

**AMENDMENT TO THE RULES COMMITTEE PRINT
FOR H.R. 5303
OFFERED BY MR. MCKINLEY OF WEST VIRGINIA**

At the end of the bill, add the following new title:

1 **TITLE V—IMPROVING COAL**
2 **COMBUSTION RESIDUALS**
3 **REGULATION**

4 **SEC. 501. SHORT TITLE.**

5 This title may be cited as the “Improving Coal Com-
6 bustion Residuals Regulation Act of 2016”.

7 **SEC. 502. MANAGEMENT AND DISPOSAL OF COAL COMBUS-**
8 **TION RESIDUALS.**

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

12 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**
13 **BUSTION RESIDUALS.**

14 “(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-
15 TION RESIDUALS.—Each State may adopt and implement
16 a coal combustion residuals permit program in accordance
17 with this section.

18 “(b) STATE ACTIONS.—

1 “(1) NOTIFICATION.—Not later than 6 months
2 after the date of enactment of this section, the Gov-
3 ernor of each State shall notify the Administrator,
4 in writing, whether such State will adopt and imple-
5 ment a coal combustion residuals permit program.

6 “(2) APPLICATION FOR, AND APPROVAL OF,
7 STATE COAL COMBUSTION RESIDUALS PERMIT PRO-
8 GRAM.—

9 “(A) IN GENERAL.—Not later than 24
10 months after the date of enactment of this sec-
11 tion, each State that has notified the Adminis-
12 trator that it will adopt and implement a coal
13 combustion residuals permit program under
14 paragraph (1) shall submit to the Adminis-
15 trator an application for such coal combustion
16 residuals permit program for review and ap-
17 proval by the Administrator.

18 “(B) CONTENTS OF APPLICATION.—An ap-
19 plication submitted under this paragraph shall
20 include—

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

24 “(ii) identification of any other State
25 agencies to be involved with the implemen-

1 tation of the coal combustion residuals per-
2 mit program;

3 “(iii) an explanation of how the State
4 coal combustion residuals permit program
5 will meet the requirements of this section,
6 including—

7 “(I) a description of the
8 State’s—

9 “(aa) process to inspect or
10 otherwise determine compliance
11 with such permit program;

12 “(bb) process to enforce the
13 requirements of such permit pro-
14 gram, including any enforcement
15 of the requirements of subsection
16 (c)(3)(A);

17 “(cc) public participation
18 process for the promulgation,
19 amendment, or repeal of regula-
20 tions for, and the issuance of
21 permits under, such permit pro-
22 gram;

23 “(dd) process for judicial re-
24 view;

1 “(ee) proposed or existing
2 statutes, regulations, or policies
3 pertaining to public access to in-
4 formation, including information
5 on groundwater monitoring data,
6 structural stability assessments,
7 emergency action plans, fugitive
8 dust control plans, notifications
9 of closure (including any certifi-
10 cation of closure by a qualified
11 professional engineer), and cor-
12 rective action remedies; and

13 “(ff) proposed coordination
14 plan under subsection (c)(1)(C);
15 and

16 “(II) if a State proposes to apply
17 a definition different from a definition
18 included in section 257.53 of title 40,
19 Code of Federal Regulations, for pur-
20 poses of the State coal combustion re-
21 siduals permit program, an expla-
22 nation of such application, including
23 an explanation of the reasonable basis
24 for applying such different definition,
25 in accordance with subsection (i)(4);

1 “(iv) a statement that the State has
2 in effect, at the time of application, stat-
3 utes or regulations necessary to implement
4 a coal combustion residuals permit pro-
5 gram that meets the requirements de-
6 scribed in subsection (c);

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

9 “(vi) copies of any proposed forms
10 used to administer the coal combustion re-
11 siduals permit program; and

12 “(vii) such other information as the
13 Administrator may require.

14 “(C) APPROVAL.—

15 “(i) IN GENERAL.—The Administrator
16 may approve an application for a State
17 coal combustion residuals permit program
18 only if the Administrator determines that
19 such application demonstrates that the coal
20 combustion residuals permit program
21 meets the requirements described in sub-
22 section (c).

23 “(ii) EVIDENCE OF ADEQUACY.—In
24 evaluating an application for a State coal
25 combustion residuals permit program

1 under this paragraph, the Administrator
2 shall consider a State's approved permit
3 program or other system of prior approval
4 and conditions under section 4005(c) or
5 authorized program under section 3006 as
6 evidence regarding the State's ability to ef-
7 fectively implement a coal combustion re-
8 siduals program.

9 “(iii) ADOPTION BY STATE.—A State
10 may adopt and implement a coal combus-
11 tion residuals permit program if, not later
12 than 90 days after receipt of a complete
13 application under this paragraph (includ-
14 ing a revised application under subpara-
15 graph (D))—

16 “(I) the Administrator publishes
17 in the Federal Register a notice of the
18 Administrator's decision to approve
19 such application; or

20 “(II) the Administrator does not
21 publish in the Federal Register a no-
22 tice of the Administrator's decision to
23 approve or deny such application, in
24 which case such application shall be
25 deemed approved.

1 “(D) REVISED APPLICATION.—If the Ad-
2 ministrator denies an initial application for a
3 State coal combustion residuals program under
4 this paragraph—

5 “(i) the Administrator shall notify the
6 State of the reasons for such denial; and

7 “(ii) the State may, not later than 60
8 days after the date of such notification,
9 submit to the Administrator a revised ap-
10 plication for such coal combustion residu-
11 als permit program for review and ap-
12 proval by the Administrator.

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

16 “(1) GENERAL REQUIREMENTS.—

17 “(A) PERMITS.—The implementing agency
18 shall require that owners or operators of struc-
19 tures apply for and obtain permits incor-
20 porating the applicable requirements of the coal
21 combustion residuals permit program.

22 “(B) PUBLIC AVAILABILITY OF INFORMA-
23 TION.—The implementing agency shall ensure
24 that—

1 “(i) documents for permit determina-
2 tions are made publicly available for review
3 and comment under the public participa-
4 tion process of the coal combustion residu-
5 als permit program;

6 “(ii) final determinations on permit
7 applications are made publicly available;
8 and

9 “(iii) information regarding the exer-
10 cise by the implementing agency of any
11 discretionary authority granted under this
12 section and not provided for in the rule de-
13 scribed in subsection (i)(1) is made pub-
14 licly available.

15 “(C) COORDINATION PLAN.—The imple-
16 menting agency shall develop and maintain a
17 plan for coordination among States in the event
18 of a release that crosses State lines.

19 “(2) CRITERIA.—The implementing agency
20 shall apply the following criteria with respect to
21 structures:

22 “(A) DESIGN REQUIREMENTS.—For new
23 structures, including lateral expansions of exist-
24 ing structures, the criteria regarding design re-
25 quirements described in sections 257.70

1 through 257.72 of title 40, Code of Federal
2 Regulations, as applicable.

3 “(B) GROUNDWATER MONITORING AND
4 CORRECTIVE ACTION.—

5 “(i) IN GENERAL.—Except as pro-
6 vided in clause (ii), for all structures, the
7 criteria regarding groundwater monitoring
8 and corrective action requirements de-
9 scribed in sections 257.90 through 257.98
10 of title 40, Code of Federal Regulations,
11 including—

12 “(I) for the purposes of detection
13 monitoring, the constituents described
14 in appendix III to part 257 of such
15 title; and

16 “(II) for the purposes of assess-
17 ment monitoring, establishing a
18 groundwater protection standard, and
19 assessment of corrective measures, the
20 constituents described in appendix IV
21 to part 257 of such title.

22 “(ii) EXCEPTIONS AND ADDITIONAL
23 AUTHORITY.—

24 “(I) ALTERNATIVE POINT OF
25 COMPLIANCE.—Notwithstanding sec-

1 tion 257.91(a)(2) of title 40, Code of
2 Federal Regulations, the imple-
3 menting agency may establish the rel-
4 evant point of compliance for the
5 down-gradient monitoring system as
6 provided in section 258.51(a)(2) of
7 such title.

8 “(II) ALTERNATIVE GROUND-
9 WATER PROTECTION STANDARDS.—
10 Notwithstanding section 257.95(h) of
11 title 40, Code of Federal Regulations,
12 the implementing agency may estab-
13 lish an alternative groundwater pro-
14 tection standard as provided in section
15 258.55(i) of such title.

16 “(III) ABILITY TO DETERMINE
17 THAT CORRECTIVE ACTION IS NOT
18 NECESSARY OR TECHNICALLY FEA-
19 SIBLE.—Notwithstanding section
20 257.97 of title 40, Code of Federal
21 Regulations, the implementing agency
22 may determine that remediation of a
23 release to groundwater from a struc-
24 ture is not necessary as provided in
25 section 258.57(e) of such title.

1 “(C) CLOSURE.—For all structures, the
2 criteria for closure described in sections
3 257.101, 257.102, and 257.103 of title 40,
4 Code of Federal Regulations, except the criteria
5 described in section 257.101(b)(1) of such title
6 shall not apply to existing structures that com-
7 ply with the criteria described in section 257.60
8 of such title by making a demonstration in ac-
9 cordance with subparagraph (E) of this para-
10 graph.

11 “(D) POST-CLOSURE.—For all structures,
12 the criteria for post-closure care described in
13 section 257.104 of title 40, Code of Federal
14 Regulations.

15 “(E) LOCATION RESTRICTIONS.—For all
16 structures, the criteria for location restrictions
17 described in sections 257.60 through 257.64 of
18 title 40, Code of Federal Regulations, except
19 the owner or operator of an existing structure
20 that is a surface impoundment may comply
21 with the criteria described in section 257.60 of
22 such title by demonstrating that—

23 “(i) the design and construction of the
24 existing structure that is a surface im-
25 poundment will prevent an intermittent,

1 recurring, or sustained hydraulic connec-
2 tion between any portion of the base of the
3 structure and the upper limit of the upper-
4 most aquifer; and

5 “(ii) the existing structure that is a
6 surface impoundment is designed and con-
7 structed to prevent the release of the con-
8 stituents listed in appendices III and IV to
9 part 257 of such title at levels above the
10 groundwater protection standards estab-
11 lished under this section.

12 “(F) AIR CRITERIA.—For all structures,
13 the criteria for air quality described in section
14 257.80 of title 40, Code of Federal Regulations.

15 “(G) FINANCIAL ASSURANCE.—For all
16 structures, the criteria for financial assurance
17 described in subpart G of part 258 of title 40,
18 Code of Federal Regulations.

19 “(H) RECORDKEEPING.—For all struc-
20 tures, the criteria for recordkeeping described
21 in section 257.105 of title 40, Code of Federal
22 Regulations.

23 “(I) RUN-ON AND RUN-OFF CONTROLS.—
24 For all structures that are landfills, sand or
25 gravel pits, or quarries, the criteria for run-on

1 and run-off control described in section 257.81
2 of title 40, Code of Federal Regulations.

3 “(J) HYDROLOGIC AND HYDRAULIC CAPAC-
4 ITY REQUIREMENTS.—For all structures that
5 are surface impoundments, the criteria for in-
6 flow design flood control systems described in
7 section 257.82 of title 40, Code of Federal Reg-
8 ulations.

9 “(K) STRUCTURAL INTEGRITY.—For
10 structures that are surface impoundments, the
11 criteria for structural integrity described in sec-
12 tions 257.73 and 257.74 of title 40, Code of
13 Federal Regulations.

14 “(L) INSPECTIONS.—For all structures,
15 the criteria described in sections 257.83 and
16 257.84 of title 40, Code of Federal Regulations.

17 “(M) PUBLIC AVAILABILITY OF INFORMA-
18 TION.—For all structures, the criteria described
19 in section 257.107 of title 40, Code of Federal
20 Regulations.

21 “(N) NOTIFICATION.—For all structures,
22 the criteria described in section 257.106 of title
23 40, Code of Federal Regulations.

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

1 “(A) COMPLIANCE WITH CERTAIN RE-
2 QUIREMENTS.—

3 “(i) INITIAL DEADLINES.—The State,
4 in the case of a State that has notified the
5 Administrator under subsection (b)(1) that
6 it will adopt and implement a coal combus-
7 tion residuals permit program, or the Ad-
8 ministrator, in the case of each other
9 State, shall require owners or operators of
10 existing structures to comply with—

11 “(I) as of October 19, 2015, the
12 requirements under paragraphs
13 (2)(F), (2)(H), and (2)(L);

14 “(II) not later than 6 months
15 after the date of enactment of this
16 section—

17 “(aa) the requirement for a
18 written closure plan under the
19 criteria described in paragraph
20 (2)(C); and

21 “(bb) the requirement under
22 paragraph (2)(G); and

23 “(III) not later than 12 months
24 after the date of enactment of this
25 section, the requirements under para-

1 graphs (2)(A), (2)(I), (2)(J), and
2 (2)(K).

3 “(ii) SUBSEQUENT DEADLINES.—The
4 implementing agency shall require owners
5 or operators of existing structures to com-
6 ply with—

7 “(I) not later than 24 months
8 after the date of enactment of this
9 section, the requirements under para-
10 graph (2)(B); and

11 “(II) not later than 36 months
12 after the date of enactment of this
13 section, the requirements under para-
14 graph (2)(E).

15 “(B) PERMITS.—Not later than 72 months
16 after the date of enactment of this section, the
17 implementing agency shall issue, with respect to
18 an existing structure, a final permit incor-
19 porating the applicable requirements of the coal
20 combustion residuals permit program, or a final
21 denial of an application submitted requesting
22 such a permit.

23 “(C) EFFECT OF COMPLIANCE.—

24 “(i) INTERIM REQUIREMENTS.—Prior
25 to the date on which a final permit or final

1 denial is issued under subparagraph (B),
2 compliance with the requirements of sub-
3 paragraph (A), as determined by the State
4 or Administrator, as applicable, shall con-
5 stitute compliance with the requirements of
6 this section and the rule described in sub-
7 section (i)(1) for the purpose of enforce-
8 ment.

9 “(ii) FINAL PERMIT.—Compliance
10 with a final permit issued by the imple-
11 menting agency, as determined by the im-
12 plementing agency, shall constitute compli-
13 ance with this section and the rule de-
14 scribed in subsection (i)(1) for the purpose
15 of enforcement.

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

18 “(A) NOTICE.—Not later than 2 months
19 after the date of enactment of this section, each
20 owner or operator of an inactive coal combus-
21 tion residuals surface impoundment shall sub-
22 mit to the Administrator and the State in which
23 such inactive coal combustion residuals surface
24 impoundment is located a notice stating wheth-

1 er such inactive coal combustion residuals sur-
2 face impoundment will—

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

7 “(ii) comply with the requirements of
8 the coal combustion residuals permit pro-
9 gram applicable to existing structures that
10 are surface impoundments (except as pro-
11 vided in subparagraph (C)(ii)).

12 “(B) FINANCIAL ASSURANCE.—The imple-
13 menting agency shall require the owner or oper-
14 ator of an inactive surface impoundment that
15 has closed pursuant to this paragraph to per-
16 form post-closure care in accordance with the
17 criteria described in section 257.104(b)(1) of
18 title 40, Code of Federal Regulations, and to
19 provide financial assurance for such post-clo-
20 sure care in accordance with the criteria de-
21 scribed in section 258.72 of such title.

22 “(C) TREATMENT AS STRUCTURE.—

23 “(i) IN GENERAL.—An inactive coal
24 combustion residuals surface impoundment
25 shall be treated as an existing structure

1 that is a surface impoundment for the pur-
2 poses of this section, including with respect
3 to the requirements of paragraphs (1) and
4 (2), if—

5 “(I) the owner or operator does
6 not submit a notice in accordance
7 with subparagraph (A); or

8 “(II) the owner or operator sub-
9 mits a notice described in subpara-
10 graph (A)(ii).

11 “(ii) INACTIVE COAL COMBUSTION RE-
12 SIDUALS SURFACE IMPOUNDMENTS THAT
13 FAIL TO CLOSE.—An inactive coal combus-
14 tion residuals surface impoundment for
15 which the owner or operator submits a no-
16 tice described in subparagraph (A)(i) that
17 does not close by the deadline provided
18 under subparagraph (A)(i) shall be treated
19 as an existing structure for purposes of
20 this section beginning on the date that is
21 the day after such applicable deadline, in-
22 cluding by—

23 “(I) being required to comply
24 with the requirements of paragraph
25 (1), as applicable; and

1 “(II) being required to comply,
2 beginning on such date, with each re-
3 quirement of paragraph (2).

4 “(d) IMPLEMENTATION BY ADMINISTRATOR.—

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

8 “(A) the Governor of the State notifies the
9 Administrator under subsection (b)(1) that the
10 State will not adopt and implement a coal com-
11 bustion residuals permit program;

12 “(B) the State fails to submit a notifica-
13 tion or an application by the applicable deadline
14 under subsection (b);

15 “(C) the Administrator denies an applica-
16 tion submitted by a State under subsection
17 (b)(2) and, if applicable, any revised application
18 submitted by the State under subparagraph (E)
19 of such subsection;

20 “(D) the State informs the Administrator,
21 in writing, that such State will no longer imple-
22 ment such a permit program; or

23 “(E) the Administrator withdraws approval
24 of a State coal combustion residuals program
25 after the Administrator—

1 “(i) determines that the State is not
2 implementing a coal combustion residuals
3 permit program approved under this sec-
4 tion in accordance with the requirements
5 of this section;

6 “(ii) notifies the State of such deter-
7 mination, including the reasons for such
8 determination and the particular defi-
9 ciencies that need to be remedied; and

10 “(iii) after allowing the State to take
11 actions to remedy such deficiencies within
12 a reasonable time, not to exceed 90 days,
13 the Administrator determines that the
14 State has not remedied such deficiencies.

15 “(2) REVIEW.—A State may obtain a review of
16 a determination by the Administrator under para-
17 graph (1)(E)(iii) as if the determination were a final
18 regulation for purposes of section 7006.

19 “(3) INDIAN COUNTRY.—The Administrator
20 shall implement a coal combustion residuals permit
21 program in Indian country.

22 “(4) REQUIREMENTS.—If the Administrator
23 implements a coal combustion residuals permit pro-
24 gram under paragraph (1) or (3), the permit pro-

1 gram shall consist of the requirements described in
2 subsection (c).

3 “(5) ENFORCEMENT.—If the Administrator im-
4 plements a coal combustion residuals permit pro-
5 gram for a State under paragraph (1) or in Indian
6 country under paragraph (3)—

7 “(A) the authorities referred to in section
8 4005(c)(2)(A) shall apply with respect to coal
9 combustion residuals, structures, and inactive
10 coal combustion residuals surface impound-
11 ments for which the Administrator is imple-
12 menting the coal combustion residuals permit
13 program; and

14 “(B) the Administrator may use those au-
15 thorities to inspect, gather information, and en-
16 force the requirements of this section in the
17 State or Indian country.

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

24 “(e) STATE CONTROL AFTER IMPLEMENTATION BY
25 ADMINISTRATOR.—

1 “(1) NEW ADOPTION BY STATE.—For a State
2 for which the Administrator is implementing a coal
3 combustion residuals permit program under sub-
4 paragraphs (A) through (D) of subsection (d), the
5 State may adopt and implement such a permit pro-
6 gram through the application process described in
7 subsection (b)(2) (notwithstanding the deadline de-
8 scribed in subparagraph (A) of such subsection). An
9 application submitted pursuant to this paragraph
10 shall include a timeline for transition to the State
11 coal combustion residuals permit program.

12 “(2) RESUMPTION AFTER REMEDYING DEFI-
13 CIENT PERMIT PROGRAM.—

14 “(A) PROCESS.—For a State for which the
15 Administrator is implementing a coal combus-
16 tion residuals permit program under subpara-
17 graph (E) of subsection (d)(1), the State may
18 adopt and implement such a permit program
19 if—

20 “(i) the State remedies only the defi-
21 ciencies included in the notice described in
22 such subparagraph; and

23 “(ii) by the date that is 90 days after
24 the date on which the State notifies the

1 Administrator that the deficiencies have
2 been remedied—

3 “(I) the Administrator publishes
4 in the Federal Register—

5 “(aa) a determination, after
6 providing a 30-day period for no-
7 tice and public comment, that the
8 deficiencies included in such no-
9 tice have been remedied; and

10 “(bb) a timeline for transi-
11 tion to the State coal combustion
12 residuals permit program; or

13 “(II) the Administrator does not
14 publish in the Federal Register a de-
15 termination regarding whether the de-
16 ficiencies included in such notice been
17 remedied, in which case such defi-
18 ciencies shall be deemed remedied.

19 “(B) REVIEW.—A State may obtain a re-
20 view of a determination by the Administrator
21 under this paragraph as if such determination
22 were a final regulation for purposes of section
23 7006.

24 “(f) IMPLEMENTATION DURING TRANSITION.—

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

5 “(A) a State takes control of its coal com-
6 bustion residuals permit program from the Ad-
7 ministrator under subsection (e); or

8 “(B) the Administrator takes control of a
9 coal combustion residuals permit program from
10 a State under subsection (d).

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

14 “(A) the implementing agency that took
15 control of the coal combustion residuals permit
16 program changes the requirements of the coal
17 combustion residuals permit program with re-
18 spect to the basis for the action or order; or

19 “(B) with respect to an ongoing corrective
20 action, the State or the Administrator, which-
21 ever took the action or issued the order, cer-
22 tifies the completion of the corrective action
23 that is the subject of the action or order.

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

1 “(A) if a State adopts and implements a
2 coal combustion residuals permit program
3 under subsection (e), the Administrator shall
4 cease to implement the coal combustion residu-
5 als permit program implemented under sub-
6 section (d) for such State; and

7 “(B) if the Administrator implements a
8 coal combustion residuals permit program for a
9 State under subsection (d)(1), the State shall
10 cease to implement its coal combustion residu-
11 als permit program.

12 “(g) AUTHORITY.—

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

19 “(2) AUTHORITY OF THE ADMINISTRATOR.—

20 “(A) IN GENERAL.—Except as provided in
21 subsections (d) and (f) of this section and sec-
22 tion 6005, the Administrator shall, with respect
23 to the regulation of coal combustion residuals
24 under this Act, defer to the States pursuant to
25 this section.

1 “(B) IMMEDIATE HAZARD.—Nothing in this
2 section shall be construed as affecting the au-
3 thority of the Administrator under section 7003
4 with respect to coal combustion residuals.

5 “(C) ENFORCEMENT ASSISTANCE ONLY
6 UPON REQUEST.—Upon request from the head
7 of a lead State implementing agency, the Ad-
8 ministrator may, including through the use of
9 the authorities referred to in section
10 4005(c)(2)(A), provide to such State agency
11 only the enforcement assistance requested.

12 “(D) CONCURRENT ENFORCEMENT.—Ex-
13 cept as provided in subparagraph (C) of this
14 paragraph and subsection (f), the Administrator
15 shall not have concurrent enforcement authority
16 when a State is implementing a coal combustion
17 residuals permit program, including during any
18 period of interim operation described in sub-
19 section (c)(3)(D).

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

24 “(h) USE OF COAL COMBUSTION RESIDUALS.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), use of coal combustion residuals in any
3 of the following ways (including storage prior to
4 such use) shall not be considered to be receipt of
5 coal combustion residuals for the purposes of this
6 section:

7 “(A) Use as—

8 “(i) engineered structural fill con-
9 structed in accordance with—

10 “(I) ASTM E2277 entitled
11 ‘Standard Guide for Design and Con-
12 struction of Coal Ash Structural
13 Fills’, including any amendment or re-
14 vision to that guidance;

15 “(II) any other published na-
16 tional standard determined appro-
17 priate by the implementing agency, in-
18 cluding standards issued by the Amer-
19 ican Association of State and High-
20 way Transportation Officials and the
21 Federal Highway Administration;

22 “(III) any specification published
23 by the Secretary of the Army, acting
24 through the Chief of Engineers; or

1 “(IV) a State standard or pro-
2 gram relating to—

3 “(aa) fill operations for coal
4 combustion residuals; or

5 “(bb) the management of
6 coal combustion residuals for
7 beneficial use; or

8 “(ii) engineered structural fill for—

9 “(I) a building site or foundation;

10 “(II) a base or embankment for
11 a bridge, roadway, runway, or rail-
12 road; or

13 “(III) a dike, levee, berm, or dam
14 that is not part of a structure, includ-
15 ing any project authorized under title
16 IV of the Water Resources Develop-
17 ment Act of 2016.

18 “(B) Beneficial use—

19 “(i) that provides a functional benefit;

20 “(ii) that is a substitute for the use of
21 a virgin material; and

22 “(iii) that meets relevant product
23 specifications and regulatory or design
24 standards, if any, including standards
25 issued by voluntary consensus standards

1 bodies such as ASTM International and
2 the American Concrete Institute.

3 “(2) EXCEPTION.—With respect to a use de-
4 scribed in paragraph (1) that involves placement on
5 the land of coal combustion residuals in non-road-
6 way and non-highway applications, the implementing
7 agency may, on a case-by-case basis, determine that
8 long-term storage of coal combustion residuals at the
9 generating facility or permanent unencapsulated use
10 of very large volumes of coal combustion residuals
11 constitutes receipt of coal combustion residuals for
12 the purposes of this section if—

13 “(A) the implementing agency determines
14 that such storage or use presents a risk of re-
15 leases of hazardous constituents to ground-
16 water, surface water, soil, or air that are great-
17 er than those that would occur from long-term
18 storage or use of a material that would be used
19 instead of coal combustion residuals; or

20 “(B) the storage or use results in releases
21 of hazardous constituents to groundwater, sur-
22 face water, soil, or air that exceed relevant reg-
23 ulatory and health-based benchmarks, as deter-
24 mined by the implementing agency.

25 “(i) EFFECT OF RULE.—

1 “(1) IN GENERAL.—With respect to the final
2 rule entitled ‘Hazardous and Solid Waste Manage-
3 ment System; Disposal of Coal Combustion Residu-
4 als from Electric Utilities’ and published in the Fed-
5 eral Register on April 17, 2015 (80 Fed. Reg.
6 21302)—

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

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

15 “(2) EFFECTIVE DATE.—For purposes of this
16 section, any reference in part 257 of title 40, Code
17 of Federal Regulations, to the effective date of such
18 part shall be considered to be a reference to the date
19 of enactment of this section, except that, in the case
20 of any deadline established by such a reference that
21 is in conflict with a deadline established by this sec-
22 tion, the deadline established by this section shall
23 control.

24 “(3) APPLICABILITY OF OTHER REGULA-
25 TIONS.—The application of section 257.52 of title

1 40, Code of Federal Regulations, is not affected by
2 this section.

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

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

10 “(B) a lead State implementing agency
11 may apply different definitions if—

12 “(i) the different definitions do not
13 conflict with the definitions in subsection
14 (j); and

15 “(ii) the lead State implementing
16 agency—

17 “(I) identifies the different defi-
18 nitions in the explanation included
19 with the application submitted under
20 subsection (b)(2); and

21 “(II) provides in such expla-
22 nation a reasonable basis for the ap-
23 plication of the different definitions.

24 “(j) DEFINITIONS.—In this section:

1 “(1) COAL COMBUSTION RESIDUALS.—The
2 term ‘coal combustion residuals’ means the following
3 wastes generated by electric utilities and inde-
4 pendent power producers:

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

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

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

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

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

1 “(2) COAL COMBUSTION RESIDUALS PERMIT
2 PROGRAM.—The term ‘coal combustion residuals
3 permit program’ means all of the authorities, activi-
4 ties, and procedures that comprise a system of prior
5 approval and conditions implemented under this sec-
6 tion to regulate the management and disposal of coal
7 combustion residuals.

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

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

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

1 “(6) INACTIVE COAL COMBUSTION RESIDUALS
2 SURFACE IMPOUNDMENT.—The term ‘inactive coal
3 combustion residuals surface impoundment’ means a
4 surface impoundment, located at an electric utility
5 or independent power producer, that, as of the date
6 of enactment of this section—

7 “(A) does not receive coal combustion re-
8 siduals;

9 “(B) contains coal combustion residuals;
10 and

11 “(C) contains liquid.

12 “(7) INDIAN COUNTRY.—The term ‘Indian
13 country’ has the meaning given that term in section
14 1151 of title 18, United States Code.

15 “(8) STRUCTURE.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), the term ‘structure’ means a
18 landfill, surface impoundment, sand or gravel
19 pit, or quarry that receives coal combustion re-
20 siduals on or after the date of enactment of this
21 section.

22 “(B) EXCEPTIONS.—

23 “(i) MUNICIPAL SOLID WASTE LAND-
24 FILLS.—The term ‘structure’ does not in-
25 clude a municipal solid waste landfill meet-

1 ing the revised criteria promulgated under
2 section 4010(c).

3 “(ii) COAL MINES.—The term ‘struc-
4 ture’ does not include the location of sur-
5 face coal mining and reclamation oper-
6 ations or surface coal mining operations
7 (as those terms are defined in section 701
8 of the Surface Mining Control and Rec-
9 lamation Act of 1977 (30 U.S.C. 1291)) or
10 an active or abandoned underground coal
11 mine.

12 “(iii) DE MINIMIS RECEIPT.—The
13 term ‘structure’ does not include any land-
14 fill or surface impoundment that receives
15 only de minimis quantities of coal combus-
16 tion residuals if the presence of coal com-
17 bustion residuals is incidental to the mate-
18 rial managed in the landfill or surface im-
19 poundment.

20 “(9) UNLINED SURFACE IMPOUNDMENT.—The
21 term ‘unlined surface impoundment’ means a sur-
22 face impoundment that does not have a liner system
23 described in section 257.71 of title 40, Code of Fed-
24 eral Regulations.”.

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

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

5 **SEC. 503. EFFECT ON REGULATORY DETERMINATIONS.**

6 Nothing in this title, or the amendments made by this
7 title, shall be construed to alter in any manner the effect
8 on coal combustion residuals (as defined in section 4011
9 of the Solid Waste Disposal Act, as added by this Act)
10 of the Environmental Protection Agency’s regulatory de-
11 terminations entitled—

12 (1) “Notice of Regulatory Determination on
13 Wastes From the Combustion of Fossil Fuels”, pub-
14 lished at 65 Fed. Reg. 32214 (May 22, 2000); and

15 (2) “Final Regulatory Determination on Four
16 Large-Volume Wastes From the Combustion of Coal
17 by Electric Utility Power Plants”, published at 58
18 Fed. Reg. 42466 (August 9, 1993).

19 **SEC. 504. TECHNICAL ASSISTANCE.**

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

1 **SEC. 505. FEDERAL POWER ACT.**

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

