

**AMENDMENT TO**  
**DIVISION D OF RULES COMMITTEE PRINT 117-57**  
**OFFERED BY MR. McEACHIN OF VIRGINIA**

Page 558, after line 22, insert the following:

1 **SEC. 120. 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—**

1           “(A) the discharge will achieve compliance  
2           with, as applicable—

3                   “(i) all”;

4                   (ii) by striking “403 of this Act, or  
5           (B) prior” and inserting the following:  
6           “403; or

7                   “(ii) prior”; and

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

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

12                   “(i) based on an analysis by the Ad-  
13           ministrators of existing water quality and  
14           the potential cumulative impacts (as de-  
15           fined in section 501 of the Clean Air Act  
16           (42 U.S.C. 7661)) of the discharge, consid-  
17           ered in conjunction with the designated  
18           and actual uses of the impacted navigable  
19           water, there exists a reasonable certainty  
20           of no harm to the health of the general  
21           population, or to any potentially exposed or  
22           susceptible subpopulation; or

23                   “(ii) if the Administrator determines  
24           that, due to those potential cumulative im-  
25           pacts, there does not exist a reasonable

1           certainty of no harm to the health of the  
2           general population, or to any potentially  
3           exposed or susceptible subpopulation, the  
4           permit or renewal includes such terms and  
5           conditions as the Administrator determines  
6           to be necessary to ensure a reasonable cer-  
7           tainty of no harm.”; and

8           (B) in paragraph (2), by striking “assure  
9           compliance with the requirements of paragraph  
10          (1) of this subsection, including conditions on  
11          data and information collection, reporting, and  
12          such other requirements as he deems appro-  
13          priate.” and inserting the following: “ensure  
14          compliance with the requirements of paragraph  
15          (1), including—

16               “(A) conditions relating to—

17                       “(i) data and information collection;

18                       “(ii) reporting; and

19                       “(iii) such other requirements as the  
20                       Administrator determines to be appro-  
21                       priate; and

22               “(B) additional controls or pollution pre-  
23          vention requirements.”; and

24          (3) in subsection (b)—

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

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

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

7 “(10) To ensure that no permit will be issued  
8 or renewed if, with respect to an application for the  
9 permit, the State determines, based on an analysis  
10 by the State of existing water quality and the poten-  
11 tial cumulative impacts (as defined in section 501 of  
12 the Clean Air Act (42 U.S.C. 7661)) of the dis-  
13 charge, considered in conjunction with the des-  
14 ignated and actual uses of the impacted navigable  
15 water, that the terms and conditions of the permit  
16 or renewal would not be sufficient to ensure a rea-  
17 sonable certainty of no harm to the health of the  
18 general population, or to any potentially exposed or  
19 susceptible subpopulation.”.

20 (b) CLEAN AIR ACT.—

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

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

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

5 (C) by inserting after paragraph (1) the  
6 following:

7 “(2) CUMULATIVE IMPACTS.—The term ‘cumu-  
8 lative impacts’ means any exposure to a public  
9 health or environmental risk, or other effect occur-  
10 ring in a specific geographical area, including from  
11 an emission, discharge, or release—

12 “(A) including—

13 “(i) environmental pollution re-  
14 leased—

15 “(I)(aa) routinely;

16 “(bb) accidentally; or

17 “(cc) otherwise; and

18 “(II) from any source, whether  
19 single or multiple; and

20 “(ii) as assessed based on the com-  
21 bined past, present, and reasonably fore-  
22 seeable emissions and discharges affecting  
23 the geographical area; and

24 “(B) evaluated taking into account sen-  
25 sitive populations and other factors that may

1           heighten vulnerability to environmental pollu-  
2           tion and associated health risks, including so-  
3           cioeconomic characteristics.”.

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

6                   (A) in paragraph (5)—

7                           (i) in subparagraphs (A) and (C), by  
8                           striking “assure” each place it appears and  
9                           inserting “ensure”; and

10                           (ii) by striking subparagraph (F) and  
11                           inserting the following:

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

14                                   “(i) with respect to an application for  
15                                   a permit or renewal of a permit for a  
16                                   major source, the permitting authority de-  
17                                   termines under paragraph (9)(A)(i)(II)(bb)  
18                                   that the terms and conditions of the per-  
19                                   mit or renewal would not be sufficient to  
20                                   ensure a reasonable certainty of no harm  
21                                   to the health of the general population, or  
22                                   to any potentially exposed or susceptible  
23                                   subpopulation, of the applicable census  
24                                   block groups or Tribal census block groups

1 (as those terms are defined by the Director  
2 of the Bureau of the Census); or

3 “(ii) the Administrator objects to the  
4 issuance of the permit in a timely manner  
5 under this title.”; and

6 (B) by striking paragraph (9) and insert-  
7 ing the following:

8 “(9) MAJOR SOURCES.—

9 “(A) IN GENERAL.—With respect to any  
10 permit or renewal of a permit, as applicable, for  
11 a major source, a requirement that the permit-  
12 ting authority shall—

13 “(i) in determining whether to issue  
14 or renew the permit—

15 “(I) evaluate the potential cumu-  
16 lative impacts of the major source, as  
17 described in the applicable cumulative  
18 impacts analysis submitted under sec-  
19 tion 503(b)(3), taking into consider-  
20 ation other pollution sources and risk  
21 factors within a community;

22 “(II) if, due to those potential  
23 cumulative impacts, the permitting  
24 authority cannot determine that there  
25 exists a reasonable certainty of no

1 harm to the health of the general pop-  
2 ulation, or to any potentially exposed  
3 or susceptible subpopulation, of any  
4 census block groups or Tribal census  
5 block groups (as those terms are de-  
6 fined by the Director of the Bureau of  
7 the Census) located in, or immediately  
8 adjacent to, the area in which the  
9 major source is, or is proposed to be,  
10 located—

11 “(aa) include in the permit  
12 or renewal such standards and  
13 requirements (including addi-  
14 tional controls or pollution pre-  
15 vention requirements) as the per-  
16 mitting authority determines to  
17 be necessary to ensure a reason-  
18 able certainty of no such harm;  
19 or

20 “(bb) if the permitting au-  
21 thority determines that standards  
22 and requirements described in  
23 item (aa) would not be sufficient  
24 to ensure a reasonable certainty  
25 of no such harm, deny the



1 issuance or renewal of the per-  
2 mit;

3 “(III) determine whether the ap-  
4 plicant is a persistent violator, based  
5 on such criteria relating to the history  
6 of compliance by an applicant with  
7 this Act as the Administrator shall es-  
8 tablish by not later than 180 days  
9 after the date of enactment of the En-  
10 vironmental Justice for All Act;

11 “(IV) if the permitting authority  
12 determines under subclause (III) that  
13 the applicant is a persistent violator  
14 and the permitting authority does not  
15 deny the issuance or renewal of the  
16 permit pursuant to subclause  
17 (II)(bb)—

18 “(aa) require the applicant  
19 to submit a plan that describes—

20 “(AA) if the applicant  
21 is not in compliance with  
22 this Act, measures the appli-  
23 cant will carry out to  
24 achieve that compliance, to-  
25 gether with an approximate

1 deadline for that achieve-  
2 ment;

3 “(BB) measures the  
4 applicant will carry out, or  
5 has carried out to ensure the  
6 applicant will remain in  
7 compliance with this Act,  
8 and to mitigate the environ-  
9 mental and health effects of  
10 noncompliance; and

11 “(CC) the measures the  
12 applicant has carried out in  
13 preparing the plan to con-  
14 sult or negotiate with the  
15 communities affected by  
16 each persistent violation ad-  
17 dressed in the plan; and

18 “(bb) once such a plan is  
19 submitted, determine whether the  
20 plan is adequate to ensuring that  
21 the applicant—

22 “(AA) will achieve com-  
23 pliance with this Act expedi-  
24 tiously;

1 “(BB) will remain in  
2 compliance with this Act;

3 “(CC) will mitigate the  
4 environmental and health ef-  
5 fects of noncompliance; and

6 “(DD) has solicited and  
7 responded to community  
8 input regarding the plan;  
9 and

10 “(V) deny the issuance or re-  
11 newal of the permit if the permitting  
12 authority determines that—

13 “(aa) the plan submitted  
14 under subclause (IV)(aa) is inad-  
15 equate; or

16 “(bb)(AA) the applicant has  
17 submitted a plan on a prior occa-  
18 sion, but continues to be a per-  
19 sistent violator; and

20 “(BB) no indication exists  
21 of extremely exigent cir-  
22 cumstances excusing the per-  
23 sistent violations; and

24 “(ii) in the case of such a permit with  
25 a term of 3 years or longer, require permit

1 revisions in accordance with subparagraph  
2 (B).

3 “(B) REVISION REQUIREMENTS.—

4 “(i) DEADLINE.—A revision described  
5 in subparagraph (A)(ii) shall occur as ex-  
6 peditiously as practicable and consistent  
7 with the procedures established under  
8 paragraph (6) but not later than 18  
9 months after the promulgation of such  
10 standards and regulations.

11 “(ii) EXCEPTION.—A revision under  
12 this paragraph shall not be required if the  
13 effective date of the standards or regula-  
14 tions is a date after the expiration of the  
15 permit term.

16 “(iii) TREATMENT AS RENEWAL.—A  
17 permit revision under this paragraph shall  
18 be treated as a permit renewal if it com-  
19 plies with the requirements of this title re-  
20 garding renewals.”.

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

24 “(3) MAJOR SOURCE ANALYSES.—The regula-  
25 tions required by section 502(b) shall include a re-

1        requirement that an applicant for a permit or renewal  
2        of a permit for a major source shall submit, together  
3        with the compliance plan required under this sub-  
4        section, a cumulative impacts analysis for each cen-  
5        sus block group or Tribal census block group (as  
6        those terms are defined by the Director of the Bu-  
7        reau of the Census) located in, or immediately adja-  
8        cent to, the area in which the major source is, or is  
9        proposed to be, located that analyzes—

10                “(A) community demographics and loca-  
11                tions of community exposure points, such as  
12                schools, day care centers, nursing homes, hos-  
13                pitals, health clinics, places of religious worship,  
14                parks, playgrounds, and community centers;

15                “(B) air quality and the potential effect on  
16                that air quality of emissions of air pollutants  
17                (including pollutants listed under section 108 or  
18                112) from the major source, including in com-  
19                bination with existing sources of pollutants;

20                “(C) the potential effects on soil quality  
21                and water quality of emissions of lead and other  
22                air pollutants that could contaminate soil or  
23                water from the major source, including in com-  
24                bination with existing sources of pollutants; and

1                   “(D) public health and any potential ef-  
2                   fects on public health from the major source.”.

