluminum, boron, chlo-  
15 ride, fluoride, iron, manganese, molyb-  
16 denum, pH, sulfate, and total dis-  
17 solved solids;

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



1                   “(iv) for all structures that receive  
2 coal combustion residuals after the date of  
3 enactment of this section, the revised cri-  
4 teria for post-closure care described in sec-  
5 tion 258.61 of title 40, Code of Federal  
6 Regulations, except for the requirement de-  
7 scribed in subsection (a)(4) of that section;

8                   “(B) the revised criteria for location re-  
9 strictions described in—

10                   “(i) for new structures, and lateral ex-  
11 pansions of existing structures, that first  
12 receive coal combustion residuals after the  
13 date of enactment of this section, sections  
14 258.11 through 258.15 of title 40, Code of  
15 Federal Regulations; and

16                   “(ii) for existing structures that re-  
17 ceive coal combustion residuals after the  
18 date of enactment of this section, sections  
19 258.11 and 258.15 of title 40, Code of  
20 Federal Regulations;

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

1           “(D) for all structures that receive coal  
2 combustion residuals after the date of enact-  
3 ment of this section, the revised criteria for fi-  
4 nancial assurance described in subpart G of  
5 part 258 of title 40, Code of Federal Regula-  
6 tions;

7           “(E) for all structures that receive coal  
8 combustion residuals after the date of enact-  
9 ment of this section, the revised criteria for sur-  
10 face water described in section 258.27 of title  
11 40, Code of Federal Regulations;

12           “(F) for all structures that receive coal  
13 combustion residuals after the date of enact-  
14 ment of this section, the revised criteria for rec-  
15 ordkeeping described in section 258.29 of title  
16 40, Code of Federal Regulations;

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

24           “(H) for surface impoundments that re-  
25 ceive coal combustion residuals after the date of



1 coal combustion residuals permit program;

2 or

3 “(E) does not make available to the Ad-  
4 ministrator within 90 days of a written request,  
5 specific information necessary for the Adminis-  
6 trator to ascertain whether the State has com-  
7 plied with subparagraphs (A) through (D).

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

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

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

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

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

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

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

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

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

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

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

23                  “(e) IMPLEMENTATION BY ADMINISTRATOR.—

1           “(1) IN GENERAL.—The Administrator shall  
2           implement a coal combustion residuals permit pro-  
3           gram for a State only if—

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

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

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

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

23           “(3) OTHER STRUCTURES.—For structures lo-  
24          cated on property within the exterior boundaries of  
25          a State for which the State does not have authority

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

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

9 “(5) ENFORCEMENT.—

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

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

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

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

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

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

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

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

17 “(1) STATE CONTROL.—

18 “(A) NEW ADOPTION AND IMPLEMENTA-  
19 TION BY STATE.—For a State for which the  
20 Administrator is implementing a coal combus-  
21 tion residuals permit program under subsection  
22 (e)(1)(A), the State may adopt and implement  
23 such a permit program by—



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

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

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

10                   “(I) a determination, after pro-  
11                   viding a 30-day period for notice and  
12                   public comment that the State coal  
13                   combustion residuals permit program  
14                   meets the specifications described in  
15                   subsection (c); and

16                   “(II) a timeline for transition of  
17                   control of the coal combustion residu-  
18                   als permit program.

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

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

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

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

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

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

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

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

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

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

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

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

14 “(2) REVIEW OF DETERMINATION.—

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

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

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

3 “(3) IMPLEMENTATION DURING TRANSITION.—

4 “(A) EFFECT ON ACTIONS AND ORDERS.—

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

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

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

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

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

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

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

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

17                  “(h) CLOSURE.—

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

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

6           “(i) AUTHORITY.—

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

13           “(2) AUTHORITY OF THE ADMINISTRATOR.—

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

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

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

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

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

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

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

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

23 “(k) DEFINITIONS.—In this section:

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

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

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

11          “(C) fluidized bed combustion wastes;

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

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

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



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

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

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

17           “(6) STRUCTURE.—

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

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

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

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

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

8 **SEC. 3. 2000 REGULATORY DETERMINATION.**

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

18 **SEC. 4. TECHNICAL ASSISTANCE.**

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

1 **SEC. 5. FEDERAL POWER ACT.**

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