

112TH CONGRESS
1ST SESSION

S. 1971

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2011

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

A BILL

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

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Comprehensive Assessment of Regulations on the Econ-
6 omy Act of 2011”.

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

- Sec. 1. Short title; table of contents.
 Sec. 2. Definitions.

TITLE I—REGULATORY ASSESSMENT

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

TITLE II—REGULATORY RELIEF

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

TITLE III—COAL RESIDUALS REUSE AND MANAGEMENT

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

TITLE IV—THERMAL DISCHARGES

- Sec. 401. Short title.
 Sec. 402. Thermal discharge.
 Sec. 403. Regulations.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) ADMINISTRATOR.—The term “Adminis-
 4 trator” means the Administrator of the Environ-
 5 mental Protection Agency.

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

1 tober 19, 2007), 72 Fed. Reg. 62338 (November 2,
2 2007), 74 Fed. Reg. 56721 (November 3, 2009)).

3 (3) COMMITTEE.—The term “Committee”
4 means the Cumulative Regulatory Assessment Com-
5 mittee established by section 101(a).

6 (4) FEDERAL REGULATORY MANDATE.—The
7 term “Federal regulatory mandate” means any reg-
8 ulation, rule, requirement, or interpretative guidance
9 that—

10 (A) is promulgated or issued (or is ex-
11 pected to be initiated) by the Administrator or
12 a State or local government during the period
13 beginning on January 1, 2010, and ending on
14 January 1, 2020;

15 (B) applies to 1 or more impacted units;

16 and

17 (C) implements any provision or require-
18 ment relating to—

19 (i) interstate or international trans-
20 port of air pollution under section
21 110(a)(2)(D), 115, or 126(b) of the Clean
22 Air Act (42 U.S.C. 7410(a)(2)(D), 7415,
23 7426(b)) with respect to any national am-
24 bient air quality standard, including—

1 (I) any standard that has been
2 promulgated or proposed before July
3 1, 2011; and

4 (II) any new or revised standard
5 for ozone or fine particulate matter
6 that, as of the date of enactment of
7 this Act, is currently under review or
8 development by the Administrator;
9 and

10 (ii) the attainment, or maintenance of
11 attainment, of any national ambient air
12 quality standard, including—

13 (I) any new or revised standard
14 for ozone or fine particulate matter
15 that, as of the date of enactment of
16 this Act, is currently under review or
17 development by the Administrator;
18 and

19 (II) any other standard that has
20 been promulgated or proposed before
21 July 1, 2011;

22 (iii) new source performance stand-
23 ards under section 111 of the Clean Air
24 Act (42 U.S.C. 7411), including any stand-
25 ards under subsection (d) of that section;

1 (iv) hazardous air pollutants under
2 section 112 of the Clean Air Act (42
3 U.S.C. 7412);

4 (v) greenhouse gas emissions under ti-
5 tles I, II, and V of the Clean Air Act (42
6 U.S.C. 7401 et seq.), including the require-
7 ments for—

8 (I) new source performance
9 standards under section 111 of the
10 Clean Air Act (42 U.S.C. 7411), in-
11 cluding any standards under sub-
12 section (d) of that section; and

13 (II) preconstruction review per-
14 mits under section 165 of the Clean
15 Air Act (42 U.S.C. 7475);

16 (vi) cooling water intake structures
17 under section 316(b) of the Clean Water
18 Act (33 U.S.C. 1326(b));

19 (vii) effluent guidelines for regulating
20 the discharge of pollutants under section
21 304 of the Clean Water Act (33 U.S.C.
22 1314);

23 (viii) the handling and disposal of coal
24 combustion residuals under subtitle C or D

1 of the Solid Waste Disposal Act (42
2 U.S.C. 6921 et seq.);

3 (ix) the regulation of fuels under title
4 II of the Clean Air Act (42 U.S.C. 7521
5 et seq.);

6 (x) regional haze or reasonably attrib-
7 utable visibility impairment under section
8 169A or section 169B of the Clean Air Act
9 (42 U.S.C. 7491, 7492); and

10 (xi) any other environmental regula-
11 tions expected to have a significant impact
12 on the electric power sector, the petroleum
13 refining sector, the petrochemical produc-
14 tion sector, pipeline facilities regulated by
15 the Department of Transportation or the
16 Environmental Protection Agency, explo-
17 ration, production, or transportation of oil
18 and natural gas, or any other manufac-
19 turing sector.

20 (5) IMPACTED UNIT.—The term “impacted
21 unit” means—

22 (A) any electric generating unit that sells
23 electricity into the grid;

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

1 (C) any petroleum refining facility that
2 produces gasoline, heating oil, diesel fuel, jet
3 fuel, kerosene, or petrochemical feedstocks;

4 (D) any petrochemical facility;

5 (E) any hydrocarbon exploration, extrac-
6 tion, manufacturing, production, or transpor-
7 tation facility; or

8 (F) any biofuel facility.

9 **TITLE I—REGULATORY**
10 **ASSESSMENT**

11 **SEC. 101. CUMULATIVE REGULATORY ASSESSMENT COM-**
12 **MITTEE.**

13 (a) ESTABLISHMENT.—There is established within
14 the Department of Commerce a Committee, to be known
15 as the “Cumulative Regulatory Assessment Committee”.

16 (b) COMPOSITION OF COMMITTEE.—The Committee
17 shall consist of the following officials (or designees of the
18 officials):

19 (1) The Secretary of Agriculture.

20 (2) The Secretary of Commerce.

21 (3) The Secretary of Defense.

22 (4) The Chairperson of the Council of Eco-
23 nomic Advisers.

24 (5) The Secretary of Energy.

25 (6) The Administrator.

1 (7) The Chairperson of the Federal Energy
2 Regulatory Commission.

3 (8) The Secretary of Labor.

4 (9) The Administrator of the Office of Informa-
5 tion and Regulatory Affairs.

6 (10) The President and Chief Executive Officer
7 of the North American Electric Reliability Corpora-
8 tion.

9 (11) The Chief Counsel for Advocacy of the
10 Small Business Administration.

11 (c) LEADERSHIP; OPERATIONS.—The Secretary of
12 Commerce shall—

13 (1) serve as the Chairperson of the Committee;
14 and

15 (2) be responsible for the executive and admin-
16 istrative operation of the Committee.

17 (d) IDENTIFICATION OF FEDERAL REGULATORY
18 MANDATES.—Not later than 30 days after the date of en-
19 actment of this Act, the Administrator shall provide to the
20 Committee a list of Federal regulatory mandates.

21 (e) DUTIES.—

22 (1) ASSESSMENT.—

23 (A) IN GENERAL.—The Committee shall
24 perform an assessment of the cumulative energy
25 and economic impacts of the Federal regulatory

1 mandates in accordance with this subsection,
2 including direct, indirect, quantifiable, and
3 qualitative effects on—

4 (i) employment, including job levels in
5 each segment of the economy and each re-
6 gion of the United States, including coal-
7 producing regions;

8 (ii) economic development, including
9 production levels and labor demands in
10 manufacturing, commercial, and other sec-
11 tors of the economy;

12 (iii) the electric power sector, includ-
13 ing potential impacts on electric reliability,
14 energy security, and retail electricity rates;

15 (iv) the domestic refining and petro-
16 chemical sector, including potential im-
17 pacts on supply, international competitive-
18 ness, wholesale and retail transportation
19 fuels, and heating oil and petrochemical
20 prices;

21 (v) State and local governments, in-
22 cluding potential impacts on governmental
23 operations and local communities from any
24 reductions in State and local tax revenues;

1 (vi) small businesses (as defined in
2 section 601 of title 5, United States Code),
3 including economic and regulatory impacts
4 that could force the shutdown or limit the
5 growth of small businesses;

6 (vii) agriculture, including economic
7 and regulatory impacts that could force the
8 shutdown, or limit growth or productive
9 capacity, of the agricultural industry in the
10 United States, including the domestic fer-
11 tilizer manufacturing industry; and

12 (viii) energy-intensive, trade-exposed
13 industry (as defined in North American In-
14 dustry Classification System codes 31, 32,
15 and 33) (including the beneficiation or
16 processing (including agglomeration) of
17 metal ores (including iron and copper
18 ores), soda ash, or phosphate, petroleum
19 refining, and petrochemicals production),
20 including economic and regulatory impacts
21 that could force the shutdown, or limit
22 growth of productive capacity, of the
23 United States manufacturing industry.

24 (B) COMPREHENSIVE ANALYSIS.—The as-
25 sessment shall include a comprehensive anal-

1 ysis, for the period beginning on January 1,
2 2012, and ending on December 31, 2025, of the
3 following matters:

4 (i) The impacted units that would
5 likely retire due to the cumulative compli-
6 ance costs of the Federal regulatory man-
7 dates.

8 (ii) The amount by which average re-
9 tail electricity prices are forecasted to in-
10 crease above inflation as a result of—

11 (I) the cumulative compliance
12 costs of the Federal regulatory man-
13 dates;

14 (II) the retirement of electric
15 generating units that are impacted
16 units described in clause (i); and

17 (III) other direct and indirect im-
18 pacts that are expected to result from
19 the cumulative compliance obligations
20 of the Federal regulatory mandates.

21 (iii) The amount by which average re-
22 tail transportation fuel and heating oil
23 prices are forecasted to increase above in-
24 flation as a result of—

1 (I) the cumulative compliance
2 costs of the Federal regulatory man-
3 dates;

4 (II) the retirement or closure of
5 domestic refineries that are impacted
6 units described in clause (i);

7 (III) the likely foreign-sourced
8 replacement for the transportation
9 fuels and heating oil supplies loss
10 caused by the retirements or closures
11 identified under subclause (II); and

12 (IV) other direct and indirect im-
13 pacts that are expected to result from
14 the cumulative compliance obligations
15 of the Federal regulatory mandates.

16 (iv) The amount by which average pe-
17 trochemical prices are forecasted to in-
18 crease above inflation as a result of—

19 (I) the cumulative compliance
20 costs of the Federal regulatory man-
21 dates;

22 (II) the retirement or closure of
23 domestic petrochemical facilities that
24 are impacted units described in clause
25 (i);

1 (III) the likely foreign-sourced
2 replacement for the petrochemical
3 supplies loss caused by the retire-
4 ments or closures identified under
5 subclause (II); and

6 (IV) other direct and indirect im-
7 pacts that are expected to result from
8 the cumulative compliance obligations
9 of the Federal regulatory mandates.

10 (v) The direct and indirect adverse
11 impacts on the economies of local commu-
12 nities that are projected to result from the
13 retirement of impacted units described in
14 clause (i) and increased retail electricity,
15 transportation fuels, heating oil, and petro-
16 chemical prices that are forecasted under
17 clause (ii), including—

18 (I) loss of jobs, including jobs
19 that would be lost that relate directly
20 or indirectly to coal production or pe-
21 troleum refining;

22 (II) reduction in State and local
23 tax revenues;

24 (III) harm to small businesses;

25 (IV) harm to consumers;

1 (V) reduction in—

2 (aa) the production and use
3 of coal; and

4 (bb) the domestic production
5 of transportation fuels, heating
6 oil, and petrochemicals in the
7 United States; and

8 (VI) other resulting adverse eco-
9 nomic or energy impacts.

10 (vi) The extent to which the direct
11 and indirect adverse economic impacts
12 identified under clause (v) can be miti-
13 gated through the creation of additional
14 jobs and new economic growth as a result
15 of renewable energy projects, energy effi-
16 ciency measures, and other such energy
17 construction projects that are projected to
18 be undertaken in order to meet future en-
19 ergy demands.

20 (vii) The cumulative effects of Federal
21 regulatory mandates on the ability of in-
22 dustries and businesses in the United
23 States to compete with industries and busi-
24 nesses in other countries, with respect to

1 competitiveness in both domestic and for-
2 eign markets.

3 (viii) The regions of the United States
4 that are forecasted to be—

5 (I) most affected from the direct
6 and indirect adverse impacts from the
7 retirement of impacted units and in-
8 creased retail electricity, transpor-
9 tation fuels, heating oil, and petro-
10 chemicals price, as identified under
11 clause (v); and

12 (II) least affected from such ad-
13 verse impacts due to the creation of
14 new jobs and economic growth that
15 are expected to result directly and in-
16 directly from the energy construction
17 projects, as identified under clause
18 (vi).

19 (ix) The cumulative effects of the
20 Federal regulatory mandates on the elec-
21 tric power sector, including—

22 (I) adverse impacts on electric re-
23 liability that are expected to result
24 from the retirement of electric gener-
25 ating units identified under clause (i);

1 (II) the geographical distribution
2 of the projected adverse electric reli-
3 ability impacts identified in subclause
4 (I), according to the regions estab-
5 lished by North American Electric Re-
6 liability Corporation; and

7 (III) an assessment of whether
8 current plans to expand electricity
9 generation and transmission capabili-
10 ties for each particular region can be
11 optimized to mitigate those projected
12 adverse reliability impacts.

13 (x) Federal, State, and local policies
14 that have been or will be implemented to
15 foster a transition in energy infrastructure
16 in the United States, including those poli-
17 cies that promote fuel diversity, affordable
18 and reliable electricity, and energy secu-
19 rity.

20 (2) CONSULTATION WITH STATE AND LOCAL
21 GOVERNMENTS.—The Committee shall consult with
22 representatives of State and local governments—

23 (A) to identify potential adverse cumulative
24 impacts of the Federal regulatory mandates
25 that have unique or significant repercussions

1 for each particular region of the United States;
2 and

3 (B) to investigate opportunities and strate-
4 gies for mitigating the adverse impacts and re-
5 percussions identified under subparagraph (A).

6 (3) METHODOLOGY.—The Committee shall—

7 (A) use the best available information and
8 peer-reviewed economic models in performing
9 the cumulative regulatory impact assessment
10 under this subsection; and

11 (B) seek public comment on the cost, en-
12 ergy, and other modeling assumptions used in
13 performing the assessment.

14 (4) PUBLIC NOTICE AND COMMENT.—The Com-
15 mittee shall provide public notice and the oppor-
16 tunity for comment on a draft cumulative regulatory
17 impact assessment to be prepared under this sub-
18 section.

19 (5) REPORT TO CONGRESS AND STATES.—Not
20 later than August 1, 2012, the Committee shall sub-
21 mit to Congress and the Governor of each State a
22 detailed report of the cumulative assessment per-
23 formed under this subsection.

1 **SEC. 102. ADDITIONAL PROVISIONS RELATING TO CERTAIN**
2 **RULES.**

3 (a) **CROSS-STATE AIR POLLUTION RULE/TRANSPORT**
4 **RULE.—**

5 (1) **EARLIER RULES.—**The rule entitled “Fed-
6 eral Implementation Plans: Interstate Transport of
7 Fine Particulate Matter and Ozone and Correction
8 of SIP Approvals” (76 Fed. Reg. 48208 (August 8,
9 2011)), and any successor or substantially similar
10 rule, shall be—

11 (A) of no force or effect; and

12 (B) treated as though the rule had never
13 taken effect.

14 (2) **CONTINUED APPLICABILITY OF CLEAN AIR**
15 **INTERSTATE RULE.—**In place of any rule described
16 in paragraph (1), the Administrator shall continue
17 to implement the Clean Air Interstate Rule.

18 (3) **ADDITIONAL RULEMAKINGS.—**

19 (A) **ISSUANCE OF NEW RULES.—**The Ad-
20 ministrator shall—

21 (i) not issue any proposed or final rule
22 under section 110(a)(2)(D)(i)(I) or section
23 126 of the Clean Air Act (42 U.S.C.
24 7410(a)(2)(D)(i)(I), 7426) relating to na-
25 tional ambient air quality standards for
26 ozone or particulate matter (including any

1 modification of the Clean Air Interstate
2 Rule) before the date that is 3 years after
3 the date on which the Committee submits
4 the final report under section 101(e)(5);
5 and

6 (ii) in issuing any rule described in
7 clause (i)—

8 (I) base the rule on actual mon-
9 itored (and not modeled) data; and

10 (II) notwithstanding section
11 110(a)(2)(D)(i)(I) of the Clean Air
12 Act (42 U.S.C. 7410(a)(2)(D)(i)(I)),
13 allow the trading of emission allow-
14 ances among entities covered by the
15 rule irrespective of the States in which
16 the entities are located.

17 (B) IMPLEMENTATION SCHEDULE.—In
18 promulgating any final rule described in sub-
19 paragraph (A)(i), the Administrator shall estab-
20 lish a date for State implementation of the
21 standards established by the final rule that is
22 not earlier than 3 years after the date of publi-
23 cation of the final rule.

24 (b) STEAM GENERATING UNIT RULES.—

25 (1) EARLIER RULES.—

1 (A) IN GENERAL.—The proposed rule enti-
2 tled “National Emission Standards for Haz-
3 arduous Air Pollutants From Coal- and Oil-Fired
4 Electric Utility Steam Generating Units and
5 Standards of Performance for Fossil-Fuel-Fired
6 Electric Utility, Industrial-Commercial-Institu-
7 tional, and Small Industrial-Commercial-Insti-
8 tutional Steam Generating Units” (76 Fed.
9 Reg. 24976 (May 3, 2011)), and any final rule
10 that is based on that proposed rule and promul-
11 gated prior to the date of enactment of this
12 Act, shall be—

13 (i) of no force and effect; and

14 (ii) treated as though the proposed or
15 final rule had never been issued or promul-
16 gated.

17 (B) ANALYSES.—In conducting analyses
18 under section 101(e)(1)(B), the Committee
19 shall analyze the rules described in subpara-
20 graph (A) (including any successor or substan-
21 tially similar rules) as if subparagraph (A) did
22 not apply to the rules.

23 (2) PROMULGATION OF FINAL RULES.—In
24 place of the rules described in paragraph (1), the
25 Administrator shall promulgate—

1 (A) regulations establishing national emis-
2 sion standards for coal-and oil-fired electric
3 utility steam generating units under section 112
4 of the Clean Air Act (42 U.S.C. 7412) with re-
5 spect to each hazardous air pollutant for which
6 the Administrator determines that regulations
7 are appropriate and necessary pursuant to sec-
8 tion 112(n)(1)(A) of that Act (42 U.S.C.
9 7412(n)(1)(A));

10 (B) regulations establishing standards of
11 performance for fossil-fuel-fired electric utility,
12 industrial-commercial-institutional, and small
13 industrial-commercial-institutional steam gener-
14 ating units under section 111 of the Clean Air
15 Act (42 U.S.C. 7411); and

16 (C) the final regulations required by sub-
17 paragraphs (A) and (B)—

18 (i) after issuing proposed regulations
19 under those subparagraphs;

20 (ii) after consideration of the final re-
21 port submitted under section 101(e)(5);
22 and

23 (iii) not earlier than the date that is
24 1 year after the date on which the Com-
25 mittee submits that report to Congress (or

1 on such later date as may be determined
2 by the Administrator).

3 (3) COMPLIANCE PROVISIONS.—

4 (A) ESTABLISHMENT OF COMPLIANCE
5 DATES.—In promulgating the regulations under
6 paragraph (2), the Administrator shall—

7 (i) establish a date for compliance
8 with the standards and requirements under
9 the regulations that is not earlier than 5
10 years after the effective date of the regula-
11 tions; and

12 (ii) in establishing a date for that
13 compliance, take into consideration—

14 (I) the costs of achieving emis-
15 sion reductions;

16 (II) any non-air quality health
17 and environmental impact and energy
18 requirements of the standards and re-
19 quirements;

20 (III) the feasibility of imple-
21 menting the standards and require-
22 ments, including the time needed—

23 (aa) to obtain necessary per-
24 mit approvals; and

1 (bb) to procure, install, and
2 test control equipment;

3 (IV) the availability of equip-
4 ment, suppliers, and labor, given the
5 requirements of the regulations and
6 other proposed or finalized regula-
7 tions; and

8 (V) potential net employment im-
9 pacts.

10 (B) NEW SOURCES.—With respect to the
11 regulations promulgated pursuant to paragraph
12 (2)—

13 (i) the date on which the Adminis-
14 trator proposes a regulation pursuant to
15 paragraph (2)(A) establishing an emission
16 standard under section 112 of the Clean
17 Air Act (42 U.S.C. 7412) shall be treated
18 as the date on which the Administrator
19 first proposes such a regulation for pur-
20 poses of applying the definition of a new
21 source under section 112(a)(4) of that Act
22 (42 U.S.C. 7412(a)(4));

23 (ii) the date on which the Adminis-
24 trator proposes a regulation pursuant to
25 paragraph (2)(B) establishing a standard

1 of performance under section 111 of the
2 Clean Air Act (42 U.S.C. 7411) shall be
3 treated as the date on which the Adminis-
4 trator proposes such a regulation for pur-
5 poses of applying the definition of a new
6 source under section 111(a)(2) of that Act
7 (42 U.S.C. 7411(a)(2));

8 (iii) for purposes of any emission
9 standard or limitation applicable to electric
10 utility steam generating units, the term
11 “new source” shall mean a stationary
12 source for which a preconstruction permit
13 or other preconstruction approval required
14 under the Clean Air Act (42 U.S.C. 7401
15 et seq.) has been issued after the effective
16 date of the emission standard or limitation;
17 and

18 (iv) for purposes of clause (iii), the
19 date of issuance of a preconstruction per-
20 mit or other preconstruction approval is
21 deemed to be the date on which the permit
22 or approval is issued to the applicant irre-
23 spective of any administrative or judicial
24 review occurring after that date.

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

5 (4) OTHER PROVISIONS.—

6 (A) ESTABLISHMENT OF STANDARDS
7 ACHIEVABLE IN PRACTICE.—

8 (i) IN GENERAL.—The regulations
9 promulgated pursuant to paragraph (2)(A)
10 shall apply to section 112(d)(3) of the
11 Clean Air Act (42 U.S.C. 7412(d)(3)) in
12 accordance with clauses (ii) and (iii).

13 (ii) NEW SOURCES.—With respect to
14 new sources—

15 (I) the Administrator shall iden-
16 tify the best-controlled similar source
17 for each source category or sub-
18 category; and

19 (II) the best-controlled similar
20 source for a category or subcategory
21 shall be the single source that is de-
22 termined by the Administrator to be
23 the best controlled, in the aggregate,
24 for all of the hazardous air pollutants
25 for which the Administrator intends

1 to issue standards for the source cat-
2 egory or subcategory, under actual op-
3 erating conditions, taking into account
4 the variability in actual source per-
5 formance, source design, fuels, con-
6 trols, ability to measure pollutant
7 emissions, and operating conditions.

8 (iii) EXISTING SOURCES.—With re-
9 spect to existing sources—

10 (I) the Administrator shall iden-
11 tify 1 group of sources that con-
12 stitutes the best-performing 12 per-
13 cent of existing sources for each
14 source category or subcategory; and

15 (II) the group constituting the
16 best-performing 12 percent of existing
17 sources for a category or subcategory
18 shall be the single group that is deter-
19 mined by the Administrator to be the
20 best performing, in the aggregate, for
21 all of the hazardous air pollutants for
22 which the Administrator intends to
23 issue standards for the source cat-
24 egory or subcategory, under actual op-
25 erating conditions, taking into account

1 the variability in actual source per-
2 formance, source design, fuels, con-
3 trols, ability to measure pollutant
4 emissions, and operating conditions.

5 (B) REGULATORY ALTERNATIVES.—For
6 the regulations promulgated pursuant to para-
7 graph (2), from among the range of regulatory
8 alternatives authorized under the Clean Air Act
9 (42 U.S.C. 7401 et seq.), including work prac-
10 tice standards under section 112(h) of that Act
11 (42 U.S.C. 7412(h)), the Administrator shall
12 impose the least burdensome, consistent with
13 the purposes of that Act and Executive Order
14 No. 13563 (76 Fed. Reg. 3821 (January 21,
15 2011)).

16 **SEC. 103. CONSIDERATION OF FEASIBILITY AND COST IN**
17 **ESTABLISHING NATIONAL AMBIENT AIR**
18 **QUALITY STANDARDS.**

19 In establishing any national primary or secondary
20 ambient air quality standard under section 109 of the
21 Clean Air Act (42 U.S.C. 7409), the Administrator shall
22 take into consideration feasibility and cost.

1 **TITLE II—REGULATORY RELIEF**

2 **SEC. 201. LEGISLATIVE STAY.**

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

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

11 (A) propose regulations for the Portland
12 cement manufacturing industry and Portland
13 cement plants, and for industrial, commercial,
14 and institutional boilers and process heaters,
15 and commercial and industrial solid waste in-
16 cinerator units that are subject to any of the
17 rules specified in paragraph (2)(B), that—

18 (i) establish maximum achievable con-
19 trol technology standards, performance
20 standards, and other requirements under
21 sections 112 and 129, as applicable, of the
22 Clean Air Act (42 U.S.C. 7412, 7429);
23 and

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

1 bustion units of that industry and those
2 plants, boilers, heaters, and units, qualify
3 as solid waste under the Solid Waste Dis-
4 posal Act (42 U.S.C. 6901 et seq.) for pur-
5 poses of determining the extent to which
6 the combustion units are required to meet
7 the emission standards under section 112
8 or 129 of the Clean Air Act (42 U.S.C.
9 7412, 7429); and

10 (B) promulgate final versions of those reg-
11 ulations by not later than—

12 (i) the date that is 15 months after
13 the date of enactment of this Act; or

14 (ii) such later date as may be deter-
15 mined by the Administrator.

16 (2) STAY OF CERTAIN RULES.—

17 (A) IN GENERAL.—The final rules de-
18 scribed in subparagraph (B) shall be—

19 (i) of no force or effect;

20 (ii) treated as though the rule had
21 never taken effect; and

22 (iii) replaced in accordance with para-
23 graph (1).

24 (B) DESCRIPTION OF RULES.—The rules
25 referred to in subparagraph (A) are—

1 (i) the final rule entitled “National
2 Emission Standards for Hazardous Air
3 Pollutants from the Portland Cement Man-
4 ufacturing Industry and Standards of Per-
5 formance for Portland Cement Plants” (75
6 Fed. Reg. 54970 (September 9, 2010));

7 (ii) the final rule entitled “Standards
8 of Performance for New Stationary
9 Sources and Emission Guidelines for Ex-
10 isting Sources: Commercial and Industrial
11 Solid Waste Incineration Units” (76 Fed.
12 Reg. 15704 (March 21, 2011));

13 (iii) the final rule entitled “Identifica-
14 tion of Non-Hazardous Secondary Mate-
15 rials That Are Solid Waste” (76 Fed. Reg.
16 15456 (March 21, 2011));

17 (iv) the final rule entitled “National
18 Emission Standards for Hazardous Air
19 Pollutants for Major Sources: Industrial,
20 Commercial, and Institutional Boilers and
21 Process Heaters” (76 Fed. Reg. 15608
22 (March 21, 2011));

23 (v) the final rule entitled “National
24 Emission Standards for Hazardous Air
25 Pollutants for Area Sources: Industrial,

1 Commercial, and Institutional Boilers” (76
2 Fed. Reg. 15554 (March 21, 2011));

3 (vi) the final rule entitled “Standards
4 of Performance for New Stationary
5 Sources and Emission Guidelines for Ex-
6 isting Sources: Commercial and Industrial
7 Solid Waste Incineration Units” (76 Fed.
8 Reg. 15704 (March 21, 2011)); and

9 (vii) the final rule entitled “Identifica-
10 tion of Non-Hazardous Secondary Mate-
11 rials That Are Solid Waste” (76 Fed. Reg.
12 15456 (March 21, 2011)).

13 (b) INAPPLICABILITY OF CERTAIN PROVISIONS.—
14 With respect to any standard required by subsection
15 (a)(1) to be promulgated in regulations under section 112
16 of the Clean Air Act (42 U.S.C. 7412), the provisions of
17 subsections (g)(2) and (j) of that section shall not apply
18 prior to the effective date of the standard specified in
19 those regulations.

20 **SEC. 202. COMPLIANCE DATES.**

21 (a) ESTABLISHMENT OF COMPLIANCE DATES.—For
22 each regulation promulgated pursuant to section 201, the
23 Administrator—

24 (1) shall establish a date for compliance with
25 standards and requirements under the regulation

1 that is, notwithstanding any other provision of law,
2 not earlier than 5 years after the effective date of
3 the regulation; and

4 (2) in proposing a date for that compliance,
5 shall take into consideration—

6 (A) the costs of achieving emission reduc-
7 tions;

8 (B) any non-air quality health and environ-
9 mental impact and energy requirements of the
10 standards and requirements;

11 (C) the feasibility of implementing the
12 standards and requirements, including the time
13 necessary—

14 (i) to obtain necessary permit approv-
15 als; and

16 (ii) to procure, install, and test con-
17 trol equipment;

18 (D) the availability of equipment, sup-
19 pliers, and labor, given the requirements of the
20 regulation and other proposed or finalized regu-
21 lations of the Administrator; and

22 (E) potential net employment impacts.

23 (b) NEW SOURCES.—The date on which the Adminis-
24 trator proposes a regulation pursuant to section 201 es-
25 tablishing an emission standard under section 112 or 129

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

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

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

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

13 **SEC. 203. ENERGY RECOVERY AND CONSERVATION.**

14 Notwithstanding any other provision of law, and to
15 ensure the recovery and conservation of energy consistent
16 with the Solid Waste Disposal Act (42 U.S.C. 6901 et
17 seq.), in promulgating regulations under section 201 ad-
18 dressing the subject matter of the rules specified in para-
19 graph (2) of each of those subsections, the Administrator
20 shall—

21 (1) adopt the definitions of the terms “commer-
22 cial and industrial solid waste incineration unit”,
23 “commercial and industrial waste”, and “contained
24 gaseous material” in the rule entitled “Standards
25 for Performance of New Stationary Sources and

1 Emission Guidelines for Existing Sources: Commer-
2 cial and Industrial Solid Waste Incineration Units”
3 (65 Fed. Reg. 75338 (December 1, 2000)); and

4 (2) identify nonhazardous secondary material to
5 be solid waste (as defined in section 1004 of the
6 Solid Waste Disposal Act (42 U.S.C. 6903)) only
7 if—

8 (A) the material meets that definition of
9 commercial and industrial waste; or

10 (B) if the material is a gas, the material
11 meets that definition of contained gaseous ma-
12 terial.

13 **SEC. 204. OTHER PROVISIONS.**

14 (a) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN
15 PRACTICE.—In promulgating regulations under section
16 201, the Administrator shall ensure, to the maximum ex-
17 tent practicable, that emission standards for existing and
18 new sources established under section 112 or 129 of the
19 Clean Air Act (42 U.S.C. 7412, 7429), as applicable, can
20 be met under actual operating conditions consistently and
21 concurrently with emission standards for all other air pol-
22 lutants covered by regulations applicable to the source cat-
23 egory, taking into account—

24 (1) variability in actual source performance;

25 (2) source design;

- 1 (3) fuels;
- 2 (4) inputs;
- 3 (5) controls;
- 4 (6) ability to measure the pollutant emissions;
- 5 and
- 6 (7) operating conditions.

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

16 **TITLE III—COAL RESIDUALS**
 17 **REUSE AND MANAGEMENT**

18 **SEC. 301. SHORT TITLE.**

19 This title may be cited as the “Coal Residuals Reuse
 20 and Management Act”.

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

23 (a) IN GENERAL.—Subtitle D of the Solid Waste Dis-
 24 posal Act (42 U.S.C. 6941 et seq.) is amended by adding
 25 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)(2)(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).

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

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

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

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

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

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

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

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

3 “(iv) a legal certification that the
4 State has, at the time of certification, fully
5 effective statutes or regulations necessary
6 to implement a coal combustion residuals
7 permit program that meets the specifica-
8 tions described in subsection (c)(1); and

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

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

19 “(c) PERMIT PROGRAM SPECIFICATIONS.—

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

23 “(A) The revised criteria described in
24 paragraph (2) shall apply to a coal combustion

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

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

20 “(C) The coal combustion residuals permit
21 program shall apply the revised criteria promul-
22 gated pursuant to section 4010(e) for location,
23 design, groundwater monitoring, corrective ac-
24 tion, financial assurance, closure, and post-clo-
25 sure described in paragraph (2) and the speci-

1 fications described in this paragraph to surface
2 impoundments.

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

21 “(E) In the case of a coal combustion re-
22 siduals permit program implemented by a
23 State, the State has the authority to inspect
24 structures and implement and enforce such per-
25 mit program.

1 “(F) In the case of a coal combustion re-
2 siduals permit program implemented by a
3 State, the State has the authority to address
4 wind dispersal of dust from coal combustion re-
5 siduals by requiring dust control measures, as
6 determined appropriate by the head of the lead
7 State agency responsible for implementing the
8 coal combustion residuals permit program.

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

11 “(A) the revised criteria for design,
12 groundwater monitoring, corrective action, clo-
13 sure, and post-closure, for structures, includ-
14 ing—

15 “(i) for new structures, and lateral ex-
16 pansions of existing structures, that first
17 receive coal combustion residuals after the
18 date of enactment of this section, the re-
19 vised criteria regarding design require-
20 ments described in section 258.40 of title
21 40, Code of Federal Regulations; and

22 “(ii) for all structures that receive
23 coal combustion residuals after the date of
24 enactment of this section, the revised cri-
25 teria regarding groundwater monitoring

1 and corrective action requirements de-
2 scribed in subpart E of part 258 of title
3 40, Code of Federal Regulations, except
4 that, for the purposes of this paragraph,
5 such revised criteria shall also include—

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

11 “(II) for the purposes of assess-
12 ment monitoring, the constituents alu-
13 minum, boron, chloride, fluoride, iron,
14 manganese, molybdenum, pH, sulfate,
15 and total dissolved solids;

16 “(B) the revised criteria for location re-
17 strictions described in—

18 “(i) for new structures, and lateral ex-
19 pansion of existing structures, that first
20 receive coal combustion residuals after the
21 date of enactment of this section, sections
22 258.11 through 258.15 of title 40, Code of
23 Federal Regulations; and

24 “(ii) for existing structures that re-
25 ceive coal combustion residuals after the

1 date of enactment of this section, sections
2 258.11 and 258.15 of title 40, Code of
3 Federal Regulations;

4 “(C) for all structures that receive coal
5 combustion residuals after the date of enact-
6 ment of this section, the revised criteria for air
7 quality described in section 258.24 of title 40,
8 Code of Federal Regulations;

9 “(D) for all structures that receive coal
10 combustion residuals after the date of enact-
11 ment of this section, the revised criteria for fi-
12 nancial assurance described in subpart G of
13 part 258 of title 40, Code of Federal Regula-
14 tions;

15 “(E) for all structures that receive coal
16 combustion residuals after the date of enact-
17 ment of this section, the revised criteria for sur-
18 face water described in section 258.27 of title
19 40, Code of Federal Regulations;

20 “(F) for all structures that receive coal
21 combustion residuals after the date of enact-
22 ment of this section, the revised criteria for rec-
23 ordkeeping described in section 258.29 of title
24 40, Code of Federal Regulations;

1 “(G) for landfills and other land-based
2 units, other than surface impoundments, that
3 receive coal combustion residuals after the date
4 of enactment of this section, the revised criteria
5 for run-on and run-off control systems de-
6 scribed in section 258.26 of title 40, Code of
7 Federal Regulations; and

8 “(H) for surface impoundments that re-
9 ceive coal combustion residuals after the date of
10 enactment of this section, the revised criteria
11 for run-off control systems described in section
12 258.26(a)(2) of title 40, Code of Federal Regu-
13 lations.

14 “(3) APPLICABILITY OF CERTAIN REQUIRE-
15 MENTS.—A State may determine that one or more
16 of the requirements of the revised criteria described
17 in paragraph (2) is not needed for the management
18 of coal combustion residuals in that State, and may
19 decline to apply such requirement as part of its coal
20 combustion residuals permit program. If a State de-
21 clines to apply a requirement under this paragraph,
22 the State shall include in the certification under sub-
23 section (b)(2) a description of such requirement and
24 the reasons such requirement is not needed in the
25 State. If the Administrator, taking into account only

1 the revised criteria that the State determines to be
2 needed under this section, determines that a State
3 determination under this paragraph does not accu-
4 rately reflect the needs for the management of coal
5 combustion residuals in the State, the Administrator
6 may treat such State determination as a deficiency
7 under subsection (d).

8 “(d) WRITTEN NOTICE AND OPPORTUNITY TO REM-
9 EDY.—

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

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

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

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

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

23 “(2) CONTENTS OF NOTICE; DEADLINE FOR RE-
24 SPONSE.—A notice provided under this subsection
25 shall—

1 “(A) include findings of the Administrator
2 detailing any applicable deficiencies in—

3 “(i) compliance by the State with the
4 notification requirement under subsection
5 (b)(1);

6 “(ii) compliance by the State with the
7 certification requirement under subsection
8 (b)(2);

9 “(iii) compliance by the State with the
10 maintenance requirement under subsection
11 (b)(3); and

12 “(iv) the State coal combustion re-
13 siduals permit program in meeting the
14 specifications described in subsection
15 (c)(1); and

16 “(B) identify, in collaboration with the
17 State, a reasonable deadline, which shall be not
18 sooner than 6 months after the State receives
19 the notice, by which the State shall remedy the
20 deficiencies detailed under subparagraph (A).

21 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

22 “(1) IN GENERAL.—The Administrator shall
23 implement a coal combustion residuals permit pro-
24 gram for a State only in the following cir-
25 cumstances:

1 “(A) If the Governor of such State notifies
2 the Administrator under subsection (b)(1) that
3 such State will not adopt and implement such
4 a permit program.

5 “(B) If such State has received a notice
6 under subsection (d) and, after any review
7 brought by the State under section 7006, fails,
8 by the deadline identified in such notice under
9 subsection (d)(2)(B), to remedy the deficiencies
10 detailed in such notice under subsection
11 (d)(2)(A).

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

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

20 “(3) ENFORCEMENT.—If the Administrator im-
21 plements a coal combustion residuals permit pro-
22 gram for a State under paragraph (1), the authori-
23 ties referred to in section 4005(c)(2)(A) shall apply
24 with respect to coal combustion residuals and struc-
25 tures and the Administrator may use such authori-

1 ties to inspect, gather information, and enforce the
2 requirements of this section in the State.

3 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
4 ADMINISTRATOR.—

5 “(1) STATE CONTROL.—

6 “(A) NEW ADOPTION AND IMPLEMENTA-
7 TION BY STATE.—For a State for which the
8 Administrator is implementing a coal combus-
9 tion residuals permit program under subsection
10 (e)(1)(A), the State may adopt and implement
11 such a permit program by—

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

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

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

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

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

4 “(B) REMEDYING DEFICIENT PERMIT PRO-
5 GRAM.—For a State for which the Adminis-
6 trator is implementing a coal combustion re-
7 siduals permit program under subsection
8 (e)(1)(B), the State may adopt and implement
9 such a permit program by—

10 “(i) remedying the deficiencies de-
11 tailed in the notice provided under sub-
12 section (d)(2)(A); and

13 “(ii) receiving from the Adminis-
14 trator—

15 “(I) a determination that the de-
16 ficiencies detailed in such notice have
17 been remedied; and

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

21 “(C) RESUMPTION OF IMPLEMENTATION
22 BY STATE.—For a State for which the Adminis-
23 trator is implementing a coal combustion re-
24 siduals permit program under subsection

1 (e)(1)(C), the State may adopt and implement
2 such a permit program by—

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

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

10 “(iii) receiving from the Adminis-
11 trator—

12 “(I) a determination that the
13 State coal combustion residuals per-
14 mit program meets the specifications
15 described in subsection (c)(1); and

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

19 “(2) REVIEW OF DETERMINATION.—

20 “(A) DETERMINATION REQUIRED.—The
21 Administrator shall make a determination
22 under paragraph (1) not later than 90 days
23 after the date on which the State submits a cer-
24 tification under paragraph (1)(A)(ii) or
25 (1)(C)(ii), or notifies the Administrator that the

1 deficiencies have been remedied pursuant to
2 paragraph (1)(B)(i), as applicable.

3 “(B) REVIEW.—A State may obtain a re-
4 view of a determination by the Administrator
5 under paragraph (1) as if such determination
6 was a final regulation for purposes of section
7 7006.

8 “(3) IMPLEMENTATION DURING TRANSITION.—

9 “(A) EFFECT ON ACTIONS AND ORDERS.—
10 Actions taken or orders issued pursuant to a
11 coal combustion residuals permit program shall
12 remain in effect if—

13 “(i) a State takes control of its coal
14 combustion residuals permit program from
15 the Administrator under paragraph (1); or

16 “(ii) the Administrator takes control
17 of a coal combustion residuals permit pro-
18 gram from a State under subsection (e).

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

1 “(i) implements changes to the re-
2 quirements of the coal combustion residu-
3 als permit program with respect to the
4 basis for the action or order; or

5 “(ii) certifies the completion of a cor-
6 rective action that is the subject of the ac-
7 tion or order.

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

13 “(g) EFFECT ON DETERMINATION UNDER 4005(c)
14 OR 3006.—The Administrator shall not consider the im-
15 plementation of a coal combustion residuals permit pro-
16 gram by the Administrator under subsection (e) in making
17 a determination of approval for a permit program or other
18 system of prior approval and conditions under section
19 4005(c) or of authorization for a program under section
20 3006.

21 “(h) CLOSURE.—If it is determined, pursuant to a
22 coal combustion residuals permit program, that a struc-
23 ture should close, the time period and method for the clo-
24 sure of such structure shall be set forth in a closure plan
25 that establishes a deadline for completion and that takes

1 into account the nature and the site-specific characteris-
2 ties of the structure to be closed. In the case of a surface
3 impoundment, the closure plan shall require, at a min-
4 imum, the removal of liquid and the stabilization of re-
5 maining 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 subsection (e) of this section and section 6005
16 of this title, the Administrator shall, with re-
17 spect to the regulation of coal combustion re-
18 siduals, defer to the States pursuant to this sec-
19 tion.

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

24 “(C) TECHNICAL AND ENFORCEMENT AS-
25 SISTANCE ONLY UPON REQUEST.—Upon re-

1 quest from the head of a lead State agency that
2 is implementing a coal combustion residuals
3 permit program, the Administrator may provide
4 to such State agency only the technical or en-
5 forcement assistance requested.

6 “(3) CITIZEN SUITS.—Nothing in this section
7 shall be construed to affect the authority of a person
8 to commence a civil action in accordance with sec-
9 tion 7002.

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

15 “(k) DEFINITIONS.—In this section:

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

18 “(A) the solid wastes listed in section
19 3001(b)(3)(A)(i), including recoverable mate-
20 rials from such wastes;

21 “(B) coal combustion wastes that are co-
22 managed with wastes produced in conjunction
23 with the combustion of coal, provided that such
24 wastes are not segregated and disposed of sepa-
25 rately from the coal combustion wastes and

1 comprise a relatively small proportion of the
2 total wastes being disposed in the structure;

3 “(C) fluidized bed combustion wastes;

4 “(D) wastes from the co-burning of coal
5 with non-hazardous secondary materials pro-
6 vided that coal makes up at least 50 percent of
7 the total fuel burned; and

8 “(E) wastes from the co-burning of coal
9 with materials described in subparagraph (A)
10 that are recovered from monofills.

11 “(2) COAL COMBUSTION RESIDUALS PERMIT
12 PROGRAM.—The term ‘coal combustion residuals
13 permit program’ means a permit program or other
14 system of prior approval and conditions that is
15 adopted by or for a State for the management and
16 disposal of coal combustion residuals to the extent
17 such activities occur in structures in such State.

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

21 “(4) REVISED CRITERIA.—The term ‘revised
22 criteria’ means the criteria promulgated for munic-
23 ipal solid waste landfill units under section 4004(a)
24 and under section 1008(a)(3), as revised under sec-
25 tion 4010(c).”.

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

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

5 **SEC. 303. 2000 REGULATORY DETERMINATION.**

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

15 **SEC. 304. EFFECT OF TITLE.**

16 This title and the amendments made by this title—

17 (1) supersede any regulations promulgated or
18 being developed as of the date of enactment of this
19 Act relating to coal combustion residuals; and

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

1 **TITLE IV—THERMAL**
2 **DISCHARGES**

3 **SEC. 401. SHORT TITLE.**

4 This title may be cited as the “Environmental Impact
5 of Thermal Discharges Act of 2011”.

6 **SEC. 402. THERMAL DISCHARGE.**

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

10 “(b) COOLING WATER INTAKE STRUCTURES.—

11 “(1) DEFINITION OF STATE.—In this sub-
12 section, the term ‘State’ means a State authorized to
13 administer a permit program under section 402.

14 “(2) STANDARDS.—

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

1 “(B) COOLING WATER INTAKE STRUC-
2 TURES CONSTRUCTED ON OR BEFORE JANUARY
3 17, 2002.—For any cooling water intake struc-
4 ture that commenced construction on or before
5 January 17, 2002, any standard established
6 under section 301 shall require that the loca-
7 tion, design, construction, and capacity of the
8 cooling water intake structure reflect the best
9 technology available for reducing adverse envi-
10 ronmental impact.

11 “(3) SITE-SPECIFIC ADVERSE ENVIRONMENTAL
12 IMPACT DETERMINATION.—

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (C), the Administrator or State,
15 if applicable, shall determine whether the cool-
16 ing water intake structure described in para-
17 graph (2)(B) creates an adverse environmental
18 impact at the site in which the cooling water in-
19 take structure is located.

20 “(B) SHELLFISH, FISH, OR WILDLIFE
21 MORTALITY.—

22 “(i) IN GENERAL.—In making the de-
23 termination under subparagraph (A), shell-
24 fish, fish, or wildlife mortality shall not be

1 considered an adverse environmental im-
2 pact unless—

3 “(I) a demonstrable, quantifiable,
4 and continuous decline in any shell-
5 fish, fish, or wildlife population occurs
6 in or on the body of water on which
7 the cooling water intake structure is
8 located; and

9 “(II) the Administrator or State,
10 as applicable, determines that the de-
11 cline is specifically attributable to that
12 cooling water intake structure.

13 “(ii) PRESUMPTION; CLEAR AND CON-
14 VINING EVIDENCE.—In making the deter-
15 mination under clause (i)(II), the Adminis-
16 trator or State, as applicable, may presume
17 that the cooling water intake structure is
18 not causing an adverse environmental im-
19 pact unless there is clear and convincing
20 evidence to the contrary.

21 “(C) CERTAIN CATEGORIES OR CLASSES
22 OF COOLING WATER INTAKE STRUCTURES.—
23 The Administrator or State, as applicable, shall
24 not be required to make the determination
25 under subparagraph (A) for any category or

1 class of cooling water intake structure that the
2 Administrator or State, as applicable, deter-
3 mines, because of the location, design, capacity,
4 or other factors, is unlikely to cause an adverse
5 environmental impact.

6 “(4) SITE-SPECIFIC SELECTION OF BEST TECH-
7 NOLOGY AVAILABLE.—For any cooling water intake
8 structure described in paragraph (2)(A), or if the
9 Administrator or State, as applicable, makes the de-
10 termination described in paragraph (3)(A), the Ad-
11 ministrator or the State, as applicable, shall select
12 the best technology available for the cooling water
13 intake structure using a site-specific cost-benefit
14 analysis that ensures the benefits of the cooling
15 water intake structure technology selected justify the
16 costs, taking into consideration—

17 “(A) any costs associated with any feasible
18 alternative cooling water intake structure tech-
19 nology;

20 “(B) any likely environmental and eco-
21 nomic benefits;

22 “(C) any nonwater quality environmental
23 or water consumption impacts;

24 “(D) any energy requirements;

1 “(E) the remaining useful life of equip-
2 ment and facilities involved;

3 “(F) the process employed;

4 “(G) the engineering aspects of the appli-
5 cation of various types of control techniques;

6 “(H) electricity reliability impacts;

7 “(I) land availability;

8 “(J) lost revenues; and

9 “(K) other factors that the Administrator
10 or State, as applicable, determines to be appro-
11 priate.

12 “(5) ALTERNATIVE TECHNOLOGIES.—Any
13 owner or operator of any cooling water intake struc-
14 ture described in paragraph (2) may use restoration
15 measures, including restocking fish and shellfish, im-
16 proving the surrounding habitat, and alternative
17 techniques in lieu of modifying the cooling water in-
18 take structure if the Administrator or State, as ap-
19 plicable, determines that the restoration measures
20 achieve substantially the same environmental bene-
21 fits as the best technology available selected under
22 paragraph (4).

23 “(6) CREDIT FOR PREVIOUSLY INSTALLED
24 FISH-PROTECTION TECHNOLOGY.—The Adminis-
25 trator or State, as applicable, shall provide credit for

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

5 **SEC. 403. REGULATIONS.**

6 Effective beginning January 1, 2011—

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

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

○