

118TH CONGRESS  
1ST SESSION

# H. R. 4592

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2023

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

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## 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 2023”.

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 disproportio-  
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

1 (iii) by striking “this Act.” and insert-  
2 ing the following: “this Act; and

3 “(B) with respect to the issuance or re-  
4 newal of the permit—

5 “(i) based on an analysis by the Ad-  
6 ministrator of existing water quality and  
7 the potential cumulative impacts (as de-  
8 fined in section 501 of the Clean Air Act  
9 (42 U.S.C. 7661)) of the discharge, consid-  
10 ered in conjunction with the designated  
11 and actual uses of the impacted navigable  
12 water, there exists a reasonable certainty  
13 of no harm to the health of the general  
14 population, or to any potentially exposed or  
15 susceptible subpopulation; or

16 “(ii) if the Administrator determines  
17 that, due to those potential cumulative im-  
18 pacts, there does not exist a reasonable  
19 certainty of no harm to the health of the  
20 general population, or to any potentially  
21 exposed or susceptible subpopulation, the  
22 permit or renewal includes such terms and  
23 conditions as the Administrator determines  
24 to be necessary to ensure a reasonable cer-  
25 tainty 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 2023;

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.”.

○