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114TH CONGRESS
1ST SESSION

H. R. 1734

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2015

Mr. MCKINLEY (for himself, Mr. CRAMER, Mr. GUTHRIE, Mr. MURPHY of Pennsylvania, Mr. RODNEY DAVIS of Illinois, Mr. WHITFIELD, Mr. HUIZENGA of Michigan, Mr. HARPER, Mr. FRANKS of Arizona, Mr. BARR, Mr. OLSON, Mr. KELLY of Pennsylvania, Mr. RENACCI, Mr. THOMPSON of Mississippi, Mr. SHIMKUS, Mr. BARLETTA, Ms. JENKINS of Kansas, Mr. BISHOP of Georgia, Mr. JENKINS of West Virginia, Mrs. LUMMIS, Mr. LONG, Mrs. BLACKBURN, and Mr. MOONEY of West Virginia) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

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

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Improving Coal Combustion Residuals Regulation Act of 2015".

(b) TABLE OF CONTENTS.—The table of contents for 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.

SEC. 2. MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS.

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

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

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

"(b) STATE ACTIONS.—

"(1) NOTIFICATION.—Not later than 6 months after the date of enactment of this section (except as provided by the deadline identified under subsection (d)(3)(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.

"(2) CERTIFICATION.—

"(A) IN GENERAL.—Not later than 24 months after the date of enactment of this section (except as provided in subparagraph (B) and subsection (f)(1)(A)), in the case of a State that has notified the Administrator that it will implement a coal combustion residuals permit program, the head of the lead State implementing agency shall submit to the Administrator a certification that such coal combustion residuals permit program meets the requirements described in subsection (c).

"(B) EXTENSION.—

"(i) REQUIREMENTS.—The Administrator may extend the deadline for submission of a certification for a State under subparagraph (A) for a period of 12 months if the State submits to the Administrator a request for such an extension that—

"(I) describes the efforts of the State to meet such deadline;

"(II) demonstrates that the legislative or rulemaking procedures of such State render the State unable meet such deadline; and

"(III) provides the Administrator with a detailed schedule for completion and submission of the certification.

"(ii) DETERMINATION.—If the Administrator does not approve or deny a request submitted under clause (i) by the date that is 30 days after such submission, the request shall be deemed approved.

"(C) CONTENTS.—A certification submitted under this paragraph shall include—

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

"(ii) identification of any other State agencies involved with the implementation of the coal combustion residuals permit program;

"(iii) an explanation of how the State coal combustion residuals permit program

meets the requirements of this section, including—

"(I) a description of the State's—

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

"(bb) process to enforce the requirements of such permit program;

"(cc) public participation process for the promulgation, amendment, or repeal of regulations for, and the issuance of permits under, such permit program; and

"(dd) statutes, regulations, or policies pertaining to public access to information, including information on groundwater monitoring data, structural stability assessments, emergency action plans, fugitive dust control plans, notifications of closure (including any certification of closure by a

qualified professional engineer), and corrective action remedies; and

"(II) identification of any changes to the definitions under section 257.53 of title 40, Code of Federal Regulations, for purposes of the State coal combustion residuals permit program, including a reasonable basis for such changes, as required under subsection (l)(5);

"(iv) a statement that the State has in effect, at the time of certification, statutes or regulations necessary to implement a coal combustion residuals permit program that meets the requirements described in subsection (c);

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

"(vi) a plan for a response by the State to a release at a structure or inactive surface impoundment that has the potential for impact beyond the site on which the structure or inactive surface impoundment is located; and

"(vii) a plan for coordination among States in the event of a release that crosses State lines.

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

"(3) MAINTENANCE OF 4005(c) OR 3006 PROGRAM.—In order to adopt or implement a coal combustion residuals permit program under this section (including pursuant to subsection (f)), the lead State implementing agency shall maintain an approved permit program or other system of prior approval and conditions under section 4005(c) or an authorized program under section 3006.

"(c) REQUIREMENTS FOR A COAL COMBUSTION RESIDUALS PERMIT PROGRAM.—A coal combustion residuals permit program shall consist of the following:

"(1) GENERAL REQUIREMENTS.—

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

"(B) PUBLIC AVAILABILITY OF INFORMATION.—Except for information with respect to

which disclosure is prohibited under section 1905 of title 18, United States Code, the implementing agency shall ensure that—

"(i) documents for permit determinations are made publicly available for review and comment under the public participation process of the coal combustion residuals permit program;

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

"(iii) information on groundwater monitoring data, structural stability assessments, emergency action plans, fugitive dust control plans, notifications of closure (including any certification of closure by a qualified professional engineer), and corrective action remedies required pursuant to paragraph (2), collected in a manner determined appropriate by the implementing agency, is publicly available, including on an Internet website; and

"(iv) information regarding the exercise by the implementing agency of any discretionary authority granted under this section and not provided for in the rule de-

scribed in subsection (l)(1) is made publicly available.

"(C) AGENCY AUTHORITY.—

"(i) IN GENERAL.—The implementing agency shall—

"(I) obtain information necessary to determine whether the owner or operator of a structure is in compliance with the requirements of the coal combustion residuals permit program;

"(II) conduct or require monitoring or testing to ensure that structures are in compliance with the requirements of the coal combustion residuals permit program; and

"(III) enter any site or premise at which a structure or inactive coal combustion residuals surface impoundment is located for the purpose of inspecting such structure or surface impoundment and reviewing relevant records.

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

agency, the implementing agency shall, if requested, provide to the owner or operator—

"(I) a written description of the monitoring or testing completed;

"(II) at the time of sampling, a portion of each sample equal in volume or weight to the portion retained by or for the implementing agency; and

"(III) a copy of the results of any analysis of samples collected by or for the implementing agency.

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

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

"(B) GROUNDWATER MONITORING AND CORRECTIVE ACTION.—

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

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

"(II) for the purposes of assessment monitoring, establishing a groundwater protection standard, and assessment of corrective measures, the constituents described in appendix IV to part 257 of title 40, Code of Federal Regulations.

"(ii) EXCEPTIONS AND ADDITIONAL AUTHORITY.—

"(I) ALTERNATIVE POINT OF COMPLIANCE.—Notwithstanding section 257.91(a)(2) of title 40, Code of Federal Regulations, the implementing agency may establish the rel-

evant point of compliance for the down-gradient monitoring system as provided in section 258.51(a)(2) of title 40, Code of Federal Regulations.

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

"(III) ABILITY TO DETERMINE THAT CORRECTIVE ACTION IS NOT NECESSARY OR TECHNICALLY FEASIBLE.—Notwithstanding section 257.97 of title 40, Code of Federal Regulations, the implementing agency may determine that remediation of a release from a structure is not necessary as provided in section 258.57(e) of title 40, Code of Federal Regulations.

"(IV) AUTHORITY RELATING TO RELEASES, OTHER THAN RELEASES TO GROUNDWATER.—Notwithstanding sections 257.90(d) and 257.96(a) of title 40, Code of Federal Regulations, the implementing agency may, with respect to a release from a structure, other than a release to groundwater, authorize, for purposes of complying with this section, remediation of such release in accordance with other applicable Federal or State requirements if compliance with such requirements will result in the same level of protection as compliance with the criteria described in sections 257.96 through 257.98 of title 40, Code of Federal Regulations, taking into consideration the nature of the release.

"(V) GENERAL AUTHORITY RELATING TO GROUNDWATER MONITORING AND CORRECTIVE ACTION.—Notwithstanding sections 257.90 through 257.98 of title 40, Code of Federal Regulations, the imple-

menting agency may authorize alternative groundwater monitoring and corrective action requirements provided that such requirements are no less stringent than the alternative requirements authorized to be established under subpart E of part 258 of title 40, Code of Federal Regulations.

"(VI) OPPORTUNITY FOR CORRECTIVE ACTION FOR UNLINED SURFACE IMPOUNDMENTS.—Notwithstanding section 257.101(a)(1) of title 40, Code of Federal Regulations, the implementing agency may allow the owner or operator of an existing structure that is an unlined surface impoundment—

"(aa) to continue to operate, pursuant to sections 257.96 through 257.98 of title 40, Code of Federal Regulations, until the date that is 102 months after the date of enactment of this section; and

"(bb) to continue to operate after such date as long as such unlined surface impoundment meets the groundwater protection standard established pursuant to this subparagraph and any other applicable requirement established pursuant to this section.

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

"(i) the criteria described in section 257.101(a)(1) of title 40, Code of Federal Regulations, shall apply to an existing structure that is an unlined surface impoundment only if—

"(I) the unlined surface impoundment is not allowed to continue operation pursuant to subparagraph (B)(ii)(VI)(aa); or

"(II) in the case of an unlined surface impoundment that is allowed to continue operation pursuant to subparagraph (B)(ii)(VI)(aa), the date

described in such subparagraph has passed and the unlined surface impoundment does not meet the requirements described in subparagraph (B)(ii)(VI)(bb);

"(ii) the criteria described in section 257.101(b)(1) of title 40, Code of Federal Regulations, shall not apply to existing structures, except as provided in subparagraphs (E)(i)(II) and (E)(ii); and

"(iii) if an implementing agency has set a deadline under clause (i) or (ii) of subparagraph (L), the criteria described in section 257.101(b)(2) of title 40, Code of Federal Regulations, shall apply to structures that are surface impoundments only after such deadline.

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

"(E) LOCATION RESTRICTIONS.—

"(i) IN GENERAL.—The criteria for location restrictions described in—

"(I) for new structures, including lateral expansions of existing structures, sections 257.60 through 257.64 and 257.3–1 of title 40, Code of Federal Regulations; and

"(II) for existing structures, sections 257.64 and 257.3–1 of title 40, Code of Federal Regulations.

"(ii) ADDITIONAL AUTHORITY.—The implementing agency may apply the criteria described in sections 257.60 through 257.63 of title 40, Code of Federal Regulations, to existing structures that are surface impoundments.

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

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

"(H) SURFACE WATER.—For all structures, the criteria for surface water described in section 257.3–3 of title 40, Code of Federal Regulations.

"(I) RECORDKEEPING.—For all structures, the criteria for recordkeeping described in section 257.105 of title 40, Code of Federal Regulations.

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

"(K) HYDROLOGIC AND HYDRAULIC CAPACITY REQUIREMENTS.—For all structures that are surface impoundments, the criteria for inflow design flood control systems described in section 257.82 of title 40, Code of Federal Regulations.

"(L) STRUCTURAL INTEGRITY.—For structures that are surface impoundments, the criteria for structural integrity described in sections 257.73 and 257.74 of title 40, Code of Federal Regulations, except that, notwithstanding section 257.73(f)(4) of title 40, Code of Federal Regulations, the implementing agency may provide for—

"(i) up to 30 days for an owner or operator to complete a safety factor assess-

ment when an owner or operator has failed to meet an applicable periodic assessment deadline provided in section 257.73(f) of title 40, Code of Federal Regulations; and

"(ii) up to 12 months for an owner or operator to meet the safety factor assessment criteria provided in section 257.73(e)(1) of title 40, Code of Federal Regulations, if the implementing agency determines, through the initial safety factor assessment, that the structure does not meet such safety factor assessment criteria and that the structure does not pose an immediate threat of release.

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

"(3) PERMIT PROGRAM IMPLEMENTATION FOR EXISTING STRUCTURES.—

"(A) NOTIFICATION.—Not later than the date on which a State submits a certification under subsection (b)(2), not later than 18 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 24 months after the date of enactment of this sec-

tion with respect to a coal combustion residuals permit program that is being implemented by the Administrator under subsection (e)(3), as applicable, the implementing agency shall notify owners or operators of existing structures of—

"(i) the obligation to apply for and obtain a permit under subparagraph (C); and

"(ii) the requirements referred to in subparagraph (B)(ii).

"(B) COMPLIANCE WITH CERTAIN REQUIREMENTS.—

"(i) INITIAL DEADLINE FOR CERTAIN REQUIREMENTS.—Not later than 8 months after the date of enactment of this section, the implementing agency shall require owners or operators of existing structures to comply with—

"(I) the requirements under paragraphs (2)(F), (2)(H), (2)(I), and (2)(M); and

"(II) the requirement for a permanent identification marker under the criteria described in paragraph (2)(L).

"(ii) SUBSEQUENT DEADLINE FOR CERTAIN OTHER REQUIREMENTS.—Not later than 12 months after the date on which a State submits a certification under subsection (b)(2), not later than 30 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 36 months after the date of enactment of this section with respect to a coal combustion residuals permit program that is being implemented by the Administrator under subsection (e)(3), as applicable, the implementing agency shall require owners or operators of existing structures to comply with—

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

"(II) the requirement for a written closure plan under the criteria described in paragraph (2)(C).

"(C) PERMITS.—

"(i) PERMIT DEADLINE.—Not later than 48 months after the date on which a State submits a certification under sub-

section (b)(2), not later than 66 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 72 months after the date of enactment of this section with respect to a coal combustion residuals permit program that is being implemented by the Administrator under subsection (e)(3), as applicable, the implementing agency shall issue, with respect to an existing structure, a final permit incorporating the applicable requirements of the coal combustion residuals permit program, or a final denial of an application submitted requesting such a permit.

"(ii) APPLICATION DEADLINE.—The implementing agency shall identify, in collaboration with the owner or operator of an existing structure, a reasonable deadline by which the owner or operator shall submit a permit application under clause (i).

"(D) INTERIM OPERATION.—

"(i) PRIOR TO DEADLINES.—Unless the implementing agency determines that the structure should close in accordance with the criteria described in paragraph

(2)(C), with respect to any period of time on or after the date of enactment of this section but prior to the applicable deadline in subparagraph (B), the owner or operator of an existing structure may continue to operate such structure until such applicable deadline under any applicable regulations in effect during such period.

"(ii) PRIOR TO PERMIT.—Unless the implementing agency determines that the structure should close in accordance with the criteria described in paragraph (2)(C), if the owner or operator of an existing structure meets the requirements referred to in subparagraph (B) by the applicable deadline in such subparagraph, the owner or operator may operate the structure until such time as the implementing agency issues, under subparagraph (C), a final permit incorporating the requirements of the coal combustion residuals permit program, or a final denial of an application submitted requesting such a permit.

"(4) REQUIREMENTS FOR INACTIVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS.—

"(A) NOTICE.—Not later than 2 months after the date of enactment of this section, each owner or operator of an inactive coal combustion residuals surface impoundment shall submit to the Administrator and the State in which such inactive coal combustion residuals surface impoundment is located a notice stating whether such inactive coal combustion residuals surface impoundment will—

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

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

"(B) EXTENSION.—In the case of an inactive coal combustion residuals surface impoundment for which the owner or operator submits a notice described in subparagraph (A)(i), the implementing agency may extend the closure deadline provided in such subparagraph by a period of not more than 2 years if the owner or

operator of such inactive coal combustion residuals surface impoundment—

"(i) demonstrates to the satisfaction of the implementing agency that it is not feasible to complete closure of the inactive coal combustion residuals surface impoundment in accordance with section 257.100 of title 40, Code of Federal Regulations, by the deadline provided in subparagraph (A)(i)—

"(I) because of complications stemming from the climate or weather, such as unusual amounts of precipitation or a significantly shortened construction season;

"(II) because additional time is required to remove the liquid from the inactive coal combustion residuals surface impoundment due to the volume of coal combustion residuals contained in the surface impoundment or the characteristics of the coal combustion residuals in such surface impoundment;

"(III) because the geology and terrain surrounding the inactive coal combustion residuals surface impoundment will affect the amount of material needed to close the inactive coal combustion residuals surface impoundment; or

"(IV) because additional time is required to coordinate with and obtain necessary approvals and permits; and

"(ii) demonstrates to the satisfaction of the implementing agency that the inactive coal combustion residuals surface impoundment does not pose an immediate threat of release.

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

scribed in section 258.72 of title 40, Code of Federal Regulations.

"(D) TREATMENT AS STRUCTURE.—

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

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

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

"(ii) INACTIVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS THAT FAIL TO CLOSE.—An inactive coal combustion residuals surface impoundment for which the owner or operator submits a notice described in subparagraph (A)(i) that does not close by the deadline provided under subparagraph (A)(i) or subparagraph (B), as applicable—

"(I) shall be treated as an existing structure for purposes of this section beginning on the date that is the day after such applicable deadline, including by—

"(aa) being required to comply with the requirements of paragraph (1), as applicable; and

"(bb) being required to comply, beginning on such date, with each requirement of paragraph (2); but

"(II) shall not be required to comply with paragraph (3).

"(d) FEDERAL REVIEW OF STATE PERMIT PROGRAMS.—

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

"(A) does not satisfy the notification requirement under subsection (b)(1);

"(B) has not submitted a certification as required under subsection (b)(2);

"(C) does not satisfy the maintenance requirement under subsection (b)(3);

"(D) is not implementing a coal combustion residuals permit program, with respect to which the State has submitted a certification under subsection (b)(2), that meets the requirements described in subsection (c);

"(E) is not implementing a coal combustion residuals permit program, with respect to which the State has submitted a certification under subsection (b)(2)—

"(i) that is consistent with such certification; and

"(ii) for which the State continues to have in effect statutes or regulations necessary to implement such program; or

"(F) does not make available to the Administrator, within 90 days of a written request, specific information necessary for the Administrator to ascertain whether the State has satisfied the requirements described in subparagraphs (A) through (E).

"(2) REQUEST.—If a request described in paragraph (1)(F) is proposed pursuant to a petition to the Administrator, the Administrator shall make the

request only if the Administrator does not possess the information necessary to ascertain whether the State has satisfied the requirements described in subparagraphs (A) through (E) of paragraph (1).

"(3) CONTENTS OF NOTICE; DEADLINE FOR RESPONSE.—A notice provided under paragraph (1) shall—

"(A) include findings of the Administrator detailing any applicable deficiencies described in subparagraphs (A) through (F) of paragraph (1); and

"(B) identify, in collaboration with the State, a reasonable deadline by which the State shall remedy such applicable deficiencies, which shall be—

"(i) in the case of a deficiency described in subparagraphs (A) through (E) of paragraph (1), not earlier than 180 days after the date on which the State receives the notice; and

"(ii) in the case of a deficiency described in paragraph (1)(F), not later than 90 days after the date on which the State receives the notice.

"(4) CONSIDERATIONS FOR DETERMINING DEFICIENCY OF STATE PERMIT PROGRAM.—In making a determination whether a State has failed to satisfy the requirements described in subparagraphs (A) through (E) of paragraph (1), or a determination under subsection (e)(1)(B), the Administrator shall consider, as appropriate—

"(A) whether the State's statutes or regulations to implement a coal combustion residuals permit program are not sufficient to meet the requirements described in subsection (c) because of—

"(i) failure of the State to promulgate or enact new statutes or regulations when necessary; or

"(ii) action by a State legislature or court striking down or limiting such State statutes or regulations;

"(B) whether the operation of the State coal combustion residuals permit program fails to comply with the requirements of subsection (c) because of—

"(i) failure of the State to issue permits as required in subsection (c)(1)(A);

"(ii) repeated issuance by the State of permits that do not meet the requirements of subsection (c);

"(iii) failure of the State to comply with the public participation requirements of this section; or

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

"(C) whether the enforcement of a State coal combustion residuals permit program fails to comply with the requirements of this section because of—

"(i) failure to act on violations of permits, as identified by the State; or

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

"(e) IMPLEMENTATION BY ADMINISTRATOR.—

"(1) FEDERAL BACKSTOP AUTHORITY.—The Administrator shall implement a coal combustion residuals permit program for a State if—

"(A) the Governor of the State notifies the Administrator under subsection (b)(1) that the

State will not adopt and implement a permit program;

"(B) the State has received a notice under subsection (d) and the Administrator determines, after providing a 30-day period for notice and public comment, that the State has failed, by the deadline identified in the notice under subsection (d)(3)(B), to remedy the deficiencies detailed in the notice pursuant to subsection (d)(3)(A); or

"(C) the State informs the Administrator, in writing, that such State will no longer implement such a permit program.

"(2) REVIEW.—A State may obtain a review of a determination by the Administrator under this subsection as if the determination was a final regulation for purposes of section 7006.

"(3) OTHER STRUCTURES.—For structures and inactive coal combustion residuals surface impoundments located on property within the exterior boundaries of a State that the State does not have authority or jurisdiction to regulate, the Administrator shall implement a coal combustion residuals permit program only for those structures and inactive coal combustion residuals surface impoundments.

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

"(5) ENFORCEMENT.—

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

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

"(ii) the Administrator may use those authorities to inspect, gather information, and enforce the requirements of this section in the State.

"(B) OTHER STRUCTURES.—If the Administrator implements a coal combustion residuals permit program under paragraph (3)—

"(i) the authorities referred to in section 4005(c)(2)(A) shall apply with respect

to coal combustion residuals, structures, and inactive coal combustion residuals surface impoundments for which the Administrator is implementing the coal combustion residuals permit program; and

"(ii) the Administrator may use those authorities to inspect, gather information, and enforce the requirements of this section for the structures and inactive coal combustion residuals surface impoundments for which the Administrator is implementing the coal combustion residuals permit program.

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

"(f) STATE CONTROL AFTER IMPLEMENTATION BY ADMINISTRATOR.—

"(1) STATE CONTROL.—

"(A) NEW ADOPTION, OR RESUMPTION OF, AND IMPLEMENTATION BY STATE.—For a State for which the Administrator is implementing a

coal combustion residuals permit program under subsection (e)(1)(A) or subsection (e)(1)(C), the State may adopt and implement such a permit program by—

"(i) notifying the Administrator that the State will adopt and implement such a permit program;

"(ii) not later than 6 months after the date of such notification, submitting to the Administrator a certification under subsection (b)(2); and

"(iii) receiving from the Administrator—

"(I) a determination, after the Administrator provides for a 30-day period for notice and public comment, that the State coal combustion residuals permit program meets the requirements described in subsection (c); and

"(II) a timeline for transition to the State coal combustion residuals permit program.

"(B) REMEDYING DEFICIENT PERMIT PROGRAM.—For a State for which the Administrator is implementing a coal combustion re-

siduals permit program under subsection (e)(1)(B), the State may adopt and implement such a permit program by—

"(i) remedying only the deficiencies detailed in the notice pursuant to subsection (d)(3)(A); and

"(ii) receiving from the Administrator—

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

"(II) a timeline for transition to the State coal combustion residuals permit program.

"(2) REVIEW OF DETERMINATION.—

"(A) DETERMINATION REQUIRED.—The Administrator shall make a determination under paragraph (1) not later than 90 days after the date on which the State submits a certification under paragraph (1)(A)(ii), or notifies the Administrator that the deficiencies have been remedied pursuant to paragraph (1)(B)(i), as applicable.

"(B) REVIEW.—A State may obtain a review of a determination by the Administrator under paragraph (1) as if such determination was a final regulation for purposes of section 7006.

"(g) IMPLEMENTATION DURING TRANSITION.—

"(1) EFFECT ON ACTIONS AND ORDERS.—Program requirements of, and actions taken or orders issued pursuant to, a coal combustion residuals permit program shall remain in effect if—

"(A) a State takes control of its coal combustion residuals permit program from the Administrator under subsection (f)(1); or

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

"(2) CHANGE IN REQUIREMENTS.—Paragraph (1) shall apply to such program requirements, actions, and orders until such time as—

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

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

"(3) SINGLE PERMIT PROGRAM.—Except as otherwise provided in this subsection—

"(A) if a State adopts and implements a coal combustion residuals permit program under subsection (f), the Administrator shall cease to implement the coal combustion residuals permit program implemented under subsection (e) for such State; and

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

"(h) EFFECT ON DETERMINATION UNDER 4005(c) OR 3006.—The Administrator shall not consider the implementation of a coal combustion residuals permit program by the Administrator under subsection (e) in making a determination of approval for a permit program or other system of prior approval and conditions under section

4005(c) or of authorization for a program under section 3006.

"(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.

"(2) AUTHORITY OF THE ADMINISTRATOR.—

"(A) IN GENERAL.—Except as provided in subsections (d), (e), and (g) of this section and section 6005, the Administrator shall, with respect to the regulation of coal combustion residuals under this Act, defer to the States pursuant to this section.

"(B) IMMINENT HAZARD.—Nothing in this section shall be construed as affecting the authority of the Administrator under section 7003 with respect to coal combustion residuals.

"(C) ENFORCEMENT ASSISTANCE ONLY UPON REQUEST.—Upon request from the head of a lead State implementing agency, the Administrator may provide to such State agency only the enforcement assistance requested.

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

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

"(j) MINE RECLAMATION ACTIVITIES.—A coal combustion residuals permit program implemented by the Administrator under subsection (e) shall not apply to the utilization, placement, and storage of coal combustion residuals at surface or underground coal mining and reclamation operations.

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

"(1) Use as—

"(A) engineered structural fill constructed in accordance with—

"(i) ASTM E2277 entitled 'Standard Guide for Design and Construction of Coal Ash Structural Fills', including any amendment or revision to that guidance;

"(ii) any other published national standard determined appropriate by the implementing agency; or

"(iii) a State standard or program relating to—

"(I) fill operations for coal combustion residuals; or

"(II) the management of coal combustion residuals for beneficial use; or

"(B) engineered structural fill for—

"(i) a building site or foundation;

"(ii) a base or embankment for a bridge, roadway, runway, or railroad; or

"(iii) a dike, levee, berm, or dam that is not part of a structure.

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

"(3) Beneficial use—

"(A) that provides a functional benefit;

"(B) that is a substitute for the use of a virgin material;

"(C) that meets relevant product specifications and regulatory or design standards; and

"(D) if such use involves placement on the land of coal combustion residuals in non-roadway applications, in an amount equal to or greater than the amount described in the definition of beneficial use in section 257.53 of title 40, Code of Federal Regulations, for which the person using the coal combustion residuals demonstrates, and keeps records showing, that such use does not result in environmental releases to groundwater, surface water, soil, or air that—

"(i) are greater than those from a material or product that would be used instead of the coal combustion residuals; or

"(ii) exceed relevant regulatory and health-based benchmarks for human and ecological receptors.

"(l) EFFECT OF RULE.—

"(1) IN GENERAL.—With respect to the final rule entitled 'Hazardous and Solid Waste Manage-

ment System; Disposal of Coal Combustion Residuals from Electric Utilities' signed by the Administrator on December 19, 2014—

"(A) such rule shall be implemented only through a coal combustion residuals permit program under this section; and

"(B) to the extent that any provision or requirement of such rule conflicts, or is inconsistent, with a provision or requirement of this section, the provision or requirement of this section shall control.

"(2) REFERENCES TO THE CODE OF FEDERAL REGULATIONS.—For purposes of this section, any reference to a provision of the Code of Federal Regulations added by the rule described in paragraph (1) shall be considered to be a reference to such provision as it is contained in such rule.

"(3) EFFECTIVE DATE.—For purposes of this section, any reference in part 257 of title 40, Code of Federal Regulations, to the effective date contained in section 257.51 of such part shall be considered to be a reference to the date of enactment of this section, except that, in the case of any deadline established by such a reference that is in conflict

with a deadline established by this section, the deadline established by this section shall control.

"(4) APPLICABILITY OF OTHER REGULATIONS.—The application of section 257.52 of title 40, Code of Federal Regulations, is not affected by this section.

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

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

"(B) a lead State implementing agency may make changes to such definitions if the lead State implementing agency—

"(i) identifies the changes in the explanation included with the certification submitted under subsection (b)(2)(C)(iii); and

"(ii) provides in such explanation a reasonable basis for the changes.

"(6) OTHER CRITERIA.—The criteria described in sections 257.106 and 257.107 of title 40, Code of Federal Regulations, may be incorporated into a coal

combustion residuals permit program at the discretion of the implementing agency.

"(m) DEFINITIONS.—In this section:

"(1) COAL COMBUSTION RESIDUALS.—The term 'coal combustion residuals' means the following wastes generated by electric utilities and independent power producers:

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

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

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

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

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

"(2) COAL COMBUSTION RESIDUALS PERMIT PROGRAM.—The term 'coal combustion residuals permit program' means all of the authorities, activities, and procedures that comprise a system of prior approval and conditions implemented under this section to regulate the management and disposal of coal combustion residuals.

"(3) ELECTRIC UTILITY; INDEPENDENT POWER PRODUCER.—The terms 'electric utility' and 'independent power producer' include only electric utilities and independent power producers that produce electricity on or after the date of enactment of this section.

"(4) EXISTING STRUCTURE.—The term 'existing structure' means a structure the construction of which commenced before the date of enactment of this section.

"(5) IMPLEMENTING AGENCY.—The term 'implementing agency' means the agency responsible for implementing a coal combustion residuals permit program, which shall either be the lead State implementing agency identified under subsection

(b)(2)(C)(i) or the Administrator pursuant to subsection (e).

"(6) INACTIVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENT.—The term 'inactive coal combustion residuals surface impoundment' means a surface impoundment, located at an electric utility or independent power producer, that, as of the date of enactment of this section—

"(A) does not receive coal combustion residuals;

"(B) contains coal combustion residuals; and

"(C) contains liquid.

"(7) STRUCTURE.—

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

"(B) EXCEPTIONS.—

"(i) MUNICIPAL SOLID WASTE LANDFILLS.—The term 'structure' does not include a municipal solid waste landfill.

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

"(8) UNLINED SURFACE IMPOUNDMENT.—The term 'unlined surface impoundment' means a surface impoundment that does not have a liner system described in section 257.71 of title 40, Code of Federal Regulations.".

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

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

SEC. 3. 2000 REGULATORY DETERMINATION.

Nothing in this Act, or the amendments made by this Act, shall be construed to alter in any manner the Environmental Protection Agency's regulatory determination entitled "Notice of Regulatory Determination on Wastes From the Combustion of Fossil Fuels", published at 65 Fed. Reg. 32214 (May 22, 2000), that the fossil fuel combustion wastes addressed in that determination do not

warrant regulation under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.).

SEC. 4. TECHNICAL ASSISTANCE.

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

SEC. 5. FEDERAL POWER ACT.

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

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