

109TH CONGRESS
2D SESSION

S. 3868

To amend the Clean Air Act to encourage the most polluted areas in the United States to attain clean air standards.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7 (legislative day, SEPTEMBER 6), 2006

Mr. INHOFE 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 encourage the most polluted areas in the United States to attain clean air standards.

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 “Clean Air Attainment
5 Enforcement Act”.

6 **SEC. 2. IMPOSITION OF SANCTIONS.**

7 Section 179 of the Clean Air Act (42 U.S.C. 7509)
8 is amended—

1 (1) in subsection (a), by striking “For any im-
2 plementation” and inserting “Except as provided in
3 subsection (e), for any implementation”; and

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

5 “(e) SANCTIONS FOR COVERED AREAS.—

6 “(1) DEFINITION OF COVERED AREA.—In this
7 subsection, the term ‘covered area’ means any area
8 that is classified as—

9 “(A) a PM_{2.5} nonattainment area under—

10 “(i) the final rule entitled ‘Air Quality
11 Designations and Classifications for the
12 Fine Particles (PM_{2.5}) National Ambient
13 Air Quality Standards’ (70 Fed. Reg. 944
14 (January 5, 2005)); or

15 “(ii) any final nonattainment designa-
16 tion promulgated pursuant to the final
17 version of the proposed rule entitled ‘Na-
18 tional Ambient Air Quality Standards for
19 Particulate Matter, Part II’ (71 Fed. Reg.
20 2620 (January 17, 2006)); and

21 “(B) a Serious, Severe, or Extreme Area
22 for ozone nonattainment under the final rule
23 entitled ‘Air Quality Designations and Classi-
24 fications for the 8-Hour Ozone National Ambi-
25 ent Air Quality Standards; Early Action Com-

1 pact Areas With Deferred Effective Dates’ (69
2 Fed. Reg. 23858 (April 30, 2004)).

3 “(2) SANCTIONS APPLICABLE TO COVERED
4 AREAS.—If a State in which a covered area is lo-
5 cated does not submit an implementation plan in ac-
6 cordance with, or otherwise fails to comply with,
7 subsection (a)—

8 “(A) the Administrator shall not have the
9 discretion to select whether sanctions under
10 paragraph (1) or (2) of subsection (b) will be
11 imposed on the covered area; and

12 “(B) the Administrator shall impose on the
13 covered area the highway and emission offset
14 sanctions described in paragraphs (1) and (2),
15 respectively, of subsection (b), except that, with
16 respect to the emission offset requirements de-
17 scribed in subsection (b)(2), the ratio of emis-
18 sion reductions to increased emissions applica-
19 ble to the covered area shall be 5 to 1.”.

20 **SEC. 3. ENFORCEMENT FOR SELECT AREAS FOR FAILURE**
21 **TO ATTAIN.**

22 (a) OZONE.—Section 185 of the Clean Air Act (42
23 U.S.C. 7511d) is amended—

24 (1) by striking the section designation and
25 heading and inserting the following:

1 **“SEC. 185. ENFORCEMENT FOR SELECT AREAS FOR FAIL-**
 2 **URE TO ATTAIN.”;**

3 (2) in the first sentence of subsection (a), by
 4 striking “Each implementation” and inserting “Ex-
 5 cept as provided in subsection (f), each implementa-
 6 tion”; and

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

8 “(f) OZONE ATTAINMENT IN COVERED AREAS.—

9 “(1) DEFINITIONS.—In this subsection:

10 “(A) ATTAINMENT YEAR.—The term ‘at-
 11 tainment year’, with respect to a covered area,
 12 means the calendar year during which the cov-
 13 ered area is required to attain the standard for
 14 ozone described in the final rule.

15 “(B) BASELINE QUANTITY.—The term
 16 ‘baseline quantity’ means, for any attainment
 17 year, the lesser of—

18 “(i) the quantity of actual VOC or
 19 NO_x emissions of a stationary source; or

20 “(ii)(I) the quantity of VOC or NO_x
 21 emissions allowed under a permit applica-
 22 ble to a stationary source; or

23 “(II) if no such permit has been
 24 issued for the attainment year, the quan-
 25 tity of those emissions allowed under the

1 applicable State implementation plan dur-
2 ing the attainment year.

3 “(C) COVERED AREA.—The term ‘covered
4 area’ has the meaning given the term in section
5 179(e).

6 “(D) FINAL RULE.—The term ‘final rule’
7 means the final rule entitled ‘Air Quality Des-
8 ignations and Classifications for the 8-Hour
9 Ozone National Ambient Air Quality Standards;
10 Early Action Compact Areas With Deferred Ef-
11 fective Dates’ (69 Fed. Reg. 23858 (April 30,
12 2004)).

13 “(2) IMPLEMENTATION PLAN REVISION.—

14 “(A) IN GENERAL.—Each implementation
15 plan revision required under subsection (c), (d),
16 or (e) of section 182 (relating to the attainment
17 plans for Serious, Severe, and Extreme Areas,
18 respectively) shall—

19 “(i) provide that, if the area to which
20 the plan revision applies is a covered area,
21 each major stationary source that emits
22 VOCs or NO_x and that is located in the
23 covered area shall pay to the Administrator
24 a fee in an amount calculated under sub-
25 paragraph (B) as a penalty for the failure

1 to attain the standard for ozone by the ap-
2 plicable attainment date specified in the
3 final rule; and

4 “(ii) include procedures for the assess-
5 ment and collection of those fees.

6 “(B) AMOUNT OF FEE.—The amount of a
7 fee paid under this subsection for each ton of
8 VOCs or NO_x emitted by a major stationary
9 source in a covered area in nonattainment dur-
10 ing a calendar year in excess of 70 percent of
11 the baseline quantity shall be (based on classi-
12 fications of Serious, Severe, and Extreme Areas
13 in effect as of December 31, 2006, and as ad-
14 justed annually in accordance with section
15 502(b)(3)(B)(v)) (relating to inflation adjust-
16 ment)—

17 “(i) with respect to a ton of VOCs—

18 “(I) in a Serious Area, \$10,000;

19 “(II) in a Severe Area, \$20,000;

20 and

21 “(III) in an Extreme Area,

22 \$30,000; and

23 “(ii) with respect to a ton of NO_x,
24 \$5,000, regardless of whether the NO_x is

1 emitted in a Serious, Severe, or Extreme
2 Area.

3 “(3) PENALTIES FOR FAILURE TO MAKE
4 PROGRESS TOWARD ATTAINMENT IN COVERED
5 AREAS.—

6 “(A) IN GENERAL.—Upon approval of a
7 State implementation plan that covers a covered
8 area, and annually thereafter until the applica-
9 ble deadline by which the covered area is re-
10 quired to achieve attainment, as specified in
11 section 181(a) and as updated by the final rule,
12 the Administrator shall determine, in accord-
13 ance with subparagraph (B), whether the cov-
14 ered area is making progress that is sufficient
15 to enable the covered area to achieve attain-
16 ment by that deadline.

17 “(B) DETERMINATION OF PROGRESS.—
18 The Administrator shall not determine under
19 subparagraph (A) that a covered area is making
20 sufficient progress toward achieving attainment
21 for any calendar year unless the Administrator
22 determines, at a minimum, that the covered
23 area has achieved a reduction in the aggregate
24 quantity of VOCs or NO_x emitted in the cov-
25 ered area for the calendar year that is equal to

1 or greater than the product obtained by multi-
2 plying—

3 “(i) the aggregate quantity, in tons, of
4 the VOC or NO_x emission reductions, re-
5 spectively, that are required, during the pe-
6 riod beginning on the date of the deter-
7 mination by the Administrator and ending
8 on the applicable date referred to in sub-
9 paragraph (A), to achieve attainment; by

10 “(ii) the quotient obtained by divid-
11 ing—

12 “(I) the number of months,
13 rounded to the nearest month, be-
14 tween the date of submission of the
15 State implementation plan applicable
16 to the covered area and the date of
17 the determination by the Adminis-
18 trator; by

19 “(II) the number of months,
20 rounded to the nearest month, be-
21 tween the date of submission of that
22 State implementation plan and the
23 applicable attainment date referred to
24 in subparagraph (A).

1 “(C) IMPOSITION OF PENALTIES.—If the
2 Administrator determines under this paragraph
3 that a covered area is not making sufficient
4 progress to enable the covered area to achieve
5 attainment by the applicable deadline referred
6 to in subparagraph (A), the Administrator
7 shall—

8 “(i) for the first calendar year for
9 which the determination is made, impose
10 on each major stationary source located in
11 the covered area a penalty in an amount
12 that is equal to 10 percent of the amount
13 of the fee that, based on whether the
14 major stationary source is located in a Se-
15 rious, Severe, or Extreme Area, would be
16 paid by the major stationary source under
17 paragraph (2)(B) for failure to meet a na-
18 tional primary ambient air quality stand-
19 ard for ozone by the deadline referred to in
20 subparagraph (A); and

21 “(ii) for each subsequent calendar
22 year until the deadline referred to in sub-
23 paragraph (A)—

24 “(I) reevaluate the progress
25 being made by the covered area to-

1 ward achieving attainment by the
2 deadline referred to in subparagraph
3 (A); and

4 “(II) if the Administrator deter-
5 mines that the covered area is not
6 making sufficient progress, impose on
7 each major stationary source located
8 in the covered area a penalty in an
9 amount that is equal to the sum of
10 the penalty imposed on the same class
11 (with respect to location in a Serious,
12 Severe, or Extreme Area) of major
13 stationary source under clause (i) and
14 the product obtained by multiplying—

15 “(aa) 5 percent of the fee
16 that, based on whether the major
17 stationary source is located in a
18 Serious, Severe, or Extreme
19 Area, would be paid by the major
20 stationary source under para-
21 graph (2)(B) for failure to meet
22 a national primary ambient air
23 quality standard for ozone by the
24 deadline referred to in subpara-
25 graph (A); and

1 “(bb) the number of cal-
2 endar years for which the covered
3 area has been previously deter-
4 mined not to have made suffi-
5 cient progress under this para-
6 graph as of the date of the deter-
7 mination by the Administrator
8 (excluding the determination for
9 the current calendar year).

10 “(D) SUSPENSION OF PENALTIES.—If the
11 Administrator determines under this paragraph
12 that a covered area that was determined not to
13 be making sufficient progress toward attain-
14 ment under this paragraph for a preceding cal-
15 endar year is making sufficient progress toward
16 attainment for the current calendar year, the
17 Administrator shall suspend the imposition of
18 penalties on major stationary sources located in
19 the covered area for the current calendar
20 year.”.

21 (b) PARTICULATE MATTER.—Section 188 of the
22 Clean Air Act (42 U.S.C. 7513) is amended by adding
23 at the end the following:

24 “(g) PARTICULATE MATTER ATTAINMENT IN COV-
25 ERED AREAS.—

1 “(1) DEFINITIONS.—In this subsection:

2 “(A) ATTAINMENT YEAR.—The term ‘at-
3 tainment year’, with respect to a covered area,
4 means the calendar year during which the cov-
5 ered area is required to attain the standard for
6 PM_{2.5} described in the final rules.

7 “(B) BASELINE QUANTITY.—The term
8 ‘baseline quantity’ means, for any attainment
9 year, the lesser of—

10 “(i) the quantity of actual PM_{2.5}
11 emissions of a stationary source; or

12 “(ii)(I) the quantity of PM_{2.5} emis-
13 sions allowed under a permit applicable to
14 a stationary source; or

15 “(II) if no such permit has been
16 issued for the attainment year, the quan-
17 tity of those emissions allowed under the
18 applicable State implementation plan dur-
19 ing the attainment year.

20 “(C) COVERED AREA.—The term ‘covered
21 area’ has the meaning given the term in section
22 179(e).

23 “(D) FINAL RULES.—The term ‘final
24 rules’ means—

1 “(i) the final rule entitled ‘Air Quality
2 Designations and Classifications for the
3 Fine Particles (PM_{2.5}) National Ambient
4 Air Quality Standards’ (70 Fed. Reg. 944
5 (January 5, 2005)); and

6 “(ii) the final version of the proposed
7 rule entitled ‘National Ambient Air Quality
8 Standards for Particulate Matter, Part II’
9 (71 Fed. Reg. 2620 (January 17, 2006)).

10 “(E) PM_{2.5}.—The term ‘PM_{2.5}’ means
11 particulate matter the aerodynamic diameter of
12 which is less than or equal to 2.5 micrometers.

13 “(2) IMPLEMENTATION PLAN REVISION.—

14 “(A) IN GENERAL.—Each implementation
15 plan revision required under section 110 shall—

16 “(i) provide that, if the area to which
17 the plan revision applies is a covered area,
18 each major stationary source that emits
19 PM_{2.5} and that is located in the covered
20 area shall pay to the Administrator a fee
21 in an amount calculated under subpara-
22 graph (B) as a penalty for the failure to
23 attain the standard for PM_{2.5} in the final
24 rules by the applicable attainment date
25 specified in the final rules; and

1 “(ii) include procedures for the assess-
2 ment and collection of those fees.

3 “(B) AMOUNT OF FEE.—The amount of a
4 fee paid under this subsection for each ton of
5 PM_{2.5} emitted by a major stationary source in
6 a covered area in nonattainment during a cal-
7 endar year in excess of 70 percent of the base-
8 line quantity shall be, as adjusted annually in
9 accordance with section 502(b)(3)(B)(v) (relat-
10 ing to inflation adjustment), \$50,000.

11 “(3) PENALTIES FOR FAILURE TO MAKE
12 PROGRESS TOWARD ATTAINMENT IN COVERED
13 AREAS.—

14 “(A) IN GENERAL.—Upon approval of a
15 State implementation plan that covers a covered
16 area, and annually thereafter until the applica-
17 ble deadline by which the covered area is re-
18 quired to achieve attainment, as specified in the
19 final rules, the Administrator shall determine,
20 in accordance with subparagraph (B), whether
21 the covered area is making progress that is suf-
22 ficient to enable the covered area to achieve at-
23 tainment by that deadline.

24 “(B) DETERMINATION OF PROGRESS.—
25 The Administrator shall not determine under

1 subparagraph (A) that a covered area is making
2 sufficient progress toward achieving attainment
3 for any calendar year unless the Administrator
4 determines, at a minimum, that the covered
5 area has achieved a reduction in the aggregate
6 quantity of PM_{2.5} emitted in the covered area
7 for the calendar year that is equal to or greater
8 than the product obtained by multiplying—

9 “(i) the aggregate quantity, in tons, of
10 the PM_{2.5} emission reductions that are re-
11 quired, during the period beginning on the
12 date of the determination by the Adminis-
13 trator and ending on the applicable date
14 referred to in subparagraph (A), to achieve
15 attainment; by

16 “(ii) the quotient obtained by divid-
17 ing—

18 “(I) the number of months,
19 rounded to the nearest month, be-
20 tween the date of submission of the
21 State implementation plan applicable
22 to the covered area and the date of
23 the determination by the Adminis-
24 trator; by

1 “(II) the number of months,
2 rounded to the nearest month, be-
3 tween the date of submission of that
4 State implementation plan and the
5 applicable attainment date referred to
6 in subparagraph (A).

7 “(C) IMPOSITION OF PENALTIES.—If the
8 Administrator determines under this paragraph
9 that a covered area is not making sufficient
10 progress to enable the covered area to achieve
11 attainment by the applicable deadline referred
12 to in subparagraph (A), the Administrator
13 shall—

14 “(i) for the first calendar year for
15 which the determination is made, impose
16 on each major stationary source located in
17 the covered area a penalty in an amount
18 that is equal to 10 percent of the amount
19 of the fee that would be paid by the major
20 stationary source under paragraph (2)(B)
21 for failure to meet a national primary am-
22 bient air quality standard for PM_{2.5} by the
23 deadline referred to in subparagraph (A);
24 and

1 “(ii) for each subsequent calendar
2 year until the deadline referred to in sub-
3 paragraph (A)—

4 “(I) reevaluate the progress
5 being made by the covered area to-
6 ward achieving attainment by the
7 deadline referred to in subparagraph
8 (A); and

9 “(II) if the Administrator deter-
10 mines that the covered area is not
11 making sufficient progress, impose on
12 each major stationary source located
13 in the covered area a penalty in an
14 amount that is equal to the sum of
15 the penalty imposed on the same class
16 of major stationary source under
17 clause (i) and the product obtained by
18 multiplying—

19 “(aa) 5 percent of the fee
20 that would be paid by the major
21 stationary source under para-
22 graph (2)(B) for failure to meet
23 a national primary ambient air
24 quality standard for PM_{2.5} by the

1 deadline referred to in subpara-
2 graph (A); and

3 “(bb) the number of cal-
4 endar years for which the covered
5 area has been previously deter-
6 mined not to have made suffi-
7 cient progress under this para-
8 graph as of the date of the deter-
9 mination by the Administrator
10 (excluding the determination for
11 the current calendar year).

12 “(D) SUSPENSION OF PENALTIES.—If the
13 Administrator determines under this paragraph
14 that a covered area that was determined not to
15 be making sufficient progress toward attain-
16 ment under this paragraph for a preceding cal-
17 endar year is making sufficient progress toward
18 attainment for the current calendar year, the
19 Administrator shall suspend the imposition of
20 penalties on major stationary sources located in
21 the covered area for the current calendar
22 year.”.

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