

104TH CONGRESS
2D SESSION

H. R. 3906

To encourage the development and use of new and innovative environmental monitoring technology by accelerating the move toward performance-based monitoring methods, establishing target dates for implementing a new regulatory approach across all environmental programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 1996

Mr. BAKER of California (for himself and Mr. LOFGREN) introduced the following bill; which was referred to the Committee on Science, and in addition to the Committees on Commerce, and Transportation and Infrastructure, 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 encourage the development and use of new and innovative environmental monitoring technology by accelerating the move toward performance-based monitoring methods, establishing target dates for implementing a new regulatory approach across all environmental programs, 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. FINDINGS AND PURPOSES.**

4 (a) FINDINGS.—Congress finds the following:

1 (1) The development of new and innovative en-
2 vironmental technologies, including technologies for
3 monitoring environmental compliance, has been iden-
4 tified as a priority by the United States Environ-
5 mental Protection Agency.

6 (2) Current Agency environmental monitoring
7 requirements typically specify the use of a particular
8 prescriptive analytical method that must be precisely
9 followed, including the use of specific procedures and
10 instrumentation. The codification of environmental
11 monitoring methods in this manner hampers innova-
12 tion because of the time-consuming and labor-inten-
13 sive requirements for revising regulations and writ-
14 ten methods.

15 (3) Regulations can encourage the diffusion of
16 innovative and pollution preventing technologies if
17 they are cast in terms that specify performance in
18 terms of data quality objectives, rather than tech-
19 nology or method.

20 (4) The Agency is evaluating the barriers to the
21 introduction of new and innovative environmental
22 monitoring technologies and the option of converting
23 from the current prescriptive analytical methods ap-
24 proach to performance-based monitoring methods.

1 (5) The Agency has established no internal
2 deadline for completing its review of the possibility
3 of converting to performance-based monitoring
4 methods.

5 (6) The Agency lacks a mechanism for facilitat-
6 ing effective communication with Industry on the di-
7 rection of environmental monitoring methods, tech-
8 nologies, and markets, and Agency regulations af-
9 fecting them.

10 (7) The market for environmental monitoring
11 products and services is one of the most attractive
12 arenas of the United States Government to enhance
13 our international competitiveness and export per-
14 formance, and the analytical method used in envi-
15 ronmental monitoring are critical to this effort.

16 (8) The Agency should foster efforts by the sci-
17 entific community to develop environmental monitor-
18 ing methods which improve environmental quality
19 and which also improve the competitiveness of Unit-
20 ed States firms in the domestic and international
21 marketplace.

22 (9) The current Agency requirement that pre-
23 scriptive analytical methods be used hinders the in-
24 troduction of environmental monitoring methods and

1 technologies with comparable or improved capabili-
2 ties, and which may also be more cost effective.

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

4 (1) spur the development, introduction, and use
5 of new and innovative environmental monitoring
6 technologies,

7 (2) encourage the development and use of new
8 environmental monitoring technologies through the
9 conversion of the Agency’s prescriptive analytical
10 methods to performance-based monitoring methods,

11 (3) establish a date certain by which the Envi-
12 ronmental Protection Agency must complete the de-
13 velopment of performance-based monitoring methods
14 and a process for implementation within all Agency
15 program and administrative offices to cover all
16 media and multimedia methods,

17 (4) promote and encourage participation and
18 representation among all interested parties during
19 this process, and

20 (5) establish a date certain by which the Agen-
21 cy will develop a plan for guidance, implementation,
22 and acceptance of performance-based monitoring
23 methods by all Environmental Protection Agency re-
24 gions, program offices, and States.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act:

3 (1) The term “Agency” means the United
4 States Environmental Protection Agency.

5 (2) The term “Administrator” means the Ad-
6 ministrator of the United States Environmental Pro-
7 tection Agency.

8 (3) The term “environmental monitoring meth-
9 ods” means procedures or techniques associated with
10 the performance, technical capability, or environ-
11 mental impact of an analytical method.

12 (4) The term “Industry” means members of the
13 United States environmental monitoring technology
14 industry and laboratories performing environmental
15 testing.

16 (5) The term “performance-based monitoring
17 method” means a requirement that imposes legal ac-
18 countability for the achievement of specific data
19 quality assurance objectives, without prescribing the
20 particular procedures, techniques, or instrumenta-
21 tion for achieving such objectives.

22 **SEC. 3. THE PERFORMANCE-BASED MONITORING METHODS**
23 **ADVISORY COMMITTEE.**

24 (a) ESTABLISHMENT.—The Administrator shall es-
25 tablish the Performance-Based Monitoring Methods Advi-

1 sory Committee no less than 90 days after the effective
2 date of this Act.

3 (b) PURPOSE.—The Performance-Based Monitoring
4 Methods Advisory Committee shall—

5 (1) advise the Administrator on Agency policies,
6 regulations, standards, and procedures that are bar-
7 riers to the development and acceptance of perform-
8 ance-based monitoring technologies,

9 (2) assist the Administrator to develop and sub-
10 mit to Congress the report required by section 4 of
11 this Act,

12 (3) assist the Administrator to ensure that data
13 quality objectives are uniform to facilitate the devel-
14 opment and acceptance of performance-based mon-
15 itoring methods under section 5 of this Act,

16 (4) assist the Administrator to develop a proc-
17 ess for the acceptance of performance-based mon-
18 itoring methods, including the exploration of the use
19 of self-certification, third-party certification, or lab
20 accreditation. Nothing in this Act shall be construed
21 as authorizing the Agency to approve individual per-
22 formance-based monitoring methods,

23 (5) assist the Administrator to develop a plan
24 for guidance, implementation, and acceptance of per-

1 performance-based monitoring methods by all Agency
2 regions, program offices, and States, and

3 (6) recommend to the Administrator such
4 changes to Agency policies, regulations, standards,
5 and procedures that could stimulate the development
6 and use of new or innovative environmental monitor-
7 ing technologies.

8 (c) MEMBERSHIP.—The Performance-Based Mon-
9 itoring Methods Advisory Committee shall be comprised
10 of 12 members selected for appointment so as to provide
11 as nearly as practicable a broad and balanced representa-
12 tion of interested parties, including United States Envi-
13 ronmental Protection Agency program and regional of-
14 fices, the analytical instruments industry, environmental
15 testing laboratories, representatives from State regulatory
16 agencies, public interest groups, and professional or tech-
17 nical societies.

18 (d) COMMITTEE INPUT.—Prior to initiating each of
19 the activities described in sections 4 through 6 of this Act,
20 the Administrator shall convene a meeting of the Perform-
21 ance-Based Monitoring Methods Advisory Committee for
22 the purpose of seeking advice and recommendations.

23 (e) DURATION.—Section 14 of the Federal Advisory
24 Committee Act shall not apply with respect to the duration
25 of the advisory committee established under this section.

1 (f) DUTIES.—The Performance-Based Monitoring
2 Methods Advisory Committee shall convene at least twice
3 a year, and may meet at additional times as required by
4 the Administrator. The Performance-Based Monitoring
5 Methods Advisory Committee shall submit to the Adminis-
6 trator such recommendations as it believes are consistent
7 with its purposes. The Administrator shall make available
8 to the Performance-Based Monitoring Methods Advisory
9 Committee such staff as are necessary to carry out the
10 purposes of this Act.

11 **SEC. 4. REPORT TO CONGRESS.**

12 (a) GOAL.—No later than 1 year after the date of
13 enactment of this Act, the Administrator shall submit to
14 Congress a report which shall include a plan to establish
15 a performance-based monitoring methods approval proc-
16 ess.

17 (b) SYSTEM.—The report submitted under this sec-
18 tion shall be consistent with the provisions of section 5
19 of this Act.

20 (c) DELIVERY.—The report shall be transmitted to
21 the appropriate House and Senate committees.

22 **SEC. 5. PERFORMANCE-BASED MONITORING METHODS.**

23 (a) ESTABLISHMENT.—(1) No later than 2 years
24 after the date of enactment of this Act, the Administrator
25 shall establish a performance-based monitoring methods

1 approval process to be used uniformly in all environmental
2 programs for purposes of monitoring compliance with en-
3 vironmental laws and permits.

4 (2) Notwithstanding the adoption of a performance-
5 based monitoring methods approval process, approved an-
6 alytical methods existing at the time of enactment of this
7 Act shall be deemed acceptable to the Environmental Pro-
8 tection Agency, until such time the Administrator deter-
9 mines that such existing methods are no longer acceptable.

10 (b) AUTHORITY.—Nothing in this Act shall be con-
11 strued to permit the Agency to devise or endorse a process
12 that permits or requires the rating or evaluation of one
13 technology or instrument over another. Nothing in this
14 Act shall be construed as requiring the approval of an en-
15 vironmental technology or instrument.

16 (c) USE.—The Administrator shall require that ei-
17 ther the performance-based methods that are approved
18 pursuant to this section or existing analytical methods be
19 used in monitoring environmental compliance and for
20 other purposes, as appropriate. Regulatory acceptance of
21 a performance-based method shall be determined by com-
22 pliance with the data quality objectives established by the
23 Environmental Protection Agency.

24 (d) STATUS.—Performance-based monitoring meth-
25 ods approved pursuant to this section shall be deemed to

1 be equivalent to existing Environmental Protection Agency
2 methods for purposes of compliance with all applicable en-
3 vironmental statutes and regulations.

4 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

5 (a) LIMITATION ON APPROPRIATIONS.—No more
6 funds may be appropriated to carry out the purposes of
7 this Act than the amounts set forth in subsection (b). This
8 Act shall be the exclusive source of authorization of appro-
9 priations to support any activities under this Act.

10 (b) APPROPRIATIONS.—There are authorized to be
11 appropriated to the Administrator for carrying out the
12 purposes of this Act such sums as shall be necessary.

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