^{112TH CONGRESS} 1ST SESSION **S. 1971**

To provide for the establishment of a committee to assess the effects of certain Federal regulatory mandates and to provide for relief from those mandates, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2011

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

A BILL

- To provide for the establishment of a committee to assess the effects of certain Federal regulatory mandates and to provide for relief from those mandates, and for other purposes.
 - 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; TABLE OF CONTENTS.

- 4 (a) SHORT TITLE.—This Act may be cited as the 5 "Comprehensive Assessment of Regulations on the Econ-
- 6 omy Act of 2011".
- 7 (b) TABLE OF CONTENTS.—The table of contents of8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—REGULATORY ASSESSMENT

- Sec. 101. Cumulative Regulatory Assessment Committee.
- Sec. 102. Additional provisions relating to certain rules.
- Sec. 103. Consideration of feasibility and cost in establishing national ambient air quality standards.

TITLE II—REGULATORY RELIEF

- Sec. 201. Legislative stay.
- Sec. 202. Compliance dates.
- Sec. 203. Energy recovery and conservation.
- Sec. 204. Other provisions.

TITLE III—COAL RESIDUALS REUSE AND MANAGEMENT

- Sec. 301. Short title.
- Sec. 302. Amendment to Subtitle D of the Solid Waste Disposal Act.
- Sec. 303. 2000 regulatory determination.
- Sec. 304. Effect of title.

TITLE IV—THERMAL DISCHARGES

Sec. 401. Short title.

Sec. 402. Thermal discharge.

Sec. 403. Regulations.

1 SEC. 2. DEFINITIONS.

- 2 In this Act:
- 3 (1) ADMINISTRATOR.—The term "Adminis4 trator" means the Administrator of the Environ5 mental Protection Agency.

6 (2) CLEAN AIR INTERSTATE RULE.—The term "Clean Air Interstate Rule" means the Clean Air 7 8 Interstate Rule and the rule establishing Federal 9 Implementation Plans for the Clean Air Interstate 10 Rule, as promulgated and modified by the Adminis-11 trator (70 Fed. Reg. 25162 (May 12, 2005), 71 12 Fed. Reg. 25288 (April 28, 2006), 72 Fed. Reg. 55657 (October 1, 2007), 72 Fed. Reg. 59190 (Oc-13

1	tober 19, 2007), 72 Fed. Reg. 62338 (November 2,
2	2007), 74 Fed. Reg. 56721 (November 3, 2009)).
3	(3) COMMITTEE.—The term "Committee"
4	means the Cumulative Regulatory Assessment Com-
5	mittee established by section 101(a).
6	(4) FEDERAL REGULATORY MANDATE.—The
7	term "Federal regulatory mandate" means any reg-
8	ulation, rule, requirement, or interpretative guidance
9	that—
10	(A) is promulgated or issued (or is ex-
11	pected to be initiated) by the Administrator or
12	a State or local government during the period
13	beginning on January 1, 2010, and ending on
14	January 1, 2020;
15	(B) applies to 1 or more impacted units;
16	and
17	(C) implements any provision or require-
18	ment relating to—
19	(i) interstate or international trans-
20	port of air pollution under section
21	110(a)(2)(D), 115, or 126(b) of the Clean
22	Air Act (42 U.S.C. 7410(a)(2)(D), 7415,
23	7426(b)) with respect to any national am-
24	bient air quality standard, including—

	1
1	(I) any standard that has been
2	promulgated or proposed before July
3	1, 2011; and
4	(II) any new or revised standard
5	for ozone or fine particulate matter
6	that, as of the date of enactment of
7	this Act, is currently under review or
8	development by the Administrator;
9	and
10	(ii) the attainment, or maintenance of
11	attainment, of any national ambient air
12	quality standard, including—
13	(I) any new or revised standard
14	for ozone or fine particulate matter
15	that, as of the date of enactment of
16	this Act, is currently under review or
17	development by the Administrator;
18	and
19	(II) any other standard that has
20	been promulgated or proposed before
21	July 1, 2011;
22	(iii) new source performance stand-
23	ards under section 111 of the Clean Air
24	Act (42 U.S.C. 7411), including any stand-
25	ards under subsection (d) of that section;

1	(iv) hazardous air pollutants under
2	section 112 of the Clean Air Act (42)
3	U.S.C. 7412);
4	(v) greenhouse gas emissions under ti-
5	tles I, II, and V of the Clean Air Act (42 $$
6	U.S.C. 7401 et seq.), including the require-
7	ments for—
8	(I) new source performance
9	standards under section 111 of the
10	Clean Air Act (42 U.S.C. 7411), in-
11	cluding any standards under sub-
12	section (d) of that section; and
13	(II) preconstruction review per-
14	mits under section 165 of the Clean
15	Air Act (42 U.S.C. 7475);
16	(vi) cooling water intake structures
17	under section 316(b) of the Clean Water
18	Act (33 U.S.C. 1326(b));
19	(vii) effluent guidelines for regulating
20	the discharge of pollutants under section
21	304 of the Clean Water Act (33 U.S.C.
22	1314);
23	(viii) the handling and disposal of coal
24	combustion residuals under subtitle C or D

1 of the Solid Waste Disposal Act (42) 2 U.S.C. 6921 et seq.); (ix) the regulation of fuels under title 3 4 II of the Clean Air Act (42 U.S.C. 7521 5 et seq.); 6 (x) regional haze or reasonably attrib-7 utable visibility impairment under section 8 169A or section 169B of the Clean Air Act 9 (42 U.S.C. 7491, 7492); and 10 (xi) any other environmental regula-11 tions expected to have a significant impact 12 on the electric power sector, the petroleum 13 refining sector, the petrochemical produc-14 tion sector, pipeline facilities regulated by 15 the Department of Transportation or the 16 Environmental Protection Agency, explo-17 ration, production, or transportation of oil 18 and natural gas, or any other manufac-19 turing sector. 20 IMPACTED UNIT.—The term "impacted (5)unit" means-21 22 (A) any electric generating unit that sells 23 electricity into the grid;

24 (B) any industrial, commercial, or institu-25 tional boiler or process heater;

1	(C) any petroleum refining facility that
2	produces gasoline, heating oil, diesel fuel, jet
3	fuel, kerosene, or petrochemical feedstocks;
4	(D) any petrochemical facility;
5	(E) any hydrocarbon exploration, extrac-
6	tion, manufacturing, production, or transpor-
7	tation facility; or
8	(F) any biofuel facility.
9	TITLE I—REGULATORY
10	ASSESSMENT
11	SEC. 101. CUMULATIVE REGULATORY ASSESSMENT COM-
12	MITTEE.
13	(a) ESTABLISHMENT.—There is established within
14	the Department of Commerce a Committee, to be known
15	as the "Cumulative Regulatory Assessment Committee".
16	(b) Composition of Committee.—The Committee
17	shall consist of the following officials (or designees of the
18	officials):
19	(1) The Secretary of Agriculture.
20	(2) The Secretary of Commerce.
21	(3) The Secretary of Defense.
22	(4) The Chairperson of the Council of Eco-
23	nomic Advisers.
24	(5) The Secretary of Energy.
25	(6) The Administrator.

1	(7) The Chairperson of the Federal Energy
2	Regulatory Commission.
3	(8) The Secretary of Labor.
4	(9) The Administrator of the Office of Informa-
5	tion and Regulatory Affairs.
6	(10) The President and Chief Executive Officer
7	of the North American Electric Reliability Corpora-
8	tion.
9	(11) The Chief Counsel for Advocacy of the
10	Small Business Administration.
11	(c) Leadership; Operations.—The Secretary of
12	Commerce shall—
13	(1) serve as the Chairperson of the Committee;
14	and
15	(2) be responsible for the executive and admin-
16	istrative operation of the Committee.
17	(d) Identification of Federal Regulatory
18	MANDATES.—Not later than 30 days after the date of en-
19	actment of this Act, the Administrator shall provide to the
20	Committee a list of Federal regulatory mandates.
21	(e) DUTIES.—
22	(1) Assessment.—
23	(A) IN GENERAL.—The Committee shall
24	perform an assessment of the cumulative energy
25	and economic impacts of the Federal regulatory

1	mandates in accordance with this subsection,
2	including direct, indirect, quantifiable, and
3	qualitative effects on—
4	(i) employment, including job levels in
5	each segment of the economy and each re-
6	gion of the United States, including coal-
7	producing regions;
8	(ii) economic development, including
9	production levels and labor demands in
10	manufacturing, commercial, and other sec-
11	tors of the economy;
12	(iii) the electric power sector, includ-
13	ing potential impacts on electric reliability,
14	energy security, and retail electricity rates;
15	(iv) the domestic refining and petro-
16	chemical sector, including potential im-
17	pacts on supply, international competitive-
18	ness, wholesale and retail transportation
19	fuels, and heating oil and petrochemical
20	prices;
21	(v) State and local governments, in-
22	cluding potential impacts on governmental
23	operations and local communities from any
24	reductions in State and local tax revenues;

- 1(vi) small businesses (as defined in2section 601 of title 5, United States Code),3including economic and regulatory impacts4that could force the shutdown or limit the5growth of small businesses;6(vii) agriculture, including economic
- and regulatory impacts that could force the
 and regulatory impacts that could force the
 shutdown, or limit growth or productive
 capacity, of the agricultural industry in the
 United States, including the domestic fertilizer manufacturing industry; and
- 12 (viii) energy-intensive, trade-exposed 13 industry (as defined in North American In-14 dustry Classification System codes 31, 32, 15 and 33) (including the beneficiation or 16 processing (including agglomeration) of 17 metal ores (including iron and copper 18 ores), soda ash, or phosphate, petroleum 19 refining, and petrochemicals production), 20 including economic and regulatory impacts 21 that could force the shutdown, or limit 22 growth of productive capacity, of the 23 United States manufacturing industry.
- 24 (B) COMPREHENSIVE ANALYSIS.—The as25 sessment shall include a comprehensive anal-

	**
1	ysis, for the period beginning on January 1,
2	2012, and ending on December 31, 2025, of the
3	following matters:
4	(i) The impacted units that would
5	likely retire due to the cumulative compli-
6	ance costs of the Federal regulatory man-
7	dates.
8	(ii) The amount by which average re-
9	tail electricity prices are forecasted to in-
10	crease above inflation as a result of—
11	(I) the cumulative compliance
12	costs of the Federal regulatory man-
13	dates;
14	(II) the retirement of electric
15	generating units that are impacted
16	units described in clause (i); and
17	(III) other direct and indirect im-
18	pacts that are expected to result from
19	the cumulative compliance obligations
20	of the Federal regulatory mandates.
21	(iii) The amount by which average re-
22	tail transportation fuel and heating oil
23	prices are forecasted to increase above in-
24	flation as a result of—

1	(I) the cumulative compliance
2	costs of the Federal regulatory man-
3	dates;
4	(II) the retirement or closure of
5	domestic refineries that are impacted
6	units described in clause (i);
7	(III) the likely foreign-sourced
8	replacement for the transportation
9	fuels and heating oil supplies loss
10	caused by the retirements or closures
11	identified under subclause (II); and
12	(IV) other direct and indirect im-
13	pacts that are expected to result from
14	the cumulative compliance obligations
15	of the Federal regulatory mandates.
16	(iv) The amount by which average pe-
17	trochemical prices are forecasted to in-
18	crease above inflation as a result of—
19	(I) the cumulative compliance
20	costs of the Federal regulatory man-
21	dates;
22	(II) the retirement or closure of
23	domestic petrochemical facilities that
24	are impacted units described in clause
25	(i);

1	(III) the likely foreign-sourced
2	replacement for the petrochemical
3	supplies loss caused by the retire-
4	ments or closures identified under
5	subclause (II); and
6	(IV) other direct and indirect im-
7	pacts that are expected to result from
8	the cumulative compliance obligations
9	of the Federal regulatory mandates.
10	(v) The direct and indirect adverse
11	impacts on the economies of local commu-
12	nities that are projected to result from the
13	retirement of impacted units described in
14	clause (i) and increased retail electricity,
15	transportation fuels, heating oil, and petro-
16	chemical prices that are forecasted under
17	clause (ii), including—
18	(I) loss of jobs, including jobs
19	that would be lost that relate directly
20	or indirectly to coal production or pe-
21	troleum refining;
22	(II) reduction in State and local
23	tax revenues;
24	(III) harm to small businesses;
25	(IV) harm to consumers;

	14
1	(V) reduction in—
2	(aa) the production and use
3	of coal; and
4	(bb) the domestic production
5	of transportation fuels, heating
6	oil, and petrochemicals in the
7	United States; and
8	(VI) other resulting adverse eco-
9	nomic or energy impacts.
10	(vi) The extent to which the direct
11	and indirect adverse economic impacts
12	identified under clause (v) can be miti-
13	gated through the creation of additional
14	jobs and new economic growth as a result
15	of renewable energy projects, energy effi-
16	ciency measures, and other such energy
17	construction projects that are projected to
18	be undertaken in order to meet future en-
19	ergy demands.
20	(vii) The cumulative effects of Federal
21	regulatory mandates on the ability of in-
22	dustries and businesses in the United
23	States to compete with industries and busi-

1	competitiveness in both domestic and for-
2	eign markets.
3	(viii) The regions of the United States
4	that are forecasted to be—
5	(I) most affected from the direct
6	and indirect adverse impacts from the
7	retirement of impacted units and in-
8	creased retail electricity, transpor-
9	tation fuels, heating oil, and petro-
10	chemicals price, as identified under
11	clause (v); and
12	(II) least affected from such ad-
13	verse impacts due to the creation of
14	new jobs and economic growth that
15	are expected to result directly and in-
16	directly from the energy construction
17	projects, as identified under clause
18	(vi).
19	(ix) The cumulative effects of the
20	Federal regulatory mandates on the elec-
21	tric power sector, including—
22	(I) adverse impacts on electric re-
23	liability that are expected to result
24	from the retirement of electric gener-
25	ating units identified under clause (i);

	10
1	(II) the geographical distribution
2	of the projected adverse electric reli-
3	ability impacts identified in subclause
4	(I), according to the regions estab-
5	lished by North American Electric Re-
6	liability Corporation; and
7	(III) an assessment of whether
8	current plans to expand electricity
9	generation and transmission capabili-
10	ties for each particular region can be
11	optimized to mitigate those projected
12	adverse reliability impacts.
13	(x) Federal, State, and local policies
14	that have been or will be implemented to
15	foster a transition in energy infrastructure
16	in the United States, including those poli-
17	cies that promote fuel diversity, affordable
18	and reliable electricity, and energy secu-
19	rity.
20	(2) Consultation with state and local
21	GOVERNMENTS.—The Committee shall consult with
22	representatives of State and local governments—
23	(A) to identify potential adverse cumulative
24	impacts of the Federal regulatory mandates
25	that have unique or significant repercussions

1	for each particular region of the United States;
2	and
3	(B) to investigate opportunities and strate-
4	gies for mitigating the adverse impacts and re-
5	percussions identified under subparagraph (A).
6	(3) Methodology.—The Committee shall—
7	(A) use the best available information and
8	peer-reviewed economic models in performing
9	the cumulative regulatory impact assessment
10	under this subsection; and
11	(B) seek public comment on the cost, en-
12	ergy, and other modeling assumptions used in
13	performing the assessment.
14	(4) Public notice and comment.—The Com-
15	mittee shall provide public notice and the oppor-
16	tunity for comment on a draft cumulative regulatory
17	impact assessment to be prepared under this sub-
18	section.
19	(5) Report to congress and states.—Not
20	later than August 1, 2012, the Committee shall sub-
21	mit to Congress and the Governor of each State a
22	detailed report of the cumulative assessment per-
23	formed under this subsection.

1	SEC. 102. ADDITIONAL PROVISIONS RELATING TO CERTAIN
2	RULES.
3	(a) Cross-State Air Pollution Rule/Transport
4	RULE.—
5	(1) EARLIER RULES.—The rule entitled "Fed-
6	eral Implementation Plans: Interstate Transport of
7	Fine Particulate Matter and Ozone and Correction
8	of SIP Approvals" (76 Fed. Reg. 48208 (August 8,
9	2011)), and any successor or substantially similar
10	rule, shall be—
11	(A) of no force or effect; and
11	(\mathbf{A}) of no force of effect, and
11	(B) treated as though the rule had never
12	(B) treated as though the rule had never
12 13	(B) treated as though the rule had never taken effect.
12 13 14	(B) treated as though the rule had never taken effect.(2) CONTINUED APPLICABILITY OF CLEAN AIR
12 13 14 15	(B) treated as though the rule had never taken effect.(2) CONTINUED APPLICABILITY OF CLEAN AIR INTERSTATE RULE.—In place of any rule described
12 13 14 15 16	 (B) treated as though the rule had never taken effect. (2) CONTINUED APPLICABILITY OF CLEAN AIR INTERSTATE RULE.—In place of any rule described in paragraph (1), the Administrator shall continue
12 13 14 15 16 17	 (B) treated as though the rule had never taken effect. (2) CONTINUED APPLICABILITY OF CLEAN AIR INTERSTATE RULE.—In place of any rule described in paragraph (1), the Administrator shall continue to implement the Clean Air Interstate Rule.

(i) not issue any proposed or final rule
under section 110(a)(2)(D)(i)(I) or section
126 of the Clean Air Act (42 U.S.C.
7410(a)(2)(D)(i)(I), 7426) relating to national ambient air quality standards for
ozone or particulate matter (including any

1	modification of the Clean Air Interstate
2	Rule) before the date that is 3 years after
3	the date on which the Committee submits
4	the final report under section $101(e)(5)$;
5	and
6	(ii) in issuing any rule described in
7	clause (i)—
8	(I) base the rule on actual mon-
9	itored (and not modeled) data; and
10	(II) notwithstanding section
11	110(a)(2)(D)(i)(I) of the Clean Air
12	Act (42 U.S.C. 7410(a)(2)(D)(i)(I)),
13	allow the trading of emission allow-
14	ances among entities covered by the
15	rule irrespective of the States in which
16	the entities are located.
17	(B) Implementation schedule.—In
18	promulgating any final rule described in sub-
19	paragraph (A)(i), the Administrator shall estab-
20	lish a date for State implementation of the
21	standards established by the final rule that is
22	not earlier than 3 years after the date of publi-
23	cation of the final rule.
24	(b) Steam Generating Unit Rules.—
25	(1) Earlier Rules.—

1	(A) IN GENERAL.—The proposed rule enti-
2	tled "National Emission Standards for Haz-
3	ardous Air Pollutants From Coal- and Oil-Fired
4	Electric Utility Steam Generating Units and
5	Standards of Performance for Fossil-Fuel-Fired
6	Electric Utility, Industrial-Commercial-Institu-
7	tional, and Small Industrial-Commercial-Insti-
8	tutional Steam Generating Units" (76 Fed.
9	Reg. 24976 (May 3, 2011)), and any final rule $% \left(\left({{{\rm{May}}} \right)_{\rm{T}}} \right)_{\rm{T}} \left({{{\rm{TMay}}} \right)_{\rm{TMA}}} \right)_{\rm{TMA}}$
10	that is based on that proposed rule and promul-
11	gated prior to the date of enactment of this
12	Act, shall be—
13	(i) of no force and effect; and
14	(ii) treated as though the proposed or
15	final rule had never been issued or promul-
16	gated.
17	(B) ANALYSES.—In conducting analyses
18	under section $101(e)(1)(B)$, the Committee
19	shall analyze the rules described in subpara-
20	graph (A) (including any successor or substan-
21	tially similar rules) as if subparagraph (A) did
22	not apply to the rules.
23	(2) PROMULGATION OF FINAL RULES.—In
24	place of the rules described in paragraph (1), the
25	Administrator shall promulgate—

1	(A) regulations establishing national emis-
2	sion standards for coal-and oil-fired electric
3	utility steam generating units under section 112
4	of the Clean Air Act (42 U.S.C. 7412) with re-
5	spect to each hazardous air pollutant for which
6	the Administrator determines that regulations
7	are appropriate and necessary pursuant to sec-
8	tion $112(n)(1)(A)$ of that Act (42 U.S.C.
9	7412(n)(1)(A));
10	(B) regulations establishing standards of
11	performance for fossil-fuel-fired electric utility,
12	industrial-commercial-institutional, and small
13	industrial-commercial-institutional steam gener-
14	ating units under section 111 of the Clean Air
15	Act (42 U.S.C. 7411); and
16	(C) the final regulations required by sub-
17	paragraphs (A) and (B)—
18	(i) after issuing proposed regulations
19	under those subparagraphs;
20	(ii) after consideration of the final re-
21	port submitted under section $101(e)(5)$;
22	and
23	(iii) not earlier than the date that is
24	1 year after the date on which the Com-
25	mittee submits that report to Congress (or

1	on such later date as may be determined
2	by the Administrator).
3	(3) Compliance provisions.—
4	(A) ESTABLISHMENT OF COMPLIANCE
5	DATES.—In promulgating the regulations under
6	paragraph (2), the Administrator shall—
7	(i) establish a date for compliance
8	with the standards and requirements under
9	the regulations that is not earlier than 5
10	years after the effective date of the regula-
11	tions; and
12	(ii) in establishing a date for that
13	compliance, take into consideration—
14	(I) the costs of achieving emis-
15	sion reductions;
16	(II) any non-air quality health
17	and environmental impact and energy
18	requirements of the standards and re-
19	quirements;
20	(III) the feasibility of imple-
21	menting the standards and require-
22	ments, including the time needed—
23	(aa) to obtain necessary per-
24	mit approvals; and

1	(bb) to procure, install, and
2	test control equipment;
3	(IV) the availability of equip-
4	ment, suppliers, and labor, given the
5	requirements of the regulations and
6	other proposed or finalized regula-
7	tions; and
8	(V) potential net employment im-
9	pacts.
10	(B) New sources.—With respect to the
11	regulations promulgated pursuant to paragraph
12	(2)—
13	(i) the date on which the Adminis-
14	trator proposes a regulation pursuant to
15	paragraph $(2)(A)$ establishing an emission
16	standard under section 112 of the Clean
17	Air Act (42 U.S.C. 7412) shall be treated
18	as the date on which the Administrator
19	first proposes such a regulation for pur-
20	poses of applying the definition of a new
21	source under section $112(a)(4)$ of that Act
22	(42 U.S.C. 7412(a)(4));
23	(ii) the date on which the Adminis-
24	trator proposes a regulation pursuant to
25	paragraph (2)(B) establishing a standard

1	of performance under section 111 of the
2	Clean Air Act (42 U.S.C. 7411) shall be
3	treated as the date on which the Adminis-
4	trator proposes such a regulation for pur-
5	poses of applying the definition of a new
6	source under section $111(a)(2)$ of that Act
7	(42 U.S.C. 7411(a)(2));
8	(iii) for purposes of any emission
9	standard or limitation applicable to electric
10	utility steam generating units, the term
11	"new source" shall mean a stationary
12	source for which a preconstruction permit
13	or other preconstruction approval required
14	under the Clean Air Act (42 U.S.C. 7401
15	et seq.) has been issued after the effective
16	date of the emission standard or limitation;
17	and
18	(iv) for purposes of clause (iii), the
19	date of issuance of a preconstruction per-
20	mit or other preconstruction approval is
21	deemed to be the date on which the permit
22	or approval is issued to the applicant irre-
23	spective of any administrative or judicial
24	review occurring after that date.

1	(C) RULE OF CONSTRUCTION.—Nothing in
2	this subsection restricts or otherwise affects
3	paragraphs $(3)(B)$ and (4) of section $112(i)$ of
4	the Clean Air Act (42 U.S.C. 7412(i)).
5	(4) OTHER PROVISIONS.—
6	(A) ESTABLISHMENT OF STANDARDS
7	ACHIEVABLE IN PRACTICE.—
8	(i) IN GENERAL.—The regulations
9	promulgated pursuant to paragraph $(2)(A)$
10	shall apply to section $112(d)(3)$ of the
11	Clean Air Act (42 U.S.C. 7412(d)(3)) in
12	accordance with clauses (ii) and (iii).
13	(ii) NEW SOURCES.—With respect to
14	new sources—
15	(I) the Administrator shall iden-
16	tify the best-controlled similar source
17	for each source category or sub-
18	category; and
19	(II) the best-controlled similar
20	source for a category or subcategory
21	shall be the single source that is de-
22	termined by the Administrator to be
23	the best controlled, in the aggregate,
24	for all of the hazardous air pollutants
25	for which the Administrator intends

1	to issue standards for the source cat-
2	egory or subcategory, under actual op-
3	erating conditions, taking into account
4	the variability in actual source per-
5	formance, source design, fuels, con-
6	trols, ability to measure pollutant
7	emissions, and operating conditions.
8	(iii) EXISTING SOURCES.—With re-
9	spect to existing sources—
10	(I) the Administrator shall iden-
11	tify 1 group of sources that con-
12	stitutes the best-performing 12 per-
13	cent of existing sources for each
14	source category or subcategory; and
15	(II) the group constituting the
16	best-performing 12 percent of existing
17	sources for a category or subcategory
18	shall be the single group that is deter-
19	mined by the Administrator to be the
20	best performing, in the aggregate, for
21	all of the hazardous air pollutants for
22	which the Administrator intends to
23	issue standards for the source cat-
24	egory or subcategory, under actual op-
25	erating conditions, taking into account

	2.
1	the variability in actual source per-
2	formance, source design, fuels, con-
3	trols, ability to measure pollutant
4	emissions, and operating conditions.
5	(B) REGULATORY ALTERNATIVES.—For
6	the regulations promulgated pursuant to para-
7	graph (2), from among the range of regulatory
8	alternatives authorized under the Clean Air Act
9	(42 U.S.C. 7401 et seq.), including work prac-
10	tice standards under section 112(h) of that Act
11	(42 U.S.C. 7412(h)), the Administrator shall
12	impose the least burdensome, consistent with
13	the purposes of that Act and Executive Order
14	No. 13563 (76 Fed. Reg. 3821 (January 21,
15	2011)).
16	SEC. 103. CONSIDERATION OF FEASIBILITY AND COST IN
17	ESTABLISHING NATIONAL AMBIENT AIR
18	QUALITY STANDARDS.
19	In establishing any national primary or secondary
20	ambient air quality standard under section 109 of the
21	Clean Air Act (42 U.S.C. 7409), the Administrator shall

 $\,$ take into consideration feasibility and cost.

1 TITLE II—REGULATORY RELIEF

2 SEC. 201. LEGISLATIVE STAY.

3 (a) RULES RELATING TO CEMENT MANUFACTURING,
4 BOILERS, PROCESS HEATERS, AND SOLID WASTE INCIN5 ERATORS.—

6 (1) ESTABLISHMENT OF STANDARDS.—In lieu 7 of the rules specified in paragraph (2)(B), and not-8 withstanding the date by which those rules would 9 otherwise be required to be promulgated, the Admin-10 istrator shall—

(A) propose regulations for the Portland
cement manufacturing industry and Portland
cement plants, and for industrial, commercial,
and institutional boilers and process heaters,
and commercial and industrial solid waste incinerator units that are subject to any of the
rules specified in paragraph (2)(B), that—

(i) establish maximum achievable control technology standards, performance
standards, and other requirements under
sections 112 and 129, as applicable, of the
Clean Air Act (42 U.S.C. 7412, 7429);
and

24 (ii) identify nonhazardous secondary25 materials that, when used as fuels in com-

1	bustion units of that industry and those
2	plants, boilers, heaters, and units, qualify
3	as solid waste under the Solid Waste Dis-
4	posal Act (42 U.S.C. 6901 et seq.) for pur-
5	poses of determining the extent to which
6	the combustion units are required to meet
7	the emission standards under section 112
8	or 129 of the Clean Air Act (42 U.S.C.
9	7412, 7429); and
10	(B) promulgate final versions of those reg-
11	ulations by not later than—
12	(i) the date that is 15 months after
13	the date of enactment of this Act; or
14	(ii) such later date as may be deter-
15	mined by the Administrator.
16	(2) Stay of certain rules.—
17	(A) IN GENERAL.—The final rules de-
18	scribed in subparagraph (B) shall be—
19	(i) of no force or effect;
20	(ii) treated as though the rule had
21	never taken effect; and
22	(iii) replaced in accordance with para-
23	graph (1).
24	(B) DESCRIPTION OF RULES.—The rules
25	referred to in subparagraph (A) are—

1	(i) the final rule entitled "National
2	Emission Standards for Hazardous Air
3	Pollutants from the Portland Cement Man-
4	ufacturing Industry and Standards of Per-
5	formance for Portland Cement Plants" (75
6	Fed. Reg. 54970 (September 9, 2010));
7	(ii) the final rule entitled "Standards
8	of Performance for New Stationary
9	Sources and Emission Guidelines for Ex-
10	isting Sources: Commercial and Industrial
11	Solid Waste Incineration Units" (76 Fed.
12	Reg. 15704 (March 21, 2011));
13	(iii) the final rule entitled "Identifica-
14	tion of Non-Hazardous Secondary Mate-
15	rials That Are Solid Waste" (76 Fed. Reg.
16	15456 (March 21, 2011));
17	(iv) the final rule entitled "National
18	Emission Standards for Hazardous Air
19	Pollutants for Major Sources: Industrial,
20	Commercial, and Institutional Boilers and
21	Process Heaters" (76 Fed. Reg. 15608
22	(March 21, 2011));
23	(v) the final rule entitled "National
24	Emission Standards for Hazardous Air
25	Pollutants for Area Sources: Industrial,
23	Pollutants for Area Sources: Industrial,

	51	
1	Commercial, and Institutional Boilers" (76	
2	Fed. Reg. 15554 (March 21, 2011));	
3	(vi) the final rule entitled "Standards	
4	of Performance for New Stationary	
5	Sources and Emission Guidelines for Ex-	
6	isting Sources: Commercial and Industrial	
7	Solid Waste Incineration Units" (76 Fed.	
8	Reg. 15704 (March 21, 2011)); and	
9	(vii) the final rule entitled "Identifica-	
10	tion of Non-Hazardous Secondary Mate-	
11	rials That Are Solid Waste" (76 Fed. Reg.	
12	15456 (March 21, 2011)).	
13	(b) INAPPLICABILITY OF CERTAIN PROVISIONS.—	
14	With respect to any standard required by subsection	
15	(a)(1) to be promulgated in regulations under section 112	
16	of the Clean Air Act (42 U.S.C. 7412), the provisions of	
17	subsections $(g)(2)$ and (j) of that section shall not apply	
18	prior to the effective date of the standard specified in	
19	those regulations.	
20	SEC. 202. COMPLIANCE DATES.	
21	(a) Establishment of Compliance Dates.—For	
22	each regulation promulgated pursuant to section 201, the	
23	Administrator—	
24	(1) shall establish a date for compliance with	
25	standards and requirements under the regulation	

1	that is, notwithstanding any other provision of law,
2	not earlier than 5 years after the effective date of
3	the regulation; and
4	(2) in proposing a date for that compliance,
5	shall take into consideration—
6	(A) the costs of achieving emission reduc-
7	tions;
8	(B) any non-air quality health and environ-
9	mental impact and energy requirements of the
10	standards and requirements;
11	(C) the feasibility of implementing the
12	standards and requirements, including the time
13	necessary—
14	(i) to obtain necessary permit approv-
15	als; and
16	(ii) to procure, install, and test con-
17	trol equipment;
18	(D) the availability of equipment, sup-
19	pliers, and labor, given the requirements of the
20	regulation and other proposed or finalized regu-
21	lations of the Administrator; and
22	(E) potential net employment impacts.
23	(b) NEW SOURCES.—The date on which the Adminis-
24	trator proposes a regulation pursuant to section 201 es-
25	tablishing an emission standard under section 112 or 129

of the Clean Air Act (42 U.S.C. 7412, 7429) shall be
 treated as the date on which the Administrator first pro poses such a regulation for purposes of applying—

4 (1) the definition of the term "new source"
5 under section 112(a)(4) of that Act (42 U.S.C.
6 7412(a)(4)); or

7 (2) the definition of the term "new solid waste
8 incineration unit" under section 129(g)(2) of that
9 Act (42 U.S.C. 7429(g)(2)).

(c) RULE OF CONSTRUCTION.—Nothing in this Act
restricts or otherwise affects paragraphs (3)(B) and (4)
of section 112(i) of the Clean Air Act (42 U.S.C. 7412(i)).

13 SEC. 203. ENERGY RECOVERY AND CONSERVATION.

Notwithstanding any other provision of law, and to ensure the recovery and conservation of energy consistent with the Solid Waste Disposal Act (42 U.S.C. 6901 et req.), in promulgating regulations under section 201 addressing the subject matter of the rules specified in paragraph (2) of each of those subsections, the Administrator shall—

(1) adopt the definitions of the terms "commercial and industrial solid waste incineration unit",
"commercial and industrial waste", and "contained
gaseous material" in the rule entitled "Standards
for Performance of New Stationary Sources and

1	Emission Guidelines for Existing Sources: Commer-
2	cial and Industrial Solid Waste Incineration Units"
-3	(65 Fed. Reg. 75338 (December 1, 2000)); and
4	(2) identify nonhazardous secondary material to
5	be solid waste (as defined in section 1004 of the
6	Solid Waste Disposal Act (42 U.S.C. 6903)) only
7	if—
8	(A) the material meets that definition of
9	commercial and industrial waste; or
10	(B) if the material is a gas, the material
11	meets that definition of contained gaseous ma-
12	terial.
13	SEC. 204. OTHER PROVISIONS.
13 14	SEC. 204. OTHER PROVISIONS. (a) Establishment of Standards Achievable in
14	(a) Establishment of Standards Achievable in
14 15	(a) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN PRACTICE.—In promulgating regulations under section
14 15 16	(a) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN PRACTICE.—In promulgating regulations under section 201, the Administrator shall ensure, to the maximum ex-
14 15 16 17	(a) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN PRACTICE.—In promulgating regulations under section 201, the Administrator shall ensure, to the maximum ex- tent practicable, that emission standards for existing and
14 15 16 17 18	(a) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN PRACTICE.—In promulgating regulations under section 201, the Administrator shall ensure, to the maximum ex- tent practicable, that emission standards for existing and new sources established under section 112 or 129 of the
14 15 16 17 18 19	(a) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN PRACTICE.—In promulgating regulations under section 201, the Administrator shall ensure, to the maximum ex- tent practicable, that emission standards for existing and new sources established under section 112 or 129 of the Clean Air Act (42 U.S.C. 7412, 7429), as applicable, can
 14 15 16 17 18 19 20 	(a) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN PRACTICE.—In promulgating regulations under section 201, the Administrator shall ensure, to the maximum ex- tent practicable, that emission standards for existing and new sources established under section 112 or 129 of the Clean Air Act (42 U.S.C. 7412, 7429), as applicable, can be met under actual operating conditions consistently and
 14 15 16 17 18 19 20 21 	(a) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN PRACTICE.—In promulgating regulations under section 201, the Administrator shall ensure, to the maximum ex- tent practicable, that emission standards for existing and new sources established under section 112 or 129 of the Clean Air Act (42 U.S.C. 7412, 7429), as applicable, can be met under actual operating conditions consistently and concurrently with emission standards for all other air pol-

25 (2) source design;

1	(3) fuels;
2	(4) inputs;

3 (5) controls;

4 (6) ability to measure the pollutant emissions;5 and

6 (7) operating conditions.

7 (b) REGULATORY ALTERNATIVES.—For each regula-8 tion promulgated under section 201, from among the 9 range of regulatory alternatives authorized under the Clean Air Act (42 U.S.C. 7401 et seq.), including work 10 practice standards under section 112(h) of that Act (42) 11 U.S.C. 7412(h)), the Administrator shall impose the least 12 13 burdensome, consistent with the purposes of that Act and Executive Order 13563 (76 Fed. Reg. 3821 (January 21, 14 15 2011)).

16 TITLE III—COAL RESIDUALS 17 REUSE AND MANAGEMENT

18 SEC. 301. SHORT TITLE.

19 This title may be cited as the "Coal Residuals Reuse20 and Management Act".

21 SEC. 302. AMENDMENT TO SUBTITLE D OF THE SOLID
22 WASTE DISPOSAL ACT.

(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:

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

3 "(a) STATE PERMIT PROGRAMS FOR COAL COMBUS4 TION RESIDUALS.—Each State may adopt and implement
5 a coal combustion residuals permit program.

6 "(b) STATE ACTIONS.—

"(1) NOTIFICATION.—Not later than 6 months
after the date of enactment of this section (except
as provided by the deadline identified under subsection (d)(2)(B)), the Governor of each State shall
notify the Administrator, in writing, whether such
State will adopt and implement a coal combustion
residuals permit program.

14 "(2) CERTIFICATION.—

"(A) IN GENERAL.—Not later than 36 15 16 months after the date of enactment of this sec-17 tion (except as provided in subsections (f)(1)(A)18 and (f)(1)(C), in the case of a State that has 19 notified the Administrator that it will imple-20 ment a coal combustion residuals permit pro-21 gram, the head of the lead State agency respon-22 sible for implementing the coal combustion residuals permit program shall submit to the Ad-23 24 ministrator a certification that such coal com-25 bustion residuals permit program meets the 26 specifications described in subsection (c)(1).

1	"(B) CONTENTS.—A certification sub-
2	mitted under this paragraph shall include—
3	"(i) a letter identifying the lead State
4	agency responsible for implementing the
5	coal combustion residuals permit program,
6	signed by the head of such agency;
7	
	"(ii) identification of any other State
8	agencies involved with the implementation
9	of the coal combustion residuals permit
10	program;
11	"(iii) a narrative description that pro-
12	vides an explanation of how the State will
13	ensure that the coal combustion residuals
14	permit program meets the requirements of
15	this section, including a description of the
16	State's—
17	"(I) process to inspect or other-
18	wise determine compliance with such
19	permit program;
20	"(II) process to enforce the re-
21	quirements of such permit program;
22	and
23	"(III) public participation proc-
24	ess for the promulgation, amendment,
25	or repeal of regulations for, and the

	50
1	issuance of permits under, such per-
2	mit program;
3	"(iv) a legal certification that the
4	State has, at the time of certification, fully
5	effective statutes or regulations necessary
6	to implement a coal combustion residuals
7	permit program that meets the specifica-
8	tions described in subsection $(c)(1)$; and
9	"(v) copies of State statutes and regu-
10	lations described in clause (iv).
11	"(3) Maintenance of $4005(c)$ or 3006 pro-
12	GRAM.—In order to adopt or implement a coal com-
13	bustion residuals permit program under this section
14	(including pursuant to subsection (f)), the State
15	agency responsible for implementing a coal combus-
16	tion residuals permit program in a State shall main-
17	tain an approved program under section 4005(c) or
18	an authorized program under section 3006.
19	"(c) Permit Program Specifications.—
20	"(1) MINIMUM REQUIREMENTS.—The specifica-
21	tions described in this subsection for a coal combus-
22	tion residuals permit program are as follows:
23	"(A) The revised criteria described in
24	paragraph (2) shall apply to a coal combustion

residuals permit program, except as provided in paragraph (3).

3 "(B) Each structure shall be, in accord-4 ance with generally accepted engineering stand-5 ards for the structural integrity of such struc-6 tures, designed, constructed, and maintained to 7 provide for containment of the maximum vol-8 umes of coal combustion residuals appropriate 9 for the structure. If a structure is determined 10 by the head of the agency responsible for imple-11 menting the coal combustion residuals permit 12 program to be deficient, the head of such agen-13 cy has authority to require action to correct the 14 deficiency according to a schedule determined 15 by such agency. If the identified deficiency is 16 not corrected according to such schedule, the 17 head of such agency has authority to require 18 that the structure close in accordance with sub-19 section (h).

"(C) The coal combustion residuals permit
program shall apply the revised criteria promulgated pursuant to section 4010(c) for location,
design, groundwater monitoring, corrective action, financial assurance, closure, and post-closure described in paragraph (2) and the speci-

1

fications described in this paragraph to surface impoundments.

3 "(D) If a structure that is classified as 4 posing a high hazard potential pursuant to the 5 guidelines published by the Federal Emergency 6 Management Agency entitled 'Federal Guide-7 lines for Dam Safety: Hazard Potential Classi-8 fication System for Dams' (FEMA Publication 9 Number 333) is determined by the head of the 10 agency responsible for implementing the coal 11 combustion residuals permit program to be defi-12 cient with respect to the structural integrity re-13 quirement in subparagraph (B), the head of 14 such agency has authority to require action to 15 correct the deficiency according to a schedule 16 determined by such agency. If the identified de-17 ficiency is not corrected according to such 18 schedule, the head of such agency has authority 19 to require that the structure close in accordance 20 with subsection (h).

21 "(E) In the case of a coal combustion re22 siduals permit program implemented by a
23 State, the State has the authority to inspect
24 structures and implement and enforce such per25 mit program.

1

1	"(F) In the case of a coal combustion re-
2	siduals permit program implemented by a
3	State, the State has the authority to address
4	wind dispersal of dust from coal combustion re-
5	siduals by requiring dust control measures, as
6	determined appropriate by the head of the lead
7	State agency responsible for implementing the
8	coal combustion residuals permit program.
9	"(2) REVISED CRITERIA.—The revised criteria
10	described in this paragraph are—
11	"(A) the revised criteria for design,
12	groundwater monitoring, corrective action, clo-
13	sure, and post-closure, for structures, includ-
14	ing—
15	"(i) for new structures, and lateral ex-
16	pansions of existing structures, that first
17	receive coal combustion residuals after the
18	date of enactment of this section, the re-
19	vised criteria regarding design require-
20	ments described in section 258.40 of title
21	40, Code of Federal Regulations; and
22	"(ii) for all structures that receive
23	coal combustion residuals after the date of
24	enactment of this section, the revised cri-
25	teria regarding groundwater monitoring

1	and corrective action requirements de-
2	scribed in subpart E of part 258 of title
3	40, Code of Federal Regulations, except
4	that, for the purposes of this paragraph,
5	such revised criteria shall also include—
6	"(I) for the purposes of detection
7	monitoring, the constituents boron,
8	chloride, conductivity, fluoride, mer-
9	cury, pH, sulfate, sulfide, and total
10	dissolved solids; and
11	$((\Pi)$ for the purposes of assess-
12	ment monitoring, the constituents alu-
13	minum, boron, chloride, fluoride, iron,
14	manganese, molybdenum, pH, sulfate,
15	and total dissolved solids;
16	"(B) the revised criteria for location re-
17	strictions described in—
18	"(i) for new structures, and lateral ex-
19	pansions of existing structures, that first
20	receive coal combustion residuals after the
21	date of enactment of this section, sections
22	258.11 through 258.15 of title 40, Code of
23	Federal Regulations; and
24	"(ii) for existing structures that re-
25	ceive coal combustion residuals after the

1	date of enactment of this section, sections
2	258.11 and 258.15 of title 40, Code of
3	Federal Regulations;
4	"(C) for all structures that receive coal
5	combustion residuals after the date of enact-
6	ment of this section, the revised criteria for air
7	quality described in section 258.24 of title 40,
8	Code of Federal Regulations;
9	"(D) for all structures that receive coal
10	combustion residuals after the date of enact-
11	ment of this section, the revised criteria for fi-
12	nancial assurance described in subpart G of
13	part 258 of title 40, Code of Federal Regula-
14	tions;
15	((E) for all structures that receive coal
16	combustion residuals after the date of enact-
17	ment of this section, the revised criteria for sur-
18	face water described in section 258.27 of title
19	40, Code of Federal Regulations;
20	"(F) for all structures that receive coal
21	combustion residuals after the date of enact-
22	ment of this section, the revised criteria for rec-
23	ordkeeping described in section 258.29 of title
24	40, Code of Federal Regulations;

1	"(G) for landfills and other land-based
2	units, other than surface impoundments, that
3	receive coal combustion residuals after the date
4	of enactment of this section, the revised criteria
5	for run-on and run-off control systems de-
6	scribed in section 258.26 of title 40, Code of
7	Federal Regulations; and
8	"(H) for surface impoundments that re-
9	ceive coal combustion residuals after the date of
10	enactment of this section, the revised criteria
11	for run-off control systems described in section
12	258.26(a)(2) of title 40, Code of Federal Regu-
13	lations.
14	"(3) Applicability of certain require-
15	MENTS.—A State may determine that one or more
16	of the requirements of the revised criteria described
17	in paragraph (2) is not needed for the management
18	of coal combustion residuals in that State, and may
19	decline to apply such requirement as part of its coal
20	combustion residuals permit program. If a State de-
21	clines to apply a requirement under this paragraph,
22	the State shall include in the certification under sub-
23	section $(b)(2)$ a description of such requirement and
24	the reasons such requirement is not needed in the
25	State. If the Administrator, taking into account only

1	the revised criteria that the State determines to be
2	needed under this section, determines that a State
3	determination under this paragraph does not accu-
4	rately reflect the needs for the management of coal
5	combustion residuals in the State, the Administrator
6	may treat such State determination as a deficiency
7	under subsection (d).
8	"(d) Written Notice and Opportunity To Rem-
9	EDY.—
10	"(1) IN GENERAL.—The Administrator shall
11	provide to a State written notice and an opportunity
12	to remedy deficiencies in accordance with paragraph
13	(2) if at any time the State—
14	"(A) does not satisfy the notification re-
15	quirement under subsection (b)(1);
16	"(B) has not submitted a certification
17	under subsection $(b)(2);$
18	"(C) does not satisfy the maintenance re-
19	quirement under subsection (b)(3); or
20	"(D) is not implementing a coal combus-
21	tion residuals permit program that meets the
22	specifications described in subsection $(c)(1)$.
23	"(2) Contents of notice; deadline for re-
24	SPONSE.—A notice provided under this subsection
25	shall—

1	"(A) include findings of the Administrator
2	detailing any applicable deficiencies in—
3	"(i) compliance by the State with the
4	notification requirement under subsection
5	(b)(1);
6	"(ii) compliance by the State with the
7	certification requirement under subsection
8	(b)(2);
9	"(iii) compliance by the State with the
10	maintenance requirement under subsection
11	(b)(3); and
12	"(iv) the State coal combustion re-
13	siduals permit program in meeting the
14	specifications described in subsection
15	(c)(1); and
16	"(B) identify, in collaboration with the
17	State, a reasonable deadline, which shall be not
18	sooner than 6 months after the State receives
19	the notice, by which the State shall remedy the
20	deficiencies detailed under subparagraph (A).
21	"(e) Implementation by Administrator.—
22	"(1) IN GENERAL.—The Administrator shall
23	implement a coal combustion residuals permit pro-
24	gram for a State only in the following cir-
25	cumstances:

"(A) If the Governor of such State notifies 1 2 the Administrator under subsection (b)(1) that 3 such State will not adopt and implement such 4 a permit program. 5 "(B) If such State has received a notice 6 under subsection (d) and, after any review brought by the State under section 7006, fails, 7 8 by the deadline identified in such notice under 9 subsection (d)(2)(B), to remedy the deficiencies 10 detailed in such notice under subsection 11 (d)(2)(A).12 "(C) If such State informs the Adminis-13 trator, in writing, that such State will no longer 14 implement such a permit program. 15 "(2) REQUIREMENTS.—If the Administrator 16 implements a coal combustion residuals permit pro-17 gram for a State under paragraph (1), such permit 18 program shall consist of the specifications described 19 in subsection (c)(1). 20 "(3) ENFORCEMENT.—If the Administrator im-21 plements a coal combustion residuals permit pro-22 gram for a State under paragraph (1), the authori-23 ties referred to in section 4005(c)(2)(A) shall apply 24 with respect to coal combustion residuals and struc-25 tures and the Administrator may use such authori-

	40
1	ties to inspect, gather information, and enforce the
2	requirements of this section in the State.
3	"(f) STATE CONTROL AFTER IMPLEMENTATION BY
4	Administrator.—
5	"(1) STATE CONTROL.—
6	"(A) NEW ADOPTION AND IMPLEMENTA-
7	TION BY STATE.—For a State for which the
8	Administrator is implementing a coal combus-
9	tion residuals permit program under subsection
10	(e)(1)(A), the State may adopt and implement
11	such a permit program by—
12	"(i) notifying the Administrator that
13	the State will adopt and implement such a
14	permit program;
15	"(ii) not later than 6 months after the
16	date of such notification, submitting to the
17	Administrator a certification under sub-
18	section $(b)(2)$; and
19	"(iii) receiving from the Adminis-
20	trator—
21	"(I) a determination that the
22	State coal combustion residuals per-
23	mit program meets the specifications
24	described in subsection $(c)(1)$; and

1	"(II) a timeline for transition of
2	control of the coal combustion residu-
3	als permit program.
4	"(B) Remedying deficient permit pro-
5	GRAM.—For a State for which the Adminis-
6	trator is implementing a coal combustion re-
7	siduals permit program under subsection
8	(e)(1)(B), the State may adopt and implement
9	such a permit program by—
10	"(i) remedying the deficiencies de-
11	tailed in the notice provided under sub-
12	section $(d)(2)(A)$; and
13	"(ii) receiving from the Adminis-
14	trator—
15	"(I) a determination that the de-
16	ficiencies detailed in such notice have
17	been remedied; and
18	"(II) a timeline for transition of
19	control of the coal combustion residu-
20	als permit program.
21	"(C) RESUMPTION OF IMPLEMENTATION
22	BY STATE.—For a State for which the Adminis-
23	trator is implementing a coal combustion re-
24	siduals permit program under subsection

1	(e)(1)(C), the State may adopt and implement
2	such a permit program by—
3	"(i) notifying the Administrator that
4	the State will adopt and implement such a
5	permit program;
6	"(ii) not later than 6 months after the
7	date of such notification, submitting to the
8	Administrator a certification under sub-
9	section $(b)(2)$; and
10	"(iii) receiving from the Adminis-
11	trator—
12	"(I) a determination that the
13	State coal combustion residuals per-
14	mit program meets the specifications
15	described in subsection $(c)(1)$; and
16	"(II) a timeline for transition of
17	control of the coal combustion residu-
18	als permit program.
19	"(2) Review of determination.—
20	"(A) DETERMINATION REQUIRED.—The
21	Administrator shall make a determination
22	under paragraph (1) not later than 90 days
23	after the date on which the State submits a cer-
24	tification under paragraph (1)(A)(ii) or
25	(1)(C)(ii), or notifies the Administrator that the

1	deficiencies have been remedied pursuant to
2	paragraph (1)(B)(i), as applicable.
3	"(B) REVIEW.—A State may obtain a re-
4	view of a determination by the Administrator
5	under paragraph (1) as if such determination
6	was a final regulation for purposes of section
7	7006.
8	"(3) Implementation during transition.—
9	"(A) Effect on actions and orders.—
10	Actions taken or orders issued pursuant to a
11	coal combustion residuals permit program shall
12	remain in effect if—
13	"(i) a State takes control of its coal
14	combustion residuals permit program from
15	the Administrator under paragraph (1); or
16	"(ii) the Administrator takes control
17	of a coal combustion residuals permit pro-
18	gram from a State under subsection (e).
19	"(B) CHANGE IN REQUIREMENTS.—Sub-
20	paragraph (A) shall apply to such actions and
21	orders until such time as the Administrator or
22	the head of the lead State agency responsible
23	for implementing the coal combustion residuals
24	permit program, as applicable—

"(i) implements changes to the re-1 2 quirements of the coal combustion residu-3 als permit program with respect to the 4 basis for the action or order; or "(ii) certifies the completion of a cor-5 6 rective action that is the subject of the ac-7 tion or order. "(4) SINGLE PERMIT PROGRAM.—If a State 8 9 adopts and implements a coal combustion residuals 10 permit program under this subsection, the Adminis-11 trator shall cease to implement the permit program 12 implemented under subsection (e) for such State. 13 "(g) EFFECT ON DETERMINATION UNDER 4005(c) 14 OR 3006.—The Administrator shall not consider the im-15 plementation of a coal combustion residuals permit pro-

16 gram by the Administrator under subsection (e) in making
17 a determination of approval for a permit program or other
18 system of prior approval and conditions under section
19 4005(c) or of authorization for a program under section
20 3006.

21 "(h) CLOSURE.—If it is determined, pursuant to a 22 coal combustion residuals permit program, that a struc-23 ture should close, the time period and method for the clo-24 sure of such structure shall be set forth in a closure plan 25 that establishes a deadline for completion and that takes into account the nature and the site-specific characteris tics of the structure to be closed. In the case of a surface
 impoundment, the closure plan shall require, at a min imum, the removal of liquid and the stabilization of re maining waste, as necessary to support the final cover.
 "(i) 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.

13 "(2) Authority of the administrator.—

14 "(A) IN GENERAL.—Except as provided in
15 subsection (e) of this section and section 6005
16 of this title, the Administrator shall, with re17 spect to the regulation of coal combustion re18 siduals, defer to the States pursuant to this sec19 tion.

20 "(B) IMMINENT HAZARD.—Nothing in this
21 section shall be construed to affect the author22 ity of the Administrator under section 7003
23 with respect to coal combustion residuals.

24 "(C) TECHNICAL AND ENFORCEMENT AS25 SISTANCE ONLY UPON REQUEST.—Upon re-

1	quest from the head of a lead State agency that
2	is implementing a coal combustion residuals
3	permit program, the Administrator may provide
4	to such State agency only the technical or en-
5	forcement assistance requested.
6	"(3) CITIZEN SUITS.—Nothing in this section
7	shall be construed to affect the authority of a person
8	to commence a civil action in accordance with sec-
9	tion 7002.
10	"(j) Mine Reclamation Activities.—A coal com-
11	bustion residuals permit program implemented under sub-
12	section (e) by the Administrator shall not apply to the uti-
13	lization, placement, and storage of coal combustion residu-
14	als at surface mining and reclamation operations.
15	"(k) DEFINITIONS.—In this section:
16	"(1) COAL COMBUSTION RESIDUALS.—The
17	term 'coal combustion residuals' means—
18	"(A) the solid wastes listed in section
19	3001(b)(3)(A)(i), including recoverable mate-
20	rials from such wastes;
21	"(B) coal combustion wastes that are co-
22	managed with wastes produced in conjunction
23	with the combustion of coal, provided that such
24	wastes are not segregated and disposed of sepa-
25	rately from the coal combustion wastes and

1	comprise a relatively small proportion of the
2	total wastes being disposed in the structure;
3	"(C) fluidized bed combustion wastes;
4	"(D) wastes from the co-burning of coal
5	with non-hazardous secondary materials pro-
6	vided that coal makes up at least 50 percent of
7	the total fuel burned; and
8	"(E) wastes from the co-burning of coal
9	with materials described in subparagraph (A)
10	that are recovered from monofills.
11	"(2) COAL COMBUSTION RESIDUALS PERMIT
12	PROGRAM.—The term 'coal combustion residuals
13	permit program' means a permit program or other
14	system of prior approval and conditions that is
15	adopted by or for a State for the management and
16	disposal of coal combustion residuals to the extent
17	such activities occur in structures in such State.
18	"(3) STRUCTURE.—The term 'structure' means
19	a landfill, surface impoundment, or other land-based
20	unit which may receive coal combustion residuals.
21	"(4) REVISED CRITERIA.—The term 'revised
22	criteria' means the criteria promulgated for munic-
23	ipal solid waste landfill units under section 4004(a)
24	and under section $1008(a)(3)$, as revised under sec-
25	tion 4010(c).".

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

"Sec. 4011. Management and disposal of coal combustion residuals.".

5 SEC. 303. 2000 REGULATORY DETERMINATION.

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

15 SEC. 304. EFFECT OF TITLE.

16 This title and the amendments made by this title—
17 (1) supersede any regulations promulgated or
18 being developed as of the date of enactment of this
19 Act relating to coal combustion residuals; and

20 (2) specifically exempt coal combustion residu21 als from regulation under subtitle C of the Solid
22 Waste Disposal Act (42 U.S.C. 6921 et seq.).

TITLE IV—THERMAL DISCHARGES

57

3 SEC. 401. SHORT TITLE.

1

2

4 This title may be cited as the "Environmental Impact5 of Thermal Discharges Act of 2011".

6 SEC. 402. THERMAL DISCHARGE.

7 Section 316 of the Federal Water Pollution Control
8 Act (33 U.S.C. 1326) is amended by striking subsection
9 (b) and inserting the following:

10 "(b) Cooling Water Intake Structures.—

11 "(1) DEFINITION OF STATE.—In this sub12 section, the term 'State' means a State authorized to
13 administer a permit program under section 402.

14 "(2) STANDARDS.—

15 "(A) COOLING WATER INTAKE STRUC-16 TURES CONSTRUCTED AFTER JANUARY 17. 17 2002.—For any cooling water intake structure 18 that commences construction after January 17, 19 2002, any standard established under section 20 306 and applicable to a point source shall re-21 quire that the location, design, construction, 22 and capacity of the cooling water intake struc-23 ture reflect the best technology available for re-24 ducing adverse environmental impact.

1	"(B) COOLING WATER INTAKE STRUC-
2	TURES CONSTRUCTED ON OR BEFORE JANUARY
3	17, 2002.—For any cooling water intake struc-
4	ture that commenced construction on or before
5	January 17, 2002, any standard established
6	under section 301 shall require that the loca-
7	tion, design, construction, and capacity of the
8	cooling water intake structure reflect the best
9	technology available for reducing adverse envi-
10	ronmental impact.
11	"(3) SITE-SPECIFIC ADVERSE ENVIRONMENTAL
12	IMPACT DETERMINATION.—
13	"(A) IN GENERAL.—Except as provided in
14	subparagraph (C), the Administrator or State,
14 15	subparagraph (C), the Administrator or State, if applicable, shall determine whether the cool-
15	if applicable, shall determine whether the cool-
15 16	if applicable, shall determine whether the cool- ing water intake structure described in para-
15 16 17	if applicable, shall determine whether the cool- ing water intake structure described in para- graph (2)(B) creates an adverse environmental
15 16 17 18	if applicable, shall determine whether the cool- ing water intake structure described in para- graph (2)(B) creates an adverse environmental impact at the site in which the cooling water in-
15 16 17 18 19	if applicable, shall determine whether the cool- ing water intake structure described in para- graph (2)(B) creates an adverse environmental impact at the site in which the cooling water in- take structure is located.
15 16 17 18 19 20	if applicable, shall determine whether the cool- ing water intake structure described in para- graph (2)(B) creates an adverse environmental impact at the site in which the cooling water in- take structure is located. "(B) SHELLFISH, FISH, OR WILDLIFE
 15 16 17 18 19 20 21 	if applicable, shall determine whether the cool- ing water intake structure described in para- graph (2)(B) creates an adverse environmental impact at the site in which the cooling water in- take structure is located. "(B) SHELLFISH, FISH, OR WILDLIFE MORTALITY.—

1	considered an adverse environmental im-
2	pact unless—
3	"(I) a demonstrable, quantifiable,
4	and continuous decline in any shell-
5	fish, fish, or wildlife population occurs
6	in or on the body of water on which
7	the cooling water intake structure is
8	located; and
9	"(II) the Administrator or State,
10	as applicable, determines that the de-
11	cline is specifically attributable to that
12	cooling water intake structure.
13	"(ii) Presumption; clear and con-
14	VINCING EVIDENCE.—In making the deter-
15	mination under clause (i)(II), the Adminis-
16	trator or State, as applicable, may presume
17	that the cooling water intake structure is
18	not causing an adverse environmental im-
19	pact unless there is clear and convincing
20	evidence to the contrary.
21	"(C) CERTAIN CATEGORIES OR CLASSES
22	OF COOLING WATER INTAKE STRUCTURES.—
23	The Administrator or State, as applicable, shall
24	not be required to make the determination
25	under subparagraph (A) for any category or

1	class of cooling water intake structure that the
2	Administrator or State, as applicable, deter-
3	mines, because of the location, design, capacity,
4	or other factors, is unlikely to cause an adverse
5	environmental impact.
6	"(4) Site-specific selection of best tech-
7	NOLOGY AVAILABLE.—For any cooling water intake
8	structure described in paragraph (2)(A), or if the
9	Administrator or State, as applicable, makes the de-
10	termination described in paragraph (3)(A), the Ad-
11	ministrator or the State, as applicable, shall select
12	the best technology available for the cooling water
13	intake structure using a site-specific cost-benefit
14	analysis that ensures the benefits of the cooling
15	water intake structure technology selected justify the
16	costs, taking into consideration—
17	"(A) any costs associated with any feasible
18	alternative cooling water intake structure tech-
19	nology;
20	"(B) any likely environmental and eco-
21	nomic benefits;
22	"(C) any nonwater quality environmental
23	or water consumption impacts;

24 "(D) any energy requirements;

1	"(E) the remaining useful life of equip-
2	ment and facilities involved;
3	"(F) the process employed;
4	"(G) the engineering aspects of the appli-
5	cation of various types of control techniques;
6	"(H) electricity reliability impacts;
7	"(I) land availability;
8	"(J) lost revenues; and
9	"(K) other factors that the Administrator
10	or State, as applicable, determines to be appro-
11	priate.
12	"(5) Alternative technologies.—Any
13	owner or operator of any cooling water intake struc-
14	ture described in paragraph (2) may use restoration
15	measures, including restocking fish and shellfish, im-
16	proving the surrounding habitat, and alternative
17	techniques in lieu of modifying the cooling water in-
18	take structure if the Administrator or State, as ap-
19	plicable, determines that the restoration measures
20	achieve substantially the same environmental bene-
21	fits as the best technology available selected under
22	paragraph (4).
23	"(6) CREDIT FOR PREVIOUSLY INSTALLED
24	FISH-PROTECTION TECHNOLOGY.—The Adminis-
25	trator or State, as applicable, shall provide credit for

any impingement or entrainment reductions result ing from a previously installed fish-protection tech nology, as the Administrator or State determines to
 be appropriate.".

5 SEC. 403. REGULATIONS.

6 Effective beginning January 1, 2011—

7 (1) the Administrator shall not promulgate any
8 regulation regarding cooling water intake structures
9 that is inconsistent with this title or an amendment
10 made by this title; and

(2) any regulation described in paragraph (1)
that is promulgated on or after January 1, 2011,
and prior to the date of enactment of this Act shall
have no force or effect.