

114TH CONGRESS
2D SESSION

S. 2446

To amend subtitle D of the Solid Waste Disposal Act to encourage recovery and beneficial use of coal combustion residuals and establish requirements for the proper management and disposal of coal combustion residuals that are protective of human health and the environment.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 2016

Mr. HOEVEN (for himself and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend subtitle D of the Solid Waste Disposal Act to encourage recovery and beneficial use of coal combustion residuals and establish requirements for the proper management and disposal of coal combustion residuals that are protective of human health and the environment.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Improving Coal Combustion Residuals Regulation Act of
6 2016”.

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

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

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

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

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

10 “(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-
 11 TION RESIDUALS.—Each State may adopt and implement
 12 a coal combustion residuals permit program in accordance
 13 with this section.

14 “(b) STATE ACTIONS.—

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

20 “(2) APPLICATION FOR, AND APPROVAL OF,
 21 STATE COAL COMBUSTION RESIDUALS PERMIT PRO-
 22 GRAM.—

1 “(A) IN GENERAL.—Not later than 24
2 months after the date of enactment of this sec-
3 tion, each State that has notified the Adminis-
4 trator that it will adopt and implement a coal
5 combustion residuals permit program under
6 paragraph (1) shall submit to the Adminis-
7 trator an application for such coal combustion
8 residuals permit program for review and ap-
9 proval by the Administrator.

10 “(B) CONTENTS OF APPLICATION.—An ap-
11 plication submitted under this paragraph shall
12 include—

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

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

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

24 “(I) a description of the
25 State’s—

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

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

9 “(cc) public participation
10 process for the promulgation,
11 amendment, or repeal of regula-
12 tions for, and the issuance of
13 permits under, such permit pro-
14 gram;

15 “(dd) process for judicial re-
16 view;

17 “(ee) proposed or existing
18 statutes, regulations, or policies
19 pertaining to public access to in-
20 formation, including information
21 on groundwater monitoring data,
22 structural stability assessments,
23 emergency action plans, fugitive
24 dust control plans, notifications
25 of closure (including any certifi-

1 cation of closure by a qualified
2 professional engineer), and cor-
3 rective action remedies; and

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

7 “(II) if a State proposes to apply
8 a definition different from a definition
9 included in section 257.53 of title 40,
10 Code of Federal Regulations, for pur-
11 poses of the State coal combustion re-
12 siduals permit program, an expla-
13 nation of such application, including
14 an explanation of the reasonable basis
15 for applying such different definition,
16 in accordance with subsection (i)(4);

17 “(iv) a statement that the State has
18 in effect, at the time of application, stat-
19 utes or regulations necessary to implement
20 a coal combustion residuals permit pro-
21 gram that meets the requirements de-
22 scribed in subsection (c);

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

1 “(vi) copies of any proposed forms
2 used to administer the coal combustion re-
3 siduals permit program; and

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

6 “(C) APPROVAL.—

7 “(i) IN GENERAL.—The Administrator
8 may approve an application for a State
9 coal combustion residuals permit program
10 only if the Administrator determines that
11 such application demonstrates that the coal
12 combustion residuals permit program
13 meets the requirements described in sub-
14 section (c).

15 “(ii) EVIDENCE OF ADEQUACY.—In
16 evaluating an application for a State coal
17 combustion residuals permit program
18 under this paragraph, the Administrator
19 shall consider a State’s approved permit
20 program or other system of prior approval
21 and conditions under section 4005(c) or
22 authorized program under section 3006 as
23 evidence regarding the State’s ability to ef-
24 fectively implement a coal combustion re-
25 siduals program.

1 “(iii) ADOPTION BY STATE.—A State
2 may adopt and implement a coal combus-
3 tion residuals permit program if, not later
4 than 90 days after receipt of a complete
5 application under this paragraph (includ-
6 ing a revised application under subpara-
7 graph (D))—

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

12 “(II) the Administrator does not
13 publish in the Federal Register a no-
14 tice of the Administrator’s decision to
15 approve or deny such application, in
16 which case such application shall be
17 deemed approved.

18 “(D) REVISED APPLICATION.—If the Ad-
19 ministrator denies an initial application for a
20 State coal combustion residuals program under
21 this paragraph—

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

24 “(ii) the State may, not later than 60
25 days after the date of such notification,

1 submit to the Administrator a revised ap-
2 plication for such coal combustion residu-
3 als permit program for review and ap-
4 proval by the Administrator.

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

8 “(1) GENERAL REQUIREMENTS.—

9 “(A) PERMITS.—The implementing agency
10 shall require that owners or operators of struc-
11 tures apply for and obtain permits incor-
12 porating the applicable requirements of the coal
13 combustion residuals permit program.

14 “(B) PUBLIC AVAILABILITY OF INFORMA-
15 TION.—The implementing agency shall ensure
16 that—

17 “(i) documents for permit determina-
18 tions are made publicly available for review
19 and comment under the public participa-
20 tion process of the coal combustion residu-
21 als permit program;

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

1 “(iii) information regarding the exer-
2 cise by the implementing agency of any
3 discretionary authority granted under this
4 section and not provided for in the rule de-
5 scribed in subsection (i)(1) is made pub-
6 licly available.

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

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

14 “(A) DESIGN REQUIREMENTS.—For new
15 structures, including lateral expansions of exist-
16 ing structures, the criteria regarding design re-
17 quirements described in sections 257.70
18 through 257.72 of title 40, Code of Federal
19 Regulations, as applicable.

20 “(B) GROUNDWATER MONITORING AND
21 CORRECTIVE ACTION.—

22 “(i) IN GENERAL.—Except as pro-
23 vided in clause (ii), for all structures, the
24 criteria regarding groundwater monitoring
25 and corrective action requirements de-

1 scribed in sections 257.90 through 257.98
2 of title 40, Code of Federal Regulations,
3 including—

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

8 “(II) for the purposes of assess-
9 ment monitoring, establishing a
10 groundwater protection standard, and
11 assessment of corrective measures, the
12 constituents described in appendix IV
13 to part 257 of such title.

14 “(ii) EXCEPTIONS AND ADDITIONAL
15 AUTHORITY.—

16 “(I) ALTERNATIVE POINT OF
17 COMPLIANCE.—Notwithstanding sec-
18 tion 257.91(a)(2) of title 40, Code of
19 Federal Regulations, the imple-
20 menting agency may establish the rel-
21 evant point of compliance for the
22 down-gradient monitoring system as
23 provided in section 258.51(a)(2) of
24 such title.

1 “(II) ALTERNATIVE GROUND-
2 WATER PROTECTION STANDARDS.—
3 Notwithstanding section 257.95(h) of
4 title 40, Code of Federal Regulations,
5 the implementing agency may estab-
6 lish an alternative groundwater pro-
7 tection standard as provided in section
8 258.55(i) of such title.

9 “(III) ABILITY TO DETERMINE
10 THAT CORRECTIVE ACTION IS NOT
11 NECESSARY OR TECHNICALLY FEA-
12 SIBLE.—Notwithstanding section
13 257.97 of title 40, Code of Federal
14 Regulations, the implementing agency
15 may determine that remediation of a
16 release to groundwater from a struc-
17 ture is not necessary as provided in
18 section 258.57(e) of such title.

19 “(C) CLOSURE.—For all structures, the
20 criteria for closure described in sections
21 257.101, 257.102, and 257.103 of title 40,
22 Code of Federal Regulations, except the criteria
23 described in section 257.101(b)(1) of such title
24 shall not apply to existing structures that com-
25 ply with the criteria described in section 257.60

1 of such title by making a demonstration in ac-
2 cordance with subparagraph (E) of this para-
3 graph.

4 “(D) POST-CLOSURE.—For all structures,
5 the criteria for post-closure care described in
6 section 257.104 of title 40, Code of Federal
7 Regulations.

8 “(E) LOCATION RESTRICTIONS.—For all
9 structures, the criteria for location restrictions
10 described in sections 257.60 through 257.64 of
11 title 40, Code of Federal Regulations, except—

12 “(i) for existing structures that are
13 landfills, sections 257.60 through 257.63
14 shall not apply; and

15 “(ii) the owner or operator of an ex-
16 isting structure that is a surface impound-
17 ment may comply with the criteria de-
18 scribed in section 257.60 of such title by
19 demonstrating that—

20 “(I) the design and construction
21 of the existing structure that is a sur-
22 face impoundment will prevent an
23 intermittent, recurring, or sustained
24 hydraulic connection between any por-
25 tion of the base of the structure and

1 the upper limit of the uppermost aqui-
2 fer; and

3 “(II) the existing structure that
4 is a surface impoundment is designed
5 and constructed to prevent the release
6 of the constituents listed in appen-
7 dices III and IV to part 257 of such
8 title at levels above the groundwater
9 protection standards established under
10 this section.

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

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

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

22 “(I) RUN-ON AND RUN-OFF CONTROLS.—
23 For all structures that are landfills, sand or
24 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, the requirement under para-
17 graph (2)(G); and

18 “(III) not later than 12 months
19 after the date of enactment of this
20 section, the requirements under para-
21 graphs (2)(A), (2)(I), (2)(J), (2)(K),
22 and the requirement for a written clo-
23 sure plan under the criteria described
24 in paragraph 2(C).

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

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

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

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

21 “(C) EFFECT OF COMPLIANCE.—

22 “(i) INTERIM REQUIREMENTS.—Prior
23 to the date on which a final permit or final
24 denial is issued under subparagraph (B),
25 compliance with the requirements of sub-

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

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

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

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

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

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

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

20 “(C) TREATMENT AS STRUCTURE.—

21 “(i) IN GENERAL.—An inactive coal
22 combustion residuals surface impoundment
23 shall be treated as an existing structure
24 that is a surface impoundment for the pur-
25 poses of this section, including with respect

1 to the requirements of paragraphs (1) and
2 (2), if—

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

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

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

21 “(I) being required to comply
22 with the requirements of paragraph
23 (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) IMMINENT 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)(C).

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, and storage prior to such use,
4 shall not be considered to be receipt of coal combus-
5 tion residuals for the purposes of this section:

6 “(A) Use as—

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

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

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

21 “(III) a State standard or pro-
22 gram relating to—

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

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

4 “(ii) engineered structural fill for—

5 “(I) a building site or foundation;

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

9 “(III) a dike, levee, berm, or dam
10 that is not part of a structure.

11 “(B) Beneficial use—

12 “(i) that provides a functional benefit;

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

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

21 “(2) EXCEPTION.—With respect to a use de-
22 scribed in paragraph (1) that involves placement on
23 the land of coal combustion residuals in non-road-
24 way and non-highway applications, the implementing
25 agency may, on a case-by-case basis, determine that

1 long-term storage of coal combustion residuals at the
2 generating facility for such a use or permanent
3 unencapsulated use of very large volumes of coal
4 combustion residuals constitutes receipt of coal com-
5 bustion residuals for the purposes of this section if
6 the storage or use results in releases of hazardous
7 constituents to groundwater, surface water, soil, or
8 air—

9 “(A) in greater amounts than those that
10 would occur from long-term storage or use of a
11 material that would be used instead of coal
12 combustion residuals; or

13 “(B) that exceed relevant regulatory and
14 health-based benchmarks, as determined by the
15 implementing agency.

16 “(i) EFFECT OF RULE.—

17 “(1) IN GENERAL.—With respect to the final
18 rule entitled ‘Hazardous and Solid Waste Manage-
19 ment System; Disposal of Coal Combustion Residu-
20 als from Electric Utilities’ and published in the Fed-
21 eral Register on April 17, 2015 (80 Fed. Reg.
22 21302)—

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

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

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

15 “(3) APPLICABILITY OF OTHER REGULA-
16 TIONS.—The application of section 257.52 of title
17 40, Code of Federal Regulations, is not affected by
18 this section.

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

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

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

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

6 “(ii) the lead State implementing
7 agency—

8 “(I) identifies the different defi-
9 nitions in the explanation included
10 with the application submitted under
11 subsection (b)(2); and

12 “(II) provides in such expla-
13 nation a reasonable basis for the ap-
14 plication of the different definitions.

15 “(j) DEFINITIONS.—In this section:

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

20 “(A) The solid wastes listed in section
21 3001(b)(3)(A)(i) that are generated primarily
22 from the combustion of coal, including recover-
23 able materials from such wastes.

24 “(B) Coal combustion wastes that are co-
25 managed with wastes produced in conjunction

1 with the combustion of coal, provided that such
2 wastes are not segregated and disposed of sepa-
3 rately from the coal combustion wastes and
4 comprise a relatively small proportion of the
5 total wastes being disposed in the structure.

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

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

13 “(E) Wastes from the co-burning of coal
14 with materials described in subparagraph (A)
15 that are recovered from monofills.

16 “(2) COAL COMBUSTION RESIDUALS PERMIT
17 PROGRAM.—The term ‘coal combustion residuals
18 permit program’ means all of the authorities, activi-
19 ties, and procedures that comprise a system of prior
20 approval and conditions implemented under this sec-
21 tion to regulate the management and disposal of coal
22 combustion residuals.

23 “(3) ELECTRIC UTILITY; INDEPENDENT POWER
24 PRODUCER.—The terms ‘electric utility’ and ‘inde-
25 pendent power producer’ include only electric utili-

1 ties and independent power producers that produce
2 electricity on or after the date of enactment of this
3 section.

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

8 “(5) IMPLEMENTING AGENCY.—The term ‘im-
9 plementing agency’ means the agency responsible for
10 implementing a coal combustion residuals permit
11 program, which shall either be the lead State imple-
12 menting agency identified under subsection
13 (b)(2)(B)(i) or the Administrator pursuant to sub-
14 section (d).

15 “(6) INACTIVE COAL COMBUSTION RESIDUALS
16 SURFACE IMPOUNDMENT.—The term ‘inactive coal
17 combustion residuals surface impoundment’ means a
18 surface impoundment, located at an electric utility
19 or independent power producer, that, as of the date
20 of enactment of this section—

21 “(A) does not receive coal combustion re-
22 siduals;

23 “(B) contains coal combustion residuals;

24 and

25 “(C) contains liquid.

1 “(7) INDIAN COUNTRY.—The term ‘Indian
2 country’ has the meaning given that term in section
3 1151 of title 18, United States Code.

4 “(8) STRUCTURE.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), the term ‘structure’ means a
7 landfill, surface impoundment, sand or gravel
8 pit, or quarry that receives coal combustion re-
9 siduals on or after the date of enactment of this
10 section.

11 “(B) EXCEPTIONS.—

12 “(i) MUNICIPAL SOLID WASTE LAND-
13 FILLS.—The term ‘structure’ does not in-
14 clude a municipal solid waste landfill meet-
15 ing the revised criteria promulgated under
16 section 4010(c).

17 “(ii) COAL MINES.—The term ‘struc-
18 ture’ does not include the location of sur-
19 face coal mining and reclamation oper-
20 ations or surface coal mining operations
21 (as those terms are defined in section 701
22 of the Surface Mining Control and Rec-
23 lamation Act of 1977 (30 U.S.C. 1291)) or
24 an active or abandoned underground coal
25 mine.

1 “(iii) DE MINIMIS RECEIPT.—The
 2 term ‘structure’ does not include any land-
 3 fill or surface impoundment that receives
 4 only de minimis quantities of coal combus-
 5 tion residuals if the presence of coal com-
 6 bustion residuals is incidental to the mate-
 7 rial managed in the landfill or surface im-
 8 poundment.

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

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

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

18 **SEC. 3. EFFECT ON REGULATORY DETERMINATIONS.**

19 Nothing in this Act, or the amendments made by this
 20 Act, shall be construed to alter in any manner the effect
 21 on coal combustion residuals (as defined in section 4011
 22 of the Solid Waste Disposal Act, as added by this Act)
 23 of the Environmental Protection Agency’s regulatory de-
 24 terminations entitled—

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

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

8 **SEC. 4. TECHNICAL ASSISTANCE.**

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

14 **SEC. 5. FEDERAL POWER ACT.**

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

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