

117TH CONGRESS
2D SESSION

H. R. 9218

To establish a Federal program of cumulative impact assessments under the Clean Water Act and Clean Air Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 2022

Ms. TLAIB introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on 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 establish a Federal program of cumulative impact assessments under the Clean Water Act and 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 “Cumulative Impacts
5 Act of 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) All Americans, regardless of income, race,
2 ethnicity, color, national origin, gender, or sexual
3 identity, deserve to live in clean and healthy commu-
4 nities free from the burdens of environmental pollu-
5 tion and degradation.

6 (2) Communities of color and lower-income
7 communities have historically been subjected to dis-
8 proportionate amounts of air, water, and soil pollu-
9 tion, including pollution from numerous and con-
10 centrated industrial, commercial, and governmental
11 facilities located in those communities.

12 (3) As a result, residents of these overburdened
13 communities have suffered from increased adverse
14 health risks, including asthma, cancer, elevated
15 blood lead levels, respiratory illnesses, cardiovascular
16 disease, and developmental disorders. Children are
17 most vulnerable to the effects of pollution and can
18 suffer lifelong consequences. The adverse effects of
19 pollution harm the well-being and stability of these
20 communities and their residents.

21 (4) These disproportionate burdens have been
22 the consequence of policy decisions at all levels of
23 government over many years, and government now
24 has the responsibility and moral imperative to cor-
25 rect these injustices.

1 (5) No community should bear a dispropor-
2 tionate share of the adverse environmental and pub-
3 lic health impacts of pollution caused by economic or
4 any other activity.

5 (6) Overburdened communities should be em-
6 powered legally and politically to participate in any
7 decision to allow additional facilities which by their
8 nature increase environmental and public health
9 stressors to locate in their communities.

10 (7) It is in the public interest to limit the fu-
11 ture placement and expansion of such facilities in
12 overburdened communities.

13 (8) The burden of proof that a proposed action
14 will not harm communities should fall on polluting
15 industries and on the Federal Government in its reg-
16 ulatory role, not the communities themselves.

17 (9) Pollutants currently regulated by the Fed-
18 eral Government, including for example criteria air
19 pollutants, may have additive and synergistic nega-
20 tive effects on human health and the environment
21 when combined.

22 (10) Cumulative impacts are the public health
23 and environmental risks and impacts caused by the
24 combined past, present, and reasonably foreseeable
25 future releases of environmental pollution in a spe-

1 cific geographic area. Cumulative impact assessment
2 considers sensitive populations and other social fac-
3 tors that may heighten vulnerability to environ-
4 mental pollution and associated health risks.

5 (11) Cumulative impact assessments built into
6 permitting decisions are one critical tool for pre-
7 venting increased environmental and public health
8 degradation in overburdened communities. At its
9 most basic, cumulative impact assessment requires
10 studying the impacts of having multiple pollution
11 sources and stressors combined together on public
12 health and the environment. While the effects of a
13 single pollutant from a single source may be less sig-
14 nificant when analyzed in isolation, the cumulative
15 impacts of multiple pollutants from multiple sources
16 in combination with each other and with other social
17 vulnerabilities degrade public health and the environ-
18 ment substantially. Cumulative impact assessments
19 should be incorporated into pollution permitting de-
20 cisions such that Federal regulators are required to
21 deny permits that threaten public health and the en-
22 vironment.

23 (12) The general failure of the Federal Govern-
24 ment to consider and regulate potential cumulative
25 impacts in pollution permitting decisions has re-

1 sulted in the inequitable distribution of pollution
2 across regions and overburdening of certain commu-
3 nities.

4 (13) Federal Government inaction has forced
5 some State and local governments to act on their
6 own to regulate cumulative impacts, including Cali-
7 fornia and New Jersey, creating a patchwork of cu-
8 mulative impact regulations across the country.

9 (14) The Federal Government is aware of the
10 importance of cumulative impact assessment in other
11 types of environmental review, such as with environ-
12 mental assessments conducted under the National
13 Environmental Policy Act of 1969 (42 U.S.C. 4321
14 et seq.).

15 (15) The Federal Government should adopt and
16 operationalize cumulative impact assessment in all
17 pollution permitting decisions, especially in overbur-
18 dened communities, and should deny permits that
19 create a reasonable certainty of harm to commu-
20 nities.

1 **SEC. 3. CONSIDERATION OF CUMULATIVE IMPACTS AND**
 2 **PERSISTENT VIOLATIONS IN CERTAIN PER-**
 3 **MITTING DECISIONS.**

4 (a) FEDERAL WATER POLLUTION CONTROL ACT.—
 5 Section 402 of the Federal Water Pollution Control Act
 6 (33 U.S.C. 1342) is amended—

7 (1) by striking the section designation and
 8 heading and all that follows through “Except as” in
 9 subsection (a)(1) and inserting the following:

10 **“SEC. 402. NATIONAL POLLUTANT DISCHARGE ELIMI-**
 11 **NATION SYSTEM.**

12 “(a) PERMITS ISSUED BY ADMINISTRATOR.—

13 “(1) IN GENERAL.—Except as”;

14 (2) in subsection (a)—

15 (A) in paragraph (1)—

16 (i) by striking “upon condition that
 17 such discharge will meet either (A) all”
 18 and inserting the following: “subject to the
 19 conditions that—

20 “(A) the discharge will achieve compliance
 21 with, as applicable—

22 “(i) all”;

23 (ii) by striking “403 of this Act, or
 24 (B) prior” and inserting the following:

25 “403; or

26 “(ii) prior”; and

(iii) by striking “this Act.” and inserting the following: “this Act; and

“(B) with respect to the issuance or renewal of the permit—

“(i) based on an analysis by the Administrator of existing water quality and the potential cumulative impacts (as defined in section 501 of the Clean Air Act (42 U.S.C. 7661)) of the discharge, considered in conjunction with the designated and actual uses of the impacted navigable water, there exists a reasonable certainty of no harm to the health of the general population, or to any potentially exposed or susceptible subpopulation; or

“(ii) if the Administrator determines that, due to those potential cumulative impacts, there does not exist a reasonable certainty of no harm to the health of the general population, or to any potentially exposed or susceptible subpopulation, the permit or renewal includes such terms and conditions as the Administrator determines to be necessary to ensure a reasonable certainty of no harm.”; and

1 (B) in paragraph (2), by striking “assure
2 compliance with the requirements of paragraph
3 (1) of this subsection, including conditions on
4 data and information collection, reporting, and
5 such other requirements as he deems appro-
6 priate.” and inserting the following: “ensure
7 compliance with the requirements of paragraph
8 (1), including—

9 “(A) conditions relating to—

10 “(i) data and information collection;

11 “(ii) reporting; and

12 “(iii) such other requirements as the
13 Administrator determines to be appro-
14 priate; and

15 “(B) additional controls or pollution pre-
16 vention requirements.”; and
17 (3) in subsection (b)—

18 (A) in each of paragraphs (1)(D), (2)(B),
19 and (3) through (7), by striking the semicolon
20 at the end and inserting a period;

21 (B) in paragraph (8), by striking “; and”
22 at the end and inserting a period; and

23 (C) by adding at the end the following:

24 “(10) To ensure that no permit will be issued
25 or renewed if, with respect to an application for the

1 permit, the State determines, based on an analysis
2 by the State of existing water quality and the poten-
3 tial cumulative impacts (as defined in section 501 of
4 the Clean Air Act (42 U.S.C. 7661)) of the dis-
5 charge, considered in conjunction with the des-
6 ignated and actual uses of the impacted navigable
7 water, that the terms and conditions of the permit
8 or renewal would not be sufficient to ensure a rea-
9 sonable certainty of no harm to the health of the
10 general population, or to any potentially exposed or
11 susceptible subpopulation.”.

12 (b) CLEAN AIR ACT.—

13 (1) DEFINITIONS.—Section 501 of the Clean
14 Air Act (42 U.S.C. 7661) is amended—

15 (A) in the matter preceding paragraph (1),
16 by striking “As used in this title—” and insert-
17 ing “In this title:”;

18 (B) by redesignating paragraphs (2), (3),
19 and (4) as paragraphs (3), (5), and (4), respec-
20 tively, and moving the paragraphs so as to ap-
21 pear in numerical order; and

22 (C) by inserting after paragraph (1) the
23 following:

24 “(2) CUMULATIVE IMPACTS.—The term ‘cumu-
25 lative impacts’ means any exposure to a public

1 health or environmental risk, or other effect occur-
2 ring in a specific geographical area, including from
3 an emission, discharge, or release—

4 “(A) including—

5 “(i) environmental pollution re-
6 leased—

7 “(I)(aa) routinely;

8 “(bb) accidentally; or

9 “(cc) otherwise; and

10 “(II) from any source, whether

11 single or multiple; and

12 “(ii) as assessed based on the com-
13 bined past, present, and reasonably fore-
14 seeable emissions and discharges affecting
15 the geographical area; and

16 “(B) evaluated taking into account sen-
17 sitive populations and other factors that may
18 heighten vulnerability to environmental pollu-
19 tion and associated health risks, including so-
20 cioeconomic characteristics.”.

21 (2) PERMIT PROGRAMS.—Section 502(b) of the
22 Clean Air Act (42 U.S.C. 7661a(b)) is amended—

23 (A) in paragraph (5)—

1 (i) in subparagraphs (A) and (C), by
2 striking “assure” each place it appears and
3 inserting “ensure”; and

4 (ii) by striking subparagraph (F) and
5 inserting the following:

6 “(F) ensure that no permit will be issued
7 or renewed, as applicable, if—

8 “(i) with respect to an application for
9 a permit or renewal of a permit for a
10 major source, the permitting authority de-
11 termines under paragraph (9)(A)(i)(II)(bb)
12 that the terms and conditions of the per-
13 mit or renewal would not be sufficient to
14 ensure a reasonable certainty of no harm
15 to the health of the general population, or
16 to any potentially exposed or susceptible
17 subpopulation, of the applicable census
18 block groups or Tribal census block groups
19 (as those terms are defined by the Director
20 of the Bureau of the Census); or

21 “(ii) the Administrator objects to the
22 issuance of the permit in a timely manner
23 under this title.”; and

24 (B) by striking paragraph (9) and insert-
25 ing the following:

1 “(9) MAJOR SOURCES.—

2 “(A) IN GENERAL.—With respect to any
3 permit or renewal of a permit, as applicable, for
4 a major source, a requirement that the permit-
5 ting authority shall—

6 “(i) in determining whether to issue
7 or renew the permit—

8 “(I) evaluate the potential cumu-
9 lative impacts of the major source, as
10 described in the applicable cumulative
11 impacts analysis submitted under sec-
12 tion 503(b)(3), taking into consider-
13 ation other pollution sources and risk
14 factors within a community;

15 “(II) if, due to those potential
16 cumulative impacts, the permitting
17 authority cannot determine that there
18 exists a reasonable certainty of no
19 harm to the health of the general pop-
20 ulation, or to any potentially exposed
21 or susceptible subpopulation, of any
22 census block groups or Tribal census
23 block groups (as those terms are de-
24 fined by the Director of the Bureau of
25 the Census) located in, or immediately

1 adjacent to, the area in which the
2 major source is, or is proposed to be,
3 located—

4 “(aa) include in the permit
5 or renewal such standards and
6 requirements (including addi-
7 tional controls or pollution pre-
8 vention requirements) as the per-
9 mitting authority determines to
10 be necessary to ensure a reason-
11 able certainty of no such harm;
12 or

13 “(bb) if the permitting au-
14 thority determines that standards
15 and requirements described in
16 item (aa) would not be sufficient
17 to ensure a reasonable certainty
18 of no such harm, deny the
19 issuance or renewal of the per-
20 mit;

21 “(III) determine whether the ap-
22 plicant is a persistent violator, based
23 on such criteria relating to the history
24 of compliance by an applicant with
25 this Act as the Administrator shall es-

1 tablish by not later than 180 days
2 after the date of enactment of the Cu-
3 mulative Impacts Act of 2022;

4 “(IV) if the permitting authority
5 determines under subclause (III) that
6 the applicant is a persistent violator
7 and the permitting authority does not
8 deny the issuance or renewal of the
9 permit pursuant to subclause
10 (II)(bb)—

11 “(aa) require the applicant
12 to submit a plan that describes—

13 “(AA) if the applicant
14 is not in compliance with
15 this Act, measures the appli-
16 cant will carry out to
17 achieve that compliance, to-
18 gether with an approximate
19 deadline for that achieve-
20 ment;

21 “(BB) measures the
22 applicant will carry out, or
23 has carried out to ensure the
24 applicant will remain in
25 compliance with this Act,

1 and to mitigate the environ-
2 mental and health effects of
3 noncompliance; and

4 “(CC) the measures the
5 applicant has carried out in
6 preparing the plan to con-
7 sult or negotiate with the
8 communities affected by
9 each persistent violation ad-
10 dressed in the plan; and

11 “(bb) once such a plan is
12 submitted, determine whether the
13 plan is adequate to ensuring that
14 the applicant—

15 “(AA) will achieve com-
16 pliance with this Act expedi-
17 tiously;

18 “(BB) will remain in
19 compliance with this Act;

20 “(CC) will mitigate the
21 environmental and health ef-
22 fects of noncompliance; and

23 “(DD) has solicited and
24 responded to community

1 input regarding the plan;
2 and

3 “(V) deny the issuance or re-
4 newal of the permit if the permitting
5 authority determines that—

6 “(aa) the plan submitted
7 under subclause (IV)(aa) is inad-
8 equate; or

9 “(bb)(AA) the applicant has
10 submitted a plan on a prior occa-
11 sion, but continues to be a per-
12 sistent violator; and

13 “(BB) no indication exists
14 of extremely exigent cir-
15 cumstances excusing the per-
16 sistent violations; and

17 “(ii) in the case of such a permit with
18 a term of 3 years or longer, require permit
19 revisions in accordance with subparagraph
20 (B).

21 “(B) REVISION REQUIREMENTS.—

22 “(i) DEADLINE.—A revision described
23 in subparagraph (A)(ii) shall occur as ex-
24 peditiously as practicable and consistent
25 with the procedures established under

1 paragraph (6) but not later than 18
2 months after the promulgation of such
3 standards and regulations.

4 “(ii) EXCEPTION.—A revision under
5 this paragraph shall not be required if the
6 effective date of the standards or regula-
7 tions is a date after the expiration of the
8 permit term.

9 “(iii) TREATMENT AS RENEWAL.—A
10 permit revision under this paragraph shall
11 be treated as a permit renewal if it com-
12 plies with the requirements of this title re-
13 garding renewals.”.

14 (3) PERMIT APPLICATIONS.—Section 503(b) of
15 the Clean Air Act (42 U.S.C. 7661b(b)) is amended
16 by adding at the end the following:

17 “(3) MAJOR SOURCE ANALYSES.—The regulations
18 required by section 502(b) shall include a requirement
19 that an applicant for a permit or renewal of a permit for
20 a major source shall submit, together with the compliance
21 plan required under this subsection, a cumulative impacts
22 analysis for each census block group or Tribal census
23 block group (as those terms are defined by the Director
24 of the Bureau of the Census) located in, or immediately

1 adjacent to, the area in which the major source is, or is
2 proposed to be, located that analyzes—

3 “(A) community demographics and locations of
4 community exposure points, such as schools, day
5 care centers, nursing homes, hospitals, health clinics,
6 places of religious worship, parks, playgrounds, and
7 community centers;

8 “(B) air quality and the potential effect on that
9 air quality of emissions of air pollutants (including
10 pollutants listed under section 108 or 112) from the
11 major source, including in combination with existing
12 sources of pollutants;

13 “(C) the potential effects on soil quality and
14 water quality of emissions of lead and other air pol-
15 lutants that could contaminate soil or water from
16 the major source, including in combination with ex-
17 isting sources of pollutants; and

18 “(D) public health and any potential effects on
19 public health from the major source.”.

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