

September 21, 2011

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The Honorable John Boehner
Speaker of the House
U.S. House of Representatives
The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader of the House
U.S. House of Representatives
The Capitol
Washington, DC 20515

Dear Speaker Boehner and Minority Leader Pelosi:

We are writing to you on behalf of the National Association of Clean Air Agencies (NACAA) to express our opposition to H.R. 2401 – the “Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011,” the so-called TRAIN Act. NACAA is the national association of air pollution control agencies in 51 states and territories and over 165 metropolitan areas across the country.¹ The members of NACAA have the primary responsibility under the Clean Air Act for ensuring healthful air quality and, as such, we are deeply concerned with the substantial adverse impacts that will result from enactment of this bill.

Above all, NACAA fears that H.R. 2401 will create potentially indefinite delays in issuing important U.S. Environmental Protection Agency (EPA) rules that are designed to prevent thousands of premature deaths and many more cases of sickness throughout the country each year. H.R. 2401 would prohibit EPA from taking final action on several critical rulemakings until six months after a report is issued by a committee formed under the Act. For at least two of these rules – the “Mercury and Air Toxics Standards” (MATS) for power plants and the “Cross-State Air Pollution Rule” (CSAPR) – this would mean a postponement of at least 15 months and 19 months, respectively, in enactment of the crucial public health protections afforded by these regulations. Furthermore, H.R. 2401 would eliminate the statutory deadlines for ever issuing these regulations.

¹The views expressed in this letter do not necessarily represent the positions of every state and local air pollution control agency in the country.

The public health consequences of these postponements are staggering: using EPA's own data, if H.R. 2401 were enacted, the 15- and 19-month delays in the finalization of MATS and CSAPR could result in over 30,000 premature deaths, with an additional 25,000 deaths expected with every further year of delay.

H.R. 2401 would also place a significant burden not only on state and local agencies, but also on the regulated community, especially small businesses. By postponing, possibly indefinitely, the federal regulatory tools (i.e., MATS and CSAPR) designed to assist agencies in meeting their Clean Air Act responsibilities, state and local agencies' ability to reduce mercury, arsenic, lead, acid gases and other toxic air pollutants would be compromised and interstate transport pollution problems throughout the eastern United States would not be adequately addressed. Further, without these federal rules, state and local air agencies would then have to explore and adopt alternative pollution control strategies, requiring these agencies to use resources that are in short supply. We would likely have no other option but to turn to much costlier, less-cost-effective measures, including controls on smaller businesses and industrial facilities. This is not only unfair to these smaller facilities, but it would also create regulatory uncertainty, which could translate into lost jobs, at a time when our country can ill afford it.

While we appreciate the bill sponsors' interest in ensuring that EPA's rules are adequately analyzed, especially on a cumulative basis, the new process contemplated in H.R. 2401 is flawed. The bill creates a bureaucratic Cabinet-level committee of 11 members, chaired not by the EPA Administrator, but by the Secretary of Commerce. It tasks the committee with conducting a seemingly robust analysis of each of EPA's rules that, in reality, would ignore the health and environmental benefits these rules could deliver. And, as we have noted, the bill creates the potential for substantial delay that would postpone the critical public health protections provided by the EPA rules being analyzed. NACAA believes these new procedures are unnecessary and inappropriate.

Finally, we have significant concerns with the mechanism that sponsors have chosen for funding H.R. 2401. Section 6 would fund the entire bill from the Diesel Emissions Reduction Act (DERA), a program established by Congress to provide grants and loans to reduce air pollution emissions from a variety of diesel engines, such as construction equipment, trucks and agriculture and mining equipment. DERA, which enjoys strong bi-partisan support, has proven to be one of the most cost-effective environmental programs ever enacted and one that creates jobs as well.

In summary, NACAA is extremely concerned that H.R. 2401, if adopted, will create regulatory delays that could lead to thousands of premature deaths, remove important regulatory tools upon which states and localities depend, impose additional costs on government as well as small businesses, create regulatory uncertainty, cause job losses and de-fund an important and cost-effective air pollution control program.

We urge you to oppose H.R. 2401.

Thank you for your consideration of our comments. If you would like further information, please do not hesitate to contact either of us, NACAA Executive Director S. William Becker, or your state or local air pollution control agency.

Sincerely,



David Shaw
New York
Co-President
NACAA



Lynne A. Liddington
Knoxville, TN
Co-President
NACAA