

110TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

Mr. INHOFE introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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<sub>2.5</sub> nonattainment area under—

10           “(i) the final rule entitled ‘Air Quality  
11           Designations and Classifications for the  
12           Fine Particles (PM<sub>2.5</sub>) 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<sub>x</sub> emissions of a stationary source; or

20 “(ii)(I) the quantity of VOC or NO<sub>x</sub>  
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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub>,

24 \$5,000, regardless of whether the NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>2.5</sub> 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<sub>2.5</sub>  
11 emissions of a stationary source; or

12 “(ii)(I) the quantity of PM<sub>2.5</sub> 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<sub>2.5</sub>) 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<sub>2.5</sub>.—The term ‘PM<sub>2.5</sub>’ 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<sub>2.5</sub> 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<sub>2.5</sub> 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<sub>2.5</sub> 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<sub>2.5</sub> 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<sub>2.5</sub> 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<sub>2.5</sub> 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<sub>2.5</sub> 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.”.