

SEPTEMBER 12, 2012

RULES COMMITTEE PRINT 112-32
TEXT OF H.R. 3409, COAL MINER EMPLOYMENT
AND DOMESTIC ENERGY INFRASTRUCTURE
PROTECTION ACT

[Showing the text of H.R. 3409, as ordered reported by the Committee on Natural Resources; H.R. 910, H.R. 2401, and H.R. 2273 as passed the House, along with changes recommended by the chair of the Committee on Energy and Commerce; and H.R. 2018 as passed the House.]

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Stop the War on Coal Act of 2012”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; Table of contents.

**TITLE I—LIMITATION ON AUTHORITY TO ISSUE REGULATIONS
UNDER THE SURFACE MINING CONTROL AND RECLAMATION
ACT OF 1977.**

Sec. 101. Limitation on authority to issue regulations under the Surface Mining Control and Reclamation Act of 1977.

**TITLE II—NO GREENHOUSE GAS REGULATION UNDER THE
CLEAN AIR ACT**

Sec. 201. No regulation of emissions of greenhouse gases.

Sec. 202. Preserving one national standard for automobiles.

**TITLE III—TRANSPARENCY IN REGULATORY ANALYSIS OF
IMPACTS ON NATION**

Sec. 301. Committee for the Cumulative Analysis of Regulations that Impact Energy and Manufacturing in the United States.

Sec. 302. Analyses.

Sec. 303. Reports; public comment.

Sec. 304. Additional provisions relating to certain rules.

Sec. 305. Consideration of feasibility and cost in establishing national ambient air quality standards.

TITLE IV—MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS

Sec. 401. Management and disposal of coal combustion residuals.

Sec. 402. 2000 Regulatory determination.

Sec. 403. Technical assistance.

Sec. 404. Federal Power Act.

TITLE V—PRESERVING STATE AUTHORITY TO MAKE DETERMINATIONS RELATING TO WATER QUALITY STANDARDS

Sec. 501. State water quality standards.

Sec. 502. Permits for dredged or fill material.

Sec. 503. Deadlines for agency comments.

Sec. 504. Applicability of amendments.

Sec. 505. Reporting on harmful pollutants.

Sec. 506. Pipelines crossing streambeds.

Sec. 507. Impacts of EPA regulatory activity on employment and economic activity.

1 **TITLE I—LIMITATION ON AU-**
2 **THORITY TO ISSUE REGULA-**
3 **TIONS UNDER THE SURFACE**
4 **MINING CONTROL AND REC-**
5 **LAMATION ACT OF 1977.**

6 **SEC. 101. LIMITATION ON AUTHORITY TO ISSUE REGULA-**
7 **TIONS UNDER THE SURFACE MINING CON-**
8 **TROL AND RECLAMATION ACT OF 1977.**

9 The Secretary of the Interior may not, before Decem-
10 ber 31, 2013, issue or approve any proposed or final regu-
11 lation under the Surface Mining Control and Reclamation
12 Act of 1977 (30 U.S.C. 1201 et seq.) that would—

13 (1) adversely impact employment in coal mines
14 in the United States;

1 (2) cause a reduction in revenue received by the
2 Federal Government or any State, tribal, or local
3 government, by reducing through regulation the
4 amount of coal in the United States that is available
5 for mining;

6 (3) reduce the amount of coal available for do-
7 mestic consumption or for export;

8 (4) designate any area as unsuitable for surface
9 coal mining and reclamation operations; or

10 (5) expose the United States to liability for tak-
11 ing the value of privately owned coal through regula-
12 tion.

13 **TITLE II—NO GREENHOUSE GAS**
14 **REGULATION UNDER THE**
15 **CLEAN AIR ACT**

16 **SEC. 201. NO REGULATION OF EMISSIONS OF GREENHOUSE**
17 **GASES.**

18 Title III of the Clean Air Act (42 U.S.C. 7601 et
19 seq.) is amended by adding at the end the following:

20 **“SEC. 330. NO REGULATION OF EMISSIONS OF GREEN-**
21 **HOUSE GASES.**

22 “(a) DEFINITION.—In this section, the term ‘green-
23 house gas’ means any of the following:

24 “(1) Water vapor.

25 “(2) Carbon dioxide.

1 “(3) Methane.

2 “(4) Nitrous oxide.

3 “(5) Sulfur hexafluoride.

4 “(6) Hydrofluorocarbons.

5 “(7) Perfluorocarbons.

6 “(8) Any other substance subject to, or pro-
7 posed to be subject to, regulation, action, or consid-
8 eration under this Act to address climate change.

9 “(b) LIMITATION ON AGENCY ACTION.—

10 “(1) LIMITATION.—

11 “(A) IN GENERAL.—The Administrator
12 may not, under this Act, promulgate any regu-
13 lation concerning, take action relating to, or
14 take into consideration the emission of a green-
15 house gas to address climate change.

16 “(B) AIR POLLUTANT DEFINITION.—The
17 definition of the term ‘air pollutant’ in section
18 302(g) does not include a greenhouse gas. Not-
19 withstanding the previous sentence, such defini-
20 tion may include a greenhouse gas for purposes
21 of addressing concerns other than climate
22 change.

23 “(2) EXCEPTIONS.—Paragraph (1) does not
24 prohibit the following:

1 “(A) Notwithstanding paragraph (4)(B),
2 implementation and enforcement of the rule en-
3 titled ‘Light-Duty Vehicle Greenhouse Gas
4 Emission Standards and Corporate Average
5 Fuel Economy Standards’ (as published at 75
6 Fed. Reg. 25324 (May 7, 2010) and without
7 further revision) and implementation and en-
8 forcement of the rule entitled ‘Greenhouse Gas
9 Emissions Standards and Fuel Efficiency
10 Standards for Medium- and Heavy-Duty En-
11 gines and Vehicles’ (as published at 76 Fed.
12 Reg. 57106 (September 15, 2011) and without
13 further revision).

14 “(B) Implementation and enforcement of
15 section 211(o).

16 “(C) Statutorily authorized Federal re-
17 search, development, demonstration programs
18 and voluntary programs addressing climate
19 change.

20 “(D) Implementation and enforcement of
21 title VI to the extent such implementation or
22 enforcement only involves one or more class I
23 substances or class II substances (as such
24 terms are defined in section 601).

1 “(E) Implementation and enforcement of
2 section 821 (42 U.S.C. 7651k note) of Public
3 Law 101–549 (commonly referred to as the
4 ‘Clean Air Act Amendments of 1990’).

5 “(3) INAPPLICABILITY OF PROVISIONS.—Noth-
6 ing listed in paragraph (2) shall cause a greenhouse
7 gas to be subject to part C of title I (relating to pre-
8 vention of significant deterioration of air quality) or
9 considered an air pollutant for purposes of title V
10 (relating to permits).

11 “(4) CERTAIN PRIOR AGENCY ACTIONS.—The
12 following rules and actions (including any supple-
13 ment or revision to such rules and actions) are re-
14 pealed and shall have no legal effect:

15 “(A) ‘Mandatory Reporting of Greenhouse
16 Gases’, published at 74 Fed. Reg. 56260 (Octo-
17 ber 30, 2009).

18 “(B) ‘Endangerment and Cause or Con-
19 tribute Findings for Greenhouse Gases Under
20 Section 202(a) of the Clean Air Act’, published
21 at 74 Fed. Reg. 66496 (December 15, 2009).

22 “(C) ‘Reconsideration of Interpretation of
23 Regulations That Determine Pollutants Covered
24 by Clean Air Act Permitting Programs’, pub-
25 lished at 75 Fed. Reg. 17004 (April 2, 2010)

1 and the memorandum from Stephen L. John-
2 son, Environmental Protection Agency (EPA)
3 Administrator, to EPA Regional Administra-
4 tors, concerning ‘EPA’s Interpretation of Regu-
5 lations that Determine Pollutants Covered by
6 Federal Prevention of Significant Deterioration
7 (PSD) Permit Program’ (December 18, 2008).

8 “(D) ‘Prevention of Significant Deteriora-
9 tion and Title V Greenhouse Gas Tailoring
10 Rule’, published at 75 Fed. Reg. 31514 (June
11 3, 2010).

12 “(E) ‘Action To Ensure Authority To
13 Issue Permits Under the Prevention of Signifi-
14 cant Deterioration Program to Sources of
15 Greenhouse Gas Emissions: Finding of Sub-
16 stantial Inadequacy and SIP Call’, published at
17 75 Fed. Reg. 77698 (December 13, 2010).

18 “(F) ‘Action To Ensure Authority To
19 Issue Permits Under the Prevention of Signifi-
20 cant Deterioration Program to Sources of
21 Greenhouse Gas Emissions: Finding of Failure
22 To Submit State Implementation Plan Revi-
23 sions Required for Greenhouse Gases’, pub-
24 lished at 75 Fed. Reg. 81874 (December 29,
25 2010).

1 “(G) ‘Action to Ensure Authority To Issue
2 Permits Under the Prevention of Significant
3 Deterioration Program to Sources of Green-
4 house Gas Emissions: Federal Implementation
5 Plan’, published at 75 Fed. Reg. 82246 (De-
6 cember 30, 2010).

7 “(H) ‘Action to Ensure Authority to Im-
8 plement Title V Permitting Programs Under
9 the Greenhouse Gas Tailoring Rule’, published
10 at 75 Fed. Reg. 82254 (December 30, 2010).

11 “(I) ‘Determinations Concerning Need for
12 Error Correction, Partial Approval and Partial
13 Disapproval, and Federal Implementation Plan
14 Regarding Texas Prevention of Significant De-
15 terioration Program’, published at 75 Fed. Reg.
16 82430 (December 30, 2010).

17 “(J) ‘Limitation of Approval of Prevention
18 of Significant Deterioration Provisions Con-
19 cerning Greenhouse Gas Emitting-Sources in
20 State Implementation Plans’, published at 75
21 Fed. Reg. 82536 (December 30, 2010).

22 “(K) ‘Determinations Concerning Need for
23 Error Correction, Partial Approval and Partial
24 Disapproval, and Federal Implementation Plan
25 Regarding Texas Prevention of Significant De-

1 terioration Program; Proposed Rule’, published
2 at 75 Fed. Reg. 82365 (December 30, 2010).

3 “(L) Except for actions listed in paragraph
4 (2), any other Federal action under this Act oc-
5 curring before the date of enactment of this
6 section that constitutes a stationary source per-
7 mitting requirement or an emissions standard
8 for a greenhouse gas to address climate change.

9 “(5) STATE ACTION.—

10 “(A) NO LIMITATION.—This section does
11 not limit or otherwise affect the authority of a
12 State to adopt, amend, enforce, or repeal State
13 laws and regulations pertaining to the emission
14 of a greenhouse gas.

15 “(B) EXCEPTION.—

16 “(i) RULE.—Notwithstanding sub-
17 paragraph (A), any provision described in
18 clause (ii)—

19 “(I) is not federally enforceable;

20 “(II) is not deemed to be a part
21 of Federal law; and

22 “(III) is deemed to be stricken
23 from the plan described in clause
24 (ii)(I) or the program or permit de-
25 scribed in clause (ii)(II), as applicable.

1 “(ii) PROVISION DEFINED.—For pur-
2 poses of clause (i), the term ‘provision’
3 means any provision that—

4 “(I) is contained in a State im-
5 plementation plan under section 110
6 and authorizes or requires a limitation
7 on, or imposes a permit requirement
8 for, the emission of a greenhouse gas
9 to address climate change; or

10 “(II) is part of an operating per-
11 mit program under title V, or a per-
12 mit issued pursuant to title V, and
13 authorizes or requires a limitation on
14 the emission of a greenhouse gas to
15 address climate change.

16 “(C) ACTION BY ADMINISTRATOR.—The
17 Administrator may not approve or make feder-
18 ally enforceable any provision described in sub-
19 paragraph (B)(ii).”.

20 **SEC. 202. PRESERVING ONE NATIONAL STANDARD FOR**
21 **AUTOMOBILES.**

22 Section 209(b) of the Clean Air Act (42 U.S.C. 7543)
23 is amended by adding at the end the following:

24 “(4) With respect to standards for emissions of
25 greenhouse gases (as defined in section 330) for model

1 year 2017 or any subsequent model year new motor vehi-
2 cles and new motor vehicle engines—

3 “(A) the Administrator may not waive applica-
4 tion of subsection (a); and

5 “(B) no waiver granted prior to the date of en-
6 actment of this paragraph may be construed to
7 waive the application of subsection (a).”.

8 **TITLE III—TRANSPARENCY IN**
9 **REGULATORY ANALYSIS OF**
10 **IMPACTS ON NATION**

11 **SEC. 301. COMMITTEE FOR THE CUMULATIVE ANALYSIS OF**
12 **REGULATIONS THAT IMPACT ENERGY AND**
13 **MANUFACTURING IN THE UNITED STATES.**

14 (a) **ESTABLISHMENT.**—The President shall establish
15 a committee to be known as the Committee for the Cumu-
16 lative Analysis of Regulations that Impact Energy and
17 Manufacturing in the United States (in this Act referred
18 to as the “Committee”) to analyze and report on the cu-
19 mulative and incremental impacts of certain rules and ac-
20 tions of the Environmental Protection Agency, in accord-
21 ance with sections 302 and 303.

22 (b) **MEMBERS.**—The Committee shall be composed of
23 the following officials (or their designees):

24 (1) The Secretary of Agriculture, acting
25 through the Chief Economist.

1 (2) The Secretary of Commerce, acting through
2 the Chief Economist and the Under Secretary for
3 International Trade.

4 (3) The Secretary of Labor, acting through the
5 Commissioner of the Bureau of Labor Statistics.

6 (4) The Secretary of Energy, acting through
7 the Administrator of the Energy Information Ad-
8 ministration.

9 (5) The Secretary of the Treasury, acting
10 through the Deputy Assistant Secretary for Environ-
11 ment and Energy of the Department of the Treas-
12 ury.

13 (6) The Administrator of the Environmental
14 Protection Agency.

15 (7) The Chairman of the Council of Economic
16 Advisors.

17 (8) The Chairman of the Federal Energy Regu-
18 latory Commission.

19 (9) The Administrator of the Office of Informa-
20 tion and Regulatory Affairs.

21 (10) The Chief Counsel for Advocacy of the
22 Small Business Administration.

23 (11) The Chairman of the United States Inter-
24 national Trade Commission, acting through the Of-
25 fice of Economics.

1 (c) CHAIR.—The Secretary of Commerce shall serve
2 as Chair of the Committee. In carrying out the functions
3 of the Chair, the Secretary of Commerce shall consult with
4 the members serving on the Committee pursuant to para-
5 graphs (5) and (11) of subsection (b).

6 (d) CONSULTATION.—In conducting analyses under
7 section 302 and preparing reports under section 303, the
8 Committee shall consult with, and consider pertinent re-
9 ports issued by, the Electric Reliability Organization cer-
10 tified under section 215(c) of the Federal Power Act (16
11 U.S.C. 824o(c)).

12 (e) TERMINATION.—The Committee shall terminate
13 60 days after submitting its final report pursuant to sec-
14 tion 303(c).

15 **SEC. 302. ANALYSES.**

16 (a) SCOPE.—The Committee shall conduct analyses,
17 for each of the calendar years 2016, 2020, and 2030, of
18 the following:

19 (1) The cumulative impact of covered rules that
20 are promulgated as final regulations on or before
21 January 1, 2013, in combination with covered ac-
22 tions.

23 (2) The cumulative impact of all covered rules
24 (including covered rules that have not been promul-

1 gated as final regulations on or before January 1,
2 2013), in combination with covered actions.

3 (3) The incremental impact of each covered rule
4 not promulgated as a final regulation on or before
5 January 1, 2013, relative to an analytic baseline
6 representing the results of the analysis conducted
7 under paragraph (1).

8 (b) CONTENTS.—The Committee shall include in
9 each analysis conducted under this section the following:

10 (1) Estimates of the impacts of the covered
11 rules and covered actions with regard to—

12 (A) the global economic competitiveness of
13 the United States, particularly with respect to
14 energy intensive and trade sensitive industries;

15 (B) other cumulative costs and cumulative
16 benefits, including evaluation through a general
17 equilibrium model approach;

18 (C) any resulting change in national,
19 State, and regional electricity prices;

20 (D) any resulting change in national,
21 State, and regional fuel prices;

22 (E) the impact on national, State, and re-
23 gional employment during the 5-year period be-
24 ginning on the date of enactment of this Act,
25 and also in the long term, including secondary

1 impacts associated with increased energy prices
2 and facility closures; and

3 (F) the reliability and adequacy of bulk
4 power supply in the United States.

5 (2) Discussion of key uncertainties and assump-
6 tions associated with each estimate.

7 (3) A sensitivity analysis.

8 (4) Discussion, and where feasible an assess-
9 ment, of the cumulative impact of the covered rules
10 and covered actions on—

11 (A) consumers;

12 (B) small businesses;

13 (C) regional economies;

14 (D) State, local, and tribal governments;

15 (E) low-income communities;

16 (F) public health;

17 (G) local and industry-specific labor mar-
18 kets; and

19 (H) agriculture,

20 as well as key uncertainties associated with each
21 topic.

22 (c) METHODS.—In conducting analyses under this
23 section, the Committee shall use the best available meth-
24 ods, consistent with guidance from the Office of Informa-

1 tion and Regulatory Affairs and the Office of Management
2 and Budget Circular A-4.

3 (d) DATA.—In conducting analyses under this sec-
4 tion, the Committee—

5 (1) shall use the best data that are available to
6 the public or supplied to the Committee by its mem-
7 bers, including the most recent such data appro-
8 priate for this analysis representing air quality, facil-
9 ity emissions, and installed controls; and

10 (2) is not required to create data or to use data
11 that are not readily accessible.

12 (e) COVERED RULES.—In this section, the term “cov-
13 ered rule” means the following:

14 (1) The following published rules (including any
15 successor or substantially similar rule):

16 (A) The Clean Air Interstate Rule (as de-
17 fined in section 304(a)(4)).

18 (B) “National Ambient Air Quality Stand-
19 ards for Ozone”, published at 73 Fed. Reg.
20 16436 (March 27, 2008).

21 (C) “National Emission Standards for
22 Hazardous Air Pollutants for Major Sources:
23 Industrial, Commercial, and Institutional Boil-
24 ers and Process Heaters”, published at 76 Fed.
25 Reg. 15608 (March 21, 2011).

1 (D) “National Emission Standards for
2 Hazardous Air Pollutants for Area Sources: In-
3 dustrial, Commercial, and Institutional Boil-
4 ers”, published at 76 Fed. Reg. 15554 (March
5 21, 2011).

6 (E) “National Emission Standards for
7 Hazardous Air Pollutants from Coal- and Oil-
8 fired Electric Utility Steam Generating Units
9 and Standards of Performance for Fossil-Fuel-
10 Fired Electric Utility, Industrial-Commercial-
11 Institutional, and Small Industrial-Commercial-
12 Institutional Steam Generating Units”, pub-
13 lished at 77 Fed. Reg. 9304 (February 16,
14 2012).

15 (F) “Hazardous and Solid Waste Manage-
16 ment System; Identification and Listing of Spe-
17 cial Wastes; Disposal of Coal Combustion Re-
18 siduals From Electric Utilities”, published at
19 75 Fed. Reg. 35127 (June 21, 2010).

20 (G) “Primary National Ambient Air Qual-
21 ity Standard for Sulfur Dioxide”, published at
22 75 Fed. Reg. 35520 (June 22, 2010).

23 (H) “Primary National Ambient Air Qual-
24 ity Standards for Nitrogen Dioxide”, published
25 at 75 Fed. Reg. 6474 (February 9, 2010).

1 (I) “National Emission Standards for Haz-
2 arduous Air Pollutants from the Portland Ce-
3 ment Manufacturing Industry and Standards of
4 Performance for Portland Cement Plants”,
5 published at 75 Fed. Reg. 54970 (September 9,
6 2010).

7 (2) The following additional rules or guidelines
8 promulgated on or after January 1, 2009:

9 (A) Any rule or guideline promulgated
10 under section 111(b) or 111(d) of the Clean Air
11 Act (42 U.S.C. 7411(b), 7411(d)) to address
12 climate change.

13 (B) Any rule or guideline promulgated by
14 the Administrator of the Environmental Protec-
15 tion Agency, a State, a local government, or a
16 permitting agency under or as the result of sec-
17 tion 169A or 169B of the Clean Air Act (42
18 U.S.C. 7491, 7492).

19 (C) Any rule establishing or modifying a
20 national ambient air quality standard under
21 section 109 of the Clean Air Act (42 U.S.C.
22 7409).

23 (D) Any rule addressing fuels under title
24 II of the Clean Air Act (42 U.S.C. 7521 et
25 seq.) as described in the Unified Agenda of

1 Federal Regulatory and Deregulatory Actions
2 under Regulatory Identification Number 2060–
3 AQ86, or any substantially similar rule, includ-
4 ing any rule under section 211(v) of the Clean
5 Air Act (42 U.S.C. 7545(v)).

6 (f) COVERED ACTIONS.—In this section, the term
7 “covered action” means any action on or after January
8 1, 2009, by the Administrator of the Environmental Pro-
9 tection Agency, a State, a local government, or a permit-
10 ting agency as a result of the application of part C of title
11 I (relating to prevention of significant deterioration of air
12 quality) or title V (relating to permitting) of the Clean
13 Air Act (42 U.S.C. 7401 et seq.), if such application oc-
14 curs with respect to an air pollutant that is identified as
15 a greenhouse gas in “Endangerment and Cause or Con-
16 tribute Findings for Greenhouse Gases Under Section
17 202(a) of the Clean Air Act”, published at 74 Fed. Reg.
18 66496 (December 15, 2009).

19 **SEC. 303. REPORTS; PUBLIC COMMENT.**

20 (a) PRELIMINARY REPORT.—Not later than March
21 31, 2013, the Committee shall make public and submit
22 to the Committee on Energy and Commerce of the House
23 of Representatives and the Committee on Environment
24 and Public Works of the Senate a preliminary report con-

1 taining the results of the analyses conducted under section
2 302.

3 (b) PUBLIC COMMENT PERIOD.—The Committee
4 shall accept public comments regarding the preliminary re-
5 port submitted under subsection (a) for a period of 120
6 days after such submission.

7 (c) FINAL REPORT.—Not later than September 30,
8 2013, the Committee shall submit to Congress a final re-
9 port containing the analyses conducted under section 302,
10 including any revisions to such analyses made as a result
11 of public comments, and a response to such comments.

12 **SEC. 304. ADDITIONAL PROVISIONS RELATING TO CERTAIN**
13 **RULES.**

14 (a) CROSS-STATE AIR POLLUTION RULE/TRANSPORT
15 RULE.—

16 (1) EARLIER RULES.—The rule entitled “Fed-
17 eral Implementation Plans: Interstate Transport of
18 Fine Particulate Matter and Ozone and Correction
19 of SIP Approvals”, published at 76 Fed. Reg. 48208
20 (August 8, 2011), and any successor or substantially
21 similar rule, shall be of no force or effect, and shall
22 be treated as though such rule had never taken ef-
23 fect.

24 (2) CONTINUED APPLICABILITY OF CLEAN AIR
25 INTERSTATE RULE.—In place of any rule described

1 in paragraph (1), the Administrator of the Environ-
2 mental Protection Agency (in this section referred to
3 as the “Administrator”) shall continue to implement
4 the Clean Air Interstate Rule.

5 (3) ADDITIONAL RULEMAKINGS.—

6 (A) ISSUANCE OF NEW RULES.—The Ad-
7 ministrator—

8 (i) shall not issue any proposed or
9 final rule under section 110(a)(2)(D)(i)(I)
10 or section 126 of the Clean Air Act (42
11 U.S.C. 7410(a)(2)(D)(i)(I), 7426) relating
12 to national ambient air quality standards
13 for ozone or particulate matter (including
14 any modification of the Clean Air Inter-
15 state Rule) before the date that is 3 years
16 after the date on which the Committee
17 submits the final report under section
18 303(e); and

19 (ii) in issuing any rule described in
20 clause (i), shall base the rule on actual
21 monitored (and not modeled) data and
22 shall, notwithstanding section
23 110(a)(2)(D)(i)(I), allow the trading of
24 emissions allowances among entities cov-

1 ered by the rule irrespective of the States
2 in which such entities are located.

3 (B) IMPLEMENTATION SCHEDULE.—In
4 promulgating any final rule described in sub-
5 paragraph (A)(i), the Administrator shall estab-
6 lish a date for State implementation of the
7 standards established by such final rule that is
8 not earlier than 3 years after the date of publi-
9 cation of such final rule.

10 (4) DEFINITION OF CLEAN AIR INTERSTATE
11 RULE.—For purposes of this section, the term
12 “Clean Air Interstate Rule” means the Clean Air
13 Interstate Rule and the rule establishing Federal
14 Implementation Plans for the Clean Air Interstate
15 Rule as promulgated and modified by the Adminis-
16 trator (70 Fed. Reg. 25162 (May 12, 2005), 71
17 Fed. Reg. 25288 (April 28, 2006), 72 Fed. Reg.
18 55657 (October 1, 2007), 72 Fed. Reg. 59190 (Oc-
19 tober 19, 2007), 72 Fed. Reg. 62338 (November 2,
20 2007), 74 Fed. Reg. 56721 (November 3, 2009)).

21 (b) STEAM GENERATING UNIT RULES.—

22 (1) EARLIER RULES.—The proposed rule enti-
23 tled “National Emission Standards for Hazardous
24 Air Pollutants From Coal- and Oil-Fired Electric
25 Utility Steam Generating Units and Standards of

1 Performance for Fossil-Fuel-Fired Electric Utility,
2 Industrial-Commercial- Institutional, and Small In-
3 dustrial-Commercial-Institutional Steam Generating
4 Units” published at 76 Fed. Reg. 24976 (May 3,
5 2011), and any final rule that is based on such pro-
6 posed rule and is issued prior to the date of the en-
7 actment of this Act, shall be of no force and effect,
8 and shall be treated as though such proposed or
9 final rule had never been issued. In conducting anal-
10 yses under section 302(a), the Committee shall ana-
11 lyze the rule described in section 302(e)(1)(E) (in-
12 cluding any successor or substantially similar rule)
13 as if the preceding sentence did not apply to such
14 rule.

15 (2) PROMULGATION OF FINAL RULES.—In
16 place of the rules described in paragraph (1), the
17 Administrator shall—

18 (A) issue regulations establishing national
19 emission standards for coal-and oil-fired electric
20 utility steam generating units under section 112
21 of the Clean Air Act (42 U.S.C. 7412) with re-
22 spect to each hazardous air pollutant for which
23 the Administrator finds such regulations are
24 appropriate and necessary pursuant to sub-
25 section (n)(1)(A) of such section;

1 (B) issue regulations establishing stand-
2 ards of performance for fossil-fuel-fired electric
3 utility, industrial-commercial-institutional, and
4 small industrial-commercial-institutional steam
5 generating units under section 111 of the Clean
6 Air Act (42 U.S.C. 111); and

7 (C) issue the final regulations required by
8 subparagraphs (A) and (B)—

9 (i) after issuing proposed regulations
10 under such subparagraphs;

11 (ii) after consideration of the final re-
12 port submitted under section 303(c); and

13 (iii) not earlier than the date that is
14 12 months after the date on which the
15 Committee submits such report to the Con-
16 gress, or such later date as may be deter-
17 mined by the Administrator.

18 (3) COMPLIANCE PROVISIONS.—

19 (A) ESTABLISHMENT OF COMPLIANCE
20 DATES.—In promulgating the regulations under
21 paragraph (2), the Administrator—

22 (i) shall establish a date for compli-
23 ance with the standards and requirements
24 under such regulations that is not earlier

1 than 5 years after the effective date of the
2 regulations; and

3 (ii) in establishing a date for such
4 compliance, shall take into consideration—

5 (I) the costs of achieving emis-
6 sions reductions;

7 (II) any non-air quality health
8 and environmental impact and energy
9 requirements of the standards and re-
10 quirements;

11 (III) the feasibility of imple-
12 menting the standards and require-
13 ments, including the time needed to—

14 (aa) obtain necessary permit
15 approvals; and

16 (bb) procure, install, and
17 test control equipment;

18 (IV) the availability of equip-
19 ment, suppliers, and labor, given the
20 requirements of the regulations and
21 other proposed or finalized regula-
22 tions; and

23 (V) potential net employment im-
24 pacts.

1 (B) NEW SOURCES.—With respect to the
2 regulations promulgated pursuant to paragraph
3 (2)—

4 (i) the date on which the Adminis-
5 trator proposes a regulation pursuant to
6 paragraph (2)(A) establishing an emission
7 standard under section 112 of the Clean
8 Air Act (42 U.S.C. 7412) shall be treated
9 as the date on which the Administrator
10 first proposes such a regulation for pur-
11 poses of applying the definition of a new
12 source under section 112(a)(4) of such Act
13 (42 U.S.C. 7412(a)(4));

14 (ii) the date on which the Adminis-
15 trator proposes a regulation pursuant to
16 paragraph (2)(B) establishing a standard
17 of performance under section 111 of the
18 Clean Air Act (42 U.S.C. 7411) shall be
19 treated as the date on which the Adminis-
20 trator proposes such a regulation for pur-
21 poses of applying the definition of a new
22 source under section 111(a)(2) of such Act
23 (42 U.S.C. 7411(a)(2));

24 (iii) for purposes of any emission
25 standard or limitation applicable to electric

1 utility steam generating units, the term
2 “new source” means a stationary source
3 for which a preconstruction permit or
4 other preconstruction approval required
5 under the Clean Air Act (42 U.S.C. 7401
6 et seq.) has been issued after the effective
7 date of such emissions standard or limita-
8 tion; and

9 (iv) for purposes of clause (iii), the
10 date of issuance of a preconstruction per-
11 mit or other preconstruction approval is
12 deemed to be the date on which such per-
13 mit or approval is issued to the applicant
14 irrespective of any administrative or judi-
15 cial review occurring after such date.

16 (C) RULE OF CONSTRUCTION.—Nothing in
17 this subsection shall be construed to restrict or
18 otherwise affect the provisions of paragraphs
19 (3)(B) and (4) of section 112(i) of the Clean
20 Air Act (42 U.S.C. 7412(i)).

21 (4) OTHER PROVISIONS.—

22 (A) ESTABLISHMENT OF STANDARDS
23 ACHIEVABLE IN PRACTICE.—The regulations
24 promulgated pursuant to paragraph (2)(A) of
25 this section shall apply section 112(d)(3) of the

1 Clean Air Act (42 U.S.C. 7412(d)(3)) in ac-
2 cordance with the following:

3 (i) NEW SOURCES.—With respect to
4 new sources:

5 (I) The Administrator shall iden-
6 tify the best controlled similar source
7 for each source category or sub-
8 category.

9 (II) The best controlled similar
10 source for a category or subcategory
11 shall be the single source that is de-
12 termined by the Administrator to be
13 the best controlled, in the aggregate,
14 for all of the hazardous air pollutants
15 for which the Administrator intends
16 to issue standards for such source cat-
17 egory or subcategory, under actual op-
18 erating conditions, taking into account
19 the variability in actual source per-
20 formance, source design, fuels, con-
21 trols, ability to measure pollutant
22 emissions, and operating conditions.

23 (ii) EXISTING SOURCES.—With re-
24 spect to existing sources:

1 (I) The Administrator shall identify
2 tify one group of sources that con-
3 stitutes the best performing 12 per-
4 cent of existing sources for each
5 source category or subcategory.

6 (II) The group constituting the
7 best performing 12 percent of existing
8 sources for a category or subcategory
9 shall be the single group that is deter-
10 mined by the Administrator to be the
11 best performing, in the aggregate, for
12 all of the hazardous air pollutants for
13 which the Administrator intends to
14 issue standards for such source cat-
15 egory or subcategory, under actual op-
16 erating conditions, taking into account
17 the variability in actual source per-
18 formance, source design, fuels, con-
19 trols, ability to measure pollutant
20 emissions, and operating conditions.

21 (B) REGULATORY ALTERNATIVES.—For
22 the regulations promulgated pursuant to para-
23 graph (2) of this section, from among the range
24 of regulatory alternatives authorized under the
25 Clean Air Act (42 U.S.C. 7401 et seq.), includ-

1 ing work practice standards under section
2 112(h) of such Act (42 U.S.C. 7412(h)), the
3 Administrator shall impose the least burden-
4 some, consistent with the purposes of such Act
5 and Executive Order No. 13563 published at 76
6 Fed. Reg. 3821 (January 21, 2011).

7 **SEC. 305. CONSIDERATION OF FEASIBILITY AND COST IN**
8 **ESTABLISHING NATIONAL AMBIENT AIR**
9 **QUALITY STANDARDS.**

10 In establishing any national primary or secondary
11 ambient air quality standard under section 109 of the
12 Clean Air Act (42 U.S.C. 7409), the Administrator of the
13 Environmental Protection Agency shall take into consider-
14 ation feasibility and cost.

15 **TITLE IV—MANAGEMENT AND**
16 **DISPOSAL OF COAL COMBUS-**
17 **TION RESIDUALS**

18 **SEC. 401. MANAGEMENT AND DISPOSAL OF COAL COMBUS-**
19 **TION RESIDUALS.**

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

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

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

6 “(b) STATE ACTIONS.—

7 “(1) NOTIFICATION.—Not later than 6 months
8 after the date of enactment of this section (except
9 as provided by the deadline identified under sub-
10 section (d)(3)(B)), the Governor of each State shall
11 notify the Administrator, in writing, whether such
12 State will adopt and implement a coal combustion
13 residuals permit program.

14 “(2) CERTIFICATION.—

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

1 “(B) CONTENTS.—A certification sub-
2 mitted under this paragraph shall include—

3 “(i) a letter identifying the lead State
4 agency responsible for implementing the
5 coal combustion residuals permit program,
6 signed by the head of such agency;

7 “(ii) identification of any other State
8 agencies involved with the implementation
9 of the coal combustion residuals permit
10 program;

11 “(iii) a narrative description that pro-
12 vides an explanation of how the State will
13 ensure that the coal combustion residuals
14 permit program meets the requirements of
15 this section, including a description of the
16 State’s—

17 “(I) process to inspect or other-
18 wise determine compliance with such
19 permit program;

20 “(II) process to enforce the re-
21 quirements of such permit program;

22 “(III) public participation proc-
23 ess for the promulgation, amendment,
24 or repeal of regulations for, and the

1 issuance of permits under, such per-
2 mit program; and

3 “(IV) statutes, regulations, or
4 policies pertaining to public access to
5 information, such as groundwater
6 monitoring data;

7 “(iv) a legal certification that the
8 State has, at the time of certification, fully
9 effective statutes or regulations necessary
10 to implement a coal combustion residuals
11 permit program that meets the specifica-
12 tions described in subsection (c); and

13 “(v) copies of State statutes and regu-
14 lations described in clause (iv).

15 “(C) UPDATES.—A State may update the
16 certification as needed to reflect changes to the
17 coal combustion residuals permit program.

18 “(3) MAINTENANCE OF 4005(C) OR 3006 PRO-
19 GRAM.—In order to adopt or implement a coal com-
20 bustion residuals permit program under this section
21 (including pursuant to subsection (f)), the State
22 agency responsible for implementing a coal combus-
23 tion residuals permit program in a State shall main-
24 tain an approved program under section 4005(c) or
25 an authorized program under section 3006.

1 “(c) PERMIT PROGRAM SPECIFICATIONS.—

2 “(1) MINIMUM REQUIREMENTS.—

3 “(A) IN GENERAL.—A coal combustion re-
4 siduals permit program shall apply the revised
5 criteria described in paragraph (2) to owners or
6 operators of structures, including surface im-
7 poundments, that receive coal combustion re-
8 siduals.

9 “(B) STRUCTURAL INTEGRITY.—

10 “(i) ENGINEERING CERTIFICATION.—
11 A coal combustion residuals permit pro-
12 gram shall require that an independent
13 registered professional engineer certify
14 that—

15 “(I) the design of structures is in
16 accordance with recognized and gen-
17 erally accepted good engineering prac-
18 tices for containment of the maximum
19 volume of coal combustion residuals
20 and liquids appropriate for the struc-
21 ture; and

22 “(II) the construction and main-
23 tenance of the structure will ensure
24 dam stability.

1 “(ii) INSPECTION.—A coal combustion
2 residuals permit program shall require that
3 structures that are surface impoundments
4 be inspected not less than annually by an
5 independent registered professional engi-
6 neer to assure that the design, operation,
7 and maintenance of the surface impound-
8 ment is in accordance with recognized and
9 generally accepted good engineering prac-
10 tices for containment of the maximum vol-
11 ume of coal combustion residuals and liq-
12 uids which can be impounded, so as to en-
13 sure dam stability.

14 “(iii) DEFICIENCY.—

15 “(I) IN GENERAL.—If the head
16 of the agency responsible for imple-
17 menting the coal combustion residuals
18 permit program determines that a
19 structure is deficient with respect to
20 the requirements in clauses (i) and
21 (ii), the head of the agency has the
22 authority to require action to correct
23 the deficiency according to a schedule
24 determined by the agency.

1 “(II) UNCORRECTED DEFI-
2 CIENCIES.—If a deficiency is not cor-
3 rected according to the schedule, the
4 head of the agency has the authority
5 to require that the structure close in
6 accordance with subsection (h).

7 “(C) LOCATION.—Each structure that first
8 receives coal combustion residuals after the date
9 of enactment of this section shall be constructed
10 with a base located a minimum of 2 feet above
11 the upper limit of the water table, unless it is
12 demonstrated to the satisfaction of the agency
13 responsible for implementing the coal combus-
14 tion residuals permit program that—

15 “(i) the hydrogeologic characteristics
16 of the structure and surrounding land
17 would preclude such a requirement; and

18 “(ii) the function and integrity of the
19 liner system will not be adversely impacted
20 by contact with the water table.

21 “(D) WIND DISPERSAL.—

22 “(i) IN GENERAL.—The agency re-
23 sponsible for implementing the coal com-
24 bustion residuals permit program shall re-
25 quire that owners or operators of struc-

1 tures address wind dispersal of dust by re-
2 quiring cover, or by wetting coal combus-
3 tion residuals with water to a moisture
4 content that prevents wind dispersal, facili-
5 tates compaction, and does not result in
6 free liquids.

7 “(ii) ALTERNATIVE METHODS.—Sub-
8 ject to the review and approval by the
9 agency, owners or operators of structures
10 may propose alternative methods to ad-
11 dress wind dispersal of dust that will pro-
12 vide comparable or more effective control
13 of dust.

14 “(E) PERMITS.—The agency responsible
15 for implementing the coal combustion residuals
16 permit program shall require that the owner or
17 operator of each structure that receives coal
18 combustion residuals after the date of enact-
19 ment of this section apply for and obtain a per-
20 mit incorporating the requirements of the coal
21 combustion residuals permit program.

22 “(F) STATE NOTIFICATION AND GROUND-
23 WATER MONITORING.—

24 “(i) NOTIFICATION.—Not later than
25 the date on which a State submits a cer-

1 tification under subsection (b)(2), the
2 State shall notify owners or operators of
3 structures within the State of—

4 “(I) the obligation to apply for
5 and obtain a permit under subpara-
6 graph (E); and

7 “(II) the groundwater monitoring
8 requirements applicable to structures
9 under paragraph (2)(A)(ii).

10 “(ii) GROUNDWATER MONITORING.—
11 Not later than 1 year after the date on
12 which a State submits a certification under
13 subsection (b)(2), the State shall require
14 the owner or operator of each structure to
15 comply with the groundwater monitoring
16 requirements under paragraph (2)(A)(ii).

17 “(G) AGENCY REQUIREMENTS.—Except
18 for information described in section 1905 of
19 title 18, United States Code, the agency respon-
20 sible for implementing the coal combustion re-
21 siduals permit program shall ensure that—

22 “(i) documents for permit determina-
23 tions are made available for public review
24 and comment under the public participa-

1 tion process described in subsection
2 (b)(2)(B)(iii)(III);

3 “(ii) final determinations on permit
4 applications are made known to the public;
5 and

6 “(iii) groundwater monitoring data
7 collected under paragraph (2) is publicly
8 available.

9 “(H) AGENCY AUTHORITY.—

10 “(i) IN GENERAL.—The agency re-
11 sponsible for implementing the coal com-
12 bustion residuals permit program has the
13 authority to—

14 “(I) obtain information necessary
15 to determine whether the owner or op-
16 erator of a structure is in compliance
17 with the coal combustion residuals
18 permit program requirements of this
19 section;

20 “(II) conduct or require moni-
21 toring and testing to ensure that
22 structures are in compliance with the
23 coal combustion residuals permit pro-
24 gram requirements of this section;
25 and

1 “(III) enter, at reasonable times,
2 any site or premise subject to the coal
3 combustion residuals permit program
4 for the purpose of inspecting struc-
5 tures and reviewing records relevant
6 to the operation and maintenance of
7 structures.

8 “(ii) MONITORING AND TESTING.—If
9 monitoring or testing is conducted under
10 clause (i)(II) by or for the agency respon-
11 sible for implementing the coal combustion
12 residuals permit program, the agency shall,
13 if requested, provide to the owner or oper-
14 ator—

15 “(I) a written description of the
16 monitoring or testing completed;

17 “(II) at the time of sampling, a
18 portion of each sample equal in vol-
19 ume or weight to the portion retained
20 by or for the agency; and

21 “(III) a copy of the results of
22 any analysis of samples collected by or
23 for the agency.

1 “(I) STATE AUTHORITY.—A State imple-
2 menting a coal combustion residuals permit
3 program has the authority to—

4 “(i) inspect structures; and

5 “(ii) implement and enforce the coal
6 combustion residuals permit program.

7 “(J) REQUIREMENTS FOR SURFACE IM-
8 POUNDMENTS THAT DO NOT MEET CERTAIN
9 CRITERIA.—

10 “(i) IN GENERAL.—In addition to the
11 groundwater monitoring and corrective ac-
12 tion requirements described in paragraph
13 (2)(A)(ii), a coal combustion residuals per-
14 mit program shall require a surface im-
15 poundment that receives coal combustion
16 residuals after the date of enactment of
17 this section to—

18 “(I) comply with the require-
19 ments in clause (ii)(I)(aa) and sub-
20 clauses (II) through (IV) of clause (ii)
21 if the surface impoundment—

22 “(aa) does not—

23 “(AA) have a liner sys-
24 tem described in section

1 258.40(b) of title 40, Code
2 of Federal Regulations; and
3 “(BB) meet the design
4 criteria described in section
5 258.40(a)(1) of title 40,
6 Code of Federal Regula-
7 tions; and

8 “(bb) within 10 years after
9 the date of enactment of this sec-
10 tion, is required under section
11 258.56(a) of title 40, Code of
12 Federal Regulations, to undergo
13 an assessment of corrective meas-
14 ures for any constituent identi-
15 fied in paragraph (2)(A)(ii) for
16 which assessment groundwater
17 monitoring is required; and

18 “(II) comply with the require-
19 ments in clause (ii)(I)(bb) and sub-
20 clauses (II) through (IV) of clause (ii)
21 if the surface impoundment—

22 “(aa) does not—

23 “(AA) have a liner sys-
24 tem described in section

1 258.40(b) of title 40, Code
2 of Federal Regulations; and
3 “(BB) meet the design
4 criteria described in section
5 258.40(a)(1) of title 40,
6 Code of Federal Regula-
7 tions; and

8 “(bb) as of the date of en-
9 actment of this section, is subject
10 to a State corrective action re-
11 quirement.

12 “(ii) REQUIREMENTS.—

13 “(I) DEADLINES.—

14 “(aa) IN GENERAL.—Except
15 as provided in item (bb), sub-
16 clause (IV), and clause (iii), the
17 groundwater protection standard
18 for structures identified in clause
19 (i)(I) established by the agency
20 responsible for implementing the
21 coal combustion residuals permit
22 program under section 258.55(h)
23 or 258.55(i) of title 40, Code of
24 Federal Regulations, for any con-
25 stituent for which corrective

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measures are required shall be met—

“(AA) as soon as practicable at the relevant point of compliance, as described in section 258.40(d) of title 40, Code of Federal Regulations; and

“(BB) not later than 10 years after the date of enactment of this section.

“(bb) IMPOUNDMENTS SUBJECT TO STATE CORRECTIVE ACTION REQUIREMENTS.—Except as provided in subclause (IV), the groundwater protection standard for structures identified in clause (i)(II) established by the agency responsible for implementing the coal combustion residuals permit program under section 258.55(h) or 258.55(i) of title 40, Code of Federal Regulations, for any constituent for which corrective

1 measures are required shall be
2 met—

3 “(AA) as soon as prac-
4 ticable at the relevant point
5 of compliance, as described
6 in section 258.40(d) of title
7 40, Code of Federal Regula-
8 tions; and

9 “(BB) not later than 8
10 years after the date of en-
11 actment of this section.

12 “(II) CLOSURE.—If the deadlines
13 under clause (I) are not satisfied, the
14 structure shall cease receiving coal
15 combustion residuals and initiate clo-
16 sure under subsection (h).

17 “(III) INTERIM MEASURES.—

18 “(aa) IN GENERAL.—Except
19 as provided in item (bb), not
20 later than 90 days after the date
21 on which the assessment of cor-
22 rective measures is initiated, the
23 owner or operator shall imple-
24 ment interim measures, as nec-
25 essary, under the factors in sec-

1 tion 258.58(a)(3) of title 40,
2 Code of Federal Regulations.

3 “(bb) IMPOUNDMENTS SUB-
4 JECT TO STATE CORRECTIVE AC-
5 TION REQUIREMENTS.—Item (aa)
6 shall only apply to surface im-
7 poundments subject to a State
8 corrective action requirement as
9 of the date of enactment of this
10 section if the owner or operator
11 has not implemented interim
12 measures, as necessary, under
13 the factors in section
14 258.58(a)(3) of title 40, Code of
15 Federal Regulations.

16 “(IV) EXTENSION OF DEAD-
17 LINE.—

18 “(aa) IN GENERAL.—Except
19 as provided in item (bb), the
20 deadline for meeting a ground-
21 water protection standard under
22 subclause (I) may be extended by
23 the agency responsible for imple-
24 menting the coal combustion re-
25 siduals permit program, after op-

1 portunity for public notice and
2 comment under the public par-
3 ticipation process described in
4 subsection (b)(2)(B)(iii)(III),
5 based on—

6 “(AA) the effectiveness
7 of any interim measures im-
8 plemented by the owner or
9 operator of the facility under
10 section 258.58(a)(3) of title
11 40, Code of Federal Regula-
12 tions;

13 “(BB) the level of
14 progress demonstrated in
15 meeting the groundwater
16 protection standard;

17 “(CC) the potential for
18 other adverse human health
19 or environmental exposures
20 attributable to the contami-
21 nation from the surface im-
22 poundment undergoing cor-
23 rective action; and

24 “(DD) the lack of avail-
25 able alternative management

1 capacity for the coal com-
2 bustion residuals and related
3 materials managed in the
4 impoundment at the facility
5 at which the impoundment
6 is located if the owner or op-
7 erator has used best efforts,
8 as necessary, to design, ob-
9 tain any necessary permits,
10 finance, construct, and
11 render operational the alter-
12 native management capacity
13 during the time period for
14 meeting a groundwater pro-
15 tection standard in sub-
16 clause (I).

17 “(bb) EXCEPTION.—The
18 deadlines under subclause (I)
19 shall not be extended if there has
20 been contamination of public or
21 private drinking water systems
22 attributable to a surface im-
23 poundment undergoing corrective
24 action, unless the contamination
25 has been addressed by providing

1 a permanent replacement water
2 system.

3 “(iii) SUBSEQUENT CLOSURE.—

4 “(I) IN GENERAL.—In addition
5 to the groundwater monitoring and
6 corrective action requirements de-
7 scribed in paragraph (2)(A)(ii), a coal
8 combustion residuals permit program
9 shall require a surface impoundment
10 that receives coal combustion residu-
11 als after the date of enactment of this
12 section to comply with the require-
13 ments in subclause (II) if the surface
14 impoundment—

15 “(aa) does not—

16 “(AA) have a liner sys-
17 tem described in section
18 258.40(b) of title 40, Code
19 of Federal Regulations; and

20 “(BB) meet the design
21 criteria described in section
22 258.40(a)(1) of title 40,
23 Code of Federal Regula-
24 tions;

1 “(bb) more than 10 years
2 after the date of enactment of
3 this section, is required under
4 section 258.56(a) of title 40,
5 Code of Federal Regulations, to
6 undergo an assessment of correc-
7 tive measures for any constituent
8 identified in paragraph (2)(A)(ii)
9 for which assessment ground-
10 water monitoring is required; and

11 “(cc) is not subject to the
12 requirements in clause (ii).

13 “(II) REQUIREMENTS.—

14 “(aa) CLOSURE.—The struc-
15 tures identified in subclause (I)
16 shall cease receiving coal combus-
17 tion residuals and initiate closure
18 in accordance with subsection (h)
19 after alternative management ca-
20 pacity for the coal combustion re-
21 siduals and related materials
22 managed in the impoundment at
23 the facility is available.

24 “(bb) BEST EFFORTS.—The
25 alternative management capacity

1 shall be developed as soon as
2 practicable with the owner or op-
3 erator using best efforts to de-
4 sign, obtain necessary permits, fi-
5 nance, construct, and render
6 operational the alternative man-
7 agement capacity.

8 “(cc) ALTERNATIVE MAN-
9 AGEMENT CAPACITY PLAN.—The
10 owner or operator shall, in col-
11 laboration with the agency re-
12 sponsible for implementing the
13 coal combustion residuals permit
14 program, prepare a written plan
15 that describes the steps necessary
16 to develop the alternative man-
17 agement capacity and includes a
18 schedule for completion.

19 “(dd) PUBLIC PARTICIPA-
20 TION.—The plan described in
21 item (cc) shall be subject to pub-
22 lic notice and comment under the
23 public participation process de-
24 scribed in subsection
25 (b)(2)(B)(iii)(III).

1 “(2) REVISED CRITERIA.—The revised criteria
2 described in this paragraph are—

3 “(A) the revised criteria for design,
4 groundwater monitoring, corrective action, clo-
5 sure, and post-closure, for structures, includ-
6 ing—

7 “(i) for new structures, and lateral ex-
8 pansions of existing structures, that first
9 receive coal combustion residuals after the
10 date of enactment of this section, the re-
11 vised criteria regarding design require-
12 ments described in section 258.40 of title
13 40, Code of Federal Regulations, except
14 that the leachate collection system require-
15 ments described in section 258.40(a)(2) of
16 title 40, Code of Federal Regulations do
17 not apply to structures that are surface
18 impoundments;

19 “(ii) for all structures that receive
20 coal combustion residuals after the date of
21 enactment of this section, the revised cri-
22 teria regarding groundwater monitoring
23 and corrective action requirements de-
24 scribed in subpart E of part 258 of title
25 40, Code of Federal Regulations, except

1 that, for the purposes of this paragraph,
2 the revised criteria shall also include—

3 “(I) for the purposes of detection
4 monitoring, the constituents boron,
5 chloride, conductivity, fluoride, mer-
6 cury, pH, sulfate, sulfide, and total
7 dissolved solids; and

8 “(II) for the purposes of assess-
9 ment monitoring, establishing a
10 groundwater protection standard, and
11 assessment of corrective measures, the
12 constituents aluminum, boron, chlo-
13 ride, fluoride, iron, manganese, molyb-
14 denum, pH, sulfate, and total dis-
15 solved solids;

16 “(iii) for all structures that receive
17 coal combustion residuals after the date of
18 enactment of this section, in a manner
19 consistent with subsection (h), the revised
20 criteria for closure described in subsections
21 (a) through (c) and (h) through (j) of sec-
22 tion 258.60 of title 40, Code of Federal
23 Regulations; and

24 “(iv) for all structures that receive
25 coal combustion residuals after the date of

1 enactment of this section, the revised cri-
2 teria for post-closure care described in sec-
3 tion 258.61 of title 40, Code of Federal
4 Regulations, except for the requirement de-
5 scribed in subsection (a)(4) of that section;

6 “(B) the revised criteria for location re-
7 strictions described in—

8 “(i) for new structures, and lateral ex-
9 pansions of existing structures, that first
10 receive coal combustion residuals after the
11 date of enactment of this section, sections
12 258.11 through 258.15 of title 40, Code of
13 Federal Regulations; and

14 “(ii) for existing structures that re-
15 ceive coal combustion residuals after the
16 date of enactment of this section, sections
17 258.11 and 258.15 of title 40, Code of
18 Federal Regulations;

19 “(C) for all structures that receive coal
20 combustion residuals after the date of enact-
21 ment of this section, the revised criteria for air
22 quality described in section 258.24 of title 40,
23 Code of Federal Regulations;

24 “(D) for all structures that receive coal
25 combustion residuals after the date of enact-

1 ment of this section, the revised criteria for fi-
2 nancial assurance described in subpart G of
3 part 258 of title 40, Code of Federal Regula-
4 tions;

5 “(E) for all structures that receive coal
6 combustion residuals after the date of enact-
7 ment of this section, the revised criteria for sur-
8 face water described in section 258.27 of title
9 40, Code of Federal Regulations;

10 “(F) for all structures that receive coal
11 combustion residuals after the date of enact-
12 ment of this section, the revised criteria for rec-
13 ordkeeping described in section 258.29 of title
14 40, Code of Federal Regulations;

15 “(G) for landfills and other land-based
16 units, other than surface impoundments, that
17 receive coal combustion residuals after the date
18 of enactment of this section, the revised criteria
19 for run-on and run-off control systems de-
20 scribed in section 258.26 of title 40, Code of
21 Federal Regulations; and

22 “(H) for surface impoundments that re-
23 ceive coal combustion residuals after the date of
24 enactment of this section, the revised criteria
25 for run-off control systems described in section

1 258.26(a)(2) of title 40, Code of Federal Regu-
2 lations.

3 “(d) WRITTEN NOTICE AND OPPORTUNITY TO REM-
4 EDY.—

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 (2) 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
12 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 that—

17 “(i) meets the specifications described
18 in subsection (c); or

19 “(ii)(I) is consistent with the certifi-
20 cation under subsection (b)(2)(B)(iii); and

21 “(II) maintains fully effective
22 statutes or regulations necessary to
23 implement a coal combustion residuals
24 permit program; or

1 “(E) does not make available to the Ad-
2 ministrator, within 90 days of a written re-
3 quest, specific information necessary for the
4 Administrator to ascertain whether the State
5 has complied with subparagraphs (A) through
6 (D).

7 “(2) REQUEST.—If the request described in
8 paragraph (1)(E) is made pursuant to a petition of
9 the Administrator, the Administrator shall only
10 make the request if the Administrator does not pos-
11 sess the information necessary to ascertain whether
12 the State has complied with subparagraphs (A)
13 through (D) of paragraph (1).

14 “(3) CONTENTS OF NOTICE; DEADLINE FOR RE-
15 SPONSE.—A notice provided under this subsection
16 shall—

17 “(A) include findings of the Administrator
18 detailing any applicable deficiencies in—

19 “(i) compliance by the State with the
20 notification requirement under subsection
21 (b)(1);

22 “(ii) compliance by the State with the
23 certification requirement under subsection
24 (b)(2);

1 “(iii) compliance by the State with the
2 maintenance requirement under subsection
3 (b)(3);

4 “(iv) the State coal combustion re-
5 siduals permit program in meeting the
6 specifications described in subsection (c);
7 and

8 “(v) compliance by the State with the
9 request under paragraph (1)(E); and

10 “(B) identify, in collaboration with the
11 State, a reasonable deadline, by which the State
12 shall remedy the deficiencies detailed under
13 subparagraph (A), which shall be—

14 “(i) in the case of a deficiency de-
15 scribed in clauses (i) through (iv) of sub-
16 paragraph (A), not earlier than 180 days
17 after the date on which the State receives
18 the notice; and

19 “(ii) in the case of a deficiency de-
20 scribed in subparagraph (A)(v), not later
21 than 90 days after the date on which the
22 State receives the notice.

23 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

1 “(1) IN GENERAL.—The Administrator shall
2 implement a coal combustion residuals permit pro-
3 gram for a State only if—

4 “(A) the Governor of the State notifies the
5 Administrator under subsection (b)(1) that the
6 State will not adopt and implement a permit
7 program;

8 “(B) the State has received a notice under
9 subsection (d) and the Administrator deter-
10 mines, after providing a 30-day period for no-
11 tice and public comment, that the State has
12 failed, by the deadline identified in the notice
13 under subsection (d)(3)(B), to remedy the defi-
14 ciencies detailed in the notice under subsection
15 (d)(3)(A); or

16 “(C) the State informs the Administrator,
17 in writing, that such State will no longer imple-
18 ment such a permit program.

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

23 “(3) OTHER STRUCTURES.—For structures lo-
24 cated on property within the exterior boundaries of
25 a State for which the State does not have authority

1 or jurisdiction to regulate, the Administrator shall
2 implement a coal combustion residuals permit pro-
3 gram only for those structures.

4 “(4) REQUIREMENTS.—If the Administrator
5 implements a coal combustion residuals permit pro-
6 gram for a State under paragraph (1) or (3), the
7 permit program shall consist of the specifications de-
8 scribed in subsection (c).

9 “(5) ENFORCEMENT.—

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

13 “(i) the authorities referred to in sec-
14 tion 4005(c)(2)(A) shall apply with respect
15 to coal combustion residuals and structures
16 for which the Administrator is imple-
17 menting the coal combustion residuals per-
18 mit program; and

19 “(ii) the Administrator may use those
20 authorities to inspect, gather information,
21 and enforce the requirements of this sec-
22 tion in the State.

23 “(B) OTHER STRUCTURES.—If the Admin-
24 istrator implements a coal combustion residuals

1 permit program for a State under paragraph
2 (3)—

3 “(i) the authorities referred to in sec-
4 tion 4005(c)(2)(A) shall apply with respect
5 to coal combustion residuals and structures
6 for which the Administrator is imple-
7 menting the coal combustion residuals per-
8 mit program; and

9 “(ii) the Administrator may use those
10 authorities to inspect, gather information,
11 and enforce the requirements of this sec-
12 tion for the structures for which the Ad-
13 ministrator is implementing the coal com-
14 bustion residuals permit program.

15 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
16 ADMINISTRATOR.—

17 “(1) STATE CONTROL.—

18 “(A) NEW ADOPTION AND IMPLEMENTA-
19 TION BY STATE.—For a State for which the
20 Administrator is implementing a coal combus-
21 tion residuals permit program under subsection
22 (e)(1)(A), the State may adopt and implement
23 such a permit program by—

1 “(i) notifying the Administrator that
2 the State will adopt and implement such a
3 permit program;

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

8 “(iii) receiving from the Adminis-
9 trator—

10 “(I) a determination, after pro-
11 viding a 30-day period for notice and
12 public comment that the State coal
13 combustion residuals permit program
14 meets the specifications described in
15 subsection (c); and

16 “(II) a timeline for transition of
17 control of the coal combustion residu-
18 als permit program.

19 “(B) REMEDYING DEFICIENT PERMIT PRO-
20 GRAM.—For a State for which the Adminis-
21 trator is implementing a coal combustion re-
22 siduals permit program under subsection
23 (e)(1)(B), the State may adopt and implement
24 such a permit program by—

1 “(i) remedying only the deficiencies
2 detailed in the notice provided under sub-
3 section (d)(3)(A); and

4 “(ii) receiving from the Adminis-
5 trator—

6 “(I) a determination, after pro-
7 viding a 30-day period for notice and
8 public comment, that the deficiencies
9 detailed in such notice have been rem-
10 edied; and

11 “(II) a timeline for transition of
12 control of the coal combustion residu-
13 als permit program.

14 “(C) RESUMPTION OF IMPLEMENTATION
15 BY STATE.—For a State for which the Adminis-
16 trator is implementing a coal combustion re-
17 siduals permit program under subsection
18 (e)(1)(C), the State may adopt and implement
19 such a permit program by—

20 “(i) notifying the Administrator that
21 the State will adopt and implement such a
22 permit program;

23 “(ii) not later than 6 months after the
24 date of such notification, submitting to the

1 Administrator a certification under sub-
2 section (b)(2); and

3 “(iii) receiving from the Adminis-
4 trator—

5 “(I) a determination, after pro-
6 viding a 30-day period for notice and
7 public comment, that the State coal
8 combustion residuals permit program
9 meets the specifications described in
10 subsection (c); and

11 “(II) a timeline for transition of
12 control of the coal combustion residu-
13 als permit program.

14 “(2) REVIEW OF DETERMINATION.—

15 “(A) DETERMINATION REQUIRED.—The
16 Administrator shall make a determination
17 under paragraph (1) not later than 90 days
18 after the date on which the State submits a cer-
19 tification under paragraph (1)(A)(ii) or
20 (1)(C)(ii), or notifies the Administrator that the
21 deficiencies have been remedied pursuant to
22 paragraph (1)(B)(i), as applicable.

23 “(B) REVIEW.—A State may obtain a re-
24 view of a determination by the Administrator
25 under paragraph (1) as if such determination

1 was a final regulation for purposes of section
2 7006.

3 “(3) IMPLEMENTATION DURING TRANSITION.—

4 “(A) EFFECT ON ACTIONS AND ORDERS.—

5 Actions taken or orders issued pursuant to a
6 coal combustion residuals permit program shall
7 remain in effect if—

8 “(i) a State takes control of its coal
9 combustion residuals permit program from
10 the Administrator under paragraph (1); or

11 “(ii) the Administrator takes control
12 of a coal combustion residuals permit pro-
13 gram from a State under subsection (e).

14 “(B) CHANGE IN REQUIREMENTS.—Sub-
15 paragraph (A) shall apply to such actions and
16 orders until such time as the Administrator or
17 the head of the lead State agency responsible
18 for implementing the coal combustion residuals
19 permit program, as applicable—

20 “(i) implements changes to the re-
21 quirements of the coal combustion residu-
22 als permit program with respect to the
23 basis for the action or order; or

1 “(ii) certifies the completion of a cor-
2 rective action that is the subject of the ac-
3 tion or order.

4 “(4) SINGLE PERMIT PROGRAM.—If a State
5 adopts and implements a coal combustion residuals
6 permit program under this subsection, the Adminis-
7 trator shall cease to implement the permit program
8 implemented under subsection (e)(1) for such State.

9 “(g) EFFECT ON DETERMINATION UNDER 4005(C)
10 OR 3006.—The Administrator shall not consider the im-
11 plementation of a coal combustion residuals permit pro-
12 gram by the Administrator under subsection (e) in making
13 a determination of approval for a permit program or other
14 system of prior approval and conditions under section
15 4005(e) or of authorization for a program under section
16 3006.

17 “(h) CLOSURE.—

18 “(1) IN GENERAL.—If it is determined, pursu-
19 ant to a coal combustion residuals permit program,
20 that a structure should close, the time period and
21 method for the closure of such structure shall be set
22 forth in a closure plan that establishes a deadline for
23 completion and that takes into account the nature
24 and the site-specific characteristics of the structure
25 to be closed.

1 “(2) SURFACE IMPOUNDMENT.—In the case of
2 a surface impoundment, the closure plan under
3 paragraph (1) shall require, at a minimum, the re-
4 moval of liquid and the stabilization of remaining
5 waste, as necessary to support the final cover.

6 “(i) AUTHORITY.—

7 “(1) STATE AUTHORITY.—Nothing in this sec-
8 tion shall preclude or deny any right of any State to
9 adopt or enforce any regulation or requirement re-
10 specting coal combustion residuals that is more
11 stringent or broader in scope than a regulation or
12 requirement under this section.

13 “(2) AUTHORITY OF THE ADMINISTRATOR.—

14 “(A) IN GENERAL.—Except as provided in
15 subsections (d) and (e) and section 6005, the
16 Administrator shall, with respect to the regula-
17 tion of coal combustion residuals, defer to the
18 States pursuant to this section.

19 “(B) IMMINENT HAZARD.—Nothing in this
20 section shall be construed as affecting the au-
21 thority of the Administrator under section 7003
22 with respect to coal combustion residuals.

23 “(C) ENFORCEMENT ASSISTANCE ONLY
24 UPON REQUEST.—Upon request from the head
25 of a lead State agency that is implementing a

1 coal combustion residuals permit program, the
2 Administrator may provide to such State agen-
3 cy only the enforcement assistance requested.

4 “(D) CONCURRENT ENFORCEMENT.—Ex-
5 cept as provided in subparagraph (C), the Ad-
6 ministrator shall not have concurrent enforce-
7 ment authority when a State is implementing a
8 coal combustion residuals permit program.

9 “(E) OTHER AUTHORITY.—The Adminis-
10 trator shall not have authority to finalize the
11 proposed rule published at pages 35128
12 through 35264 of volume 75 of the Federal
13 Register (June 21, 2010).

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

18 “(j) MINE RECLAMATION ACTIVITIES.—A coal com-
19 bustion residuals permit program implemented by the Ad-
20 ministrator under subsection (e) shall not apply to the uti-
21 lization, placement, and storage of coal combustion residu-
22 als at surface mining and reclamation operations.

23 “(k) DEFINITIONS.—In this section:

24 “(1) COAL COMBUSTION RESIDUALS.—The
25 term ‘coal combustion residuals’ means—

1 “(A) the solid wastes listed in section
2 3001(b)(3)(A)(i), including recoverable mate-
3 rials from such wastes;

4 “(B) coal combustion wastes that are co-
5 managed with wastes produced in conjunction
6 with the combustion of coal, provided that such
7 wastes are not segregated and disposed of sepa-
8 rately from the coal combustion wastes and
9 comprise a relatively small proportion of the
10 total wastes being disposed in the structure;

11 “(C) fluidized bed combustion wastes;

12 “(D) wastes from the co-burning of coal
13 with non-hazardous secondary materials, pro-
14 vided that coal makes up at least 50 percent of
15 the total fuel burned; and

16 “(E) wastes from the co-burning of coal
17 with materials described in subparagraph (A)
18 that are recovered from monofills.

19 “(2) COAL COMBUSTION RESIDUALS PERMIT
20 PROGRAM.—The term ‘coal combustion residuals
21 permit program’ means all of the authorities, activi-
22 ties, and procedures that comprise the system of
23 prior approval and conditions implemented by or for
24 a State to regulate the management and disposal of
25 coal combustion residuals.

1 “(3) CODE OF FEDERAL REGULATIONS.—The
2 term ‘Code of Federal Regulations’ means the Code
3 of Federal Regulations (as in effect on the date of
4 enactment of this section) or any successor regula-
5 tions.

6 “(4) PERMIT; PRIOR APPROVAL AND CONDI-
7 TIONS.—The terms ‘permit’ and ‘prior approval and
8 conditions’ mean any authorization, license, or equiv-
9 alent control document that incorporates the re-
10 quirements and revised criteria described in para-
11 graphs (1) and (2) of subsection (c), respectively.

12 “(5) REVISED CRITERIA.—The term ‘revised
13 criteria’ means the criteria promulgated for munic-
14 ipal solid waste landfill units under section 4004(a)
15 and under section 1008(a)(3), as revised under sec-
16 tion 4010(c).

17 “(6) STRUCTURE.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), the term ‘structure’ means a
20 landfill, surface impoundment, or other land-
21 based unit which may receive coal combustion
22 residuals.

23 “(B) DE MINIMIS RECEIPT.—The term
24 ‘structure’ does not include any land-based unit
25 that receives only de minimis quantities of coal

1 combustion residuals if the presence of coal
2 combustion residuals is incidental to the mate-
3 rial managed in the unit.”.

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

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

8 **SEC. 402. 2000 REGULATORY DETERMINATION.**

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

18 **SEC. 403. TECHNICAL ASSISTANCE.**

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

1 **SEC. 404. FEDERAL POWER ACT.**

2 Nothing in this title, or the amendments made by this
3 title, shall be construed to affect the obligations of the
4 owner or operator of a structure (as defined in section
5 4011 of the Solid Waste Disposal Act, as added by this
6 title) under section 215(b)(1) of the Federal Power Act
7 (16 U.S.C. 824o(b)(1)).

8 **TITLE V—PRESERVING STATE**
9 **AUTHORITY TO MAKE DETER-**
10 **MINATIONS RELATING TO**
11 **WATER QUALITY STANDARDS**

12 **SEC. 501. STATE WATER QUALITY STANDARDS.**

13 (a) STATE WATER QUALITY STANDARDS.—Section
14 303(c)(4) of the Federal Water Pollution Control Act (33
15 U.S.C. 1313(c)(4)) is amended—

16 (1) by redesignating subparagraphs (A) and
17 (B) as clauses (i) and (ii), respectively;

18 (2) by striking “(4)” and inserting “(4)(A)”;

19 (3) by striking “The Administrator shall pro-
20 mulgate” and inserting the following:

21 “(B) The Administrator shall promulgate”; and

22 (4) by adding at the end the following:

23 “(C) Notwithstanding subparagraph (A)(ii), the Ad-
24 ministrator may not promulgate a revised or new standard
25 for a pollutant in any case in which the State has sub-
26 mitted to the Administrator and the Administrator has ap-

1 proved a water quality standard for that pollutant, unless
2 the State concurs with the Administrator's determination
3 that the revised or new standard is necessary to meet the
4 requirements of this Act.”.

5 (b) FEDERAL LICENSES AND PERMITS.—Section
6 401(a) of such Act (33 U.S.C. 1341(a)) is amended by
7 adding at the end the following:

8 “(7) With respect to any discharge, if a State or
9 interstate agency having jurisdiction over the navigable
10 waters at the point where the discharge originates or will
11 originate determines under paragraph (1) that the dis-
12 charge will comply with the applicable provisions of sec-
13 tions 301, 302, 303, 306, and 307, the Administrator may
14 not take any action to supersede the determination.”.

15 (c) STATE NPDES PERMIT PROGRAMS.—Section
16 402(c) of such Act (42 U.S.C. 1342(c)) is amended by
17 adding at the end the following:

18 “(5) LIMITATION ON AUTHORITY OF ADMINIS-
19 TRATOR TO WITHDRAW APPROVAL OF STATE PRO-
20 GRAMS.—The Administrator may not withdraw ap-
21 proval of a State program under paragraph (3) or
22 (4), or limit Federal financial assistance for the
23 State program, on the basis that the Administrator
24 disagrees with the State regarding—

1 “(A) the implementation of any water
2 quality standard that has been adopted by the
3 State and approved by the Administrator under
4 section 303(c); or

5 “(B) the implementation of any Federal
6 guidance that directs the interpretation of the
7 State’s water quality standards.”.

8 (d) **LIMITATION ON AUTHORITY OF ADMINISTRATOR**
9 **TO OBJECT TO INDIVIDUAL PERMITS.**—Section 402(d) of
10 such Act (33 U.S.C. 1342(d)) is amended by adding at
11 the end the following:

12 “(5) The Administrator may not object under para-
13 graph (2) to the issuance of a permit by a State on the
14 basis of—

15 “(A) the Administrator’s interpretation of a
16 water quality standard that has been adopted by the
17 State and approved by the Administrator under sec-
18 tion 303(c); or

19 “(B) the implementation of any Federal guid-
20 ance that directs the interpretation of the State’s
21 water quality standards.”.

22 **SEC. 502. PERMITS FOR DREDGED OR FILL MATERIAL.**

23 (a) **AUTHORITY OF EPA ADMINISTRATOR.**—Section
24 404(c) of the Federal Water Pollution Control Act (33
25 U.S.C. 1344(c)) is amended—

1 (1) by striking “(c)” and inserting “(c)(1)”;

2 and

3 (2) by adding at the end the following:

4 “(2) Paragraph (1) shall not apply to any permit if
5 the State in which the discharge originates or will origi-
6 nate does not concur with the Administrator’s determina-
7 tion that the discharge will result in an unacceptable ad-
8 verse effect as described in paragraph (1).”.

9 (b) STATE PERMIT PROGRAMS.—The first sentence
10 of section 404(g)(1) of such Act (33 U.S.C. 1344(g)(1))
11 is amended by striking “The Governor of any State desir-
12 ing to administer its own individual and general permit
13 program for the discharge” and inserting “The Governor
14 of any State desiring to administer its own individual and
15 general permit program for some or all of the discharges”.

16 **SEC. 503. DEADLINES FOR AGENCY COMMENTS.**

17 Section 404 of the Federal Water Pollution Control
18 Act (33 U.S.C. 1344) is amended—

19 (1) in subsection (m) by striking “ninetieth
20 day” and inserting “30th day (or the 60th day if ad-
21 ditional time is requested)”; and

22 (2) in subsection (q)—

23 (A) by striking “(q)” and inserting
24 “(q)(1)”; and

25 (B) by adding at the end the following:

1 “(2) The Administrator and the head of a depart-
2 ment or agency referred to in paragraph (1) shall each
3 submit any comments with respect to an application for
4 a permit under subsection (a) or (e) not later than the
5 30th day (or the 60th day if additional time is requested)
6 after the date of receipt of an application for a permit
7 under that subsection.”.

8 **SEC. 504. APPLICABILITY OF AMENDMENTS.**

9 The amendments made by this title shall apply to ac-
10 tions taken on or after the date of enactment of this Act,
11 including actions taken with respect to permit applications
12 that are pending or revised or new standards that are
13 being promulgated as of such date of enactment.

14 **SEC. 505. REPORTING ON HARMFUL POLLUTANTS.**

15 Not later than 1 year after the date of enactment
16 of this Act, and annually thereafter, the Administrator of
17 the Environmental Protection Agency shall submit to Con-
18 gress a report on any increase or reduction in waterborne
19 pathogenic microorganisms (including protozoa, viruses,
20 bacteria, and parasites), toxic chemicals, or toxic metals
21 (such as lead and mercury) in waters regulated by a State
22 under the provisions of this title, including the amend-
23 ments made by this title.

1 **SEC. 506. PIPELINES CROSSING STREAMBEDS.**

2 None of the provisions of this title, including the
3 amendments made by this title, shall be construed to limit
4 the authority of the Administrator of the Environmental
5 Protection Agency, as in effect on the day before the date
6 of enactment of this Act, to regulate a pipeline that
7 crosses a streambed.

8 **SEC. 507. IMPACTS OF EPA REGULATORY ACTIVITY ON EM-**
9 **PLOYMENT AND ECONOMIC ACTIVITY.**

10 (a) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOY-
11 MENT AND ECONOMIC ACTIVITY.—

12 (1) ANALYSIS.—Before taking a covered action,
13 the Administrator shall analyze the impact,
14 disaggregated by State, of the covered action on em-
15 ployment levels and economic activity, including esti-
16 mated job losses and decreased economic activity.

17 (2) ECONOMIC MODELS.—

18 (A) IN GENERAL.—In carrying out para-
19 graph (1), the Administrator shall utilize the
20 best available economic models.

21 (B) ANNUAL GAO REPORT.—Not later
22 than December 31st of each year, the Comp-
23 troller General of the United States shall sub-
24 mit to Congress a report on the economic mod-
25 els used by the Administrator to carry out this
26 subsection.

1 (3) AVAILABILITY OF INFORMATION.—With re-
2 spect to any covered action, the Administrator
3 shall—

4 (A) post the analysis under paragraph (1)
5 as a link on the main page of the public Inter-
6 net Web site of the Environmental Protection
7 Agency; and

8 (B) request that the Governor of any State
9 experiencing more than a de minimis negative
10 impact post such analysis in the Capitol of such
11 State.

12 (b) PUBLIC HEARINGS.—

13 (1) IN GENERAL.—If the Administrator con-
14 cludes under subsection (a)(1) that a covered action
15 will have more than a de minimis negative impact on
16 employment levels or economic activity in a State,
17 the Administrator shall hold a public hearing in each
18 such State at least 30 days prior to the effective
19 date of the covered action.

20 (2) TIME, LOCATION, AND SELECTION.—A pub-
21 lic hearing required under paragraph (1) shall be
22 held at a convenient time and location for impacted
23 residents. In selecting a location for such a public
24 hearing, the Administrator shall give priority to loca-

1 tions in the State that will experience the greatest
2 number of job losses.

3 (c) NOTIFICATION.—If the Administrator concludes
4 under subsection (a)(1) that a covered action will have
5 more than a de minimis negative impact on employment
6 levels or economic activity in any State, the Administrator
7 shall give notice of such impact to the State’s Congres-
8 sional delegation, Governor, and Legislature at least 45
9 days before the effective date of the covered action.

10 (d) DEFINITIONS.—In this section, the following defi-
11 nitions apply:

12 (1) ADMINISTRATOR.—The term “Adminis-
13 trator” means the Administrator of the Environ-
14 mental Protection Agency.

15 (2) COVERED ACTION.—The term “covered ac-
16 tion” means any of the following actions taken by
17 the Administrator under the Federal Water Pollu-
18 tion Control Act (33 U.S.C. 1201 et seq.):

19 (A) Issuing a regulation, policy statement,
20 guidance, response to a petition, or other re-
21 quirement.

22 (B) Implementing a new or substantially
23 altered program.

1 (3) MORE THAN A DE MINIMIS NEGATIVE IM-
2 PACT.—The term “more than a de minimis negative
3 impact” means the following:

4 (A) With respect to employment levels, a
5 loss of more than 100 jobs. Any offsetting job
6 gains that result from the hypothetical creation
7 of new jobs through new technologies or govern-
8 ment employment may not be used in the job
9 loss calculation.

10 (B) With respect to economic activity, a
11 decrease in economic activity of more than
12 \$1,000,000 over any calendar year. Any offset-
13 ting economic activity that results from the hy-
14 pothetical creation of new economic activity
15 through new technologies or government em-
16 ployment may not be used in the economic ac-
17 tivity calculation.

