

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To amend certain provisions relating to criminal violations under the Clean Air Act.

**IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.**

**S. 1917**

To reform sentencing laws and correctional institutions, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by \_\_\_\_\_

Viz:

1 At the end, add the following:

2 **TITLE IV—CRIMINAL VIOLA-**  
 3 **TIONS UNDER THE CLEAN AIR**  
 4 **ACT**

5 **SEC. 401. CRIMINAL PENALTIES.**

6 Section 113(c)(1) of the Clean Air Act (42 U.S.C.

7 7413(c)(1)) is amended—

8 (1) by striking “(1) Any” and inserting the fol-  
 9 lowing:

10 “(1) PENALTIES.—

11 “(A) IN GENERAL.—Any”;

1           (2) in subparagraph (A) of paragraph (1) (as  
2       so redesignated)—

3           (A) in the first sentence—

4           (i) by striking “requirement or prohi-  
5       bition of section 111(e) of this title (relat-  
6       ing to new source performance standards),  
7       section 112 of this title,”; and

8           (ii) by striking “or title VI (relating  
9       to stratospheric ozone control),”; and

10          (B) in the second sentence, by striking  
11       “this paragraph” each place it appears and in-  
12       serting “this subparagraph”; and

13       (3) by adding at the end the following:

14           “(B) CERTAIN VIOLATIONS.—

15           “(i) IN GENERAL.—Any person who  
16       knowingly violates any requirement or pro-  
17       hibition of section 111(e) (relating to new  
18       source performance standards), section  
19       112, or title VI (relating to stratospheric  
20       ozone control), including a requirement of  
21       any rule, order, waiver, or permit promul-  
22       gated or approved under those sections or  
23       titles, and including any requirement for  
24       the payment of any fee owed the United  
25       States under this Act (other than title II),

1 shall, on conviction, be punished by impris-  
2 onment for not to exceed 10 years, a fine  
3 not to exceed \$10,000,000 (except as pro-  
4 vided in clause (ii)), or both.

5 “(ii) SPECIAL RULE FOR PECUNIARY  
6 LOSSES.—

7 “(I) IN GENERAL.—If any person  
8 or organization derives pecuniary gain  
9 from a violation described in clause  
10 (i), or if the violation results in pecu-  
11 niary loss to 1 or more persons or or-  
12 ganizations other than the defendant,  
13 the defendant may be fined not more  
14 than the greater of 3 times the gross  
15 gain or 3 times the gross loss.

16 “(II) CALCULATION OF  
17 LOSSES.—In calculating losses for  
18 purposes of subclause (I), the court  
19 may—

20 “(aa) rely on peer-reviewed  
21 modeling or other estimates of  
22 total economic losses, including  
23 negative public health con-  
24 sequences that result from the  
25 violation; and

1 “(bb) include estimated fu-  
2 ture losses.

3 “(iii) MULTIPLE VIOLATIONS.—If a  
4 conviction of any person under this sub-  
5 paragraph is for a violation committed  
6 after a first conviction of such person  
7 under this subparagraph, the maximum  
8 punishment shall be doubled with respect  
9 to both the fine and imprisonment.”.

10 **SEC. 402. FALSE STATEMENTS IN CAA DOCUMENTS.**

11 Section 113(c) of the Clean Air Act (42 U.S.C.  
12 7413(c)) is amended by striking paragraph (2) and insert-  
13 ing the following:

14 “(2) FALSE STATEMENTS IN DOCUMENTS.—

15 “(A) IN GENERAL.—A penalty under sub-  
16 paragraph (B) shall apply to any person who  
17 knowingly—

18 “(i) makes any false material state-  
19 ment, representation, or certification in, or  
20 omits material information from, or know-  
21 ingly alters, conceals, or fails to file or  
22 maintain any notice, application, record,  
23 report, plan, or other document required  
24 pursuant to this Act to be either filed or  
25 maintained (whether with respect to the

1 requirements imposed by the Adminis-  
2 trator or by a State);

3 “(ii) fails to notify or report as re-  
4 quired under this Act; or

5 “(iii) falsifies, tampers with, renders  
6 inaccurate, or fails to install any moni-  
7 toring device or method required to be  
8 maintained or followed under this Act.

9 “(B) PENALTY.—A person who commits a  
10 violation under subparagraph (A) shall, on con-  
11 viction, be punished by imprisonment for not to  
12 exceed 2 years, a fine of not more than  
13 \$5,000,000 (except as provided in subpara-  
14 graph (C)), or both.

15 “(C) SPECIAL RULE FOR PECUNIARY  
16 LOSSES.—

17 “(i) IN GENERAL.—If any person or  
18 organization derives pecuniary gain from a  
19 violation described in subparagraph (A), or  
20 if the violation results in pecuniary loss to  
21 1 or more persons or organizations other  
22 than the defendant, the defendant may be  
23 fined not more than the greater of 3 times  
24 the gross gain or 3 times the gross loss.

1                   “(ii) CALCULATION OF LOSSES.—In  
2                   calculating losses for purposes of clause  
3                   (i), the court may—

4                                 “(I) rely on peer-reviewed mod-  
5                                 eling or other estimates of total eco-  
6                                 nomic losses, including negative public  
7                                 health consequences that result from  
8                                 the violation; and

9                                 “(II) include estimated future  
10                                 losses.

11                   “(D) MULTIPLE VIOLATIONS.—If a convic-  
12                   tion of any person under this paragraph is for  
13                   a violation committed after a first conviction of  
14                   such person under this paragraph, the max-  
15                   imum punishment shall be doubled with respect  
16                   to both the fine and imprisonment.”.

17 **SEC. 403. KNOWING OR NEGLIGENT ENDANGERMENT.**

18                   (a) NEGLIGENT OFFENSE.—Section 113(c)(4) of the  
19 Clean Air Act (42 U.S.C. 7413(c)(4)) is amended—

20                                 (1) in the first sentence—

21   (A) by inserting “(A)” before “Any”; and

22   (B) by striking “be punished by a fine  
23   under title 18 or by imprisonment for not more  
24   than 1 year, or both” and inserting “be fined  
25   not more than \$10,000,000 or in the case of

1 any person or organization deriving pecuniary  
2 gain from the offense, or if the offense results  
3 in pecuniary loss to 1 or more persons or orga-  
4 nizations other than the defendant, the defend-  
5 ant may be fined not more than the greater of  
6 3 times the gross gain or 3 times the gross loss,  
7 imprisoned for not more than 10 years, or  
8 both.”; and

9 (2) by striking the second sentence and insert-  
10 ing the following:

11 “(B) For purposes of subparagraph (A), in cal-  
12 culating losses to persons or organizations, the court  
13 may—

14 “(i) rely on peer-reviewed modeling or  
15 other estimates of total economic losses includ-  
16 ing negative public health consequences that re-  
17 sult from the proscribed activity; and

18 “(ii) in the determining the gross loss  
19 amount, include the estimated future loss of the  
20 person or organization.

21 “(C) If a conviction of any person under this  
22 paragraph is for a violation committed after a first  
23 conviction of such person under this paragraph, the  
24 maximum punishment shall be doubled with respect  
25 to both the fine and imprisonment.”.

1 (b) KNOWING OFFENSE.—Section 113(c)(5)(A) of  
2 the Clean Air Act (42 U.S.C. 7413(c)(5)(A)) is amended,  
3 in the first sentence, by striking “be punished by a fine  
4 under title 18 or by imprisonment of not more than 15  
5 years, or both. Any person committing such violation  
6 which is an organization shall, upon conviction under this  
7 paragraph, be subject to a fine of not more than  
8 \$1,000,000 for each violation.” and inserting “be fined  
9 not more than \$30,000,000 or in the case of any person  
10 or organization deriving pecuniary gain from the offense,  
11 or if the offense results in pecuniary loss to 1 or more  
12 persons or organizations other than the defendant, the de-  
13 fendant may be fined not more than the greater of 3 times  
14 the gross gain or 3 times the gross loss, imprisoned for  
15 not more than 30 years, or both. For purposes of this sub-  
16 paragraph, in calculating losses to persons or organiza-  
17 tions, the court may rely on peer-reviewed modeling or  
18 other estimates of total economic losses including negative  
19 public health consequences that result from the proscribed  
20 activity and may include the estimated future loss of the  
21 person or organization in the determination of the gross  
22 loss amount.”.

23 **SEC. 404. VIOLATION OF EMERGENCY ORDER.**

24 Section 113(c)(1) of the Clean Air Act (42 U.S.C.  
25 7413(c)(1)) is amended—



1 (1) in the first sentence—

2 (A) by inserting (A) before “Any”;

3 (B) by striking “knowingly”; and

4 (C) by striking “be punished by a fine pur-

5 suant to title 18 or by imprisonment for not to

6 exceed 5 years, or both.” and inserting the fol-

7 lowing: “be fined not more than \$10,000,000

8 or, in the case of any person or organization de-

9 riving pecuniary gain from the offense, or if the

10 offense results in pecuniary loss to 1 or more

11 persons or organizations other than the defend-

12 ant, fined not more than the greater of 3 times

13 the gross gain or 3 times the gross loss, impris-

14 oned not more than 10 years, or both.”; and

15 (2) by striking the second sentence and insert-

16 ing the following:

17 “(B) For purposes of subparagraph (A), in cal-

18 culating losses to persons or organizations, the court

19 may—

20 “(i) rely on peer-reviewed modeling or

21 other estimates of total economic losses, includ-

22 ing negative public health consequences that re-

23 sult from the proscribed activity; and

1           “(ii) in the determining the gross loss  
2           amount, include the estimated future loss of the  
3           person or organization.

4           “(C) If a conviction of any person under sub-  
5           paragraph (A) is for a violation committed after a  
6           first conviction of such person under this paragraph,  
7           the maximum punishment shall be doubled with re-  
8           spect to both the fine and imprisonment.

9           “(D) For purposes of an offense under this  
10          paragraph, the Government need not prove that the  
11          defendant acted with any state of mind.”.