

106TH CONGRESS
2^D SESSION

H. R. 4922

To ensure that certain controversial changes to the Environmental Protection Agency's total maximum daily load program and permit program be subjected to adequate public and congressional analysis and review.

IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2000

Mr. STENHOLM (for himself, Mr. DICKEY, Mr. HOLDEN, Mr. HAYES, Mr. SANDLIN, Mr. BOEHLERT, Mr. SHOWS, Mr. COMBEST, Mr. BOYD, Mr. SHERWOOD, Mr. TURNER, Mr. GOODLATTE, Mr. BALDACCI, Mr. CHAMBLISS, Mr. BERRY, Mr. EWING, Mrs. CLAYTON, Mr. HUTCHINSON, Mr. PETERSON of Minnesota, and Mr. GREEN of Wisconsin) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To ensure that certain controversial changes to the Environmental Protection Agency's total maximum daily load program and permit program be subjected to adequate public and congressional analysis and review.

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 "TMDL Regulatory Ac-
5 countability Act of 2000".

1 **SEC. 2. ENSURING CONSIDERATION OF THE VIEWS OF THE**
2 **PUBLIC.**

3 The Administrator shall—

4 (1) publish, not later the 5th day following the
5 date of enactment of this Act, in the Federal Reg-
6 ister a notice soliciting public comment for 120 days
7 on revisions to regulations pertaining to the national
8 pollutant discharge elimination system program and
9 the water quality planning and management pro-
10 gram published in the Federal Register on July 13,
11 2000 (65 Fed. Reg. 43586);

12 (2) solicit comments from each State regarding
13 the impact of such revisions on implementation and
14 effectiveness of existing State programs;

15 (3) hold public meetings for the purpose of re-
16 ceiving public comments on such revisions, including
17 meetings at locations that will provide a reasonable
18 opportunity for citizens of rural communities to both
19 attend and provide comments; and

20 (4) maintain a record of all public comments on
21 such revisions, including comments from States
22 under paragraph (2) and comments received at pub-
23 lic meetings under paragraph (3), in a publicly avail-
24 able docket and, not later than the 180th day fol-
25 lowing such date of enactment, publish a response to
26 the comments in the Federal Register.

1 SEC. 3. FILLING DATA GAPS.

2 (a) IN GENERAL.—Not later than the 120th day fol-
3 lowing the date of enactment of this Act, the Adminis-
4 trator shall transmit to Congress an analysis of the moni-
5 toring data needed for development and implementation
6 of TMDLs. Such analysis shall address the data gaps
7 identified by the Comptroller General in the March 2000
8 report issued by the General Accounting Office, entitled
9 “Water Quality, Key EPA and State Decisions Limited
10 By Inconsistent and Incomplete Data”, including gaps in
11 data needed to—

- 12 (1) assess all State waters;
- 13 (2) identify waters that are impaired;
- 14 (3) identify pollution sources;
- 15 (4) develop TMDLs; and
- 16 (5) develop plans to implement TMDLs.

17 (b) DATA COLLECTION COSTS.—The analysis under
18 subsection (a) shall include an estimate of the cost of col-
19 lecting the monitoring data.

20 (c) STATE INPUT.—In conducting the analysis under
21 subsection (a) and estimating the costs under subsection
22 (b), the Administrator shall solicit comments from each
23 State regarding the analysis and estimate.

24 SEC. 4. IMPROVING SCIENTIFIC UNDERSTANDING.

25 (a) STUDY REQUIRED.—The Administrator shall
26 make arrangements with the National Academy of

1 Sciences to conduct a study on the scientific bases under-
2 lying the development of TMDLs.

3 (b) SCOPE.—The study shall include an evaluation of
4 each of the following:

5 (1) The information required to identify sources
6 of pollutant loadings and their respective contribu-
7 tions to water quality impairment.

8 (2) The information required to allocate reduc-
9 tions in pollutant loadings among sources.

10 (3) Whether such information is available for
11 use by States.

12 (4) Whether such information, if available, is
13 reliable.

14 (5) If such information is not available or is not
15 reliable, what methodologies should be used to ob-
16 tain such information.

17 (c) REVIEW.—Before submitting a report under sub-
18 section (d), the National Academy of Sciences shall pro-
19 vide appropriate Federal, State, and public and private
20 sector interests an opportunity to review and submit writ-
21 ten comments on the report. The final report shall incor-
22 porate such comments if appropriate.

23 (d) REPORT.—Not later than the 240th day following
24 the date of enactment of this Act, the National Academy
25 of Sciences shall transmit a report on the study to the

1 Administrator and Congress. The report shall include rec-
2 ommendations of the National Academy of Sciences for
3 improving the methodologies evaluated under the study.

4 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated to carry out this section
6 \$3,000,000. Such sums shall remain available until ex-
7 pended.

8 **SEC. 5. ENSURING PUBLIC UNDERSTANDING OF THE BENE-**
9 **FITS AND COSTS OF REGULATORY CHANGES.**

10 (a) UMRA ANALYSIS.—

11 (1) IN GENERAL.—With respect to the revisions
12 referred to in section 2, the Administrator shall pre-
13 pare a written statement containing the information
14 specified in section 202(a) of the Unfunded Man-
15 dates Reform Act of 1995 (2 U.S.C. 1532(a); 109
16 Stat. 64–65) and shall conduct the analyses required
17 under section 205 of such Act (2 U.S.C. 1535).

18 (2) RECOMMENDATIONS OF THE COMPTROLLER
19 GENERAL.—In preparing the statement and con-
20 ducting the analyses referred to in paragraph (1)—

21 (A) the Administrator shall address the
22 concerns regarding the economic analysis per-
23 formed by the Administrator on these regu-
24 latory changes identified by the Comptroller
25 General in a June 21, 2000, report entitled

1 “Clean Water Act: Proposed Revisions to EPA
2 Regulations to Clean Up Polluted Waters”; and

3 (B) the Administrator, consistent with the
4 recommendations of the Comptroller General,
5 shall—

6 (i) use alternative baseline assump-
7 tions, including an assumption that accu-
8 rately reflects the water quality data cur-
9 rently available for the development and
10 implementation of TMDLs, and conduct a
11 sensitivity analysis to assess the effect of
12 different assumptions on the analyses;

13 (ii) quantify benefits using the same
14 baseline assumptions used to quantify
15 costs; and

16 (iii) consider costs to regulated enti-
17 ties and other Federal agencies, as well as
18 costs to States.

19 (b) EFFECTS ON SMALL ENTITIES.—The Adminis-
20 trator shall conduct analyses of the effects of the revisions
21 referred to in section 2 on small entities, including small
22 businesses, small organizations, and small governmental
23 organizations. Such analyses shall include, at a
24 minimum—

1 (1) a description of and an estimate of the
2 number of small entities to which the regulations, as
3 revised, would apply;

4 (2) the cost to small entities resulting from im-
5 plementation of the regulations, as revised, by States
6 and the Environmental Protection Agency; and

7 (3) a description of the steps the Administrator
8 has taken to minimize the significant economic im-
9 pact on small entities, including a statement of the
10 factual, policy, and legal reasons for selecting the al-
11 ternative adopted in the final rule and why each one
12 of the other significant alternatives to the rule con-
13 sidered by the Administrator that affect the impact
14 on small entities was rejected.

15 (c) INFORMATION FROM RELEVANT FEDERAL AGEN-
16 CIES.—In conducting the analyses under subsections (a)
17 and (b), the Administrator shall obtain information from
18 relevant Federal agencies, including the Department of
19 Agriculture, the Department of Defense, and the Small
20 Business Administration.

21 (d) REVIEW BY THE COMPTROLLER GENERAL.—At
22 least 60 days before publishing an analysis in the Federal
23 Register for public notice and comment under subsection
24 (e), the Administrator shall provide the Comptroller Gen-

1 eral with an opportunity to review and comment on such
2 analysis.

3 (e) PUBLIC REVIEW AND COMMENT.—The Adminis-
4 trator shall publish the analyses required under sub-
5 sections (a) and (b) in the Federal Register not later than
6 150th day after the date of enactment of this Act and
7 shall solicit public comment for a period of not less than
8 60 days. Comments received shall be included in the pub-
9 licly available docket maintained under section 2.

10 (f) RESPONSE TO COMMENTS.—Not later than the
11 60th day following the last day of the comment period
12 under subsection (e), the Administrator shall publish a re-
13 sponse to comments in the Federal Register.

14 **SEC. 6. USE OF INFORMATION TO IMPROVE CLEAN WATER**
15 **ACT PROGRAMS.**

16 (a) AGENCY REVIEW OF INFORMATION AND REGULA-
17 TIONS.—The Administrator shall review all information
18 provided or developed under sections 2, 3, 4, and 5 and
19 shall consider whether or not the Administrator should
20 change the revisions referred to in section 2 based upon
21 such information.

22 (b) EXPLANATION TO CONGRESS.—Upon completing
23 the review, but not later than the 270th day following the
24 date of enactment of this Act, the Administrator shall
25 transmit to Congress an explanation of the Administra-

1 tor's decision to change or not to change the revisions re-
2 ferred to in section 2.

3 **SEC. 7. DEFINITIONS.**

4 In this Act, the following definitions shall apply:

5 (1) ADMINISTRATOR.—The term “Adminis-
6 trator” means the Administrator of the Environ-
7 mental Protection Agency.

8 (2) TMDL.—The term “TMDL” has the
9 meaning that the term “total maximum daily load”
10 has under section 303(d)(1)(C) of the Federal Water
11 Pollution Control Act (23 U.S.C. 1313(d)(1)(C)).

12 (3) SMALL ENTITY.—The term “small entity”
13 has the meaning such term has in section 601 of
14 title 5, United States Code.

15 (4) STATE.—The term “State” has the mean-
16 ing such term has under section 502 of the Federal
17 Water Pollution Control Act (33 U.S.C. 1362).

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