

106TH CONGRESS
1ST SESSION

S. 172

To reduce acid deposition under the Clean Air Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

Mr. MOYNIHAN (for himself, Mr. SCHUMER, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To reduce acid deposition under the Clean Air Act, 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 “Acid Deposition and
5 Ozone Control Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) reductions of atmospheric nitrogen oxide
9 and sulfur dioxide from utility plants, in addition to
10 the reductions required under the Clean Air Act (42

1 U.S.C. 7401 et seq.), are needed to reduce acid dep-
2 osition and its serious adverse effects on public
3 health, natural resources, building structures, sen-
4 sitive ecosystems, and visibility;

5 (2) nitrogen oxide and sulfur dioxide contribute
6 to the development of fine particulates, suspected of
7 causing human mortality and morbidity to a signifi-
8 cant extent;

9 (3) regional nitrogen oxide reductions of 50
10 percent in the Eastern United States, in addition to
11 the reductions required under the Clean Air Act,
12 may be necessary to protect sensitive watersheds
13 from the effects of nitrogen deposition;

14 (4) without reductions in nitrogen oxide and
15 sulfur dioxide, the number of acidic lakes in the Adi-
16 rondacks in the State of New York is expected to in-
17 crease by up to 40 percent by 2040; and

18 (5) nitrogen oxide is highly mobile and can lead
19 to ozone formation hundreds of miles from the emit-
20 ting source.

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

22 (1) to recognize the current scientific under-
23 standing that emissions of nitrogen oxide and sulfur
24 dioxide, and the acid deposition resulting from emis-

sions of nitrogen oxide and sulfur dioxide, present a substantial human health and environmental risk;

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

(3) to support the efforts of the Ozone Transport Assessment Group to reduce ozone pollution;

(4) to reduce utility emissions of nitrogen oxide by 70 percent from 1990 levels; and

(5) to reduce utility emissions of sulfur dioxide by 50 percent after the implementation of phase II sulfur dioxide requirements under section 405 of the Clean Air Act (42 U.S.C. 7651d).

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) AFFECTED FACILITY.—The term “affected facility” means a facility with 1 or more combustion units that serve at least 1 electricity generator with a capacity equal to or greater than 25 megawatts.

(3) NO_x ALLOWANCE.—The term “NO_x allowance” means a limited authorization under section 4(3) to emit, in accordance with this Act, quantities of nitrogen oxide.

1 (4) MMBTU.—The term “mmBtu” means
2 1,000,000 British thermal units.

3 (5) PROGRAM.—The term “Program” means
4 the Nitrogen Oxide Allowance Program established
5 under section 4.

6 (6) STATE.—The term “State” means the 48
7 contiguous States and the District of Columbia.

8 **SEC. 4. NITROGEN OXIDE ALLOWANCE PROGRAM.**

9 (a) IN GENERAL.—

10 (1) ESTABLISHMENT.—Not later than 18
11 months after the date of enactment of this Act, the
12 Administrator shall establish a program to be known
13 as the “Nitrogen Oxide Allowance Program”.

14 (2) SCOPE.—The Program shall be conducted
15 in the 48 contiguous States and the District of Co-
16 lumbia.

17 (3) NO_x ALLOWANCES.—

18 (A) ALLOCATION.—The Administrator
19 shall allocate under paragraph (4)—

20 (i) for each of calendar years 2002
21 through 2004, 5,400,000 NO_x allowances;
22 and

23 (ii) for calendar year 2005 and each
24 calendar year thereafter, 3,000,000 NO_x
25 allowances.

1 (B) USE.—Each NO_x allowance shall au-
2 thorize an affected facility to emit—

3 (i) 1 ton of nitrogen oxide during each
4 of the months of October, November, De-
5 cember, January, February, March, and
6 April of any year; or

7 (ii) ½ ton of nitrogen oxide during
8 each of the months of May, June, July,
9 August, and September of any year.

10 (4) ALLOCATION.—

11 (A) DEFINITION OF TOTAL ELECTRIC
12 POWER.—In this paragraph, the term “total
13 electric power” means all electric power gen-
14 erated by utility and nonutility generators for
15 distribution, including electricity generated
16 from solar, wind, hydro power, nuclear power,
17 cogeneration facilities, and the combustion of
18 fossil fuel.

19 (B) ALLOCATION OF ALLOWANCES.—The
20 Administrator shall allocate annual NO_x allow-
21 ances to each of the States in proportion to the
22 State’s share of the total electric power gen-
23 erated in all of the States.

1 (C) PUBLICATION.—The Administrator
2 shall publish in the Federal Register a list of
3 each State’s NO_x allowance allocation—

4 (i) by December 1, 2000, for calendar
5 years 2002 through 2004;

6 (ii) by December 1, 2002, for calendar
7 years 2005 through 2007; and

8 (iii) by December 1 of each calendar
9 year after 2002, for the calendar year that
10 begins 61 months thereafter.

11 (5) INTRASTATE DISTRIBUTION.—

12 (A) IN GENERAL.—A State may submit to
13 the Administrator a report detailing the dis-
14 tribution of NO_x allowances of the State to af-
15 fected facilities in the State—

16 (i) not later than September 30,
17 2001, for calendar years 2002 through
18 2004;

19 (ii) not later than September 30,
20 2003, for calendar years 2005 through
21 2012; and

22 (iii) not later than September 30 of
23 each calendar year after 2013, for the cal-
24 endar year that begins 61 months there-
25 after.

1 (B) ACTION BY THE ADMINISTRATOR.—If
 2 a State submits a report under subparagraph
 3 (A) not later than September 30 of the calendar
 4 year specified in subparagraph (A), the Admin-
 5 istrator shall distribute the NO_x allowances to
 6 affected facilities in the State as detailed in the
 7 report.

8 (C) LATE SUBMISSION OF REPORT.—A re-
 9 port submitted by a State after September 30
 10 of a specified year shall be of no effect.

11 (D) DISTRIBUTION IN ABSENCE OF A RE-
 12 PORT.—

13 (i) IN GENERAL.—Subject to sub-
 14 section (e), if a State does not submit a re-
 15 port under subparagraph (A) not later
 16 than September 30 of the calendar year
 17 specified in subparagraph (A), the Admin-
 18 istrator shall, not later than November 30
 19 of that calendar year, distribute the NO_x
 20 allowances for the calendar years specified
 21 in subparagraph (A) to each affected facil-
 22 ity in the State in proportion to the af-
 23 fected facility's share of the total electric
 24 power generated in the State.

1 (ii) DETERMINATION OF FACILITY'S
2 SHARE.—In determining an affected facili-
3 ty's share of total electric power generated
4 in a State, the Administrator shall con-
5 sider the net electric power generated by
6 the facility and the State to be—

7 (I) for calendar years 2002
8 through 2004, the average annual
9 amount of electric power generated,
10 by the facility and the State, respec-
11 tively, in calendar years 1997 through
12 1999;

13 (II) for calendar years 2005
14 through 2012, the average annual
15 amount of electric power generated,
16 by the facility and the State, respec-
17 tively, in calendar years 1999 through
18 2001; and

19 (III) for calendar year 2013 and
20 each calendar year thereafter, the
21 amount of electric power generated,
22 by the facility and the State, respec-
23 tively, in the calendar year 5 years
24 previous to the year for which the de-
25 termination is made.

1 (E) JUDICIAL REVIEW.—A distribution of
 2 NO_x allowances by the Administrator under
 3 subparagraph (D) shall not be subject to judi-
 4 cial review.

5 (b) NO_x ALLOWANCE TRANSFER SYSTEM.—

6 (1) IN GENERAL.—Not later than 18 months
 7 after the date of enactment of this Act, the Adminis-
 8 trator shall promulgate a NO_x allowance system reg-
 9 ulation under which a NO_x allowance allocated
 10 under this Act may be transferred among affected
 11 facilities and any other person.

12 (2) ESTABLISHMENT.—The regulation shall es-
 13 tablish the NO_x allowance system under this section,
 14 including requirements for the allocation, transfer,
 15 and use of NO_x allowances under this Act.

16 (3) USE OF NO_x ALLOWANCES.—The regulation
 17 shall—

18 (A) prohibit the use (but not the transfer
 19 in accordance with paragraph (5)) of any NO_x
 20 allowance before the calendar year for which
 21 the NO_x allowance is allocated; and

22 (B) provide that the unused NO_x allow-
 23 ances shall be carried forward and added to
 24 NO_x allowances allocated for subsequent years.

1 (4) CERTIFICATION OF TRANSFER.—A transfer
2 of a NO_x allowance shall not be effective until a
3 written certification of the transfer, signed by a re-
4 sponsible official of the person making the transfer,
5 is received and recorded by the Administrator.

6 (c) NO_x ALLOWANCE TRACKING SYSTEM.—Not later
7 than 18 months after the date of enactment of this Act,
8 the Administrator shall promulgate regulations for
9 issuing, recording, and tracking the use and transfer of
10 NO_x allowances that shall specify all necessary procedures
11 and requirements for an orderly and competitive function-
12 ing of the NO_x allowance system.

13 (d) PERMIT REQUIREMENTS.—A NO_x allowance allo-
14 cation or transfer shall, on recordation by the Adminis-
15 trator, be considered to be a part of each affected facility's
16 operating permit requirements, without a requirement for
17 any further permit review or revision.

18 (e) NEW SOURCE RESERVE.—

19 (1) IN GENERAL.—For a State for which the
20 Administrator distributes NO_x allowances under
21 subsection (a)(5)(D), the Administrator shall place
22 10 percent of the total annual NO_x allowances of the
23 State in a new source reserve to be distributed by
24 the Administrator—

1 (A) for calendar years 2002 through 2005,
2 to sources that commence operation after 1998;

3 (B) for calendar years 2006 through 2011,
4 to sources that commence operation after 2000;
5 and

6 (C) for calendar year 2012 and each cal-
7 endar year thereafter, to sources that com-
8 mence operation after the calendar year that is
9 5 years previous to the year for which the dis-
10 tribution is made.

11 (2) SHARE.—For a State for which the Admin-
12 istrator distributes NO_x allowances under subsection
13 (a)(5)(D), the Administrator shall distribute to each
14 new source a number of NO_x allowances sufficient to
15 allow emissions by the source at a rate equal to the
16 lesser of the new source performance standard or
17 the permitted level for the full nameplate capacity of
18 the source, adjusted pro rata for the number of
19 months of the year during which the source oper-
20 ates.

21 (3) UNUSED NO_x ALLOWANCES.—

22 (A) IN GENERAL.—During the period of
23 calendar years 2000 through 2005, the Admin-
24 istrator shall conduct auctions at which a NO_x
25 allowance remaining in the new source reserve

1 that has not been distributed under paragraph
2 (2) shall be offered for sale.

3 (B) OPEN AUCTIONS.—An auction under
4 subparagraph (A) shall be open to any person.

5 (C) CONDUCT OF AUCTION.—

6 (i) METHOD OF BIDDING.—A person
7 wishing to bid for a NO_x allowance at an
8 auction under subparagraph (A) shall sub-
9 mit (by a date set by the Administrator) to
10 the Administrator (on a sealed bid sched-
11 ule provided by the Administrator) an offer
12 to purchase a specified number of NO_x al-
13 lowances at a specified price.

14 (ii) SALE BASED ON BID PRICE.—A
15 NO_x allowance auctioned under subpara-
16 graph (A) shall be sold on the basis of bid
17 price, starting with the highest priced bid
18 and continuing until all NO_x allowances
19 for sale at the auction have been sold.

20 (iii) NO MINIMUM PRICE.—A mini-
21 mum price shall not be set for the pur-
22 chase of a NO_x allowance auctioned under
23 subparagraph (A).

24 (iv) REGULATIONS.—The Adminis-
25 trator, in consultation with the Secretary

1 of the Treasury, shall promulgate a regula-
 2 tion to carry out this paragraph.

3 (D) USE OF NO_x ALLOWANCES.—A NO_x
 4 allowance purchased at an auction under sub-
 5 paragraph (A) may be used for any purpose
 6 and at any time after the auction that is per-
 7 mitted for use of a NO_x allowance under this
 8 Act.

9 (E) PROCEEDS OF AUCTION.—The pro-
 10 ceeds from an auction under this paragraph
 11 shall be distributed to the owner of an affected
 12 source in proportion to the number of allow-
 13 ances that the owner would have received but
 14 for this subsection.

15 (f) NATURE OF NO_x ALLOWANCES.—

16 (1) NOT A PROPERTY RIGHT.—A NO_x allow-
 17 ance shall not be considered to be a property right.

18 (2) LIMITATION OF NO_x ALLOWANCES.—Not-
 19 withstanding any other provision of law, the Admin-
 20 istrator may terminate or limit a NO_x allowance.

21 (g) PROHIBITIONS.—

22 (1) IN GENERAL.—After January 1, 2000, it
 23 shall be unlawful—

24 (A) for the owner or operator of an af-
 25 fected facility to operate the affected facility in

1 such a manner that the affected facility emits
2 nitrogen oxides in excess of the amount per-
3 mitted by the quantity of NO_x allowances held
4 by the designated representative of the affected
5 facility; or

6 (B) for any person to hold, use, or transfer
7 a NO_x allowance allocated under this Act, ex-
8 cept as provided under this Act.

9 (2) OTHER EMISSION LIMITATIONS.—Section
10 407 of the Clean Air Act (42 U.S.C. 7651f) is re-
11 pealed.

12 (3) TIME OF USE.—A NO_x allowance may not
13 be used before the calendar year for which the NO_x
14 allowance is allocated.

15 (4) PERMITTING, MONITORING, AND ENFORCE-
16 MENT.—Nothing in this section affects—

17 (A) the permitting, monitoring, and en-
18 forcement obligations of the Administrator
19 under the Clean Air Act (42 U.S.C. 7401 et
20 seq.); or

21 (B) the requirements and liabilities of an
22 affected facility under that Act.

23 (h) SAVINGS PROVISIONS.—Nothing in this section—

24 (1) affects the application of, or compliance
25 with, the Clean Air Act (42 U.S.C. 7401 et seq.) for

1 an affected facility, including the provisions related
2 to applicable national ambient air quality standards
3 and State implementation plans;

4 (2) requires a change in, affects, or limits any
5 State law regulating electric utility rates or charges,
6 including prudency review under State law;

7 (3) affects the application of the Federal Power
8 Act (16 U.S.C. 791a et seq.) or the authority of the
9 Federal Energy Regulatory Commission under that
10 Act; or

11 (4) interferes with or impairs any program for
12 competitive bidding for power supply in a State in
13 which the Program is established.

14 **SEC. 5. INDUSTRIAL SOURCE MONITORING.**

15 Section 412(a) of the Clean Air Act (42 U.S.C.
16 7651k(a)) is amended in the first sentence by inserting
17 “, or of any industrial facility with a capacity of 100 or
18 more mmBtu’s per hour,” after “The owner and operator
19 of any source subject to this title”.

20 **SEC. 6. EXCESS EMISSIONS PENALTY.**

21 (a) IN GENERAL.—

22 (1) LIABILITY.—The owner or operator of an
23 affected facility that emits nitrogen oxides in any
24 calendar year in excess of the NO_x allowances the
25 owner or operator holds for use for the facility for

1 that year shall be liable for the payment of an excess
2 emissions penalty.

3 (2) CALCULATION.—The excess emissions pen-
4 alty shall be calculated by multiplying \$6,000 by the
5 quantity that is equal to—

6 (A) the quantity of NO_x allowances that
7 would authorize the nitrogen oxides emitted by
8 the facility for the calendar year; minus

9 (B) the quantity of NO_x allowances that
10 the owner or operator holds for use for the fa-
11 cility for that year.

12 (3) OVERLAPPING PENALTIES.—A penalty
13 under this section shall not diminish the liability of
14 the owner or operator of an affected facility for any
15 fine, penalty, or assessment against the owner or op-
16 erator for the same violation under any other provi-
17 sion of law.

18 (b) EXCESS EMISSIONS OFFSET.—

19 (1) IN GENERAL.—The owner or operator of an
20 affected facility that emits nitrogen oxide during a
21 calendar year in excess of the NO_x allowances held
22 for the facility for the calendar year shall offset in
23 the following calendar year a quantity of NO_x allow-
24 ances equal to the number of NO_x allowances that
25 would authorize the excess nitrogen oxides emitted.

1 (2) PROPOSED PLAN.—Not later than 60 days
 2 after the end of the year in which excess emissions
 3 occur, the owner or operator of an affected facility
 4 shall submit to the Administrator and the State in
 5 which the affected facility is located a proposed plan
 6 to achieve the offset required under paragraph (1).

7 (3) CONDITION OF PERMIT.—On approval of
 8 the proposed plan by the Administrator, as submit-
 9 ted, or as modified or conditioned by the Adminis-
 10 trator, the plan shall be considered a condition of
 11 the operating permit for the affected facility without
 12 further review or revision of the permit.

13 (c) PENALTY ADJUSTMENT.—The Administrator
 14 shall annually adjust the amount of the penalty specified
 15 in subsection (a) to reflect changes in the Consumer Price
 16 Index for all urban consumers published by the Bureau
 17 of Labor Statistics.

18 **SEC. 7. SULFUR DIOXIDE ALLOWANCE PROGRAM REVI-**
 19 **SIONS.**

20 Section 402 of the Clean Air Act (42 U.S.C. 7651a)
 21 is amended by striking paragraph (3) and inserting the
 22 following:

23 “(3) ALLOWANCE.—The term ‘allowance’
 24 means an authorization, allocated to an affected unit

1 by the Administrator under this title, to emit, during
 2 or after a specified calendar year—

3 “(A) in the case of allowances allocated for
 4 calendar years 1997 through 2004, 1 ton of
 5 sulfur dioxide; and

6 “(B) in the case of allowances allocated for
 7 calendar year 2005 and each calendar year
 8 thereafter, ½ ton of sulfur dioxide.”.

9 **SEC. 8. REGIONAL ECOSYSTEMS.**

10 (a) REPORT.—

11 (1) IN GENERAL.—Not later than December 31,
 12 2002, the Administrator shall submit to Congress a
 13 report identifying objectives for scientifically credible
 14 environmental indicators, as determined by the Ad-
 15 ministrator, that are sufficient to protect sensitive
 16 ecosystems of the Adirondack Mountains, mid-Appa-
 17 lachian Mountains, Rocky Mountains, and Southern
 18 Blue Ridge Mountains and water bodies of the Great
 19 Lakes, Lake Champlain, Long Island Sound, and
 20 the Chesapeake Bay.

21 (2) ACID NEUTRALIZING CAPACITY.—The re-
 22 port under paragraph (1) shall—

23 (A) include acid neutralizing capacity as
 24 an indicator; and

1 (B) identify as an objective under para-
2 graph (1) the objective of increasing the propor-
3 tion of water bodies in sensitive receptor areas
4 with an acid neutralizing capacity greater than
5 zero from the proportion identified in surveys
6 begun in 1984.

7 (3) UPDATED REPORT.—Not later than Decem-
8 ber 31, 2008, the Administrator shall submit to
9 Congress a report updating the report under para-
10 graph (1) and assessing the status and trends of
11 various environmental indicators for the regional
12 ecosystems referred to in paragraph (1).

13 (4) REPORTS UNDER THE NATIONAL ACID PRE-
14 CIPITATION ASSESSMENT PROGRAM.—The reports
15 under this subsection shall be subject to the require-
16 ments applicable to a report under section
17 103(j)(3)(E) of the Clean Air Act (42 U.S.C.
18 7403(j)(3)(E)).

19 (b) REGULATIONS.—

20 (1) DETERMINATION.—Not later than Decem-
21 ber 31, 2008, the Administrator shall determine
22 whether emissions reductions under section 4 are
23 sufficient to ensure achievement of the objectives
24 stated in subsection (a)(1).

1 (2) PROMULGATION.—If the Administrator de-
 2 termines under paragraph (1) that emissions reduc-
 3 tions under section 4 are not sufficient to ensure
 4 achievement of the objectives identified in subsection
 5 (a)(1), the Administrator shall promulgate, not later
 6 than 2 years after making the finding, such regula-
 7 tions, including modification of nitrogen oxide and
 8 sulfur dioxide allowance allocations or any such
 9 measure, as the Administrator determines are nec-
 10 essary to protect the sensitive ecosystems described
 11 in subsection (a)(1).

12 **SEC. 9. GENERAL COMPLIANCE WITH OTHER PROVISIONS.**

13 Except as expressly provided in this Act, compliance
 14 with this Act shall not exempt or exclude the owner or
 15 operator of an affected facility from compliance with any
 16 other law.

17 **SEC. 10. MERCURY EMISSION STUDY AND CONTROL.**

18 (a) STUDY AND REPORT.—The Administrator
 19 shall—

20 (1) study the practicality of monitoring mercury
 21 emissions from all combustion units that have a ca-
 22 pacity equal to or greater than 250 mmBtu's per
 23 hour; and

1 (2) not later than 2 years after the date of en-
2 actment of this Act, submit to Congress a report on
3 the results of the study.

4 (b) REGULATIONS CONCERNING MONITORING.—Not
5 later than 1 year after the date of submission of the report
6 under subsection (a), the Administrator shall promulgate
7 a regulation requiring the reporting of mercury emissions
8 from units that have a capacity equal to or greater than
9 250 mmBtu's per hour.

10 (c) EMISSION CONTROLS.—

11 (1) IN GENERAL.—Not later than 1 year after
12 the commencement of monitoring activities under
13 subsection (b), the Administrator shall promulgate a
14 regulation controlling electric utility and industrial
15 source emissions of mercury.

16 (2) FACTORS.—The regulation shall take into
17 account technological feasibility, cost, and the pro-
18 jected reduction in levels of mercury emissions that
19 will result from implementation of this Act.

20 **SEC. 11. DEPOSITION RESEARCH BY THE ENVIRONMENTAL**
21 **PROTECTION AGENCY.**

22 (a) IN GENERAL.—The Administrator shall establish
23 a competitive grant program to fund research related to
24 the effects of nitrogen deposition on sensitive watersheds
25 and coastal estuaries in the Eastern United States.

1 (b) CHEMISTRY OF LAKES AND STREAMS.—

2 (1) INITIAL REPORT.—Not later than Septem-
3 ber 30, 2001, the Administrator shall submit to the
4 Committee on Environment and Public Works of the
5 Senate and the Committee on Resources of the
6 House of Representatives a report on the health and
7 chemistry of lakes and streams of the Adirondacks
8 that were subjects of the report transmitted under
9 section 404 of Public Law 101–549 (commonly
10 known as the “Clean Air Act Amendments of
11 1990”) (104 Stat. 2632).

12 (2) FOLLOWING REPORT.—Not later than 2
13 years after the date of the report under paragraph
14 (1), the Administrator shall submit a report updat-
15 ing the information contained in the initial report.

16 (c) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated—

18 (1) to carry out subsection (a), \$1,000,000 for
19 each of fiscal years 2000 through 2005; and

20 (2) to carry out subsection (b), \$1,000,000 for
21 each of fiscal years 2000, 2001, 2007, and 2008.

○