

107TH CONGRESS
1ST SESSION

H. R. 25

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2001

Mr. SWEENEY (for himself, Mr. BOEHLERT, and Mr. MCHUGH) introduced the following bill; which was referred to the Committee on Energy and Commerce

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 Rain Control
5 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-

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

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

5 (3) to support the efforts of the Ozone Trans-
6 port Assessment Group to reduce ozone pollution;

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

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

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) ADMINISTRATOR.—The term “Adminis-
16 trator” means the Administrator of the Environ-
17 mental Protection Agency.

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

22 (3) NO_x ALLOWANCE.—The term “NO_x allow-
23 ance” means a limited authorization under section
24 4(3) to emit, in accordance with this Act, quantities
25 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 2004
21 through 2006, a sufficient number of NO_x
22 allowances to reduce utility emission of
23 NO_x by 56 percent from 1990 levels; and

24 (ii) for calendar year 2007 and each
25 calendar year thereafter, a sufficient num-

1 ber of NO_x allowances to reduce utility
2 emissions of NO_x by 70 percent from 1990
3 levels.

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

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

10 (ii) ½ ton of nitrogen oxide during
11 each of the months of May, June, July,
12 August, and September of any year.

13 (4) ALLOCATION.—

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

22 (B) ALLOCATION OF ALLOWANCES.—The
23 Administrator shall allocate annual NO_x allow-
24 ances to each of the States in proportion to the

1 State's share of the total electric power gen-
2 erated in all of the States.

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

6 (i) by December 1, 2002, for calendar
7 years 2004 through 2006;

8 (ii) by December 1, 2004, for calendar
9 years 2007 through 2009; and

10 (iii) by December 1 of each calendar
11 year after 2004, for the calendar year that
12 begins 61 months thereafter.

13 (5) INTRASTATE DISTRIBUTION.—

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

18 (i) not later than September 30,
19 2003, for calendar years 2004 through
20 2006;

21 (ii) not later than September 30,
22 2005, for calendar years 2007 through
23 2014; and

24 (iii) not later than September 30 of
25 each calendar year after 2015, for the cal-

1 endar year that begins 61 months there-
2 after.

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

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

13 (D) DISTRIBUTION IN ABSENCE OF A RE-
14 PORT.—

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

1 affected facility's share of the total electric
2 power generated in the State.

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

9 (I) for calendar years 2004
10 through 2006, the average annual
11 amount of electric power generated,
12 by the facility and the State, respec-
13 tively, in calendar years 1999 through
14 2001;

15 (II) for calendar years 2007
16 through 2014, the average annual
17 amount of electric power generated,
18 by the facility and the State, respec-
19 tively, in calendar years 2001 through
20 2003; and

21 (III) for calendar year 2015 and
22 each calendar year thereafter, the
23 amount of electric power generated,
24 by the facility and the State, respec-
25 tively, in the calendar year 5 years

1 previous to the year for which the de-
2 termination is made.

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

7 (b) NO_x ALLOWANCE TRANSFER SYSTEM.—

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

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

18 (3) USE OF NO_x ALLOWANCES.—The regulation
19 shall—

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

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

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

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

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

21 (e) NEW SOURCE RESERVE.—

22 (1) IN GENERAL.—For a State for which the
23 Administrator distributes NO_x allowances under
24 subsection (a)(5)(D), the Administrator shall place
25 10 percent of the total annual NO_x allowances of the

1 State in a new source reserve to be distributed by
2 the Administrator—

3 (A) for calendar years 2004 through 2007,
4 to sources that commence operation after 2000;

5 (B) for calendar years 2008 through 2013,
6 to sources that commence operation after 2002;

7 and

8 (C) for calendar year 2014 and each cal-
9 endar year thereafter, to sources that com-
10 mence operation after the calendar year that is
11 5 years previous to the year for which the dis-
12 tribution is made.

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

23 (3) UNUSED NO_x ALLOWANCES.—

24 (A) IN GENERAL.—During the period of
25 calendar years 2002 through 2007, the Admin-

1 istrator shall conduct auctions at which a NO_x
2 allowance remaining in the new source reserve
3 that has not been distributed under paragraph
4 (2) shall be offered for sale.

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

7 (C) CONDUCT OF AUCTION.—

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

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

22 (iii) NO MINIMUM PRICE.—A min-
23 imum price shall not be set for the pur-
24 chase of a NO_x allowance auctioned under
25 subparagraph (A).

1 (iv) REGULATIONS.—The Adminis-
2 trator, in consultation with the Secretary
3 of the Treasury, shall promulgate a regula-
4 tion to carry out this paragraph.

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

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

17 (f) NATURE OF NO_x ALLOWANCES.—

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

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

23 (g) PROHIBITIONS.—

24 (1) IN GENERAL.—After January 1, 2002, it
25 shall be unlawful—

1 (A) for the owner or operator of an af-
2 fected facility to operate the affected facility in
3 such a manner that the affected facility emits
4 nitrogen oxides in excess of the amount per-
5 mitted by the quantity of NO_x allowances held
6 by the designated representative of the affected
7 facility; or

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

11 (2) OTHER EMISSION LIMITATIONS.—Section
12 407 of the Clean Air Act (42 U.S.C. 7651f) is re-
13 pealed.

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

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

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

23 (B) the requirements and liabilities of an
24 affected facility under that Act.

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

1 (1) affects the application of, or compliance
2 with, the Clean Air Act (42 U.S.C. 7401 et seq.) for
3 an affected facility, including the provisions related
4 to applicable national ambient air quality standards
5 and State implementation plans;

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

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

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

16 **SEC. 5. INDUSTRIAL SOURCE MONITORING.**

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

22 **SEC. 6. EXCESS EMISSIONS PENALTY.**

23 (a) IN GENERAL.—

24 (1) LIABILITY.—The owner or operator of an
25 affected facility that emits nitrogen oxides in any

1 calendar year in excess of the NO_x allowances the
2 owner or operator holds for use for the facility for
3 that year shall be liable for the payment of an excess
4 emissions penalty.

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

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

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

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

20 (b) EXCESS EMISSIONS OFFSET.—

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

1 “(3) ALLOWANCE.—The term ‘allowance’
2 means an authorization, allocated to an affected unit
3 by the Administrator under this title, to emit, during
4 or after a specified calendar year—

5 “(A) in the case of allowances allocated for
6 calendar years 1999 through 2006, 1 ton of
7 sulfur dioxide; and

8 “(B) in the case of allowances allocated for
9 calendar year 2007 and each calendar year
10 thereafter, ½ ton of sulfur dioxide.”.

11 **SEC. 8. REGIONAL ECOSYSTEMS.**

12 (a) REPORT.—

13 (1) IN GENERAL.—Not later than December 31,
14 2006, the Administrator shall submit to Congress a
15 report identifying objectives for scientifically credible
16 environmental indicators, as determined by the Ad-
17 ministrator, that are sufficient to protect sensitive
18 ecosystems of the Adirondack Mountains, mid-Appa-
19 lachian Mountains, Rocky Mountains, and Southern
20 Blue Ridge Mountains and water bodies of the Great
21 Lakes, Lake Champlain, Long Island Sound, and
22 the Chesapeake Bay.

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

1 (A) include acid neutralizing capacity as
2 an indicator; and

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

9 (3) UPDATED REPORT.—Not later than Decem-
10 ber 31, 2010, the Administrator shall submit to
11 Congress a report updating the report under para-
12 graph (1) and assessing the status and trends of
13 various environmental indicators for the regional
14 ecosystems referred to in paragraph (1).

15 (4) REPORTS UNDER THE NATIONAL ACID PRE-
16 CIPITATION ASSESSMENT PROGRAM.—The reports
17 under this subsection shall be subject to the require-
18 ments applicable to a report under section
19 103(j)(3)(E) of the Clean Air Act (42 U.S.C.
20 7403(j)(3)(E)).

21 (b) REGULATIONS.—

22 (1) DETERMINATION.—Not later than Decem-
23 ber 31, 2010, the Administrator shall determine
24 whether emissions reductions under section 4 are

1 sufficient to ensure achievement of the objectives
2 stated in subsection (a)(1).

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

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

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

19 **SEC. 10. MERCURY EMISSION CONTROL.**

20 Not later than December 15, 2004, the Administrator
21 shall promulgate a regulation controlling electric utility
22 and industrial source emissions of mercury.

1 **SEC. 11. DEPOSITION RESEARCH BY THE ENVIRONMENTAL**
2 **PROTECTION AGENCY.**

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

7 (b) CHEMISTRY OF LAKES AND STREAMS.—

8 (1) INITIAL REPORT.—Not later than Sep-
9 tember 30, 2001, the Administrator shall submit to
10 the Committee on Environment and Public Works of
11 the Senate and the Committee on Resources of the
12 House of Representatives a report on the health and
13 chemistry of lakes and streams of the Adirondacks
14 that were subjects of the report transmitted under
15 section 404 of Public Law 101–549 (commonly
16 known as the “Clean Air Act Amendments of
17 1990”) (104 Stat. 2632).

18 (2) FOLLOWING REPORT.—Not later than 2
19 years after the date of the report under paragraph
20 (1), the Administrator shall submit a report updat-
21 ing the information contained in the initial report.

22 (c) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated—

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

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

○