

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

A BILL

To amend the Clean Air Act to reduce sulfur dioxide, nitrogen oxide, and mercury emissions, 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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Acid Rain and Mercury Control Act”.

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

Sec. 1. Short title and table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Reduction of sulfur dioxide and nitrogen oxide emissions from power-plants.

Sec. 4. Mercury emission reductions.

Sec. 5. Effect on other law.

Sec. 6. Protecting sensitive regional ecosystems.

Sec. 7. Authorization of appropriations.

Sec. 8. Modernization.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

3 (1) reductions of atmospheric sulfur dioxide and
4 nitrogen oxide from utility plants, in addition to the
5 reductions required under the Clean Air Act (42
6 U.S.C. 7401 et seq.), are needed to reduce acid dep-
7 osition and its serious adverse effects on public
8 health, natural resources, building structures, sen-
9 sitive ecosystems, and visibility;

10 (2) sulfur dioxide and nitrogen oxide contribute
11 to the development of fine particulates, suspected of
12 causing human mortality and morbidity to a signifi-
13 cant extent;

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

19 (4) since the Clean Air Act Amendments of
20 1990 were enacted, some acidic lakes in the Adiron-
21 dacks in the State of New York have started to

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

6 (5) nitrogen oxide is highly mobile and can lead
7 to ozone formation hundreds of miles from the emit-
8 ting source;

9 (6) on March 10, 2005, the Environmental Pro-
10 tection Agency (EPA) issued the Clean Air Inter-
11 state Rule (CAIR) to require additional reductions
12 in sulfur dioxide and nitrogen oxide in 28 Eastern
13 States and the District of Columbia;

14 (7) these reductions represent approximately a
15 70 percent reduction in sulfur dioxide and a 60 per-
16 cent reduction in nitrogen oxide in the affected
17 States;

18 (8) on July 11, 2008, the United States Court
19 of Appeals for the District of Columbia Circuit va-
20 cated CAIR and on December 23, 2008, the same
21 court remanded the rule back to the EPA without
22 vacature;

23 (9) fossil fuel-fired electric generating units
24 emit approximately $\frac{1}{3}$ of the total mercury emis-
25 sions in the United States;

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

5 (11) according to the EPA, there were 3,080
6 fish advisories for mercury in 2006; there are over
7 90 fish advisories for mercury in New York alone,
8 with blanket warning for the Adirondack and Cats-
9 kill Mountains;

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

16 (13) on February 8, 2008, the United States
17 Court of Appeals for the District of Columbia Cir-
18 cuit vacated CAMR; and

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

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

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

1 present a substantial human health and environ-
2 mental risk;

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

5 (3) to support the efforts of existing acid rain
6 and mercury monitoring programs located through-
7 out the country;

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

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

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

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

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

21 **“SEC. 132. REDUCTION OF SULFUR DIOXIDE AND NITRO-**
22 **GEN OXIDE EMISSIONS FROM POWERPLANTS.**

23 “(a) EMISSION REDUCTION OBJECTIVES.—The emis-
24 sion reduction objectives of this section are to reduce, not
25 later than January 1, 2012—

1 “(1) aggregate sulfur dioxide emissions from
2 powerplants by 75 percent from the levels allowed
3 under full implementation of the Phase II sulfur di-
4 oxide requirements under title IV (relating to acid
5 deposition control); and

6 “(2) aggregate nitrogen oxide emissions from
7 powerplants by 75 percent from 1997 levels.

8 “(b) AGENCY ACTION.—

9 “(1) REGULATIONS.—

10 “(A) IN GENERAL.—Not later than 2 years
11 after the date of enactment of this section, the
12 Administrator shall promulgate regulations to
13 achieve the emission reduction objectives speci-
14 fied in subsection (a).

15 “(B) ELEMENTS.—The regulations pro-
16 mulgated under subparagraph (A)—

17 “(i) shall achieve the objectives in a
18 manner that the Administrator determines
19 will allocate required emission reductions
20 equitably, taking into account emission re-
21 ductions achieved before the date of enact-
22 ment of this section and other relevant fac-
23 tors;

24 “(ii) may include market-oriented
25 mechanisms (such as emissions trading

1 based on generation performance stand-
2 ards, auctions, or other allocation meth-
3 ods);

4 “(iii) shall prevent localized adverse
5 effects on public health and the environ-
6 ment and ensure that significant emission
7 reductions are achieved in both the East-
8 ern and Western regions of the United
9 States; and

10 “(iv) shall include, consistent with
11 achieving the objectives set forth in sub-
12 section (a), incentives for renewable en-
13 ergy.

14 “(2) INTERAGENCY COORDINATION TO MINI-
15 MIZE COSTS AND MAXIMIZE GAINS.—To minimize
16 the economic costs and maximize the economic gains
17 of achieving the emission reduction objectives speci-
18 fied in subsection (a), the Administrator shall co-
19 ordinate with other departments and agencies of
20 Federal and State government to increase energy ef-
21 ficiency, to increase the use of renewable energy, and
22 to implement cost saving advanced demand and sup-
23 ply side policies, such as those described in the re-
24 port prepared by the Interlaboratory Working Group

1 of the Department of Energy entitled ‘Scenarios for
2 a Clean Energy Future’, dated November 2000.

3 “(c) ADDITIONAL REDUCTIONS.—The regulations
4 promulgated under subsection (b) may require additional
5 reductions in emissions from powerplants if the Adminis-
6 trator determines that the emission levels necessary to
7 achieve the emission reduction objectives specified in sub-
8 section (a) are not reasonably anticipated to protect public
9 health or welfare.

10 “(d) MODERNIZATION OF OUTDATED POWER-
11 PLANTS.—

12 “(1) IN GENERAL.—On the later of the date
13 that is 30 years after a powerplant commenced oper-
14 ation or the date that is 5 years after the date of
15 enactment of this section, it shall comply with—

16 “(A) the most recent new source perform-
17 ance standards promulgated under section 111;
18 and

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

21 “(2) ADDITIONAL REQUIREMENTS.—The re-
22 quirements of this subsection shall be in addition to
23 the requirements of the regulations promulgated
24 under subsection (b).

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

4 “(f) DEFINITION.—In this section, the term ‘power-
 5 plant’ means an electric generation facility with a name-
 6 plate capacity of 25 megawatts or more that uses a com-
 7 bustion device to generate electricity for sale.”.

8 **SEC. 4. MERCURY EMISSION REDUCTIONS.**

9 The Clean Air Act (42 U.S.C. 7401 et seq.) is amend-
 10 ed by adding at the end the following:

11 **“TITLE VII—MERCURY**
 12 **REDUCTIONS**

“Sec. 701. Definitions.

“Sec. 702. Mercury reduction program.

“Sec. 703. Prohibitions.

13 **“SEC. 701. DEFINITIONS.**

14 “‘In this title:

15 “(1) AFFECTED UNIT.—The term ‘affected
 16 unit’ means a coal-fired electric generating facility
 17 (including a cogeneration facility) that—

18 “(A) has a nameplate capacity greater
 19 than 25 megawatts; and

20 “(B) generates electricity for sale.

21 “(2) COGENERATION FACILITY.—The term ‘co-
 22 generation facility’ means a facility that—

23 “(A) cogenerates—

24 “(i) steam; and

1 “(ii) electricity; and

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

4 “(i) more than $\frac{1}{3}$ of the potential
5 electric output capacity of the facility; and

6 “(ii) more than 25 megawatts of elec-
7 trical output of the facility.

8 **“SEC. 702. MERCURY REDUCTION PROGRAM.**

9 “(a) NEW UNIT REQUIREMENT.—Any affected unit
10 that commences operation after December 31, 2010, shall
11 be considered a new unit for the purposes of this section
12 and shall not exceed the emission limit of 0.6 pounds mer-
13 cury per trillion Btu (0.6 lb Hg/TBtu) upon commence-
14 ment of operation.

15 “(b) EXISTING UNIT REQUIREMENT.—Any affected
16 unit that commences operation on or before December 31,
17 2010, shall not exceed the emission limit of 0.6 pounds
18 mercury per trillion Btu by January 1, 2013.

19 “(c) MONITORING SYSTEM.—Not later than January
20 1, 2011, the Administrator shall promulgate regulations
21 requiring operation, reporting and certification of contin-
22 uous emissions monitoring systems (CEMS) to accurately
23 measure the quantity of mercury that is emitted from each
24 affected unit.

25 “(d) EXCESS EMISSIONS.—

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

6 “(2) DETERMINATION OF EXCESS EMISSIONS
7 PENALTY.—The excess emissions penalty shall be an
8 amount equal to \$10,000 for each ounce of mercury
9 emitted in excess of the emission limitations for mer-
10 cury described in subsections (b) and (c).

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

16 **“SEC. 703. PROHIBITIONS.**

17 “‘It shall be unlawful—

18 “(1) for the owner or operator of any electricity
19 generating facility—

20 “(A) to operate the electricity generating
21 facility in noncompliance with the requirements
22 of this title (including any regulations imple-
23 menting this title);

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

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

6 “(D) to emit mercury in excess of the
7 emission limitations established under section
8 702; or

9 “(2) for any person to hold, use, or transfer
10 any emission allowance allocated under this title ex-
11 cept in accordance with regulations promulgated by
12 the Administrator.”.

13 **SEC. 5. EFFECT ON OTHER LAW.**

14 Nothing in this Act—

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

18 (2) except as expressly provided in this Act—

19 (A) modifies or otherwise affects any re-
20 quirement of this Act in effect on the day be-
21 fore the date of enactment of this Act; or

22 (B) relieves any person of the responsi-
23 bility to comply with this Act.

24 **SEC. 6. PROTECTING SENSITIVE REGIONAL ECOSYSTEMS.**

25 (a) REPORT.—

1 (1) IN GENERAL.—Not later than December 31,
2 2012, the Administrator shall submit to Congress a
3 report identifying objectives for scientifically credible
4 environmental indicators, as determined by the Ad-
5 ministrator of the Environmental Protection Agency,
6 that are sufficient to protect and restore sensitive
7 ecosystems of the Adirondack Mountains, mid-Appa-
8 lachian Mountains, Catskill Mountains, Rocky
9 Mountains, and Southern Blue Ridge Mountains and
10 water bodies of the Great Lakes, Lake Champlain,
11 Long Island Sound, the Chesapeake Bay and other
12 sensitive ecosystems, as determined by the Adminis-
13 trator.

14 (2) UPDATED REPORT.—Not later than Decem-
15 ber 31, 2021, the Administrator shall submit to
16 Congress a report updating the report under para-
17 graph (1) and assessing the status and trends of
18 various environmental objectives and indicators for
19 the sensitive regional ecosystems referred to in para-
20 graph (1).

21 (3) REPORTS UNDER THE NATIONAL ACID PRE-
22 CIPITATION ASSESSMENT PROGRAM.—The reports
23 under this subsection shall be subject to the require-
24 ments applicable to a report under section

1 103(j)(3)(E) of the Clean Air Act (42 U.S.C.
2 7403(j)(3)(E)).

3 (b) REGULATIONS.—

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

9 (2) PROMULGATION.—If the Administrator de-
10 termines under paragraph (1) that emission reduc-
11 tions under title VII of the Clean Air Act are not
12 sufficient to ensure achievement of the objectives
13 identified in subsection (a)(1), the Administrator
14 shall promulgate, not later than 2 years after mak-
15 ing the finding, such regulations, including modifica-
16 tion of sulfur dioxide and nitrogen oxide allowance
17 allocations or any such measure, as the Adminis-
18 trator determines are necessary to protect the sen-
19 sitive ecosystems described in subsection (a)(1).

20 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

21 In addition to amounts made available under any
22 other law, there are authorized to be appropriated for each
23 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;

1 (4) for the Clean Air Status and Trends Net-
2 work \$5,000,000 to the Environmental Protection
3 Agency; and

4 (5) for the Temporally Integrated Monitoring of
5 Ecosystems and Long-Term Monitoring Program
6 \$2,500,000 to the Environmental Protection Agency.

7 **SEC. 8. MODERNIZATION.**

8 (a) AUTHORIZATION OF APPROPRIATIONS.—In addi-
9 tion to amounts made available under any other law, there
10 are authorized to be appropriated—

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

15 (2) for equipment and site modernization and
16 network expansion of the National Atmospheric
17 Deposition Program Mercury Deposition Network
18 \$2,000,000 to the Environmental Protection Agency;

19 (3) for equipment and site modernization and
20 network expansion of the National Atmospheric
21 Deposition Program Atmospheric Integrated Re-
22 search Monitoring Network \$1,000,000 to the Na-
23 tional Oceanic and Atmospheric Administration; and

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

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

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

○