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110TH CONGRESS
1ST SESSION

H. R. 3989

To amend the Clean Air Act to reduce mercury, carbon dioxide, sulfur dioxide, and nitrogen oxide emissions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 29, 2007

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

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A BILL

To amend the Clean Air Act to reduce mercury, carbon dioxide, sulfur dioxide, and nitrogen oxide emissions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the ''Healthy Air and Clean Water Act''.

TITLE I—MERCURY AND CARBON DIOXIDE EMISSION REDUCTIONS

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SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) fossil fuel-fired electric generating units emit approximately ⅓ of the total mercury and carbon dioxide emission in the United States;

(2) the Environmental Protection Agency has yet to adequately address the emissions of either mercury or carbon dioxide;

(3) owners of electric generating units seek regulatory certainty when complying with environmental standards; and

(4) many states have already taken action, either by themselves or in partnerships, to reduce their emissions of mercury and carbon dioxide.

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

(1) to protect the quality of our Nation's air and water quality by substantially reducing the emissions from fossil fuel-fired electric generating units;

(2) to reduce the impact of climate change by limiting emissions of carbon dioxide;

(3) to enhance human and wildlife health by limiting emissions of mercury; and

(4) to develop and promote sources of clean energy that do not require the burning of fossil fuels.

SEC. 102. MERCURY AND CARBON DIOXIDE EMISSIONS REDUCTIONS.

The Clean Air Act (42 U.S.C. 7401 et seq.) is amended by adding at the end the following:

"TITLE VII—MERCURY AND CARBON DIOXIDE REDUCTIONS

"SEC. 701. DEFINITIONS.

"In this title:

"(1) AFFECTED UNIT.—The term 'affected unit' means a coal-fired electric generating facility (including a cogeneration facility) that—

"(A) has a nameplate capacity greater than 25 megawatts; and

"(B) generates electricity for sale.

"(2) COGENERATION FACILITY.—The term 'cogeneration facility' means a facility that—

"(A) cogenerates—

''(i) steam; and

''(ii) electricity; and

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

''(i) more than ⅓ of the potential electric output capacity of the facility; and

''(ii) more than 25 megawatts of electrical output of the facility.

''SEC. 702. MERCURY REDUCTION PROGRAM.

''(a) NEW UNIT REQUIREMENT.—Any affected unit that commences operation after December 31, 2008, shall be considered a new unit for the purposes of this section and shall not exceed the emission limit of 0.6 pounds mercury per trillion Btu (0.6 lb Hg/TBtu) upon commencement of operation.

''(b) EXISTING UNIT REQUIREMENT.—Any affected unit that commences operation on or before December 31, 2008, shall not exceed the emission limit of 0.6 pounds mercury per trillion Btu by January 1, 2011.

''(c) MONITORING SYSTEM.—Not later than January 1, 2009, the Administrator shall promulgate regulations requiring operation, reporting and certification of continuous emissions monitoring systems (CEMS) to accurately measure the quantity of mercury that is emitted from each affected unit.

''(d) EXCESS EMISSIONS.—

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

''(2) DETERMINATION OF EXCESS EMISSIONS PENALTY.—The excess emissions penalty shall be an amount equal to $10,000 for each ounce of mercury emitted in excess of the emission limitations for mercury described in subsections (b) and (c).

''(e) PREVENTION OF MERCURY RE-RELEASE.—Not later than January 1, 2009, the Administrator shall promulgate regulations to ensure that any mercury captured or recovered by emission controls installed at an affected unit is not re-released into the environment.

''SEC. 703. CARBON DIOXIDE TRADING PROGRAM.

''(a) DEFINITIONS.—In this section:

''(1) ALLOWANCE.—The term 'allowance' mean a carbon dioxide allowance equivalent to emitting one ton of carbon dioxide during the year that it was issued or any subsequent year.

''(2) RENEWABLE ENERGY.—The term 'renewable energy' means electricity generated from—

''(A) wind;

''(B) organic waste (excluding incinerated municipal solid waste);

''(C) biomass (including anaerobic digestion from farm systems and landfill gas recovery);

''(D) fuel cells; or

''(E) a hydroelectric, geothermal, solar thermal, photovoltaic, or other nonfossil fuel, nonnuclear source.

''(b) CARBON DIOXIDE EMISSION LEVELS FOR 2015, 2020, 2030, 2040, AND 2050.—

''(1) By January 1, 2015, carbon dioxide emission levels for affected units shall not exceed the level of carbon dioxide emissions for affected units in 2005.

''(2) By January 1, 2020, carbon dioxide emission levels for affected units shall not exceed 75 percent of the level of carbon dioxide emissions for affected units in 2005.

''(3) By January 1, 2030, carbon dioxide emission levels for affected units shall not exceed 50 percent of the level of carbon dioxide emissions for affected units in 2005.

''(4) By January 1, 2040, carbon dioxide emission levels for affected units shall not exceed 35 per-

cent of the level of carbon dioxide emissions for affected units in 2005.

''(5) By January 1, 2050, carbon dioxide emission levels for affected units shall not exceed 20 percent of the level of carbon dioxide emissions for affected units in 2005.

''(c) REGULATIONS.—

''(1) IN GENERAL.—Not later than January 1, 2010, the Administrator shall promulgate regulations to establish an allowance trading program for affected units in the United States.

''(2) REQUIRED ELEMENTS.—Regulations promulgated under paragraph (1) shall establish requirements for the carbon dioxide allowance trading program under this section, including requirements concerning—

''(A) the issuance, auction, and use of carbon dioxide allowances. Such allowances shall be—

''(i) 100 percent auctioned; and

''(ii) the proceeds of such auction shall be deposited into a special fund jointly administered by the Department of Energy and Environmental Protection Agency

to fund research and development of renewable energy projects.

''(B) the transfer of allowances;

''(C) the monitoring, tracking and reporting of carbon dioxide allowances; and

''(d) COMPLIANCE AND ENFORCEMENT.—

''(1) IN GENERAL.—For calendar year 2015 and each calendar year thereafter, the owner of each affected unit shall surrender to the Administrator a quantity of allowances that is equal to the total tons of carbon dioxide emitted by the affected unit during the calendar year.

''(2) PENALTY.—The owner of an affected unit that emits carbon dioxide in excess of the allowances that the owner holds for use for the affected unit for the calendar year shall pay an excess emissions penalty equal to the product obtained by multiplying—

''(A) the number of tons of carbon dioxide emitted inexcess of the total quantity of allowances held; and

''(B) $150, adjusted for changes in the Consumer Price Index for All-Urban Consumers published by the Department of Labor.

''(e) ALLOWANCE NOT A PROPERTY RIGHT.—An allowance—

''(1) is not a property right; and

''(2) may be terminated or limited by the Administrator.

''(f) NO JUDICIAL REVIEW.—An auction or issuance of an allowance by the Administrator shall not be subject to judicial review.

"SEC. 704. PROHIBITIONS.

''It shall be unlawful—

''(1) for the owner or operator of any electricity generating facility—

''(A) to operate the electricity generating facility in noncompliance with the requirements of this title (including any regulations implementing this title);

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

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

''(D) to emit mercury in excess of the emission limitations established under section 702; or

''(2) for any person to hold, use, or transfer any emission allowance allocated under this title ex-

cept in accordance with regulations promulgated by the Administrator.

"SEC. 705. EFFECT ON OTHER LAW.

"Nothing in this title—

"(1) affects the ability of a State to take State actions to further limit climate change (except that section 209 shall apply to standards for vehicles); and

"(2) except as expressly provided in this title—

"(A) modifies or otherwise affects any requirement of this Act in effect on the day before the date of enactment of this title; or

"(B) relieves any person of the responsibility to comply with this Act.".

SEC. 103. PROTECTING SENSITIVE REGIONAL ECOSYSTEMS.

(a) REPORT.—

(1) IN GENERAL.—Not later than December 31, 2010, the Administrator shall submit to Congress a report identifying objectives for scientifically credible environmental indicators, as determined by the Administrator, that are sufficient to protect and restore sensitive ecosystems of the Adirondack Mountains, mid-Appalachian Mountains, Catskill Mountains, Rocky Mountains, and Southern Blue Ridge Mountains and water bodies of the Great Lakes, Lake

Champlain, Long Island Sound, the Chesapeake Bay and other sensitive ecosystems, as determined by the Administrator.

(2) UPDATED REPORT.—Not later than December 31, 2019, the Administrator shall submit to Congress a report updating the report under paragraph (1) and assessing the status and trends of various environmental objectives and indicators for the sensitive regional ecosystems referred to in paragraph (1).

(3) REPORTS UNDER THE NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM.—The reports under this subsection shall be subject to the requirements applicable to a report under section 103(j)(3)(E) of the Clean Air Act (42 U.S.C. 7403(j)(3)(E)).

(b) REGULATIONS.—

(1) DETERMINATION.—Not later than December 31, 2019, the Administrator shall determine whether emissions reductions under title VII of the Clean Air Act are sufficient to ensure achievement of the objectives stated in subsection (a)(1).

(2) PROMULGATION.—If the Administrator determines under paragraph (1) that emissions reductions under title VII of the Clean Air Act are not

sufficient to ensure achievement of the objectives identified in subsection (a)(1), the Administrator shall promulgate, not later than 2 years after making the finding, such regulations, including modification of nitrogen oxide and sulfur dioxide allowance allocations or any such measure, as the Administrator determines are necessary to protect the sensitive ecosystems described in subsection (a)(1).

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

In addition to amounts made available under any other law, there are authorized to be appropriated for each of fiscal years 2008 through 2018—

(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;

(4) for the Clean Air Status and Trends Network $5,000,000 to the Environmental Protection Agency; and

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

SEC. 105. MODERNIZATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts made available under any other law, there are authorized to be appropriated—

(1) for equipment and site modernization of the National Atmospheric Deposition Program National

Trends Network $6,000,000 to the Environmental Protection Agency;

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

(3) for equipment and site modernization and network expansion of the National Atmospheric Deposition Program Atmospheric Integrated Research Monitoring Network $1,000,000 to the National Oceanic and Atmospheric Administration; and

(4) for equipment and site modernization and network expansion of the Clean Air Status and Trends Network $4,600,000 to the Environmental Protection Agency.

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

TITLE II—SULFUR DIOXIDE AND NITROGEN OXIDE EMISSIONS

SEC. 201. REDUCTION OF EMISSIONS FROM POWERPLANTS.

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

"SEC. 132. REDUCTION OF EMISSIONS FROM POWERPLANTS.

"(a) EMISSION REDUCTION OBJECTIVES.—The emission reduction objectives of this section are to reduce, not later than January 1, 2010:

"(1) aggregate sulfur dioxide emissions from powerplants by 75 percent from the levels allowed under full implementation of the Phase II sulfur dioxide requirements under title IV (relating to acid deposition control); and

"(2) aggregate nitrogen oxide emissions from powerplants by 75 percent from 1997 levels.

"(b) AGENCY ACTION.—

"(1) REGULATIONS.—

"(A) IN GENERAL.—Not later than 2 years after the date of enactment of this section, the Administrator shall promulgate regulations to achieve the emission reduction objectives specified in subsection (a).

"(B) ELEMENTS.—The regulations promulgated under subparagraph (A)—

"(i) shall achieve the objectives in a manner that the Administrator determines will allocate required emission reductions equitably, taking into account emission reductions achieved before the date of enact-

ment of this section and other relevant factors;

"(ii) may include market-oriented mechanisms (such as emissions trading based on generation performance standards, auctions, or other allocation methods);

"(iii) shall prevent localized adverse effects on public health and the environment and ensure that significant emission reductions are achieved in both the Eastern and Western regions of the United States;

"(iv) shall, include, consistent with achieving the objectives set forth in subsection (a), incentives for renewable energy.

"(2) INTERAGENCY COORDINATION TO MINIMIZE COSTS AND MAXIMIZE GAINS.—To minimize the economic costs and maximize the economic gains of achieving the emission reduction objectives specified in subsection (a), the Administrator shall coordinate with other departments and agencies of Federal and State government to increase energy efficiency, to increase the use of renewable energy, and

to implement cost saving advanced demand and supply side policies, such as those described in the report prepared by the Interlaboratory Working Group of the Department of Energy entitled 'Scenarios for a Clean Energy Future', dated November 2000.

''(c) ADDITIONAL REDUCTIONS.—The regulations promulgated under subsection (b) may require additional reductions in emissions from powerplants if the Administrator determines that the emission levels necessary to achieve the emission reduction objectives specified in subsection (a) are not reasonably anticipated to protect public health or welfare.

''(d) MODERNIZATION OF OUTDATED POWERPLANTS.—

''(1) IN GENERAL.—On the later of the date that is 30 years after a powerplant commenced operation or the date that is 5 years after the date of enactment of this section, it shall comply with—

''(A) the most recent new source performance standards promulgated under section 111; and

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

''(2) ADDITIONAL REQUIREMENTS.—The requirements of this subsection shall be in addition to

the requirements of the regulations promulgated under subsection (b).

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

''(f) DEFINITION.—In this section, the term 'power-plant' means an electric generation facility with a name-plate capacity of 25 megawatts or more that uses a combustion device to generate electricity for sale.''.

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