

114TH CONGRESS
1ST SESSION

H. R. 1734

AN ACT

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 2015”.

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

- Sec. 1. Short title and table of contents.
- Sec. 2. Management and disposal of coal combustion residuals.
- Sec. 3. 2000 regulatory determination.
- Sec. 4. Technical assistance.
- Sec. 5. Federal Power Act.

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

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

14 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**
 15 **BUSTION RESIDUALS.**

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

20 “(b) STATE ACTIONS.—

21 “(1) NOTIFICATION.—Not later than 6 months
 22 after the date of enactment of this section (except
 23 as provided by the deadline identified under sub-

1 section (d)(3)(B)), the Governor of each State shall
2 notify the Administrator, in writing, whether such
3 State will adopt and implement a coal combustion
4 residuals permit program.

5 “(2) CERTIFICATION.—

6 “(A) IN GENERAL.—Not later than 24
7 months after the date of enactment of this sec-
8 tion (except as provided in subparagraph (B)
9 and subsection (f)(1)(A)), in the case of a State
10 that has notified the Administrator that it will
11 implement a coal combustion residuals permit
12 program, the head of the lead State imple-
13 menting agency shall submit to the Adminis-
14 trator a certification that such coal combustion
15 residuals permit program meets the require-
16 ments described in subsection (c).

17 “(B) EXTENSION.—

18 “(i) REQUIREMENTS.—The Adminis-
19 trator may extend the deadline for submis-
20 sion of a certification for a State under
21 subparagraph (A) for a period of 12
22 months if the State submits to the Admin-
23 istrator a request for such an extension
24 that—

1 “(I) describes the efforts of the
2 State to meet such deadline;

3 “(II) demonstrates that the legis-
4 lative or rulemaking procedures of
5 such State render the State unable
6 meet such deadline; and

7 “(III) provides the Administrator
8 with a detailed schedule for comple-
9 tion and submission of the certifi-
10 cation.

11 “(ii) DETERMINATION.—If the Ad-
12 ministrator does not approve or deny a re-
13 quest submitted under clause (i) by the
14 date that is 30 days after such submission,
15 the request shall be deemed approved.

16 “(C) CONTENTS.—A certification sub-
17 mitted under this paragraph shall include—

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

21 “(ii) identification of any other State
22 agencies involved with the implementation
23 of the coal combustion residuals permit
24 program;

1 “(iii) an explanation of how the State
2 coal combustion residuals permit program
3 meets the requirements of this section, in-
4 cluding—

5 “(I) a description of the
6 State’s—

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

10 “(bb) process to enforce the
11 requirements of such permit pro-
12 gram;

13 “(cc) public participation
14 process for the promulgation,
15 amendment, or repeal of regula-
16 tions for, and the issuance of
17 permits under, such permit pro-
18 gram; and

19 “(dd) statutes, regulations,
20 or policies pertaining to public
21 access to information, including
22 information on groundwater mon-
23 itoring data, structural stability
24 assessments, emergency action
25 plans, fugitive dust control plans,

1 notifications of closure (including
2 any certification of closure by a
3 qualified professional engineer),
4 and corrective action remedies;
5 and

6 “(II) identification of any
7 changes to the definitions under sec-
8 tion 257.53 of title 40, Code of Fed-
9 eral Regulations, for purposes of the
10 State coal combustion residuals per-
11 mit program, including a reasonable
12 basis for such changes, as required
13 under subsection (l)(4);

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

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

22 “(vi) a plan for a response by the
23 State to a release at a structure or inactive
24 surface impoundment that has the poten-
25 tial for impact beyond the site on which

1 the structure or inactive surface impound-
2 ment is located; and

3 “(vii) a plan for coordination among
4 States in the event of a release that
5 crosses State lines.

6 “(D) UPDATES.—A State may update the
7 certification as needed to reflect changes to the
8 coal combustion residuals permit program.

9 “(3) MAINTENANCE OF 4005(c) OR 3006 PRO-
10 GRAM.—In order to adopt or implement a coal com-
11 bustion residuals permit program under this section
12 (including pursuant to subsection (f)), the lead State
13 implementing agency shall maintain an approved
14 permit program or other system of prior approval
15 and conditions under section 4005(c) or an author-
16 ized program under section 3006.

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

20 “(1) GENERAL REQUIREMENTS.—

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

1 “(B) PUBLIC AVAILABILITY OF INFORMA-
2 TION.—Except for information with respect to
3 which disclosure is prohibited under section
4 1905 of title 18, United States Code, the imple-
5 menting agency shall ensure that—

6 “(i) documents for permit determina-
7 tions are made publicly available for review
8 and comment under the public participa-
9 tion process of the coal combustion residu-
10 als permit program;

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

13 “(iii) information on groundwater
14 monitoring data, structural stability as-
15 sessments, emergency action plans, fugitive
16 dust control plans, notifications of closure
17 (including any certification of closure by a
18 qualified professional engineer), and cor-
19 rective action remedies required pursuant
20 to paragraph (2), collected in a manner de-
21 termined appropriate by the implementing
22 agency, is publicly available, including on
23 an Internet website; and

24 “(iv) information regarding the exer-
25 cise by the implementing agency of any

1 discretionary authority granted under this
2 section and not provided for in the rule de-
3 scribed in subsection (l)(1) is made pub-
4 licly available.

5 “(C) AGENCY AUTHORITY.—

6 “(i) IN GENERAL.—The implementing
7 agency shall—

8 “(I) obtain information necessary
9 to determine whether the owner or op-
10 erator of a structure is in compliance
11 with the requirements of the coal com-
12 bustion residuals permit program;

13 “(II) conduct or require moni-
14 toring or testing to ensure that struc-
15 tures are in compliance with the re-
16 quirements of the coal combustion re-
17 siduals permit program; and

18 “(III) enter any site or premise
19 at which a structure or inactive coal
20 combustion residuals surface im-
21 poundment is located for the purpose
22 of inspecting such structure or surface
23 impoundment and reviewing relevant
24 records.

1 “(ii) MONITORING AND TESTING.—If
2 monitoring or testing is conducted under
3 clause (i)(II) by or for the implementing
4 agency, the implementing agency shall, if
5 requested, provide to the owner or oper-
6 ator—

7 “(I) a written description of the
8 monitoring or testing completed;

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

14 “(III) a copy of the results of
15 any analysis of samples collected by or
16 for the implementing agency.

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

20 “(A) DESIGN REQUIREMENTS.—For new
21 structures, including lateral expansions of exist-
22 ing structures, the criteria regarding design re-
23 quirements described in sections 257.70 and
24 257.72 of title 40, Code of Federal Regulations,
25 as applicable.

1 “(B) GROUNDWATER MONITORING AND
2 CORRECTIVE ACTION.—

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

10 “(I) for the purposes of detection
11 monitoring, the constituents described
12 in appendix III to part 257 of title
13 40, Code of Federal Regulations; and

14 “(II) for the purposes of assess-
15 ment monitoring, establishing a
16 groundwater protection standard, and
17 assessment of corrective measures, the
18 constituents described in appendix IV
19 to part 257 of title 40, Code of Fed-
20 eral Regulations.

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

23 “(I) ALTERNATIVE POINT OF
24 COMPLIANCE.—Notwithstanding sec-
25 tion 257.91(a)(2) of title 40, Code of

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

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

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

1 258.57(e) of title 40, Code of Federal
2 Regulations.

3 “(IV) GENERAL AUTHORITY RE-
4 LATING TO GROUNDWATER MONI-
5 TORING AND CORRECTIVE ACTION.—
6 Notwithstanding sections 257.90
7 through 257.98 of title 40, Code of
8 Federal Regulations, the imple-
9 menting agency may authorize alter-
10 native groundwater monitoring and
11 corrective action requirements pro-
12 vided that such requirements are no
13 less stringent than the alternative re-
14 quirements authorized to be estab-
15 lished under subpart E of part 258 of
16 title 40, Code of Federal Regulations.

17 “(V) OPPORTUNITY FOR CORREC-
18 TIVE ACTION FOR UNLINED SURFACE
19 IMPOUNDMENTS.—Notwithstanding
20 section 257.101(a)(1) of title 40, Code
21 of Federal Regulations, the imple-
22 menting agency may allow the owner
23 or operator of an existing structure
24 that is an unlined surface impound-
25 ment—

1 “(aa) to continue to operate,
2 pursuant to sections 257.96
3 through 257.98 of title 40, Code
4 of Federal Regulations, until the
5 date that is 102 months after the
6 date of enactment of this section;
7 and

8 “(bb) to continue to operate
9 after such date as long as such
10 unlined surface impoundment
11 meets the groundwater protection
12 standard established pursuant to
13 this subparagraph and any other
14 applicable requirement estab-
15 lished pursuant to this section.

16 “(C) CLOSURE.—For all structures, the
17 criteria for closure described in sections
18 257.101, 257.102, and 257.103 of title 40,
19 Code of Federal Regulations, except—

20 “(i) the criteria described in section
21 257.101(a)(1) of title 40, Code of Federal
22 Regulations, shall apply to an existing
23 structure that is an unlined surface im-
24 poundment only if—

1 “(I) the unlined surface im-
2 poundment is not allowed to continue
3 operation pursuant to subparagraph
4 (B)(ii)(VI)(aa); or

5 “(II) in the case of an unlined
6 surface impoundment that is allowed
7 to continue operation pursuant to sub-
8 paragraph (B)(ii)(VI)(aa), the date
9 described in such subparagraph has
10 passed and the unlined surface im-
11 poundment does not meet the require-
12 ments described in subparagraph
13 (B)(ii)(VI)(bb);

14 “(ii) the criteria described in section
15 257.101(b)(1) of title 40, Code of Federal
16 Regulations, shall not apply to existing
17 structures, except as provided in subpara-
18 graphs (E)(i)(II) and (E)(ii); and

19 “(iii) if an implementing agency has
20 set a deadline under clause (i) or (ii) of
21 subparagraph (L), the criteria described in
22 section 257.101(b)(2) of title 40, Code of
23 Federal Regulations, shall apply to struc-
24 tures that are surface impoundments only
25 after such deadline.

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

5 “(E) LOCATION RESTRICTIONS.—

6 “(i) IN GENERAL.—The criteria for
7 location restrictions described in—

8 “(I) for new structures, including
9 lateral expansions of existing struc-
10 tures, sections 257.60 through 257.64
11 and 257.3–1 of title 40, Code of Fed-
12 eral Regulations; and

13 “(II) for existing structures, sec-
14 tions 257.64 and 257.3–1 of title 40,
15 Code of Federal Regulations.

16 “(ii) ADDITIONAL AUTHORITY.—The
17 implementing agency may apply the cri-
18 teria described in sections 257.60 through
19 257.63 of title 40, Code of Federal Regula-
20 tions, to existing structures that are sur-
21 face impoundments.

22 “(F) AIR CRITERIA.—For all structures,
23 the criteria for air quality described in section
24 257.80 of title 40, Code of Federal Regulations.

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

5 “(H) SURFACE WATER.—For all struc-
6 tures, the criteria for surface water described in
7 section 257.3–3 of title 40, Code of Federal
8 Regulations.

9 “(I) RECORDKEEPING.—For all structures,
10 the criteria for recordkeeping described in sec-
11 tion 257.105 of title 40, Code of Federal Regu-
12 lations.

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

18 “(K) HYDROLOGIC AND HYDRAULIC CA-
19 PACITY REQUIREMENTS.—For all structures
20 that are surface impoundments, the criteria for
21 inflow design flood control systems described in
22 section 257.82 of title 40, Code of Federal Reg-
23 ulations.

24 “(L) STRUCTURAL INTEGRITY.—For struc-
25 tures that are surface impoundments, the cri-

1 teria for structural integrity described in sec-
2 tions 257.73 and 257.74 of title 40, Code of
3 Federal Regulations, except that, notwith-
4 standing section 257.73(f)(4) of title 40, Code
5 of Federal Regulations, the implementing agen-
6 cy may provide for—

7 “(i) up to 30 days for an owner or op-
8 erator to complete a safety factor assess-
9 ment when an owner or operator has failed
10 to meet an applicable periodic assessment
11 deadline provided in section 257.73(f) of
12 title 40, Code of Federal Regulations; and

13 “(ii) up to 12 months for an owner or
14 operator to meet the safety factor assess-
15 ment criteria provided in section
16 257.73(e)(1) of title 40, Code of Federal
17 Regulations, if the implementing agency
18 determines, through the initial safety fac-
19 tor assessment, that the structure does not
20 meet such safety factor assessment criteria
21 and that the structure does not pose an
22 immediate threat of release.

23 “(M) INSPECTIONS.—For all structures,
24 the criteria described in sections 257.83 and
25 257.84 of title 40, Code of Federal Regulations.

1 “(3) PERMIT PROGRAM IMPLEMENTATION FOR
2 EXISTING STRUCTURES.—

3 “(A) NOTIFICATION.—Not later than the
4 date on which a State submits a certification
5 under subsection (b)(2), not later than 18
6 months after the Administrator receives notice
7 under subsection (e)(1)(A), or not later than 24
8 months after the date of enactment of this sec-
9 tion with respect to a coal combustion residuals
10 permit program that is being implemented by
11 the Administrator under subsection (e)(3), as
12 applicable, the implementing agency shall notify
13 owners or operators of existing structures of—

14 “(i) the obligation to apply for and
15 obtain a permit under subparagraph (C);
16 and

17 “(ii) the requirements referred to in
18 subparagraph (B)(ii).

19 “(B) COMPLIANCE WITH CERTAIN RE-
20 QUIREMENTS.—

21 “(i) INITIAL DEADLINE FOR CERTAIN
22 REQUIREMENTS.—Not later than 8 months
23 after the date of enactment of this section,
24 the implementing agency shall require own-

1 ers or operators of existing structures to
2 comply with—

3 “(I) the requirements under
4 paragraphs (2)(F), (2)(H), (2)(I), and
5 (2)(M); and

6 “(II) the requirement for a per-
7 manent identification marker under
8 the criteria described in paragraph
9 (2)(L).

10 “(ii) SUBSEQUENT DEADLINE FOR
11 CERTAIN OTHER REQUIREMENTS.—Not
12 later than 12 months after the date on
13 which a State submits a certification under
14 subsection (b)(2), not later than 30
15 months after the Administrator receives
16 notice under subsection (e)(1)(A), or not
17 later than 36 months after the date of en-
18 actment of this section with respect to a
19 coal combustion residuals permit program
20 that is being implemented by the Adminis-
21 trator under subsection (e)(3), as applica-
22 ble, the implementing agency shall require
23 owners or operators of existing structures
24 to comply with—

1 “(I) the requirements under
2 paragraphs (2)(B), (2)(G), (2)(J),
3 (2)(K), and (2)(L); and

4 “(II) the requirement for a writ-
5 ten closure plan under the criteria de-
6 scribed in paragraph (2)(C).

7 “(C) PERMITS.—

8 “(i) PERMIT DEADLINE.—Not later
9 than 48 months after the date on which a
10 State submits a certification under sub-
11 section (b)(2), not later than 66 months
12 after the Administrator receives notice
13 under subsection (e)(1)(A), or not later
14 than 72 months after the date of enact-
15 ment of this section with respect to a coal
16 combustion residuals permit program that
17 is being implemented by the Administrator
18 under subsection (e)(3), as applicable, the
19 implementing agency shall issue, with re-
20 spect to an existing structure, a final per-
21 mit incorporating the applicable require-
22 ments of the coal combustion residuals per-
23 mit program, or a final denial of an appli-
24 cation submitted requesting such a permit.

1 “(ii) APPLICATION DEADLINE.—The
2 implementing agency shall identify, in col-
3 laboration with the owner or operator of an
4 existing structure, a reasonable deadline by
5 which the owner or operator shall submit a
6 permit application under clause (i).

7 “(D) INTERIM OPERATION.—

8 “(i) PRIOR TO DEADLINES.—Unless
9 the implementing agency determines that
10 the structure should close in accordance
11 with the criteria described in paragraph
12 (2)(C), with respect to any period of time
13 on or after the date of enactment of this
14 section but prior to the applicable deadline
15 in subparagraph (B), the owner or oper-
16 ator of an existing structure may continue
17 to operate such structure until such appli-
18 cable deadline under any applicable regula-
19 tions in effect during such period.

20 “(ii) PRIOR TO PERMIT.—Unless the
21 implementing agency determines that the
22 structure should close in accordance with
23 the criteria described in paragraph (2)(C),
24 if the owner or operator of an existing
25 structure meets the requirements referred

1 to in subparagraph (B) by the applicable
2 deadline in such subparagraph, the owner
3 or operator may operate the structure until
4 such time as the implementing agency
5 issues, under subparagraph (C), a final
6 permit incorporating the requirements of
7 the coal combustion residuals permit pro-
8 gram, or a final denial of an application
9 submitted requesting such a permit.

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

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

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

1 “(ii) comply with the requirements of
2 the coal combustion residuals permit pro-
3 gram applicable to existing structures that
4 are surface impoundments (except as pro-
5 vided in subparagraph (D)(ii)).

6 “(B) EXTENSION.—In the case of an inac-
7 tive coal combustion residuals surface impound-
8 ment for which the owner or operator submits
9 a notice described in subparagraph (A)(i), the
10 implementing agency may extend the closure
11 deadline provided in such subparagraph by a
12 period of not more than 2 years if the owner or
13 operator of such inactive coal combustion re-
14 siduals surface impoundment—

15 “(i) demonstrates to the satisfaction
16 of the implementing agency that it is not
17 feasible to complete closure of the inactive
18 coal combustion residuals surface impound-
19 ment in accordance with section 257.100
20 of title 40, Code of Federal Regulations, by
21 the deadline provided in subparagraph
22 (A)(i)—

23 “(I) because of complications
24 stemming from the climate or weath-
25 er, such as unusual amounts of pre-

1 cipitation or a significantly shortened
2 construction season;

3 “(II) because additional time is
4 required to remove the liquid from the
5 inactive coal combustion residuals sur-
6 face impoundment due to the volume
7 of coal combustion residuals contained
8 in the surface impoundment or the
9 characteristics of the coal combustion
10 residuals in such surface impound-
11 ment;

12 “(III) because the geology and
13 terrain surrounding the inactive coal
14 combustion residuals surface im-
15 poundment will affect the amount of
16 material needed to close the inactive
17 coal combustion residuals surface im-
18 poundment; or

19 “(IV) because additional time is
20 required to coordinate with and obtain
21 necessary approvals and permits; and

22 “(ii) demonstrates to the satisfaction
23 of the implementing agency that the inae-
24 tive coal combustion residuals surface im-

1 poundment does not pose an immediate
2 threat of release.

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

14 “(D) TREATMENT AS STRUCTURE.—

15 “(i) IN GENERAL.—An inactive coal
16 combustion residuals surface impoundment
17 shall be treated as an existing structure
18 that is a surface impoundment for the pur-
19 poses of this section, including with respect
20 to the requirements of paragraphs (1) and
21 (2), if—

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

1 “(II) the owner or operator sub-
2 mits a notice described in subpara-
3 graph (A)(ii).

4 “(ii) INACTIVE COAL COMBUSTION RE-
5 SIDUALS SURFACE IMPOUNDMENTS THAT
6 FAIL TO CLOSE.—An inactive coal combus-
7 tion residuals surface impoundment for
8 which the owner or operator submits a no-
9 tice described in subparagraph (A)(i) that
10 does not close by the deadline provided
11 under subparagraph (A)(i) or subpara-
12 graph (B), as applicable—

13 “(I) shall be treated as an exist-
14 ing structure for purposes of this sec-
15 tion beginning on the date that is the
16 day after such applicable deadline, in-
17 cluding by—

18 “(aa) being required to com-
19 ply with the requirements of
20 paragraph (1), as applicable; and

21 “(bb) being required to com-
22 ply, beginning on such date, with
23 each requirement of paragraph
24 (2); but

1 “(II) shall not be required to
2 comply with paragraph (3).

3 “(d) FEDERAL REVIEW OF STATE PERMIT PRO-
4 GRAMS.—

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

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

11 “(B) has not submitted a certification as
12 required under subsection (b)(2);

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

15 “(D) is not implementing a coal combus-
16 tion residuals permit program, with respect to
17 which the State has submitted a certification
18 under subsection (b)(2), that meets the require-
19 ments described in subsection (c);

20 “(E) is not implementing a coal combus-
21 tion residuals permit program, with respect to
22 which the State has submitted a certification
23 under subsection (b)(2)—

24 “(i) that is consistent with such cer-
25 tification; and

1 “(ii) for which the State continues to
2 have in effect statutes or regulations nec-
3 essary to implement such program; or

4 “(F) does not make available to the Ad-
5 ministrator, within 90 days of a written re-
6 quest, specific information necessary for the
7 Administrator to ascertain whether the State
8 has satisfied the requirements described in sub-
9 paragraphs (A) through (E).

10 “(2) REQUEST.—If a request described in para-
11 graph (1)(F) is proposed pursuant to a petition to
12 the Administrator, the Administrator shall make the
13 request only if the Administrator does not possess
14 the information necessary to ascertain whether the
15 State has satisfied the requirements described in
16 subparagraphs (A) through (E) of paragraph (1).

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

20 “(A) include findings of the Administrator
21 detailing any applicable deficiencies described in
22 subparagraphs (A) through (F) of paragraph
23 (1); and

24 “(B) identify, in collaboration with the
25 State, a reasonable deadline by which the State

1 shall remedy such applicable deficiencies, which
2 shall be—

3 “(i) in the case of a deficiency de-
4 scribed in subparagraphs (A) through (E)
5 of paragraph (1), not earlier than 180
6 days after the date on which the State re-
7 ceives the notice; and

8 “(ii) in the case of a deficiency de-
9 scribed in paragraph (1)(F), not later than
10 90 days after the date on which the State
11 receives the notice.

12 “(4) CONSIDERATIONS FOR DETERMINING DE-
13 FICIENCY OF STATE PERMIT PROGRAM.—In making
14 a determination whether a State has failed to satisfy
15 the requirements described in subparagraphs (A)
16 through (E) of paragraph (1), or a determination
17 under subsection (e)(1)(B), the Administrator shall
18 consider, as appropriate—

19 “(A) whether the State’s statutes or regu-
20 lations to implement a coal combustion residu-
21 als permit program are not sufficient to meet
22 the requirements described in subsection (c) be-
23 cause of—

1 “(i) failure of the State to promulgate
2 or enact new statutes or regulations when
3 necessary; or

4 “(ii) action by a State legislature or
5 court striking down or limiting such State
6 statutes or regulations;

7 “(B) whether the operation of the State
8 coal combustion residuals permit program fails
9 to comply with the requirements of subsection
10 (c) because of—

11 “(i) failure of the State to issue per-
12 mits as required in subsection (c)(1)(A);

13 “(ii) repeated issuance by the State of
14 permits that do not meet the requirements
15 of subsection (c);

16 “(iii) failure of the State to comply
17 with the public participation requirements
18 of this section; or

19 “(iv) failure of the State to implement
20 corrective action requirements required
21 under subsection (c)(2)(B); and

22 “(C) whether the enforcement of a State
23 coal combustion residuals permit program fails
24 to comply with the requirements of this section
25 because of—

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

3 “(ii) repeated failure by the State to
4 inspect or otherwise determine compliance
5 pursuant to the process identified under
6 subsection (b)(2)(C)(iii)(I).

7 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

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

11 “(A) the Governor of the State notifies the
12 Administrator under subsection (b)(1) that the
13 State will not adopt and implement a permit
14 program;

15 “(B) the State has received a notice under
16 subsection (d) and the Administrator deter-
17 mines, after providing a 30-day period for no-
18 tice and public comment, that the State has
19 failed, by the deadline identified in the notice
20 under subsection (d)(3)(B), to remedy the defi-
21 ciencies detailed in the notice pursuant to sub-
22 section (d)(3)(A); or

23 “(C) the State informs the Administrator,
24 in writing, that such State will no longer imple-
25 ment such a permit program.

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

5 “(3) OTHER STRUCTURES.—For structures and
6 inactive coal combustion residuals surface impound-
7 ments located on property within the exterior bound-
8 aries of a State that the State does not have author-
9 ity or jurisdiction to regulate, the Administrator
10 shall implement a coal combustion residuals permit
11 program only for those structures and inactive coal
12 combustion residuals surface impoundments.

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

18 “(5) ENFORCEMENT.—

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

22 “(i) the authorities referred to in sec-
23 tion 4005(c)(2)(A) shall apply with respect
24 to coal combustion residuals, structures,
25 and inactive coal combustion residuals sur-

1 face impoundments for which the Adminis-
2 trator is implementing the coal combustion
3 residuals permit program; and

4 “(ii) the Administrator may use those
5 authorities to inspect, gather information,
6 and enforce the requirements of this sec-
7 tion in the State.

8 “(B) OTHER STRUCTURES.—If the Admin-
9 istrator implements a coal combustion residuals
10 permit program under paragraph (3)—

11 “(i) the authorities referred to in sec-
12 tion 4005(c)(2)(A) shall apply with respect
13 to coal combustion residuals, structures,
14 and inactive coal combustion residuals sur-
15 face impoundments for which the Adminis-
16 trator is implementing the coal combustion
17 residuals permit program; and

18 “(ii) the Administrator may use those
19 authorities to inspect, gather information,
20 and enforce the requirements of this sec-
21 tion for the structures and inactive coal
22 combustion residuals surface impound-
23 ments for which the Administrator is im-
24 plementing the coal combustion residuals
25 permit program.

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

7 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
8 ADMINISTRATOR.—

9 “(1) STATE CONTROL.—

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

17 “(i) notifying the Administrator that
18 the State will adopt and implement such a
19 permit program;

20 “(ii) not later than 6 months after the
21 date of such notification, submitting to the
22 Administrator a certification under sub-
23 section (b)(2); and

24 “(iii) receiving from the Adminis-
25 trator—

1 “(I) a determination, after the
2 Administrator provides for a 30-day
3 period for notice and public comment,
4 that the State coal combustion residu-
5 als permit program meets the require-
6 ments described in subsection (c); and

7 “(II) a timeline for transition to
8 the State coal combustion residuals
9 permit program.

10 “(B) REMEDYING DEFICIENT PERMIT PRO-
11 GRAM.—For a State for which the Adminis-
12 trator is implementing a coal combustion re-
13 siduals permit program under subsection
14 (e)(1)(B), the State may adopt and implement
15 such a permit program by—

16 “(i) remedying only the deficiencies
17 detailed in the notice pursuant to sub-
18 section (d)(3)(A); and

19 “(ii) receiving from the Adminis-
20 trator—

21 “(I) a determination, after the
22 Administrator provides for a 30-day
23 period for notice and public comment,
24 that the deficiencies detailed in such
25 notice have been remedied; and

1 “(II) a timeline for transition to
2 the State coal combustion residuals
3 permit program.

4 “(2) REVIEW OF DETERMINATION.—

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

13 “(B) REVIEW.—A State may obtain a re-
14 view of a determination by the Administrator
15 under paragraph (1) as if such determination
16 was a final regulation for purposes of section
17 7006.

18 “(g) IMPLEMENTATION DURING TRANSITION.—

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

23 “(A) a State takes control of its coal com-
24 bustion residuals permit program from the Ad-
25 ministrator under subsection (f)(1); or

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

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

7 “(A) the implementing agency that took
8 control of the coal combustion residuals permit
9 program changes the requirements of the coal
10 combustion residuals permit program with re-
11 spect to the basis for the action or order; or

12 “(B) with respect to an ongoing corrective
13 action, the State or the Administrator, which-
14 ever took the action or issued the order, cer-
15 tifies the completion of the corrective action
16 that is the subject of the action or order.

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

19 “(A) if a State adopts and implements a
20 coal combustion residuals permit program
21 under subsection (f), the Administrator shall
22 cease to implement the coal combustion residu-
23 als permit program implemented under sub-
24 section (e) for such State; and

1 “(B) if the Administrator implements a
2 coal combustion residuals permit program for a
3 State under subsection (e)(1), the State shall
4 cease to implement its coal combustion residu-
5 als permit program.

6 “(h) EFFECT ON DETERMINATION UNDER 4005(c)
7 OR 3006.—The Administrator shall not consider the im-
8 plementation of a coal combustion residuals permit pro-
9 gram by the Administrator under subsection (e) in making
10 a determination of approval for a permit program or other
11 system of prior approval and conditions under section
12 4005(c) or of authorization for a program under section
13 3006.

14 “(i) AUTHORITY.—

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

21 “(2) AUTHORITY OF THE ADMINISTRATOR.—

22 “(A) IN GENERAL.—Except as provided in
23 subsections (d), (e), and (g) of this section and
24 section 6005, the Administrator shall, with re-
25 spect to the regulation of coal combustion re-

1 siduals under this Act, defer to the States pur-
2 suant to this section.

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

7 “(C) ENFORCEMENT ASSISTANCE ONLY
8 UPON REQUEST.—Upon request from the head
9 of a lead State implementing agency, the Ad-
10 ministrator may 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 (g), the Adminis-
15 trator shall not have concurrent enforcement
16 authority when a State is implementing a coal
17 combustion residuals permit program, including
18 during any period of interim operation de-
19 scribed in subsection (c)(3)(D).

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

24 “(j) MINE RECLAMATION ACTIVITIES.—A coal com-
25 bustion residuals permit program implemented by the Ad-

1 administrator under subsection (e) shall not apply to the uti-
2 lization, placement, and storage of coal combustion residu-
3 als at surface or underground coal mining and reclamation
4 operations.

5 “(k) USE OF COAL COMBUSTION RESIDUALS.—Use
6 of coal combustion residuals in any of the following ways
7 shall not be considered to be receipt of coal combustion
8 residuals for the purposes of this section:

9 “(1) Use as—

10 “(A) engineered structural fill constructed
11 in accordance with—

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

16 “(ii) any other published national
17 standard determined appropriate by the
18 implementing agency; or

19 “(iii) a State standard or program re-
20 lating to—

21 “(I) fill operations for coal com-
22 bustion residuals; or

23 “(II) the management of coal
24 combustion residuals for beneficial
25 use; or

1 “(B) engineered structural fill for—
2 “(i) a building site or foundation;
3 “(ii) a base or embankment for a
4 bridge, roadway, runway, or railroad; or
5 “(iii) a dike, levee, berm, or dam that
6 is not part of a structure.

7 “(2) Storage in a manner that is consistent
8 with the management of raw materials, if the coal
9 combustion residuals being stored are intended to be
10 used in a product or as a raw material.

11 “(3) Beneficial use—
12 “(A) that provides a functional benefit;
13 “(B) that is a substitute for the use of a
14 virgin material;
15 “(C) that meets relevant product specifica-
16 tions and regulatory or design standards; and
17 “(D) if such use involves placement on the
18 land of coal combustion residuals in non-road-
19 way applications, in an amount equal to or
20 greater than the amount described in the defini-
21 tion of beneficial use in section 257.53 of title
22 40, Code of Federal Regulations, for which the
23 person using the coal combustion residuals
24 demonstrates, and keeps records showing, that
25 such use does not result in environmental re-

1 leases to groundwater, surface water, soil, or air
2 that—

3 “(i) are greater than those from a
4 material or product that would be used in-
5 stead of the coal combustion residuals; or

6 “(ii) exceed relevant regulatory and
7 health-based benchmarks for human and
8 ecological receptors.

9 “(1) EFFECT OF RULE.—

10 “(1) IN GENERAL.—With respect to the final
11 rule entitled ‘Hazardous and Solid Waste Manage-
12 ment System; Disposal of Coal Combustion Residu-
13 als from Electric Utilities’ and published in the Fed-
14 eral Register on April 17, 2015 (80 Fed. Reg.
15 21302)—

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

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

24 “(2) EFFECTIVE DATE.—For purposes of this
25 section, any reference in part 257 of title 40, Code

1 of Federal Regulations, to the effective date con-
2 tained in section 257.51 of such part shall be consid-
3 ered to be a reference to the date of enactment of
4 this section, except that, in the case of any deadline
5 established by such a reference that is in conflict
6 with a deadline established by this section, the dead-
7 line established by this section shall control.

8 “(3) APPLICABILITY OF OTHER REGULA-
9 TIONS.—The application of section 257.52 of title
10 40, Code of Federal Regulations, is not affected by
11 this section.

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

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

19 “(B) a lead State implementing agency
20 may make changes to such definitions if the
21 lead State implementing agency—

22 “(i) identifies the changes in the ex-
23 planation included with the certification
24 submitted under subsection (b)(2)(C)(iii);
25 and

1 “(ii) provides in such explanation a
2 reasonable basis for the changes.

3 “(5) OTHER CRITERIA.—The criteria described
4 in sections 257.106 and 257.107 of title 40, Code of
5 Federal Regulations, may be incorporated into a coal
6 combustion residuals permit program at the discre-
7 tion of the implementing agency.

8 “(m) DEFINITIONS.—In this section:

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

13 “(A) The solid wastes listed in section
14 3001(b)(3)(A)(i) that are generated primarily
15 from the combustion of coal, including recover-
16 able materials from such wastes.

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

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

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.

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 all of the authorities, activi-
14 ties, and procedures that comprise a system of prior
15 approval and conditions implemented under this sec-
16 tion to regulate the management and disposal of coal
17 combustion residuals.

18 “(3) ELECTRIC UTILITY; INDEPENDENT POWER
19 PRODUCER.—The terms ‘electric utility’ and ‘inde-
20 pendent power producer’ include only electric utili-
21 ties and independent power producers that produce
22 electricity on or after the date of enactment of this
23 section.

24 “(4) EXISTING STRUCTURE.—The term ‘exist-
25 ing structure’ means a structure the construction of

1 which commenced before the date of enactment of
2 this section.

3 “(5) IMPLEMENTING AGENCY.—The term ‘im-
4 plementing agency’ means the agency responsible for
5 implementing a coal combustion residuals permit
6 program, which shall either be the lead State imple-
7 menting agency identified under subsection
8 (b)(2)(C)(i) or the Administrator pursuant to sub-
9 section (e).

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

16 “(A) does not receive coal combustion re-
17 siduals;

18 “(B) contains coal combustion residuals;

19 and

20 “(C) contains liquid.

21 “(7) STRUCTURE.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), the term ‘structure’ means a
24 landfill, surface impoundment, sand or gravel
25 pit, or quarry that receives coal combustion re-

1 residuals on or after the date of enactment of this
2 section.

3 “(B) EXCEPTIONS.—

4 “(i) MUNICIPAL SOLID WASTE LAND-
5 FILLS.—The term ‘structure’ does not in-
6 clude a municipal solid waste landfill.

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

15 “(8) UNLINED SURFACE IMPOUNDMENT.—The
16 term ‘unlined surface impoundment’ means a sur-
17 face impoundment that does not have a liner system
18 described in section 257.71 of title 40, Code of Fed-
19 eral Regulations.”.

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

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

1 **SEC. 3. 2000 REGULATORY DETERMINATION.**

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

11 **SEC. 4. TECHNICAL ASSISTANCE.**

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

17 **SEC. 5. FEDERAL POWER ACT.**

18 Nothing in this Act, or the amendments made by this
19 Act, shall be construed to affect the obligations of an
20 owner or operator of a structure (as such term is defined
21 in section 4011 of the Solid Waste Disposal Act, as added

1 by this Act) under section 215(b)(1) of the Federal Power
2 Act (16 U.S.C. 824o(b)(1)).

Passed the House of Representatives July 22, 2015.

Attest:

Clerk.

114TH CONGRESS
1ST SESSION

H. R. 1734

AN ACT

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.