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 COMBUSTION RESIDUALS REGULATION

2 SEC. 501. SHORT TITLE.

This title may be cited as the “Improving Coal Combustion Residuals Regulation Act of 2016”.

3 SEC. 502. MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS.

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

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

“(a) STATE PERMIT PROGRAMS FOR COAL COMBUSTION RESIDUALS.—Each State may adopt and implement a coal combustion residuals permit program in accordance with this section.

“(b) STATE ACTIONS.—
“(1) NOTIFICATION.—Not later than 6 months after the date of enactment of this section, the Governor of each State shall notify the Administrator, in writing, whether such State will adopt and implement a coal combustion residuals permit program.

“(2) APPLICATION FOR, AND APPROVAL OF, STATE COAL COMBUSTION RESIDUALS PERMIT PROGRAM.—

“(A) IN GENERAL.—Not later than 24 months after the date of enactment of this section, each State that has notified the Administrator that it will adopt and implement a coal combustion residuals permit program under paragraph (1) shall submit to the Administrator an application for such coal combustion residuals permit program for review and approval by the Administrator.

“(B) CONTENTS OF APPLICATION.—An application submitted under this paragraph shall include—

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

“(ii) identification of any other State agencies to be involved with the implemen-
tation of the coal combustion residuals per-
mit program;

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

“(I) a description of the State’s—

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

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

“(cc) public participation process for the promulgation, amendment, or repeal of regulations for, and the issuance of permits under, such permit pro-
gram;

“(dd) process for judicial re-
view;
“(ee) proposed or existing statutes, regulations, or policies pertaining to public access to information, including information on groundwater monitoring data, structural stability assessments, emergency action plans, fugitive dust control plans, notifications of closure (including any certification of closure by a qualified professional engineer), and corrective action remedies; and

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

“(II) if a State proposes to apply a definition different from a definition included in section 257.53 of title 40, Code of Federal Regulations, for purposes of the State coal combustion residuals permit program, an explanation of such application, including an explanation of the reasonable basis for applying such different definition, in accordance with subsection (i)(4);
“(iv) a statement that the State has in effect, at the time of application, statutes or regulations necessary to implement a coal combustion residuals permit program that meets the requirements described in subsection (c);

“(v) copies of State statutes and regulations described in clause (iv);

“(vi) copies of any proposed forms used to administer the coal combustion residuals permit program; and

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

“(C) APPROVAL.—

“(i) IN GENERAL.—The Administrator may approve an application for a State coal combustion residuals permit program only if the Administrator determines that such application demonstrates that the coal combustion residuals permit program meets the requirements described in subsection (c).

“(ii) EVIDENCE OF ADEQUACY.—In evaluating an application for a State coal combustion residuals permit program
under this paragraph, the Administrator shall consider a State’s approved permit program or other system of prior approval and conditions under section 4005(c) or authorized program under section 3006 as evidence regarding the State’s ability to effectively implement a coal combustion residuals program.

“(iii) Adoption by State.—A State may adopt and implement a coal combustion residuals permit program if, not later than 90 days after receipt of a complete application under this paragraph (including a revised application under subparagraph (D))—

“(I) the Administrator publishes in the Federal Register a notice of the Administrator’s decision to approve such application; or

“(II) the Administrator does not publish in the Federal Register a notice of the Administrator’s decision to approve or deny such application, in which case such application shall be deemed approved.
“(D) Revised Application.—If the Administrator denies an initial application for a State coal combustion residuals program under this paragraph—

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

“(ii) the State may, not later than 60 days after the date of such notification, submit to the Administrator a revised application for such coal combustion residuals permit program for review and approval by the Administrator.

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

“(1) General Requirements.—

“(A) Permits.—The implementing agency shall require that owners or operators of structures apply for and obtain permits incorporating the applicable requirements of the coal combustion residuals permit program.

“(B) Public Availability of Information.—The implementing agency shall ensure that—
“(i) documents for permit determinations are made publicly available for review and comment under the public participation process of the coal combustion residuals permit program;

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

“(iii) information regarding the exercise by the implementing agency of any discretionary authority granted under this section and not provided for in the rule described in subsection (i)(1) is made publicly available.

“(C) COORDINATION PLAN.—The implementing agency shall develop and maintain a plan for coordination among States in the event of a release that crosses State lines.

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

“(A) DESIGN REQUIREMENTS.—For new structures, including lateral expansions of existing structures, the criteria regarding design requirements described in sections 257.70
through 257.72 of title 40, Code of Federal Regulations, as applicable.

“(B) GROUNDWATER MONITORING AND CORRECTIVE ACTION.—

“(i) IN GENERAL.—Except as provided in clause (ii), for all structures, the criteria regarding groundwater monitoring and corrective action requirements described in sections 257.90 through 257.98 of title 40, Code of Federal Regulations, including—

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

“(II) for the purposes of assessment monitoring, establishing a groundwater protection standard, and assessment of corrective measures, the constituents described in appendix IV to part 257 of such title.

“(ii) EXCEPTIONS AND ADDITIONAL AUTHORITY.—

“(I) ALTERNATIVE POINT OF COMPLIANCE.—Notwithstanding sec-
tion 257.91(a)(2) of title 40, Code of Federal Regulations, the implementing agency may establish the relevant point of compliance for the down-gradient monitoring system as provided in section 258.51(a)(2) of such title.

“(II) ALTERNATIVE GROUNDWATER PROTECTION STANDARDS.—Notwithstanding section 257.95(h) of title 40, Code of Federal Regulations, the implementing agency may establish an alternative groundwater protection standard as provided in section 258.55(i) of such title.

“(III) ABILITY TO DETERMINE THAT CORRECTIVE ACTION IS NOT NECESSARY OR TECHNICALLY FEASIBLE.—Notwithstanding section 257.97 of title 40, Code of Federal Regulations, the implementing agency may determine that remediation of a release to groundwater from a structure is not necessary as provided in section 258.57(e) of such title.
“(C) Closure.—For all structures, the criteria for closure described in sections 257.101, 257.102, and 257.103 of title 40, Code of Federal Regulations, except the criteria described in section 257.101(b)(1) of such title shall not apply to existing structures that comply with the criteria described in section 257.60 of such title by making a demonstration in accordance with subparagraph (E) of this paragraph.

“(D) Post-closure.—For all structures, the criteria for post-closure care described in section 257.104 of title 40, Code of Federal Regulations.

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

“(i) the design and construction of the existing structure that is a surface impoundment will prevent an intermittent,
recurring, or sustained hydraulic connec-
tion between any portion of the base of the
structure and the upper limit of the upper-
most aquifer; and

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

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

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

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

“(I) RUN-ON AND RUN-OFF CONTROLS.—
For all structures that are landfills, sand or
gravel pits, or quarries, the criteria for run-on
and run-off control described in section 257.81 of title 40, Code of Federal Regulations.

“(J) Hydrologic and hydraulic capacity requirements.—For all structures that are surface impoundments, the criteria for inflow design flood control systems described in section 257.82 of title 40, Code of Federal Regulations.

“(K) Structural integrity.—For structures that are surface impoundments, the criteria for structural integrity described in sections 257.73 and 257.74 of title 40, Code of Federal Regulations.

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

“(M) Public availability of information.—For all structures, the criteria described in section 257.107 of title 40, Code of Federal Regulations.

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

“(3) Permit program implementation for existing structures.—
“(A) Compliance with certain requirements.—

“(i) Initial deadlines.—The State, in the case of a State that has notified the Administrator under subsection (b)(1) that it will adopt and implement a coal combustion residuals permit program, or the Administrator, in the case of each other State, shall require owners or operators of existing structures to comply with—

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

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

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

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

“(III) not later than 12 months after the date of enactment of this section, the requirements under para-
graphs (2)(A), (2)(I), (2)(J), and (2)(K).

“(ii) SUBSEQUENT DEADLINES.—The implementing agency shall require owners or operators of existing structures to comply with—

“(I) not later than 24 months after the date of enactment of this section, the requirements under paragraph (2)(B); and

“(II) not later than 36 months after the date of enactment of this section, the requirements under paragraph (2)(E).

“(B) PERMITS.—Not later than 72 months after the date of enactment of this section, the implementing agency shall issue, with respect to an existing structure, a final permit incorporating the applicable requirements of the coal combustion residuals permit program, or a final denial of an application submitted requesting such a permit.

“(C) EFFECT OF COMPLIANCE.—

“(i) INTERIM REQUIREMENTS.—Prior to the date on which a final permit or final
denial is issued under subparagraph (B),
compliance with the requirements of sub-
paragraph (A), as determined by the State
or Administrator, as applicable, shall con-
stitute compliance with the requirements of
this section and the rule described in sub-
section (i)(1) for the purpose of enforce-
ment.

“(ii) Final Permit.—Compliance
with a final permit issued by the imple-
menting agency, as determined by the im-
plementing agency, shall constitute compli-
ance with this section and the rule de-
scribed in subsection (i)(1) for the purpose
of enforcement.

“(4) Requirements for Inactive Coal Com-
bustion Residuals Surface Impoundments.—

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

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

“(ii) comply with the requirements of the coal combustion residuals permit program applicable to existing structures that are surface impoundments (except as provided in subparagraph (C)(ii)).

“(B) FINANCIAL ASSURANCE.—The implementing agency shall require the owner or operator of an inactive surface impoundment that has closed pursuant to this paragraph to perform post-closure care in accordance with the criteria described in section 257.104(b)(1) of title 40, Code of Federal Regulations, and to provide financial assurance for such post-closure care in accordance with the criteria described in section 258.72 of such title.

“(C) TREATMENT AS STRUCTURE.—

“(i) IN GENERAL.—An inactive coal combustion residuals surface impoundment shall be treated as an existing structure
that is a surface impoundment for the purposes of this section, including with respect to the requirements of paragraphs (1) and (2), if—

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

“(II) the owner or operator submits a notice described in subparagraph (A)(ii).

“(ii) INACTIVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS THAT FAIL TO CLOSE.—An inactive coal combustion residuals surface impoundment for which the owner or operator submits a notice described in subparagraph (A)(i) that does not close by the deadline provided under subparagraph (A)(i) shall be treated as an existing structure for purposes of this section beginning on the date that is the day after such applicable deadline, including by—

“(I) being required to comply with the requirements of paragraph (1), as applicable; and
“(II) being required to comply, beginning on such date, with each requirement of paragraph (2).

“(d) Implementation by Administrator.—

“(1) Federal backstop authority.—The Administrator shall implement a coal combustion residuals permit program for a State if—

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

“(B) the State fails to submit a notification or an application by the applicable deadline under subsection (b);

“(C) the Administrator denies an application submitted by a State under subsection (b)(2) and, if applicable, any revised application submitted by the State under subparagraph (E) of such subsection;

“(D) the State informs the Administrator, in writing, that such State will no longer implement such a permit program; or

“(E) the Administrator withdraws approval of a State coal combustion residuals program after the Administrator—
“(i) determines that the State is not implementing a coal combustion residuals permit program approved under this section in accordance with the requirements of this section;

“(ii) notifies the State of such determination, including the reasons for such determination and the particular deficiencies that need to be remedied; and

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

“(2) REVIEW.—A State may obtain a review of a determination by the Administrator under paragraph (1)(E)(iii) as if the determination were a final regulation for purposes of section 7006.

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

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

“(5) ENFORCEMENT.—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1) or in Indian country under paragraph (3)—

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

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

“(6) PUBLIC PARTICIPATION PROCESS.—If the Administrator implements a coal combustion residuals permit program under this subsection, the Administrator shall provide a 30-day period for the public participation process required under subsection (e)(1)(B)(i).

“(e) STATE CONTROL AFTER IMPLEMENTATION BY ADMINISTRATOR.—
“(1) NEW ADOPTION BY STATE.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subparagraphs (A) through (D) of subsection (d), the State may adopt and implement such a permit program through the application process described in subsection (b)(2) (notwithstanding the deadline described in subparagraph (A) of such subsection). An application submitted pursuant to this paragraph shall include a timeline for transition to the State coal combustion residuals permit program.

“(2) RESUMPTION AFTER REMEDYING DEFICIENT PERMIT PROGRAM.—

“(A) PROCESS.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subparagraph (E) of subsection (d)(1), the State may adopt and implement such a permit program if—

“(i) the State remedies only the deficiencies included in the notice described in such subparagraph; and

“(ii) by the date that is 90 days after the date on which the State notifies the
Administrator that the deficiencies have been remedied—

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

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

“(bb) a timeline for transition to the State coal combustion residuals permit program; or

“(II) the Administrator does not publish in the Federal Register a determination regarding whether the deficiencies included in such notice been remedied, in which case such deficiencies shall be deemed remedied.

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

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

“(A) a State takes control of its coal combustion residuals permit program from the Administrator under subsection (e); or

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

“(2) Change in Requirements.—Paragraph (1) shall apply to such program requirements, actions, and orders until such time as—

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

“(B) with respect to an ongoing corrective action, the State or the Administrator, whichever took the action or issued the order, certifies the completion of the corrective action that is the subject of the action or order.

“(3) Single Permit Program.—Except as otherwise provided in this subsection—
“(A) if a State adopts and implements a coal combustion residuals permit program under subsection (e), the Administrator shall cease to implement the coal combustion residuals permit program implemented under subsection (d) for such State; and

“(B) if the Administrator implements a coal combustion residuals permit program for a State under subsection (d)(1), the State shall cease to implement its coal combustion residuals permit program.

“(g) AUTHORITY.—

“(1) STATE AUTHORITY.—Nothing in this section shall preclude or deny any right of any State to adopt or enforce any regulation or requirement respecting coal combustion residuals that is more stringent or broader in scope than a regulation or requirement under this section.

“(2) AUTHORITY OF THE ADMINISTRATOR.—

“(A) IN GENERAL.—Except as provided in subsections (d) and (f) of this section and section 6005, the Administrator shall, with respect to the regulation of coal combustion residuals under this Act, defer to the States pursuant to this section.
“(B) IMMINENT HAZARD.—Nothing in this section shall be construed as affecting the authority of the Administrator under section 7003 with respect to coal combustion residuals.

“(C) ENFORCEMENT ASSISTANCE ONLY UPON REQUEST.—Upon request from the head of a lead State implementing agency, the Administrator may, including through the use of the authorities referred to in section 4005(c)(2)(A), provide to such State agency only the enforcement assistance requested.

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

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

“(h) USE OF COAL COMBUSTION RESIDUALS.—
“(1) IN GENERAL.—Except as provided in paragraph (2), use of coal combustion residuals in any of the following ways (including storage prior to such use) shall not be considered to be receipt of coal combustion residuals for the purposes of this section:

“(A) Use as—

“(i) engineered structural fill constructed in accordance with—

“(I) ASTM E2277 entitled ‘Standard Guide for Design and Construction of Coal Ash Structural Fills’, including any amendment or revision to that guidance;

“(II) any other published national standard determined appropriate by the implementing agency, including standards issued by the American Association of State and Highway Transportation Officials and the Federal Highway Administration;

“(III) any specification published by the Secretary of the Army, acting through the Chief of Engineers; or
“(IV) a State standard or program relating to—

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

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

“(ii) engineered structural fill for—

“(I) a building site or foundation;

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

“(III) a dike, levee, berm, or dam that is not part of a structure, including any project authorized under title IV of the Water Resources Development Act of 2016.

“(B) Beneficial use—

“(i) that provides a functional benefit;

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

“(iii) that meets relevant product specifications and regulatory or design standards, if any, including standards issued by voluntary consensus standards
bodies such as ASTM International and
the American Concrete Institute.

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

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

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

“(i) EFFECT OF RULE.—
“(1) IN GENERAL.—With respect to the final rule entitled ‘Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residu- als from Electric Utilities’ and published in the Federal Register on April 17, 2015 (80 Fed. Reg. 21302)—

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

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

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

“(3) APPLICABILITY OF OTHER REGULA- TIONS.—The application of section 257.52 of title
40, Code of Federal Regulations, is not affected by this section.

“(4) DEFINITIONS.—The definitions under section 257.53 of title 40, Code of Federal Regulations, shall apply with respect to any criteria described in subsection (c) the requirements of which are incorporated into a coal combustion residuals permit program under this section, except—

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

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

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

“(ii) the lead State implementing agency—

“(I) identifies the different definitions in the explanation included with the application submitted under subsection (b)(2); and

“(II) provides in such explanation a reasonable basis for the application of the different definitions.

“(j) DEFINITIONS.—In this section:
“(1) Coal combustion residuals.—The term ‘coal combustion residuals’ means the following wastes generated by electric utilities and independent power producers:

“(A) The solid wastes listed in section 3001(b)(3)(A)(i) that are generated primarily from the combustion of coal, including recoverable materials from such wastes.

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

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

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

“(E) Wastes from the co-burning of coal with materials described in subparagraph (A) that are recovered from monofills.
(2) Coal combustion residuals permit program.—The term ‘coal combustion residuals permit program’ means all of the authorities, activities, and procedures that comprise a system of prior approval and conditions implemented under this section to regulate the management and disposal of coal combustion residuals.

(3) Electric utility; independent power producer.—The terms ‘electric utility’ and ‘independent power producer’ include only electric utilities and independent power producers that produce electricity on or after the date of enactment of this section.

(4) Existing structure.—The term ‘existing structure’ means a structure the construction of which commenced before the date of enactment of this section.

(5) Implementing agency.—The term ‘implementing agency’ means the agency responsible for implementing a coal combustion residuals permit program, which shall either be the lead State implementing agency identified under subsection (b)(2)(B)(i) or the Administrator pursuant to subsection (d).
'"(6) Inactive coal combustion residuals surface impoundment.—The term ‘inactive coal combustion residuals surface impoundment’ means a surface impoundment, located at an electric utility or independent power producer, that, as of the date of enactment of this section—

"(A) does not receive coal combustion residuals;

"(B) contains coal combustion residuals; and

"(C) contains liquid.

"(7) Indian country.—The term ‘Indian country’ has the meaning given that term in section 1151 of title 18, United States Code.

"(8) Structure.—

"(A) In general.—Except as provided in subparagraph (B), the term ‘structure’ means a landfill, surface impoundment, sand or gravel pit, or quarry that receives coal combustion residuals on or after the date of enactment of this section.

"(B) Exceptions.—

"(i) Municipal solid waste landfills.—The term ‘structure’ does not include a municipal solid waste landfill meet-
ing the revised criteria promulgated under section 4010(c).

“(ii) COAL MINES.—The term ‘structure’ does not include the location of surface coal mining and reclamation operations or surface coal mining operations (as those terms are defined in section 701 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1291)) or an active or abandoned underground coal mine.

“(iii) DE MINIMIS RECEIPT.—The term ‘structure’ does not include any landfill or surface impoundment that receives only de minimis quantities of coal combustion residuals if the presence of coal combustion residuals is incidental to the material managed in the landfill or surface impoundment.

“(9) UNLINED SURFACE IMPOUNDMENT.—The term ‘unlined surface impoundment’ means a surface impoundment that does not have a liner system described in section 257.71 of title 40, Code of Federal Regulations.”.
(b) CONFORMING AMENDMENT.—The table of contents contained in section 1001 of the Solid Waste Disposal Act is amended by inserting after the item relating to section 4010 the following:

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

SEC. 503. EFFECT ON REGULATORY DETERMINATIONS.

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

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


SEC. 504. TECHNICAL ASSISTANCE.

Nothing in this title, or the amendments made by this title, shall be construed to affect the authority of a State to request, or the Administrator of the Environmental Protection Agency to provide, technical assistance under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).
SEC. 505. FEDERAL POWER ACT.

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