

112TH CONGRESS
1ST SESSION

S. 1751

To amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 2011

Mr. HOEVEN (for himself, Mr. CONRAD, Mr. ENZI, Ms. LANDRIEU, Mr. BOOZMAN, Mr. NELSON of Nebraska, Mr. PORTMAN, Mr. MANCHIN, Mr. THUNE, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Coal Residuals Reuse
5 and Management Act”.

1 **SEC. 2. AMENDMENT TO SUBTITLE D OF THE SOLID WASTE**
2 **DISPOSAL ACT.**

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

6 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**
7 **BUSTION RESIDUALS.**

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

11 “(b) STATE ACTIONS.—

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

19 “(2) CERTIFICATION.—

20 “(A) IN GENERAL.—Not later than 36
21 months after the date of enactment of this sec-
22 tion (except as provided in subsections (f)(1)(A)
23 and (f)(1)(C)), in the case of a State that has
24 notified the Administrator that it will imple-
25 ment a coal combustion residuals permit pro-
26 gram, the head of the lead State agency respon-

1 sible for implementing the coal combustion re-
2 siduals permit program shall submit to the Ad-
3 ministrators a certification that such coal com-
4 bustion residuals permit program meets the
5 specifications described in subsection (c)(1).

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

8 “(i) a letter identifying the lead State
9 agency responsible for implementing the
10 coal combustion residuals permit program,
11 signed by the head of such agency;

12 “(ii) identification of any other State
13 agencies involved with the implementation
14 of the coal combustion residuals permit
15 program;

16 “(iii) a narrative description that pro-
17 vides an explanation of how the State will
18 ensure that the coal combustion residuals
19 permit program meets the requirements of
20 this section, including a description of the
21 State’s—

22 “(I) process to inspect or other-
23 wise determine compliance with such
24 permit program;

1 “(II) process to enforce the re-
2 quirements of such permit program;
3 and

4 “(III) public participation proc-
5 ess for the promulgation, amendment,
6 or repeal of regulations for, and the
7 issuance of permits under, such per-
8 mit program;

9 “(iv) a legal certification that the
10 State has, at the time of certification, fully
11 effective statutes and regulations necessary
12 to implement a coal combustion residuals
13 permit program that meets the specifica-
14 tions described in subsection (c)(1); and

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

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

25 “(c) PERMIT PROGRAM SPECIFICATIONS.—

1 “(1) MINIMUM REQUIREMENTS.—The specifica-
2 tions described in this subsection for a coal combus-
3 tion residuals permit program are as follows:

4 “(A) The revised criteria described in
5 paragraph (2) shall apply to a coal combustion
6 residuals permit program, except as provided in
7 paragraph (3).

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

1 “(C) The coal combustion residuals permit
2 program shall apply the revised criteria promul-
3 gated pursuant to section 4010(c) for location,
4 design, groundwater monitoring, corrective ac-
5 tion, financial assurance, closure, and post-clo-
6 sure described in paragraph (2) and the speci-
7 fications described in this paragraph to surface
8 impoundments.

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

1 to require that the structure close in accordance
2 with subsection (h).

3 “(E) New structures that first receive coal
4 combustion residuals after the date of enact-
5 ment of this section shall be constructed with a
6 base located a minimum of two feet above the
7 upper limit of the natural water table.

8 “(F) In the case of a coal combustion re-
9 siduals permit program implemented by a
10 State, the State has the authority to inspect
11 structures and implement and enforce such per-
12 mit program.

13 “(G) In the case of a coal combustion re-
14 siduals permit program implemented by a
15 State, the State has the authority to address
16 wind dispersal of dust from coal combustion re-
17 siduals by requiring dust control measures, as
18 determined appropriate by the head of the lead
19 State agency responsible for implementing the
20 coal combustion residuals permit program.

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

23 “(A) the revised criteria for design,
24 groundwater monitoring, corrective action, clo-

1 sure, and post-closure, for structures, includ-
2 ing—

3 “(i) for new structures, and lateral ex-
4 pansions of existing structures, that first
5 receive coal combustion residuals after the
6 date of enactment of this section, the re-
7 vised criteria regarding design require-
8 ments described in section 258.40 of title
9 40, Code of Federal Regulations; and

10 “(ii) for all structures that receive
11 coal combustion residuals after the date of
12 enactment of this section, the revised cri-
13 teria regarding groundwater monitoring
14 and corrective action requirements de-
15 scribed in subpart E of part 258 of title
16 40, Code of Federal Regulations, except
17 that, for the purposes of this paragraph,
18 such revised criteria shall also include—

19 “(I) for the purposes of detection
20 monitoring, the constituents boron,
21 chloride, conductivity, fluoride, mer-
22 cury, pH, sulfate, sulfide, and total
23 dissolved solids; and

24 “(II) for the purposes of assess-
25 ment monitoring, the constituents alu-

1 minum, boron, chloride, fluoride, iron,
2 manganese, molybdenum, pH, sulfate,
3 and total dissolved solids;

4 “(B) the revised criteria for location re-
5 strictions described in—

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

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

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

22 “(D) for all structures that receive coal
23 combustion residuals after the date of enact-
24 ment of this section, the revised criteria for fi-
25 nancial assurance described in subpart G of

1 part 258 of title 40, Code of Federal Regula-
2 tions;

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

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

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

20 “(H) for surface impoundments that re-
21 ceive coal combustion residuals after the date of
22 enactment of this section, the revised criteria
23 for run-off control systems described in section
24 258.26(a)(2) of title 40, Code of Federal Regu-
25 lations.

1 “(3) APPLICABILITY OF CERTAIN REQUIRE-
2 MENTS.—A State may determine that one or more
3 of the requirements of the revised criteria described
4 in paragraph (2) is not needed for the management
5 of coal combustion residuals in that State, and may
6 decline to apply such requirement as part of its coal
7 combustion residuals permit program. If a State de-
8 clines to apply a requirement under this paragraph,
9 the State shall include in the certification under sub-
10 section (b)(2) a description of such requirement and
11 the reasons such requirement is not needed in the
12 State. If the Administrator determines that a State
13 determination under this paragraph does not accu-
14 rately reflect the needs for the management of coal
15 combustion residuals in the State, the Administrator
16 may treat such State determination as a deficiency
17 under subsection (d).

18 “(d) WRITTEN NOTICE AND OPPORTUNITY TO REM-
19 EDY.—

20 “(1) IN GENERAL.—The Administrator shall
21 provide to a State written notice and an opportunity
22 to remedy deficiencies in accordance with paragraph
23 (2) if at any time the State—

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

1 “(B) has not submitted a certification
2 under subsection (b)(2);

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

5 “(D) is not implementing a coal combus-
6 tion residuals permit program that meets the
7 specifications described in subsection (c)(1).

8 “(2) CONTENTS OF NOTICE; DEADLINE FOR RE-
9 SPONSE.—A notice provided under this subsection
10 shall—

11 “(A) include findings of the Administrator
12 detailing any applicable deficiencies in—

13 “(i) compliance by the State with the
14 notification requirement under subsection
15 (b)(1);

16 “(ii) compliance by the State with the
17 certification requirement under subsection
18 (b)(2);

19 “(iii) compliance by the State with the
20 maintenance requirement under subsection
21 (b)(3); and

22 “(iv) the State coal combustion re-
23 siduals permit program in meeting the
24 specifications described in subsection
25 (c)(1); and

1 “(B) identify, in collaboration with the
2 State, a reasonable deadline, which shall be not
3 sooner than 6 months after the State receives
4 the notice, by which the State shall remedy the
5 deficiencies detailed under subparagraph (A).

6 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

7 “(1) IN GENERAL.—The Administrator shall
8 implement a coal combustion residuals permit pro-
9 gram for a State only in the following cir-
10 cumstances:

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

15 “(B) If such State has received a notice
16 under subsection (d) and, after any review
17 brought by the State under section 7006, fails,
18 by the deadline identified in such notice under
19 subsection (d)(2)(B), to remedy the deficiencies
20 detailed in such notice under subsection
21 (d)(2)(A).

22 “(C) If such State informs the Adminis-
23 trator, in writing, that such State will no longer
24 implement such a permit program.

1 “(2) REQUIREMENTS.—If the Administrator
2 implements a coal combustion residuals permit pro-
3 gram for a State under paragraph (1), such permit
4 program shall consist of the specifications described
5 in subsection (c)(1).

6 “(3) ENFORCEMENT.—If the Administrator im-
7 plements a coal combustion residuals permit pro-
8 gram for a State under paragraph (1), the authori-
9 ties referred to in section 4005(c)(2)(A) shall apply
10 with respect to coal combustion residuals and struc-
11 tures and the Administrator may use such authori-
12 ties to inspect, gather information, and enforce the
13 requirements of this section in the State.

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

16 “(1) STATE CONTROL.—

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

23 “(i) notifying the Administrator that
24 the State will adopt and implement such a
25 permit program;

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

5 “(iii) receiving from the Adminis-
6 trator—

7 “(I) a determination that the
8 State coal combustion residuals per-
9 mit program meets the specifications
10 described in subsection (c)(1); and

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

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

20 “(i) remedying the deficiencies de-
21 tailed in the notice provided under sub-
22 section (d)(2)(A); and

23 “(ii) receiving from the Adminis-
24 trator—

1 “(I) a determination that the de-
2 ficiencies detailed in such notice have
3 been remedied; and

4 “(II) a timeline for transition of
5 control of the coal combustion residu-
6 als permit program.

7 “(C) RESUMPTION OF IMPLEMENTATION
8 BY STATE.—For a State for which the Adminis-
9 trator is implementing a coal combustion re-
10 siduals permit program under subsection
11 (e)(1)(C), the State may adopt and implement
12 such a permit program by—

13 “(i) notifying the Administrator that
14 the State will adopt and implement such a
15 permit program;

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

20 “(iii) receiving from the Adminis-
21 trator—

22 “(I) a determination that the
23 State coal combustion residuals per-
24 mit program meets the specifications
25 described in subsection (c)(1); and

1 “(II) a timeline for transition of
2 control of the coal combustion residu-
3 als permit program.

4 “(2) REVIEW OF DETERMINATION.—

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

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

18 “(3) IMPLEMENTATION DURING TRANSITION.—

19 “(A) EFFECT ON ACTIONS AND ORDERS.—
20 Actions taken or orders issued pursuant to a
21 coal combustion residuals permit program shall
22 remain in effect if—

23 “(i) a State takes control of its coal
24 combustion residuals permit program from
25 the Administrator under paragraph (1); or

1 “(ii) the Administrator takes control
2 of a coal combustion residuals permit pro-
3 gram from a State under subsection (e).

4 “(B) CHANGE IN REQUIREMENTS.—Sub-
5 paragraph (A) shall apply to such actions and
6 orders until such time as the Administrator or
7 the head of the lead State agency responsible
8 for implementing the coal combustion residuals
9 permit program, as applicable—

10 “(i) implements changes to the re-
11 quirements of the coal combustion residu-
12 als permit program with respect to the
13 basis for the action or order; or

14 “(ii) certifies the completion of a cor-
15 rective action that is the subject of the ac-
16 tion or order.

17 “(4) SINGLE PERMIT PROGRAM.—If a State
18 adopts and implements a coal combustion residuals
19 permit program under this subsection, the Adminis-
20 trator shall cease to implement the permit program
21 implemented under subsection (e) for such State.

22 “(g) EFFECT ON DETERMINATION UNDER 4005(c)
23 OR 3006.—The Administrator shall not consider the im-
24 plementation of a coal combustion residuals permit pro-
25 gram by the Administrator under subsection (e) in making

1 a determination of approval for a permit program or other
2 system of prior approval and conditions under section
3 4005(e) or of authorization for a program under section
4 3006.

5 “(h) CLOSURE.—If it is determined, pursuant to a
6 coal combustion residuals permit program, that a struc-
7 ture should close, the time period and method for the clo-
8 sure of such structure shall be set forth in a closure plan
9 that establishes a deadline for completion and that takes
10 into account the nature and the site-specific characteris-
11 ties of the structure to be closed. In the case of a surface
12 impoundment, the closure plan shall require, at a min-
13 imum, the removal of liquid and the stabilization of re-
14 maining waste, as necessary to support the final cover.

15 “(i) AUTHORITY.—

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

22 “(2) AUTHORITY OF THE ADMINISTRATOR.—

23 “(A) IN GENERAL.—Except as provided in
24 subsection (e) of this section and section 6005
25 of this title, the Administrator shall, with re-

1 spect to the regulation of coal combustion re-
2 siduals, defer to the States pursuant to this sec-
3 tion.

4 “(B) IMMINENT HAZARD.—Nothing in this
5 section shall be construed to affect the author-
6 ity of the Administrator under section 7003
7 with respect to coal combustion residuals.

8 “(C) TECHNICAL AND ENFORCEMENT AS-
9 SISTANCE ONLY UPON REQUEST.—Upon re-
10 quest from the head of a lead State agency that
11 is implementing a coal combustion residuals
12 permit program, the Administrator may provide
13 to such State agency only the technical or en-
14 forcement assistance requested.

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

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

24 “(k) DEFINITIONS.—In this section:

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

3 “(A) the solid wastes listed in section
4 3001(b)(3)(A)(i), including recoverable mate-
5 rials from such wastes;

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

13 “(C) fluidized bed combustion wastes;

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

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

21 “(2) COAL COMBUSTION RESIDUALS PERMIT
22 PROGRAM.—The term ‘coal combustion residuals
23 permit program’ means a permit program or other
24 system of prior approval and conditions that is
25 adopted by or for a State for the management and

1 disposal of coal combustion residuals to the extent
2 such activities occur in structures in such State.

3 “(3) STRUCTURE.—The term ‘structure’ means
4 a landfill, surface impoundment, or other land-based
5 unit which may receive coal combustion residuals.

6 “(4) REVISED CRITERIA.—The term ‘revised
7 criteria’ means the criteria promulgated for munic-
8 ipal solid waste landfill units under section 4004(a)
9 and under section 1008(a)(3), as revised under sec-
10 tion 4010(c) in accordance with the requirement of
11 such section that the criteria protect human health
12 and the environment.”.

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

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

17 **SEC. 3. 2000 REGULATORY DETERMINATION.**

18 Nothing in this Act, or the amendments made by this
19 Act, shall be construed to alter in any manner the Envi-
20 ronmental Protection Agency’s regulatory determination
21 entitled “Notice of Regulatory Determination on Wastes
22 from the Combustion of Fossil Fuels”, published at 65
23 Fed. Reg. 32214 (May 22, 2000), that the fossil fuel com-
24 bustion wastes addressed in that determination do not

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

