



**AMENDMENT TO THE RULES COMMITTEE PRINT
OF H.R. 1947
OFFERED BY MR. MCKINLEY OF WEST VIRGINIA**

At the end of title XII, add the following new subtitle:

1 **Subtitle D—Coal Residuals Reuse**
2 **and Management**

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

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

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this subtitle 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.

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

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

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

3 “(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-
4 TION RESIDUALS.—Each State may adopt, implement,
5 and enforce a coal combustion residuals permit program
6 if such State provides the notification required under sub-
7 section (b)(1), and the certification required under sub-
8 section (b)(2).

9 “(b) STATE ACTIONS.—

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

17 “(2) CERTIFICATION.—

18 “(A) IN GENERAL.—Not later than 36
19 months after the date of enactment of this sec-
20 tion (except as provided in subsection
21 (f)(1)(A)), in the case of a State that has noti-
22 fied the Administrator that it will implement a
23 coal combustion residuals permit program, the
24 head of the lead State implementing agency
25 shall submit to the Administrator a certification
26 that such coal combustion residuals permit pro-

1 gram meets the requirements described in sub-
2 section (c).

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

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

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

12 “(iii) an explanation of how the State
13 coal combustion residuals permit program
14 meets the requirements of this section, in-
15 cluding a description of the State’s—

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

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

21 “(III) public participation proc-
22 ess for the promulgation, amendment,
23 or repeal of regulations for, and the
24 issuance of permits under, such per-
25 mit program;

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

5 “(V) statutes, regulations, or
6 policies pertaining to structural integ-
7 rity or dam safety that may be ap-
8 plied to structures through such per-
9 mit program;

10 “(iv) a certification that the State has
11 in effect, at the time of certification, stat-
12 utes or regulations necessary to implement
13 a coal combustion residuals permit pro-
14 gram that meets the requirements de-
15 scribed in subsection (c); and

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

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

21 “(3) MAINTENANCE OF 4005(c) OR 3006 PRO-
22 GRAM.—In order to adopt or implement a coal com-
23 bustion residuals permit program under this section
24 (including pursuant to subsection (f)), the State im-
25 plementing agency shall maintain an approved per-

1 mit program or other system of prior approval and
2 conditions under section 4005(c) or an authorized
3 program under section 3006.

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

7 “(1) GENERAL REQUIREMENTS.—

8 “(A) IN GENERAL.—The implementing
9 agency shall—

10 “(i) apply the subset of the revised
11 criteria described in paragraph (2) to own-
12 ers or operators of structures, including
13 surface impoundments, that receive coal
14 combustion residuals on or after the date
15 of enactment of this section;

16 “(ii) with respect to structures that
17 are receiving coal combustion residuals as
18 of the date of enactment of this section,
19 take the actions required under paragraph
20 (3);

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

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

1 “(B) STRUCTURAL INTEGRITY.—

2 “(i) ENGINEERING CERTIFICATION.—

3 The implementing agency shall require
4 that an independent registered professional
5 engineer certify that—

6 “(I) the design of each structure
7 that receives coal combustion residu-
8 als on or after the date of enactment
9 of this section is in accordance with
10 recognized and generally accepted
11 good engineering practices for con-
12 tainment of the maximum volume of
13 coal combustion residuals and liquids
14 which can be impounded therein; and

15 “(II) the construction and main-
16 tenance of the structure will ensure
17 structural stability.

18 “(ii) EMERGENCY ACTION PLAN.—

19 The implementing agency shall require
20 that the owner or operator of any structure
21 that is a surface impoundment that re-
22 ceives coal combustion residuals on or after
23 the date of enactment of this section and
24 that is classified by the State as posing a
25 high hazard potential pursuant to the

1 guidelines published by the Federal Emer-
2 gency Management Agency entitled ‘Fed-
3 eral Guidelines for Dam Safety: Hazard
4 Potential Classification System for Dams’
5 (FEMA Publication Number 333) prepare
6 and maintain an emergency action plan
7 that identifies responsible persons and ac-
8 tions to be taken in the event of a dam
9 safety emergency.

10 “(iii) INSPECTION.—

11 “(I) IN GENERAL.—The imple-
12 menting agency shall require that
13 structures that are surface impound-
14 ments that receive coal combustion re-
15 siduals on or after the date of enact-
16 ment of this section be inspected not
17 less than annually by an independent
18 registered professional engineer to as-
19 sure that the design, operation, and
20 maintenance of the surface impound-
21 ment is in accordance with recognized
22 and generally accepted good engineer-
23 ing practices for containment of the
24 maximum volume of coal combustion
25 residuals and liquids which can be im-

1 pounded therein, so as to ensure dam
2 stability.

3 “(II) POTENTIALLY HAZARDOUS
4 CONDITIONS.—The implementing
5 agency shall require that if an inspec-
6 tion under subclause (I), or a periodic
7 evaluation under clause (iv), reveals a
8 potentially hazardous condition, the
9 owner or operator of the structure
10 shall immediately take action to miti-
11 gate the potentially hazardous condi-
12 tion and notify appropriate State and
13 local first responders.

14 “(iv) PERIODIC EVALUATION.—The
15 implementing agency shall require that
16 structures that are surface impoundments
17 that receive coal combustion residuals on
18 or after the date of enactment of this sec-
19 tion be periodically evaluated for appear-
20 ances of structural weakness.

21 “(v) DEFICIENCY.—

22 “(I) IN GENERAL.—If the head
23 of the implementing agency deter-
24 mines that a structure is deficient
25 with respect to the requirements in

1 clause (i), (iii), or (iv), the head of the
2 agency has the authority to require
3 action to correct the deficiency accord-
4 ing to a schedule determined by the
5 agency.

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

13 “(III) DAM SAFETY CONSULTA-
14 TION.—In the case of a structure that
15 is a surface impoundment, the head of
16 the implementing agency shall, in
17 making a determination under sub-
18 clause (I), consult with appropriate
19 State dam safety officials.

20 “(C) LOCATION.—The implementing agen-
21 cy shall require that structures that first receive
22 coal combustion residuals on or after the date
23 of enactment of this section shall be constructed
24 with a base located a minimum of 2 feet above
25 the upper limit of the water table, unless it is

1 demonstrated to the satisfaction of the imple-
2 menting agency that—

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

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

9 “(D) WIND DISPERSAL.—

10 “(i) IN GENERAL.—The implementing
11 agency shall require that owners or opera-
12 tors of structures that receive coal combus-
13 tion residuals on or after the date of enact-
14 ment of this section address wind dispersal
15 of dust by requiring cover, or by wetting
16 coal combustion residuals with water to a
17 moisture content that prevents wind dis-
18 persal, facilitates compaction, and does not
19 result in free liquids.

20 “(ii) ALTERNATIVE METHODS.—Sub-
21 ject to the review and approval by the im-
22 plementing agency, owners or operators of
23 structures that receive coal combustion re-
24 siduals on or after the date of enactment
25 of this section may propose alternative

1 methods to address wind dispersal of dust
2 that will provide comparable or more effective
3 control of dust.

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

11 “(F) PUBLIC AVAILABILITY OF INFORMATION.—Except for information with respect to
12 which disclosure is prohibited under section
13 1905 of title 18, United States Code, the implementing
14 agency shall ensure that—
15

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

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

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

4 “(G) AGENCY AUTHORITY.—

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

7 “(I) obtain information necessary
8 to determine whether the owner or op-
9 erator of a structure is in compliance
10 with the requirements of this sub-
11 section;

12 “(II) conduct or require moni-
13 toring and testing to ensure that
14 structures are in compliance with the
15 requirements of this subsection; and

16 “(III) enter, at reasonable times,
17 any site or premise subject to the coal
18 combustion residuals permit program
19 for the purpose of inspecting struc-
20 tures and reviewing records relevant
21 to the design, operation, and mainte-
22 nance of structures.

23 “(ii) MONITORING AND TESTING.—If
24 monitoring or testing is conducted under
25 clause (i)(II) by or for the implementing

1 agency, the implementing agency shall, if
2 requested, provide to the owner or oper-
3 ator—

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

6 “(II) at the time of sampling, a
7 portion of each sample equal in vol-
8 ume or weight to the portion retained
9 by or for the implementing agency;
10 and

11 “(III) a copy of the results of
12 any analysis of samples collected by or
13 for the implementing agency.

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

17 “(A) DESIGN REQUIREMENTS.—For new
18 structures, and lateral expansions of existing
19 structures, that first receive coal combustion re-
20 siduals on or after the date of enactment of this
21 section, the revised criteria regarding design re-
22 quirements described in section 258.40 of title
23 40, Code of Federal Regulations, except that
24 the leachate collection system requirements de-
25 scribed in section 258.40(a)(2) of title 40, Code

1 of Federal Regulations, do not apply to struc-
2 tures that are surface impoundments.

3 “(B) GROUNDWATER MONITORING AND
4 CORRECTIVE ACTION.—For all structures that
5 receive coal combustion residuals on or after the
6 date of enactment of this section, the revised
7 criteria regarding groundwater monitoring and
8 corrective action requirements described in sub-
9 part E of part 258 of title 40, Code of Federal
10 Regulations, except that, for the purposes of
11 this subparagraph, the revised criteria shall also
12 include—

13 “(i) for the purposes of detection
14 monitoring, the constituents boron, chlo-
15 ride, conductivity, fluoride, mercury, pH,
16 sulfate, sulfide, and total dissolved solids;
17 and

18 “(ii) for the purposes of assessment
19 monitoring, establishing a groundwater
20 protection standard, and assessment of
21 corrective measures, the constituents alu-
22 minum, boron, chloride, fluoride, iron,
23 manganese, molybdenum, pH, sulfate, and
24 total dissolved solids.

1 “(C) CLOSURE.—For all structures that
2 receive coal combustion residuals on or after the
3 date of enactment of this section, in a manner
4 consistent with paragraph (5), the revised cri-
5 teria for closure described in subsections (a)
6 through (e) and (h) through (j) of section
7 258.60 of title 40, Code of Federal Regulations.

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

15 “(E) LOCATION RESTRICTIONS.—The re-
16 vised criteria for location restrictions described
17 in—

18 “(i) for new structures, and lateral ex-
19 pansion of existing structures, that first
20 receive coal combustion residuals on or
21 after the date of enactment of this section,
22 sections 258.11 through 258.15 of title 40,
23 Code of Federal Regulations; and

24 “(ii) for existing structures that re-
25 ceive coal combustion residuals on or after

1 the date of enactment of this section, sec-
2 tions 258.11 and 258.15 of title 40, Code
3 of Federal Regulations.

4 “(F) AIR QUALITY.—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 air quality described in sec-
8 tion 258.24 of title 40, Code of Federal Regula-
9 tions.

10 “(G) FINANCIAL ASSURANCE.—For all
11 structures that receive coal combustion residu-
12 als on or after the date of enactment of this
13 section, the revised criteria for financial assur-
14 ance described in subpart G of part 258 of title
15 40, Code of Federal Regulations.

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

22 “(I) RECORDKEEPING.—For all structures
23 that receive coal combustion residuals on or
24 after the date of enactment of this section, the
25 revised criteria for recordkeeping described in

1 section 258.29 of title 40, Code of Federal Reg-
2 ulations.

3 “(J) RUN-ON AND RUN-OFF CONTROL SYS-
4 TEMS FOR LAND-BASED UNITS.—For all land-
5 fills and other land-based units, other than sur-
6 face impoundments, that receive coal combus-
7 tion residuals on or after the date of enactment
8 of this section, the revised criteria for run-on
9 and run-off control systems described in section
10 258.26 of title 40, Code of Federal Regulations.

11 “(K) RUN-OFF CONTROL SYSTEMS FOR
12 SURFACE IMPOUNDMENTS.—For all surface im-
13 poundments that receive coal combustion re-
14 siduals on or after the date of enactment of this
15 section, the revised criteria for run-off control
16 systems described in section 258.26(a)(2) of
17 title 40, Code of Federal Regulations.

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

20 “(A) NOTIFICATION.—Not later than the
21 date on which a State submits a certification
22 under subsection (b)(2), not later than 30
23 months after the Administrator receives notice
24 under subsection (e)(1)(A), or not later than 36
25 months after the date of enactment of this sec-

1 tion with respect to a coal combustion residuals
2 permit program that is being implemented by
3 the Administrator under subsection (e)(3), as
4 applicable, the implementing agency shall notify
5 owners or operators of structures that are re-
6 ceiving coal combustion residuals as of the date
7 of enactment of this section within the State
8 of—

9 “(i) the obligation to apply for and
10 obtain a permit under subparagraph (C);
11 and

12 “(ii) the requirements referred to in
13 subparagraph (B).

14 “(B) COMPLIANCE WITH CERTAIN RE-
15 QUIREMENTS.—Not later than 12 months after
16 the date on which a State submits a certifi-
17 cation under subsection (b)(2), not later than
18 42 months after the Administrator receives no-
19 tice under subsection (e)(1)(A), or not later
20 than 48 months after the date of enactment of
21 this section with respect to a coal combustion
22 residuals permit program that is being imple-
23 mented by the Administrator under subsection
24 (e)(3), as applicable, the implementing agency
25 shall require owners or operators of structures

1 that are receiving coal combustion residuals as
2 of the date of enactment of this section to com-
3 ply with—

4 “(i) the requirements under para-
5 graphs (1)(B)(ii), (1)(B)(iii), (1)(D),
6 (2)(B), (2)(F), (2)(H), (2)(J), and (2)(K);
7 and

8 “(ii) the groundwater recordkeeping
9 requirement described in section
10 258.29(a)(5) of title 40, Code of Federal
11 Regulations.

12 “(C) PERMITS.—

13 “(i) PERMIT DEADLINE.—Not later
14 than 48 months after the date on which a
15 State submits a certification under sub-
16 section (b)(2), not later than 78 months
17 after the Administrator receives notice
18 under subsection (e)(1)(A), or not later
19 than 84 months after the date of enact-
20 ment of this section with respect to a coal
21 combustion residuals permit program that
22 is being implemented by the Administrator
23 under subsection (e)(3), as applicable, the
24 implementing agency shall issue, with re-
25 spect to a structure that is receiving coal

1 combustion residuals as of the date of en-
2 actment of this section, a final permit in-
3 corporating the requirements of the coal
4 combustion residuals permit program, or a
5 final denial for an application submitted
6 requesting such a permit.

7 “(ii) APPLICATION DEADLINE.—The
8 implementing agency shall identify, in col-
9 laboration with the owner or operator of a
10 structure described in clause (i), a reason-
11 able deadline by which the owner or oper-
12 ator shall submit a permit application
13 under such clause.

14 “(D) INTERIM OPERATION.—

15 “(i) PRIOR TO DEADLINES.—With re-
16 spect to any period of time on or after the
17 date of enactment of this section but prior
18 to the applicable deadline in subparagraph
19 (B), the owner or operator of a structure
20 that is receiving coal combustion residuals
21 as of the date of enactment of this section
22 may continue to operate such structure
23 until such applicable deadline under the
24 applicable authority in effect.

1 “(ii) PRIOR TO PERMIT.—Unless the
2 implementing agency determines that the
3 structure should close pursuant to para-
4 graph (5), if the owner or operator of a
5 structure that is receiving coal combustion
6 residuals as of the date of enactment of
7 this section meets the requirements re-
8 ferred to in subparagraph (B) by the appli-
9 cable deadline in such subparagraph, the
10 owner or operator may operate the struc-
11 ture until such time as the implementing
12 agency issues, under subparagraph (C), a
13 final permit incorporating the requirements
14 of the coal combustion residuals permit
15 program, or a final denial for an applica-
16 tion submitted requesting such a permit.

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

19 “(A) SURFACE IMPOUNDMENTS THAT RE-
20 QUIRE ASSESSMENT OF CORRECTIVE MEASURES
21 WITHIN 10 YEARS OF THE DATE OF ENACT-
22 MENT.—

23 “(i) IN GENERAL.—In addition to the
24 groundwater monitoring and corrective ac-
25 tion requirements described in paragraph

1 (2)(B), the implementing agency shall re-
2 quire a surface impoundment that receives
3 coal combustion residuals on or after the
4 date of enactment of this section to comply
5 with the requirements in clause (ii) of this
6 subparagraph and clauses (i) and (ii) of
7 subparagraph (D) if the surface impound-
8 ment—

9 “(I) does not—

10 “(aa) have a liner system
11 described in section 258.40(b) of
12 title 40, Code of Federal Regula-
13 tions; and

14 “(bb) meet the design cri-
15 teria described in section
16 258.40(a)(1) of title 40, Code of
17 Federal Regulations; and

18 “(II) within 10 years after the
19 date of enactment of this section, is
20 required under section 258.56(a) of
21 title 40, Code of Federal Regulations,
22 to undergo an assessment of correc-
23 tive measures for any constituent cov-
24 ered under subpart E of part 258 of
25 title 40, Code of Federal Regulations,

1 or otherwise identified in paragraph
2 (2)(B)(ii) of this subsection, for which
3 assessment groundwater monitoring is
4 required.

5 “(ii) DEADLINE TO MEET GROUND-
6 WATER PROTECTION STANDARD.—Except
7 as provided in subparagraph (C), the im-
8 plementing agency shall require that the
9 groundwater protection standard, for sur-
10 face impoundments identified in clause (i)
11 of this subparagraph, established by the
12 implementing agency under section
13 258.55(h) or 258.55(i) of title 40, Code of
14 Federal Regulations, for any constituent
15 for which corrective measures are required
16 shall be met—

17 “(I) as soon as practicable at the
18 relevant point of compliance, as de-
19 scribed in section 258.40(d) of title
20 40, Code of Federal Regulations; and

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

1 “(B) SURFACE IMPOUNDMENTS SUBJECT
2 TO A STATE CORRECTIVE ACTION REQUIRE-
3 MENT AS OF THE DATE OF ENACTMENT.—

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

15 “(I) does not—

16 “(aa) have a liner system
17 described in section 258.40(b) of
18 title 40, Code of Federal Regula-
19 tions; and

20 “(bb) meet the design cri-
21 teria described in section
22 258.40(a)(1) of title 40, Code of
23 Federal Regulations; and

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

4 “(ii) DEADLINE TO MEET GROUND-
5 WATER PROTECTION STANDARD.—Except
6 as provided in subparagraph (C), the im-
7 plementing agency shall require that the
8 groundwater protection standard, for sur-
9 face impoundments identified in clause (i)
10 of this subparagraph, established by the
11 implementing agency under section
12 258.55(h) or 258.55(i) of title 40, Code of
13 Federal Regulations, for any constituent
14 for which corrective measures are required
15 shall be met—

16 “(I) as soon as practicable at the
17 relevant point of compliance, as de-
18 scribed in section 258.40(d) of title
19 40, Code of Federal Regulations; and

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

22 “(C) EXTENSION OF DEADLINE.—

23 “(i) IN GENERAL.—Except as pro-
24 vided in clause (ii) of this subparagraph,
25 the deadline for meeting a groundwater

1 protection standard under subparagraph
2 (A)(ii) or (B)(ii) may be extended by the
3 implementing agency, after opportunity for
4 public notice and comment under the pub-
5 lic participation process described in sub-
6 section (b)(2)(B)(iii)(III), or in subsection
7 (e)(6) based on—

8 “(I) the effectiveness of any in-
9 terim measures implemented by the
10 owner or operator of the facility under
11 section 258.58(a)(3) of title 40, Code
12 of Federal Regulations;

13 “(II) the level of progress dem-
14 onstrated in meeting the groundwater
15 protection standard;

16 “(III) the potential for other ad-
17 verse human health or environmental
18 exposures attributable to the contami-
19 nation from the surface impoundment
20 undergoing corrective action; and

21 “(IV) the lack of available alter-
22 native management capacity for the
23 coal combustion residuals and related
24 materials managed in the impound-
25 ment at the facility at which the im-

1 poundment is located if the owner or
2 operator has used best efforts, as nec-
3 essary, to design, obtain any nec-
4 essary permits, finance, construct, and
5 render operational the alternative
6 management capacity during the time
7 period for meeting a groundwater pro-
8 tection standard in subparagraph
9 (A)(ii) or (B)(ii).

10 “(ii) EXCEPTION.—The deadline
11 under subparagraph (A)(ii) or (B)(ii) shall
12 not be extended if there has been contami-
13 nation of public or private drinking water
14 systems attributable to a surface impound-
15 ment undergoing corrective action, unless
16 the contamination has been addressed by
17 providing a permanent replacement water
18 system.

19 “(D) ADDITIONAL REQUIREMENTS.—

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

25 “(ii) INTERIM MEASURES.—

1 “(I) IN GENERAL.—Except as
2 provided in subclause (II), not later
3 than 90 days after the date on which
4 the assessment of corrective measures
5 is initiated, the owner or operator of
6 a surface impoundment described in
7 subparagraph (A) or (B) shall imple-
8 ment interim measures, as necessary,
9 under the factors in section
10 258.58(a)(3) of title 40, Code of Fed-
11 eral Regulations.

12 “(II) IMPOUNDMENTS SUBJECT
13 TO STATE CORRECTIVE ACTION RE-
14 QUIREMENT AS OF THE DATE OF EN-
15 ACTMENT.—Subclause (I) shall only
16 apply to surface impoundments sub-
17 ject to a State corrective action re-
18 quirement as of the date of enactment
19 of this section if the owner or oper-
20 ator has not implemented interim
21 measures, as necessary, under the fac-
22 tors in section 258.58(a)(3) of title
23 40, Code of Federal Regulations.

24 “(E) SURFACE IMPOUNDMENTS THAT RE-
25 QUIRE ASSESSMENT OF CORRECTIVE MEASURES

1 MORE THAN 10 YEARS AFTER DATE OF ENACT-
2 MENT.—

3 “(i) IN GENERAL.—In addition to the
4 groundwater monitoring and corrective ac-
5 tion requirements described in paragraph
6 (2)(B), the implementing agency shall re-
7 quire a surface impoundment that receives
8 coal combustion residuals on or after the
9 date of enactment of this section to comply
10 with the requirements in clause (ii) if the
11 surface impoundment—

12 “(I) does not—

13 “(aa) have a liner system
14 described in section 258.40(b) of
15 title 40, Code of Federal Regula-
16 tions; and

17 “(bb) meet the design cri-
18 teria described in section
19 258.40(a)(1) of title 40, Code of
20 Federal Regulations; and

21 “(II) more than 10 years after
22 the date of enactment of this section,
23 is required under section 258.56(a)
24 title 40, Code of Federal Regulations,
25 to undergo an assessment of correc-

1 tive measures for any constituent cov-
2 ered under subpart E of part 258 of
3 title 40, Code of Federal Regulations,
4 or otherwise identified in paragraph
5 (2)(B)(ii) of this subsection, for which
6 assessment groundwater monitoring is
7 required.

8 “(ii) REQUIREMENTS.—

9 “(I) CLOSURE.—The surface im-
10 poundments identified in clause (i)
11 shall cease receiving coal combustion
12 residuals and initiate closure in ac-
13 cordance with paragraph (5) after al-
14 ternative management capacity at the
15 facility is available for the coal com-
16 bustion residuals and related mate-
17 rials managed in the impoundment.

18 “(II) BEST EFFORTS.—The al-
19 ternative management capacity shall
20 be developed as soon as practicable
21 with the owner or operator using best
22 efforts to design, obtain necessary
23 permits for, finance, construct, and
24 render operational the alternative
25 management capacity.

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

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

16 “(5) CLOSURE.—

17 “(A) IN GENERAL.—If it is determined by
18 the implementing agency that a structure
19 should close because the requirements of a coal
20 combustion residuals permit program are not
21 being satisfied with respect to such structure,
22 or if it is determined by the owner or operator
23 that a structure should close, the time period
24 and method for the closure of such structure
25 shall be set forth in a closure plan that estab-

1 lishes a deadline for completion of closure as
2 soon as practicable and that takes into account
3 the nature and the site-specific characteristics
4 of the structure to be closed.

5 “(B) SURFACE IMPOUNDMENT.—In the
6 case of a surface impoundment, the closure plan
7 under subparagraph (A) shall require, at a min-
8 imum, the removal of liquid and the stabiliza-
9 tion of remaining waste, as necessary to sup-
10 port the final cover.

11 “(d) FEDERAL REVIEW OF STATE PERMIT PRO-
12 GRAMS.—

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

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

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

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

23 “(D) is not implementing a coal combus-
24 tion residuals permit program, with respect to
25 which the State has submitted a certification

1 under subsection (b)(2), that meets the require-
2 ments described in subsection (c);

3 “(E) is not implementing a coal combus-
4 tion residuals permit program, with respect to
5 which the State has submitted a certification
6 under subsection (b)(2)—

7 “(i) that is consistent with such cer-
8 tification; and

9 “(ii) for which the State continues to
10 have in effect statutes or regulations nec-
11 essary to implement such program; or

12 “(F) does not make available to the Ad-
13 ministrator, within 90 days of a written re-
14 quest, specific information necessary for the
15 Administrator to ascertain whether the State
16 has satisfied the requirements described in sub-
17 paragraphs (A) through (E).

18 “(2) REQUEST.—If a request described in para-
19 graph (1)(F) is proposed pursuant to a petition to
20 the Administrator, the Administrator shall only
21 make the request if the Administrator does not pos-
22 sess the information necessary to ascertain whether
23 the State has satisfied the requirements described in
24 subparagraphs (A) through (E) of such paragraph.

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

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

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

12 “(i) in the case of a deficiency de-
13 scribed in subparagraphs (A) through (E)
14 of paragraph (1), not earlier than 180
15 days after the date on which the State re-
16 ceives the notice; and

17 “(ii) in the case of a deficiency de-
18 scribed in paragraph (1)(F), not later than
19 90 days after the date on which the State
20 receives the notice.

21 “(4) CRITERIA FOR DETERMINING DEFICIENCY
22 OF STATE PERMIT PROGRAM.—In making a deter-
23 mination whether a State has failed to satisfy the re-
24 quirements described in subparagraphs (A) through
25 (E) of paragraph (1), or a determination under sub-

1 section (e)(1)(B), the Administrator shall consider,
2 as appropriate—

3 “(A) whether the State’s statutes or regu-
4 lations to implement a coal combustion residu-
5 als permit program are not sufficient to meet
6 the requirements described in subsection (c) be-
7 cause of—

8 “(i) failure of the State to promulgate
9 or enact new statutes or regulations when
10 necessary; or

11 “(ii) action by a State legislature or
12 court striking down or limiting such State
13 statutes or regulations;

14 “(B) whether the operation of the State
15 coal combustion residuals permit program fails
16 to comply with the requirements of subsection
17 (c) because of—

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

20 “(ii) repeated issuance of permits by
21 the State which do not meet the require-
22 ments of subsection (c);

23 “(iii) failure of the State to comply
24 with the public participation requirements
25 of this section; or

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

4 “(C) whether the enforcement of a State
5 coal combustion residuals permit program fails
6 to comply with the requirements of this section
7 because of—

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

10 “(ii) repeated failure by the State to
11 inspect or otherwise determine compliance
12 pursuant to the process identified in sub-
13 section (b)(2)(B)(iii)(I).

14 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

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

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

22 “(B) the State has received a notice under
23 subsection (d) and the Administrator deter-
24 mines, after providing a 30-day period for no-
25 tice and public comment, that the State has

1 failed, by the deadline identified in the notice
2 under subsection (d)(3)(B), to remedy the defi-
3 ciencies detailed in the notice under subsection
4 (d)(3)(A); or

5 “(C) the State informs the Administrator,
6 in writing, that such State will no longer imple-
7 ment such a permit program.

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

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

20 “(4) REQUIREMENTS.—If the Administrator
21 implements a coal combustion residuals permit pro-
22 gram for a State under paragraph (1) or (3), the
23 permit program shall consist of the requirements de-
24 scribed in subsection (c).

25 “(5) ENFORCEMENT.—

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

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

10 “(ii) the Administrator may use those
11 authorities to inspect, gather information,
12 and enforce the requirements of this sec-
13 tion in the State.

14 “(B) OTHER STRUCTURES.—If the Admin-
15 istrator implements a coal combustion residuals
16 permit program under paragraph (3)—

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

23 “(ii) the Administrator may use those
24 authorities to inspect, gather information,
25 and enforce the requirements of this sec-

1 tion for the structures for which the Ad-
2 ministrator is implementing the coal com-
3 bustion residuals permit program.

4 “(6) PUBLIC PARTICIPATION PROCESS.—If the
5 Administrator implements a coal combustion residu-
6 als permit program for a State under this sub-
7 section, the Administrator shall provide a 30-day pe-
8 riod for the public participation process required in
9 paragraphs (1)(F)(i), (4)(C)(i), and (4)(E)(ii)(IV) of
10 subsection (c).

11 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
12 ADMINISTRATOR.—

13 “(1) STATE CONTROL.—

14 “(A) NEW ADOPTION, OR RESUMPTION OF,
15 AND IMPLEMENTATION BY STATE.—For a State
16 for which the Administrator is implementing a
17 coal combustion residuals permit program
18 under subsection (e)(1)(A), or subsection
19 (e)(1)(C), the State may adopt and implement
20 such a permit program by—

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

24 “(ii) not later than 6 months after the
25 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 requirements 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 “(B) REMEDYING DEFICIENT PERMIT PRO-
15 GRAM.—For a State for which the Adminis-
16 trator is implementing a coal combustion re-
17 siduals permit program under subsection
18 (e)(1)(B), the State may adopt and implement
19 such a permit program by—

20 “(i) remedying only the deficiencies
21 detailed in the notice pursuant to sub-
22 section (d)(3)(A); and

23 “(ii) receiving from the Adminis-
24 trator—

1 “(I) a determination, after pro-
2 viding a 30-day period for notice and
3 public comment, that the deficiencies
4 detailed in such notice have been rem-
5 edied; and

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

9 “(2) REVIEW OF DETERMINATION.—

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

18 “(B) REVIEW.—A State may obtain a re-
19 view of a determination by the Administrator
20 under paragraph (1) as if such determination
21 was a final regulation for purposes of section
22 7006.

23 “(3) IMPLEMENTATION DURING TRANSITION.—

24 “(A) EFFECT ON ACTIONS AND ORDERS.—
25 Program requirements of, and actions taken or

1 orders issued pursuant to, a coal combustion re-
2 siduals permit program shall remain in effect
3 if—

4 “(i) a State takes control of its coal
5 combustion residuals permit program from
6 the Administrator under paragraph (1); or

7 “(ii) the Administrator takes control
8 of a coal combustion residuals permit pro-
9 gram from a State under subsection (e).

10 “(B) CHANGE IN REQUIREMENTS.—Sub-
11 paragraph (A) shall apply to such program re-
12 quirements, actions, and orders until such time
13 as—

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

18 “(ii) the State or the Administrator,
19 whichever took the action or issued the
20 order, certifies the completion of a correc-
21 tive action that is the subject of the action
22 or order.

23 “(4) SINGLE PERMIT PROGRAM.—If a State
24 adopts and implements a coal combustion residuals
25 permit program under this subsection, the Adminis-

1 trator shall cease to implement the permit program
2 implemented under subsection (e)(1) for such State.

3 “(g) EFFECT ON DETERMINATION UNDER 4005(c)
4 OR 3006.—The Administrator shall not consider the im-
5 plementation of a coal combustion residuals permit pro-
6 gram by the Administrator under subsection (e) in making
7 a determination of approval for a permit program or other
8 system of prior approval and conditions under section
9 4005(c) or of authorization for a program under section
10 3006.

11 “(h) AUTHORITY.—

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

18 “(2) AUTHORITY OF THE ADMINISTRATOR.—

19 “(A) IN GENERAL.—Except as provided in
20 subsections (d) and (e) and section 6005, the
21 Administrator shall, with respect to the regula-
22 tion of coal combustion residuals, defer to the
23 States pursuant to this section.

24 “(B) IMMINENT HAZARD.—Nothing in this
25 section shall be construed as affecting the au-

1 thority of the Administrator under section 7003
2 with respect to coal combustion residuals.

3 “(C) ENFORCEMENT ASSISTANCE ONLY
4 UPON REQUEST.—Upon request from the head
5 of a lead State agency that is implementing a
6 coal combustion residuals permit program, the
7 Administrator may provide to such State agen-
8 cy only the enforcement assistance requested.

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

16 “(E) OTHER AUTHORITY.—The Adminis-
17 trator shall not have authority to finalize the
18 proposed rule published at pages 35128
19 through 35264 of volume 75 of the Federal
20 Register (June 21, 2010).

21 “(F) OTHER RESPONSE AUTHORITY.—
22 Nothing in this section shall be construed as af-
23 fecting the authority of the Administrator
24 under the Comprehensive Environmental Re-
25 sponse, Compensation, and Liability Act of

1 1980 (42 U.S.C. 9601 et seq.) with respect to
2 coal combustion residuals.

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

7 “(i) MINE RECLAMATION ACTIVITIES.—A coal com-
8 bustion residuals permit program implemented by the Ad-
9 ministrators under subsection (e) shall not apply to the uti-
10 lization, placement, and storage of coal combustion residu-
11 als at surface mining and reclamation operations.

12 “(j) DEFINITIONS.—In this section:

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

15 “(A) the solid wastes listed in section
16 3001(b)(3)(A)(i), including recoverable mate-
17 rials from such wastes;

18 “(B) coal combustion wastes that are co-
19 managed with wastes produced in conjunction
20 with the combustion of coal, provided that such
21 wastes are not segregated and disposed of sepa-
22 rately from the coal combustion wastes and
23 comprise a relatively small proportion of the
24 total wastes being disposed in the structure;

25 “(C) fluidized bed combustion wastes;

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

5 “(E) wastes from the co-burning of coal
6 with materials described in subparagraph (A)
7 that are recovered from monofills.

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

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

20 “(4) IMPLEMENTING AGENCY.—The term ‘im-
21 plementing agency’ means the agency responsible for
22 implementing a coal combustion residuals permit
23 program for a State, which shall either be the lead
24 State implementing agency identified under sub-

1 section (b)(2)(B)(i) or the Administrator pursuant
2 to subsection (e).

3 “(5) PERMIT; PRIOR APPROVAL AND CONDI-
4 TIONS.—Except as provided in subsections (b)(3)
5 and (g), the terms ‘permit’ and ‘prior approval and
6 conditions’ mean any authorization, license, or equiv-
7 alent control document that incorporates the re-
8 quirements of subsection (c).

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

14 “(7) STRUCTURE.—

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

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

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. 3. 2000 REGULATORY DETERMINATION.**

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

15 **SEC. 4. TECHNICAL ASSISTANCE.**

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

22 **SEC. 5. FEDERAL POWER ACT.**

23 Nothing in this subtitle, or the amendments made by
24 this subtitle, shall be construed to affect the obligations
25 of an owner or operator of a structure (as defined in sec-

1 tion 4011 of the Solid Waste Disposal Act, as added by
2 this subtitle) under section 215(b)(1) of the Federal
3 Power Act (16 U.S.C. 824o(b)(1)).

