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111TH CONGRESS
1ST SESSION

H. R. 1841

To amend the Clean Air Act to reduce sulfur dioxide, nitrogen oxide, and mercury emissions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 2009

Mr. MCHUGH introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Natural Resources, Science and Technology, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend the Clean Air Act to reduce sulfur dioxide, nitrogen oxide, and mercury emissions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Acid Rain and Mercury Control Act''.

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) reductions of atmospheric sulfur dioxide and nitrogen oxide from utility plants, in addition to the reductions required under the Clean Air Act (42 U.S.C. 7401 et seq.), are needed to reduce acid deposition and its serious adverse effects on public health, natural resources, building structures, sensitive ecosystems, and visibility;

(2) sulfur dioxide and nitrogen oxide contribute to the development of fine particulates, suspected of causing human mortality and morbidity to a significant extent;

(3) regional nitrogen oxide reductions of 75 percent in the Eastern United States, in addition to the reductions required under the Clean Air Act, may be necessary to protect sensitive watersheds from the effects of nitrogen deposition;

(4) since the Clean Air Act Amendments of 1990 were enacted, some acidic lakes in the Adirondacks in the State of New York have started to

slowly show chemical recovery from acid rain, demonstrating that sulfur dioxide and nitrogen oxide regulations can be implemented in a cost-effective manner, but the recovery is progressing at a slower rate than originally intended;

(5) nitrogen oxide is highly mobile and can lead to ozone formation hundreds of miles from the emitting source;

(6) on March 10, 2005, the Environmental Protection Agency (EPA) issued the Clean Air Interstate Rule (CAIR) to require additional reductions in sulfur dioxide and nitrogen oxide in 28 Eastern States and the District of Columbia;

(7) these reductions represent approximately a 70 percent reduction in sulfur dioxide and a 60 percent reduction in nitrogen oxide in the affected States;

(8) on July 11, 2008, the United States Court of Appeals for the District of Columbia Circuit vacated CAIR and on December 23, 2008, the same court remanded the rule back to the EPA without vacature;

(9) fossil fuel-fired electric generating units emit approximately ⅓ of the total mercury emissions in the United States;

(10) mercury is considered a neurotoxin which can bioaccumulate as it moves its way up the food chain and is especially harmful to young children and developing fetuses;

(11) according to the EPA, there were 3,080 fish advisories for mercury in 2006; there are over 90 fish advisories for mercury in New York alone, with blanket warning for the Adirondack and Catskill Mountains;

(12) on March 15, 2005, EPA issued the Clean Air Mercury Rule (CAMR), which for the first time sought to regulate mercury emissions from power plants, but used a less restrictive cap-and-trade approach for this very harmful substance and would take a full decade to implement;

(13) on February 8, 2008, the United States Court of Appeals for the District of Columbia Circuit vacated CAMR; and

(14) on February 23, 2009, the Supreme Court denied a request to reconsider the decision.

(b) PURPOSES.—The purposes of this Act are—

(1) to recognize the current scientific understanding that emissions of sulfur dioxide and nitrogen oxide, and the acid deposition resulting from emissions of sulfur dioxide and nitrogen oxide,

present a substantial human health and environmental risk;

(2) to require reductions in sulfur dioxide and nitrogen oxide emissions;

(3) to support the efforts of existing acid rain and mercury monitoring programs located throughout the country;

(4) to reduce utility emissions of nitrogen oxide by 75 percent from 1997 levels;

(5) to reduce utility emissions of sulfur dioxide by 75 percent after the implementation of phase II sulfur dioxide requirements under section 405 of the Clean Air Act (42 U.S.C. 7651d); and

(6) to adopt a strict standard for mercury emissions by power plants of 0.6 pounds per trillion Btu without allowing for a cap-and-trade system.

SEC. 3. REDUCTION OF SULFUR DIOXIDE AND NITROGEN OXIDE EMISSIONS FROM POWERPLANTS.

Part A of title I of the Clean Air Act (42 U.S.C. 7401 et seq.) is amended by adding at the end the following:

"SEC. 132. REDUCTION OF SULFUR DIOXIDE AND NITROGEN OXIDE EMISSIONS FROM POWERPLANTS.

''(a) EMISSION REDUCTION OBJECTIVES.—The emission reduction objectives of this section are to reduce, not later than January 1, 2012—

''(1) aggregate sulfur dioxide emissions from powerplants by 75 percent from the levels allowed under full implementation of the Phase II sulfur dioxide requirements under title IV (relating to acid deposition control); and

''(2) aggregate nitrogen oxide emissions from powerplants by 75 percent from 1997 levels.

''(b) AGENCY ACTION.—

''(1) REGULATIONS.—

''(A) IN GENERAL.—Not later than 2 years after the date of enactment of this section, the Administrator shall promulgate regulations to achieve the emission reduction objectives specified in subsection (a).

''(B) ELEMENTS.—The regulations promulgated under subparagraph (A)—

''(i) shall achieve the objectives in a manner that the Administrator determines will allocate required emission reductions equitably, taking into account emission reductions achieved before the date of enactment of this section and other relevant factors;

''(ii) may include market-oriented mechanisms (such as emissions trading

based on generation performance standards, auctions, or other allocation methods);

''(iii) shall prevent localized adverse effects on public health and the environment and ensure that significant emission reductions are achieved in both the Eastern and Western regions of the United States; and

''(iv) shall include, consistent with achieving the objectives set forth in subsection (a), incentives for renewable energy.

''(2) INTERAGENCY COORDINATION TO MINIMIZE COSTS AND MAXIMIZE GAINS.—To minimize the economic costs and maximize the economic gains of achieving the emission reduction objectives specified in subsection (a), the Administrator shall coordinate with other departments and agencies of Federal and State government to increase energy efficiency, to increase the use of renewable energy, and to implement cost saving advanced demand and supply side policies, such as those described in the report prepared by the Interlaboratory Working Group

of the Department of Energy entitled 'Scenarios for a Clean Energy Future', dated November 2000.

''(c) ADDITIONAL REDUCTIONS.—The regulations promulgated under subsection (b) may require additional reductions in emissions from powerplants if the Administrator determines that the emission levels necessary to achieve the emission reduction objectives specified in subsection (a) are not reasonably anticipated to protect public health or welfare.

''(d) MODERNIZATION OF OUTDATED POWERPLANTS.—

''(1) IN GENERAL.—On the later of the date that is 30 years after a powerplant commenced operation or the date that is 5 years after the date of enactment of this section, it shall comply with—

''(A) the most recent new source performance standards promulgated under section 111; and

''(B) the requirements under parts C and D that are applicable to modified sources.

''(2) ADDITIONAL REQUIREMENTS.—The requirements of this subsection shall be in addition to the requirements of the regulations promulgated under subsection (b).

''(e) OTHER REQUIREMENTS.—The requirements of this section shall be in addition to, and not in lieu of, any other requirement of this Act.

''(f) DEFINITION.—In this section, the term 'powerplant' means an electric generation facility with a nameplate capacity of 25 megawatts or more that uses a combustion device to generate electricity for sale.''.

SEC. 4. MERCURY EMISSION REDUCTIONS.

The Clean Air Act (42 U.S.C. 7401 et seq.) is amended by adding at the end the following:

"TITLE VII—MERCURY REDUCTIONS

"SEC. 701. DEFINITIONS.

''In this title:

''(1) AFFECTED UNIT.—The term 'affected unit' means a coal-fired electric generating facility (including a cogeneration facility) that—

''(A) has a nameplate capacity greater than 25 megawatts; and

''(B) generates electricity for sale.

''(2) COGENERATION FACILITY.—The term 'cogeneration facility' means a facility that—

''(A) cogenerates—

''(i) steam; and

''(ii) electricity; and

''(B) supplies, on a net annual basis, to any utility power distribution system for sale—

''(i) more than ⅓ of the potential electric output capacity of the facility; and

''(ii) more than 25 megawatts of electrical output of the facility.

''SEC. 702. MERCURY REDUCTION PROGRAM.

''(a) NEW UNIT REQUIREMENT.—Any affected unit that commences operation after December 31, 2010, shall be considered a new unit for the purposes of this section and shall not exceed the emission limit of 0.6 pounds mercury per trillion Btu (0.6 lb Hg/TBtu) upon commencement of operation.

''(b) EXISTING UNIT REQUIREMENT.—Any affected unit that commences operation on or before December 31, 2010, shall not exceed the emission limit of 0.6 pounds mercury per trillion Btu by January 1, 2013.

''(c) MONITORING SYSTEM.—Not later than January 1, 2011, the Administrator shall promulgate regulations requiring operation, reporting and certification of continuous emissions monitoring systems (CEMS) to accurately measure the quantity of mercury that is emitted from each affected unit.

''(d) EXCESS EMISSIONS.—

''(1) IN GENERAL.—The owner or operator of an affected unit that emits mercury in excess of the emission limitation described in subsections (b) and (c) shall pay an excess emissions penalty determined under paragraph (2).

''(2) DETERMINATION OF EXCESS EMISSIONS PENALTY.—The excess emissions penalty shall be an amount equal to $10,000 for each ounce of mercury emitted in excess of the emission limitations for mercury described in subsections (b) and (c).

''(e) PREVENTION OF MERCURY RE-RELEASE.—Not later than January 1, 2011, the Administrator shall promulgate regulations to ensure that any mercury captured or recovered by emission controls installed at an affected unit is not re-released into the environment.

''SEC. 703. PROHIBITIONS.

''It shall be unlawful—

''(1) for the owner or operator of any electricity generating facility—

''(A) to operate the electricity generating facility in noncompliance with the requirements of this title (including any regulations implementing this title);

''(B) to fail to submit by the required date any emission allowances, or pay any penalty, for which the owner or operator is liable;

''(C) to fail to provide and comply with any plan to offset excess emissions; or

''(D) to emit mercury in excess of the emission limitations established under section 702; or

''(2) for any person to hold, use, or transfer any emission allowance allocated under this title except in accordance with regulations promulgated by the Administrator.''.

SEC. 5. EFFECT ON OTHER LAW.

Nothing in this Act—

(1) affects the ability of a State to take State actions to further limit sulfur dioxide, nitrogen oxide, or mercury; and

(2) except as expressly provided in this Act—

(A) modifies or otherwise affects any requirement of this Act in effect on the day before the date of enactment of this Act; or

(B) relieves any person of the responsibility to comply with this Act.

SEC. 6. PROTECTING SENSITIVE REGIONAL ECOSYSTEMS.

(a) REPORT.—

(1) IN GENERAL.—Not later than December 31, 2012, the Administrator shall submit to Congress a report identifying objectives for scientifically credible environmental indicators, as determined by the Administrator of the Environmental Protection Agency, that are sufficient to protect and restore sensitive ecosystems of the Adirondack Mountains, mid-Appalachian Mountains, Catskill Mountains, Rocky Mountains, and Southern Blue Ridge Mountains and water bodies of the Great Lakes, Lake Champlain, Long Island Sound, the Chesapeake Bay and other sensitive ecosystems, as determined by the Administrator.

(2) UPDATED REPORT.—Not later than December 31, 2021, the Administrator shall submit to Congress a report updating the report under paragraph (1) and assessing the status and trends of various environmental objectives and indicators for the sensitive regional ecosystems referred to in paragraph (1).

(3) REPORTS UNDER THE NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM.—The reports under this subsection shall be subject to the requirements applicable to a report under section

103(j)(3)(E) of the Clean Air Act (42 U.S.C. 7403(j)(3)(E)).

(b) REGULATIONS.—

(1) DETERMINATION.—Not later than December 31, 2019, the Administrator shall determine whether emission reductions under title VII of the Clean Air Act are sufficient to ensure achievement of the objectives stated in subsection (a)(1).

(2) PROMULGATION.—If the Administrator determines under paragraph (1) that emission reductions under title VII of the Clean Air Act are not sufficient to ensure achievement of the objectives identified in subsection (a)(1), the Administrator shall promulgate, not later than 2 years after making the finding, such regulations, including modification of sulfur dioxide and nitrogen oxide allowance allocations or any such measure, as the Administrator determines are necessary to protect the sensitive ecosystems described in subsection (a)(1).

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

In addition to amounts made available under any other law, there are authorized to be appropriated for each of fiscal years 2010 through 2020—

(1) for operational support of the National Atmospheric Deposition Program National Trends Network—

(A) $2,000,000 to the United States Geological Survey;

(B) $600,000 to the Environmental Protection Agency;

(C) $600,000 to the National Park Service; and

(D) $400,000 to the Forest Service;

(2) for operational support of the National Atmospheric Deposition Program Mercury Deposition Network—

(A) $400,000 to the Environmental Protection Agency;

(B) $400,000 to the United States Geological Survey;

(C) $100,000 to the National Oceanic and Atmospheric Administration; and

(D) $100,000 to the National Park Service;

(3) for the National Atmospheric Deposition Program Atmospheric Integrated Research Monitoring Network $1,500,000 to the National Oceanic and Atmospheric Administration;

(4) for the Clean Air Status and Trends Network $5,000,000 to the Environmental Protection Agency; and

(5) for the Temporally Integrated Monitoring of Ecosystems and Long-Term Monitoring Program $2,500,000 to the Environmental Protection Agency.

SEC. 8. MODERNIZATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts made available under any other law, there are authorized to be appropriated—

(1) for equipment and site modernization of the National Atmospheric Deposition Program National Trends Network $6,000,000 to the Environmental Protection Agency;

(2) for equipment and site modernization and network expansion of the National Atmospheric Deposition Program Mercury Deposition Network $2,000,000 to the Environmental Protection Agency;

(3) for equipment and site modernization and network expansion of the National Atmospheric Deposition Program Atmospheric Integrated Research Monitoring Network $1,000,000 to the National Oceanic and Atmospheric Administration; and

(4) for equipment and site modernization and network expansion of the Clean Air Status and

Trends Network $4,600,000 to the Environmental Protection Agency.

(b) AVAILABILITY OF AMOUNTS.—Each of the amounts appropriated under subsection (a) shall remain available until expended.

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