

118TH CONGRESS
2D SESSION

S. 3826

To amend the Clean Air Act to revise the treatment of certain resilience actions and natural disasters, to limit the issuance of new standards for criteria pollutants, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2024

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

A BILL

To amend the Clean Air Act to revise the treatment of certain resilience actions and natural disasters, to limit the issuance of new standards for criteria pollutants, 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.**

4 This Act may be cited as the “Modernizing Clean Air
5 Permitting Act of 2024”.

1 **SEC. 2. TREATMENT OF NATURAL BACKGROUND LEVELS**
 2 **AND ACTIVITY.**

3 (a) TREATMENT OF NATURAL BACKGROUND LEV-
 4 ELS.—Section 107(d) of the Clean Air Act (42 U.S.C.
 5 7407(d)) is amended by adding at the end the following:

6 “(8) TREATMENT OF NATURALLY OCCURRING
 7 EVENTS, WILDFIRES, AND RESILIENCE ACTIONS.—In
 8 determining whether an area meets national primary
 9 or secondary ambient air quality standards for a pol-
 10 lutant under this subsection, the Administrator shall
 11 not take into consideration any emissions of the pol-
 12 lutant that result from—

13 “(A) prescribed fires or wildfires on public
 14 or private land, regardless of the cause of those
 15 fires;

16 “(B) actions determined by the Governor
 17 to increase resilience to natural disasters;

18 “(C) natural disasters; or

19 “(D) naturally occurring events that cause
 20 an increase in the pollutant over the expected
 21 naturally occurring levels in a given year.”.

22 (b) EXISTING COMPLIANCE OF PREVIOUS STAND-
 23 ARDS.—Section 109 of the Clean Air Act (42 U.S.C.
 24 7409) is amended by adding at the end the following:

25 “(e) REVISIONS RELATED TO NATURALLY OCCUR-
 26 RING BACKGROUND LEVELS.—For national primary and

1 secondary ambient air quality standards revised after the
2 date of enactment of this subsection, if a revision of a
3 standard by the Administrator would require a State to
4 lower the emissions of a criteria pollutant in an area of
5 that State below a level consistent with levels observed
6 naturally in that area, as determined by the State, in an
7 average year, the State shall not be required to lower the
8 levels of that criteria pollutant below locally uncontrollable
9 levels, including interstate, international, and local mobile
10 emissions in areas that have implemented a basic vehicle
11 emission inspection and maintenance program and clean-
12 fuel vehicle program to comply with the requirements of
13 section 182.

14 “(f) EXISTING COMPLIANCE.—For national primary
15 and secondary ambient air quality standards revised after
16 the date of enactment of this subsection, the Adminis-
17 trator shall take into consideration—

18 “(1) existing rates of compliance with previous
19 national primary and secondary ambient air quality
20 standards;

21 “(2) technological feasibility of complying with
22 the proposed national primary or secondary ambient
23 air quality standard revision; and

1 “(3) the costs of complying with the proposed
2 national primary or secondary ambient air quality
3 standard revision.”.

4 (c) TREATMENT OF MOBILE SOURCES.—Section
5 110(a) of the Clean Air Act (42 U.S.C. 7410(a)) is
6 amended by adding at the end the following:

7 “(7) TREATMENT OF MOBILE SOURCES.—In de-
8 veloping or revising a State implementation plan
9 under this section, the Governor of a State may—

10 “(A) make a determination as to the quan-
11 tity of a criteria pollutant that is created as a
12 result of mobile sources traversing any area
13 designated as a nonattainment area as a part
14 of multi-region or interstate transport; and

15 “(B) in addition to mitigation methods de-
16 veloped for an area designated as a nonattain-
17 ment area for which a determination was made
18 under subparagraph (A), develop methods for
19 new major sources in the nonattainment area to
20 mitigate or offset the quantity of mobile source
21 pollution in the nonattainment area determined
22 under subparagraph (A) through the reduction
23 of mobile source pollution outside of that non-
24 attainment area.

1 “(8) TREATMENT OF INTERNATIONAL EMIS-
2 SIONS.—

3 “(A) IN GENERAL.—Not later than 2 years
4 after the date of enactment of this paragraph,
5 the Administrator, in consultation with the
6 States, shall submit to Congress a report that
7 describes—

8 “(i) the extent to which foreign
9 sources of air pollution, including emis-
10 sions from sources located outside of North
11 America, impact—

12 “(I) the designation of areas (or
13 portions of areas) as nonattainment,
14 attainment, or unclassifiable under
15 section 107(d); and

16 “(II) the attainment and mainte-
17 nance of national ambient air quality
18 standards;

19 “(ii) the procedures and timelines of
20 the Administrator for the disposition of pe-
21 titions submitted under section 179B(b);

22 “(iii) the total number of petitions re-
23 ceived by the Administrator under section
24 179B and, with respect to each petition—

1 “(I) the date on which the peti-
2 tion was initially submitted to the Ad-
3 ministrator; and

4 “(II) the date of final disposition
5 of the petition by the Administrator;
6 and

7 “(iv) whether the Administrator rec-
8 ommends any statutory changes to facili-
9 tate—

10 “(I) the more efficient review and
11 disposition of petitions submitted
12 under section 179B; and

13 “(II) the ability to discount the
14 emissions of foreign sources in calcu-
15 lating the emissions levels and attain-
16 ment of an area.

17 “(B) RULEMAKING REQUIRED.—Not later
18 than 3 years after the date of enactment of this
19 paragraph, the Administrator, in consultation
20 with the States, shall complete a rulemaking
21 that details any additional flexibility that is to
22 be provided to Governors of States in the cre-
23 ation of State implementation plans under this
24 section with respect to the facilitation of the
25 ability described in subparagraph (A)(iv)(II).”.

1 **SEC. 3. REVIEW AND REVISION CRITERIA FOR APPLICABLE**
 2 **STANDARDS.**

3 Section 109(d) of the Clean Air Act (42 U.S.C.
 4 7409(d)) is amended by adding at the end the following:

5 “(3)(A) Notwithstanding paragraph (1), the
 6 Administrator may not issue new standards relating
 7 to a criteria pollutant if more than 15 percent of
 8 total air quality control regions that were in non-
 9 attainment for that criteria pollutant as a result of
 10 a previous revision of standards still remain in non-
 11 attainment.

12 “(B) If fewer than 15 percent of the total num-
 13 ber of air quality control regions initially in non-
 14 attainment for a criteria pollutant remain in non-
 15 attainment for that criteria pollutant, the Adminis-
 16 trator may issue new standards relating to that cri-
 17 teria pollutant.”.

18 **SEC. 4. RECLASSIFICATION OF MAJOR SOURCES AS AREA**
 19 **SOURCES.**

20 Section 112 of the Clean Air Act (42 U.S.C. 7412)
 21 is amended by adding at the end the following:

22 “(t) RECLASSIFICATION OF MAJOR SOURCES AS
 23 AREA SOURCES.—

24 “(1) IN GENERAL.—At any time that a sta-
 25 tionary source demonstrates to the Administrator
 26 that the actual or potential emissions of hazardous

1 air pollutants of a major source fall below the stand-
 2 ards described in subsection (a)(1) for a period of 6
 3 consecutive months, the Administrator shall reclas-
 4 sify the major source as an area source under this
 5 section.

6 “(2) REQUIREMENTS.—Beginning on the date
 7 of a reclassification of a major source as an area
 8 source under paragraph (1)—

9 “(A) any requirements previously applica-
 10 ble to the reclassified source under a major
 11 source standard under this section shall no
 12 longer apply to that reclassified source;

13 “(B) the requirements of any applicable
 14 area source standard under this section shall
 15 apply to that reclassified source; and

16 “(C) the owner or operator of the reclassi-
 17 fied source shall annually supply monitoring
 18 data of the reclassified source to reconfirm the
 19 reclassification.”.

20 **SEC. 5. STANDARDS OF PERFORMANCE FOR NEW STA-**
 21 **TIONARY SOURCES.**

22 (a) IN GENERAL.—Section 111 of the Clean Air Act
 23 (42 U.S.C. 7411) is amended—

24 (1) in subsection (b)—

25 (A) in paragraph (1)—

1 (i) in subparagraph (B), in the first
2 sentence, by inserting “and subject to sub-
3 paragraph (C)” after “subparagraph (A)”;
4 and

5 (ii) by adding at the end the fol-
6 lowing:

7 “(C) LIMITATION.—The Administrator
8 may not establish a new Federal standard of
9 performance for a new source until such time
10 as the technology proposed to serve as the best
11 system of emission reduction under the pro-
12 posed new standard of performance—

13 “(i) represents not less than 5 percent
14 of the deployed systems already in use at
15 the time the new standard of performance
16 is proposed; and

17 “(ii) has been demonstrated to fully
18 achieve the emission standards of the pro-
19 posed standard of performance.”; and

20 (B) in paragraph (6), by striking “sub-
21 section (a)(1)(A)(i) and (ii)” and inserting
22 “subsection (a)(1)”;

23 (2) in subsection (d), by adding at the end the
24 following:

1 “(3) LIMITATION OF AUTHORITY.—In pre-
2 scribing regulations under paragraph (1) and other-
3 wise carrying out this subsection, the Administrator
4 may not direct a State—

5 “(A) to establish standards of performance
6 for any air pollutants at a location that is not
7 the location of an existing source; or

8 “(B) to meet any specific substantive emis-
9 sions criteria established by the Administrator
10 other than for a criteria air pollutant.”; and

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

12 “(k) TREATMENT OF MODIFICATIONS.—

13 “(1) IN GENERAL.—For purposes of this sec-
14 tion but subject to paragraphs (2) and (3), a modi-
15 fication shall be considered to be a new source only
16 if—

17 “(A) the modification expands the capacity
18 or production capability of the source; and

19 “(B) the maximum hourly emission rate of
20 an air pollutant that is achievable by such
21 source after the change is higher than the max-
22 imum hourly emission rate of such air pollutant
23 that was achievable by such source during any
24 hour in the 10-year period immediately pre-
25 ceding the change.

1 “(2) EXCEPTIONS.—If a modification expands
2 the capacity or production capability of a source, the
3 modification shall not be considered to be a new
4 source for purposes of this section if the modifica-
5 tion is designed—

6 “(A) to reduce any air pollutant emitted by
7 the source per unit of production;

8 “(B) to reduce any greenhouse gas emitted
9 by the source per unit of production; or

10 “(C) to enhance or restore the safety or re-
11 liability of operations at the source.

12 “(3) APPLICATION OF EXCEPTIONS.—A modi-
13 fication that meets an exception described in para-
14 graph (2) shall not be considered to be a modifica-
15 tion for purposes of—

16 “(A) the term ‘construction’ (as defined in
17 section 169(2)) or any provision that uses that
18 term; or

19 “(B) the term ‘modification’ (as defined in
20 section 171) or any provision that uses that
21 term.

22 “(1) TREATMENT OF OFFSETS.—A proposed new
23 source shall be exempt from the requirements of a pro-
24 posed new source in an area designated as in nonattain-
25 ment if the proposed new source emits not more than 0.5

1 percent of the periodic emissions inventory of the criteria
 2 pollutant for the area within which the proposed new
 3 source will be located.”.

4 (b) **RULE OF CONSTRUCTION.**—The amendments
 5 made by subsection (a) shall not treat any change as a
 6 modification for purposes of the Clean Air Act (42 U.S.C.
 7 7401 et seq.) if such change would not have been so treat-
 8 ed as of the day before the date of enactment of this Act.

9 **SEC. 6. TREATMENT OF PENDING PERMITS.**

10 (a) **PRECONSTRUCTION REQUIREMENTS.**—Section
 11 165(b) of the Clean Air Act (42 U.S.C. 7475(b)) is
 12 amended—

13 (1) by striking “(b) The demonstration” and in-
 14 serting the following:

15 “(b) **EXCEPTIONS.**—

16 “(1) **MAXIMUM ALLOWABLE INCREASES.**—The
 17 demonstration”; and

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

19 “(2) **PENDING DRAFT PERMITS.**—The require-
 20 ments of this section shall not apply to a new, ex-
 21 panded, or modified major emitting facility if, on the
 22 date on which a new national ambient air quality
 23 standard or maximum allowable increase is promul-
 24 gated, the developer of a proposed major emitting
 25 facility has received a draft permit from the applica-

1 ble permitting authority that demonstrates compli-
2 ance with the applicable standard or maximum al-
3 lowable increase in effect before the promulgation of
4 the new national ambient air quality or maximum al-
5 lowable increase.”.

6 (b) PERMIT REQUIREMENTS.—Section 173 of the
7 Clean Air Act (42 U.S.C. 7503) is amended—

8 (1) in subsection (a), in the matter preceding
9 paragraph (1), by striking “The permit program re-
10 quired by section 172(b)(6)” and inserting “Except
11 as provided in subsection (f), the permit program re-
12 quired by section 172(c)(5)”; and

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

14 “(f) PENDING DRAFT PERMITS.—

15 “(1) IN GENERAL.—The requirements of this
16 section shall not apply to a new or modified major
17 source if, on the date on which a nonattainment
18 area is first designated as in nonattainment with re-
19 spect to a pollutant or on the date on which an area
20 is reclassified, by operation of law or by another
21 method, to a higher classification of nonattain-
22 ment—

23 “(A) the major source has received a draft
24 permit from the applicable permitting authority

1 that demonstrates compliance with the stand-
2 ards in effect on the day before that date; and

3 “(B) the final permit is ultimately issued
4 to the new or modified major source under the
5 standards for which the draft permit was con-
6 sidered.

7 “(2) APPLICABILITY.—Any subsequent modi-
8 fication to a major source described in paragraph
9 (1) that requires a new permit and is made after the
10 applicable date described in that paragraph shall be
11 subject to the standards applicable at the time of the
12 request for the new permit.”.

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