

112TH CONGRESS  
1ST SESSION

# S. 1392

To provide additional time for the Administrator of the Environmental Protection Agency to issue achievable standards for industrial, commercial, and institutional boilers, process heaters, and incinerators, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

JULY 20 (legislative day, JULY 19), 2011

Ms. COLLINS (for herself, Mr. WYDEN, Mr. ALEXANDER, Ms. LANDRIEU, Mr. TOOMEY, and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

## A BILL

To provide additional time for the Administrator of the Environmental Protection Agency to issue achievable standards for industrial, commercial, and institutional boilers, process heaters, and incinerators, 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 “EPA Regulatory Relief  
5       Act of 2011”.

1 **SEC. 2. LEGISLATIVE STAY.**

2 (a) ESTABLISHMENT OF STANDARDS.—In place of  
3 the rules specified in subsection (b), and notwithstanding  
4 the date by which such rules would otherwise be required  
5 to be promulgated, the Administrator of the Environ-  
6 mental Protection Agency (in this Act referred to as the  
7 “Administrator”) shall—

8 (1) propose regulations for industrial, commer-  
9 cial, and institutional boilers and process heaters,  
10 and commercial and industrial solid waste inciner-  
11 ator units, subject to any of the rules specified in  
12 subsection (b)—

13 (A) establishing maximum achievable con-  
14 trol technology standards, performance stand-  
15 ards, and other requirements under sections  
16 112 and 129, as applicable, of the Clean Air  
17 Act (42 U.S.C. 7412, 7429); and

18 (B) identifying non-hazardous secondary  
19 materials that, when used as fuels or ingredi-  
20 ents in combustion units of such boilers, proc-  
21 ess heaters, or incinerator units are solid waste  
22 under the Solid Waste Disposal Act (42 U.S.C.  
23 6901 et seq.; commonly referred to as the “Re-  
24 source Conservation and Recovery Act”) for  
25 purposes of determining the extent to which  
26 such combustion units are required to meet the

1 emissions standards under section 112 of the  
2 Clean Air Act (42 U.S.C. 7412) or the emission  
3 standards under section 129 of such Act (42  
4 U.S.C. 7429); and

5 (2) finalize the regulations on the date that is  
6 15 months after the date of the enactment of this  
7 Act, or on such later date as may be determined by  
8 the Administrator.

9 (b) STAY OF EARLIER RULES.—The following rules  
10 are of no force or effect, shall be treated as though such  
11 rules had never taken effect, and shall be replaced as de-  
12 scribed in subsection (a):

13 (1) “National Emission Standards for Haz-  
14 arduous Air Pollutants for Major Sources: Industrial,  
15 Commercial, and Institutional Boilers and Process  
16 Heaters”, published at 76 Fed. Reg. 15608 (March  
17 21, 2011).

18 (2) “National Emission Standards for Haz-  
19 arduous Air Pollutants for Area Sources: Industrial,  
20 Commercial, and Institutional Boilers”, published at  
21 76 Fed. Reg. 15554 (March 21, 2011).

22 (3) “Standards of Performance for New Sta-  
23 tionary Sources and Emission Guidelines for Exist-  
24 ing Sources: Commercial and Industrial Solid Waste

1 Incineration Units”, published at 76 Fed. Reg.  
2 15704 (March 21, 2011).

3 (4) “Identification of Non-Hazardous Sec-  
4 ondary Materials That are Solid Waste”, published  
5 at 76 Fed. Reg. 15456 (March 21, 2011).

6 (c) INAPPLICABILITY OF CERTAIN PROVISIONS.—

7 With respect to any standard required by subsection (a)  
8 to be promulgated in regulations under section 112 of the  
9 Clean Air Act (42 U.S.C. 7412), the provisions of sub-  
10 sections (g)(2) and (j) of such section 112 shall not apply  
11 prior to the effective date of the standard specified in such  
12 regulations.

13 **SEC. 3. COMPLIANCE DATES.**

14 (a) ESTABLISHMENT OF COMPLIANCE DATES.—For  
15 each regulation promulgated pursuant to section 2, the  
16 Administrator—

17 (1) shall establish a date for compliance with  
18 standards and requirements under such regulation  
19 that is, notwithstanding any other provision of law,  
20 not earlier than 5 years after the effective date of  
21 the regulation; and

22 (2) in proposing a date for such compliance,  
23 shall take into consideration—

24 (A) the costs of achieving emissions reduc-  
25 tions;

1 (B) any non-air quality health and environ-  
2 mental impact and energy requirements of the  
3 standards and requirements;

4 (C) the feasibility of implementing the  
5 standards and requirements, including the time  
6 needed to—

7 (i) obtain necessary permit approvals;

8 and

9 (ii) procure, install, and test control  
10 equipment;

11 (D) the availability of equipment, sup-  
12 pliers, and labor, given the requirements of the  
13 regulation and other proposed or finalized regu-  
14 lations of the Environmental Protection Agency;  
15 and

16 (E) potential net employment impacts.

17 (b) NEW SOURCES.—The date on which the Adminis-  
18 trator proposes a regulation pursuant to section 2(a)(1)  
19 establishing an emission standard under section 112 or  
20 129 of the Clean Air Act (42 U.S.C. 7412, 7429) shall  
21 be treated as the date on which the Administrator first  
22 proposes such a regulation for purposes of applying the  
23 definition of a new source under section 112(a)(4) of such  
24 Act (42 U.S.C. 7412(a)(4)) or the definition of a new solid

1 waste incineration unit under section 129(g)(2) of such  
2 Act (42 U.S.C. 7429(g)(2)).

3 (c) **RULE OF CONSTRUCTION.**—Nothing in this Act  
4 shall be construed to restrict or otherwise affect the provi-  
5 sions of paragraphs (3)(B) and (4) of section 112(i) of  
6 the Clean Air Act (42 U.S.C. 7412(i)).

7 **SEC. 4. ENERGY RECOVERY AND CONSERVATION.**

8 (a) **IN GENERAL.**—Notwithstanding any other provi-  
9 sion of law, to ensure the recovery and conservation of  
10 energy consistent with the Solid Waste Disposal Act (42  
11 U.S.C. 6901 et seq.) (commonly known as the “Resource  
12 Conservation and Recovery Act of 1976”), in promul-  
13 gating regulations under section 2(a) that address the  
14 subject matter of the regulations described in paragraphs  
15 (3) and (4) of section 2(b), the Administrator shall—

16 (1) adopt the definitions of the terms “commer-  
17 cial and industrial solid waste incineration unit”,  
18 “commercial and industrial waste”, and “contained  
19 gaseous material” contained in the regulation enti-  
20 tled “Standards of Performance for New Stationary  
21 Sources and Emission Guidelines for Existing  
22 Sources: Commercial and Industrial Solid Waste In-  
23 cineration Units” (65 Fed. Reg. 75338 (December  
24 1, 2000)); and

1           (2) identify nonhazardous secondary material as  
2 not to be solid waste for purposes of the Solid Waste  
3 Disposal Act (42 U.S.C. 6901 et seq.) if—

4           (A) the material—

5                 (i) does not meet the definition of  
6 commercial and industrial waste; and

7                 (ii) is on the list published by the Ad-  
8 ministrator under subsection (b); or

9           (B) in the case of the material that is a  
10 gas, the material does not meet the definition of  
11 contained gaseous material.

12         (b) LIST OF NONHAZARDOUS SECONDARY MATE-  
13 RIALS.—

14           (1) IN GENERAL.—Not later than 120 days  
15 after the date of enactment of this Act, the Adminis-  
16 trator shall publish a list of nonhazardous secondary  
17 materials that are not solid waste when combusted  
18 in units designed for energy recovery, including—

19           (A) without limitation, all forms of bio-  
20 mass, including—

21                 (i) agricultural and forest-derived bio-  
22 mass;

23                 (ii) biomass crops, vines, and orchard  
24 trees;

- 1 (iii) bagasse and other crop and tree  
2 residues, including—
- 3 (I) hulls and seeds;
  - 4 (II) spent grains;
  - 5 (III) byproducts of cotton;
  - 6 (IV) corn and peanut production;
  - 7 (V) rice milling and grain eleva-  
8 tor operations;
  - 9 (VI) cellulosic biofuels; and
  - 10 (VII) byproducts of ethanol nat-  
11 ural fermentation processes;
  - 12 (iv) hogged fuel, including wood pal-  
13 lets, sawdust, and wood pellets;
  - 14 (v) wood debris from forests and  
15 urban areas;
  - 16 (vi) resinated wood and other  
17 resinated biomass-derived residuals, includ-  
18 ing trim, sanderdust, offcuts, and wood-  
19 working residuals;
  - 20 (vii) creosote-treated, borate-treated,  
21 sap-stained, and other treated wood;
  - 22 (viii) residuals from wastewater treat-  
23 ment by the manufacturing industry, in-  
24 cluding process wastewater with significant  
25 British thermal unit (“Btu”) value;



- 1 (ix) paper and paper or cardboard re-  
2 cycling residuals, including paper-derived  
3 fuel cubes, paper fines, and paper and  
4 cardboard rejects;
- 5 (x) turpentine, turpentine derivatives,  
6 pine tar, rectified methanol, glycerine, lum-  
7 ber kiln condensates, and wood char;
- 8 (xi) tall oil and related soaps;
- 9 (xii) biogases or bioliquids generated  
10 from biomass materials, wastewater oper-  
11 ations, or landfill operations;
- 12 (xiii) processed biomass derived from  
13 construction and demolition debris for the  
14 purpose of fuel production; and
- 15 (xiv) animal manure and bedding ma-  
16 terial;
- 17 (B) solid and emulsified paraffin;
- 18 (C) petroleum and chemical reaction and  
19 distillation byproducts and residues, alcohol,  
20 ink, and nonhalogenated solvents;
- 21 (D) tire-derived fuel, including factory  
22 scrap tire and related material;
- 23 (E) foundry sand processed in thermal rec-  
24 lamation units;

1 (F) coal refuse and coal combustion re-  
2 siduals;

3 (G) shredded cloth and carpet scrap;

4 (H) latex paint water, organic printing  
5 dyes and inks, recovered paint solids, and non-  
6 metallic paint sludges;

7 (I) nonchlorinated plastics;

8 (J) all used oil that qualifies as recycled oil  
9 under section 1004 of the Solid Waste Disposal  
10 Act (42 U.S.C. 6903);

11 (K) process densified fuels that contain  
12 any of the materials described in this para-  
13 graph; and

14 (L) any other specific or general categories  
15 of material that the Administrator determines  
16 the combustion of which is for use as a fuel  
17 pursuant to paragraph (2).

18 (2) ADDITIONS TO THE LIST.—

19 (A) IN GENERAL.—To provide greater reg-  
20 ulatory certainty, the Administrator may, after  
21 public notice and opportunity to comment, add  
22 nonhazardous secondary materials to the list  
23 published under paragraph (1)—

24 (i) as the Administrator determines  
25 necessary; or

1 (ii) based on a petition submitted by  
2 any person.

3 (B) RESPONSE.—Not later than 120 days  
4 after receiving any petition under subparagraph  
5 (A)(ii), the Administrator shall respond to the  
6 petition.

7 (C) REQUIREMENTS.—In making a deter-  
8 mination under this paragraph, the Adminis-  
9 trator may decline to add a material to the list  
10 under paragraph (1) if the Administrator deter-  
11 mines that regulation under section 112 of the  
12 Clean Air Act (42 U.S.C. 7412) would not rea-  
13 sonably protect public health with an ample  
14 margin of safety.

15 **SEC. 5. OTHER PROVISIONS.**

16 (a) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN  
17 PRACTICE.—In promulgating rules under section 2(a), the  
18 Administrator shall ensure that emissions standards for  
19 existing and new sources established under section 112 or  
20 129 of the Clean Air Act (42 U.S.C. 7412, 7429), as ap-  
21 plicable, can be met under actual operating conditions con-  
22 sistently and concurrently with emission standards for all  
23 other air pollutants regulated by the rule for the source  
24 category, taking into account variability in actual source  
25 performance, source design, fuels, inputs, controls, ability

1 to measure the pollutant emissions, and operating condi-  
2 tions.

3 (b) REGULATORY ALTERNATIVES.—For each regula-  
4 tion promulgated pursuant to section 2(a), from among  
5 the range of regulatory alternatives authorized under the  
6 Clean Air Act (42 U.S.C. 7401 et seq.) including work  
7 practice standards under section 112(h) of such Act (42  
8 U.S.C. 7412(h)), the Administrator shall impose the least  
9 burdensome, consistent with the purposes of such Act and  
10 Executive Order 13563 published at 76 Fed. Reg. 3821  
11 (January 21, 2011).

○