

1 Act, is further amended by adding after part E (as added
2 by section 333 of this Act) the following new part:

3 **“PART F—MISCELLANEOUS**

4 **“SEC. 861. STATE PROGRAMS.**

5 “Notwithstanding section 116, no State or political
6 subdivision thereof shall implement or enforce a cap that
7 covers any capped emissions emitted during the years
8 2012 through 2017. For purposes of this section, the term
9 ‘cap’ means an absolute tonnage limit on the amount of
10 greenhouse gases that can be emitted by a group of
11 sources over a specified time period, and that does not
12 vary with any other factor, including the number of
13 sources covered, the amount of time the sources operate,
14 and the production of the sources. For purposes of this
15 section, the term ‘cap’ does not include, among other
16 things, fleet-wide motor vehicle emission requirements
17 that allow greater emissions with increased vehicle produc-
18 tion, or requirements that fuels, or other products, meet
19 an average pollution emission rate or lifecycle greenhouse
20 gas standard.”.

21 **SEC. 336. ENFORCEMENT.**

22 (a) CITIZEN SUITS.—Section 304 of the Clean Air
23 Act (42 U.S.C. 7604) is amended by adding the following
24 new subsection at the end thereof:

1 “(h)(1) The persons authorized by subsection (a) to
2 commence an action under this section shall include any
3 person who has suffered, or reasonably expects to suffer,
4 a harm attributable, in whole or in part, to a violation
5 or failure to act referred to in subsection (a).

6 “(2) For purposes of this section, the term ‘harm’
7 includes any effect of air pollution (including climate
8 change), currently occurring or at risk of occurring, and
9 the incremental exacerbation of any such effect or risk
10 that is associated with a small incremental emission of any
11 air pollutant (including any greenhouse gas as defined in
12 title VII), whether or not the effect or risk is widely
13 shared.

14 “(3) For purposes of this section, an effect or risk
15 associated with any air pollutant (including any green-
16 house gas as defined in title VII) shall be considered at-
17 tributable to the violation or failure to act concerned if
18 the violation or failure to act slows the pace of implemen-
19 tation of this Act or compliance with this Act or results
20 in any emission of greenhouse gas or other air pollutant
21 at a higher level than would have been emitted in the ab-
22 sence of the violation or failure to act.”.

23 (b) GENERAL JUDICIAL REVIEW.—Section 307(b) of
24 the Clean Air Act (42 U.S.C. 7607(b)) is amended by add-
25 ing the following new paragraphs at the end thereof:

1 “(3)(A) A petition for review may be filed
2 under this section by any person who has suffered
3 or reasonably expects to suffer a harm attributable,
4 in whole or in part, to an action of the Adminis-
5 trator referred to in paragraph (1).

6 “(B) For purposes of this section, the term
7 ‘harm’ may include any effect of air pollution (in-
8 cluding climate change), currently occurring or at
9 risk of occurring, and the incremental exacerbation
10 of any such effect or risk that is associated with a
11 small incremental emission of any air pollutant, (in-
12 cluding any greenhouse gas as defined in title VII),
13 whether or not the effect or risk is widely shared.

14 “(C) For purposes of this section, an effect or
15 risk associated with any air pollutant (including any
16 greenhouse gas as defined in title VII) shall be con-
17 sidered attributable to an action of the Adminis-
18 trator referred to in paragraph (1) concerned if the
19 action slows the pace of implementation of this Act
20 or compliance with this Act or results in any emis-
21 sion of greenhouse gas or other air pollutant at a
22 higher level than would have been emitted in the ab-
23 sence of the action of the Administrator.

24 “(4)(A) If the court determines that any action
25 of the Administrator is arbitrary, capricious, or oth-

1 otherwise unlawful, the court may remand such action,
2 without vacatur, if vacatur would impair or delay
3 protection of the environment or public health or
4 otherwise undermine the timely achievement of the
5 purposes of this Act.

6 “(B) If the court determines that any action of
7 the Administrator is arbitrary, capricious, or other-
8 wise unlawful, and remands the matter to the Ad-
9 ministrator, the Administrator shall complete final
10 action on remand within an expeditious time period
11 no longer than the time originally allowed for the ac-
12 tion or one year, whichever is less, unless the court
13 on motion determines that a shorter or longer period
14 is necessary, appropriate, and consistent with the
15 purposes of this Act. The court of appeals shall have
16 jurisdiction to enforce a deadline for action on re-
17 mand under this subparagraph.”.

18 (c) PETITION FOR RECONSIDERATION.—Section
19 307(d)(7)(B) of the Clean Air Act (42 U.S.C.
20 7607(d)(7)(B)) is amended as follows:

21 (1) By inserting after the second sentence “If
22 a petition for reconsideration is filed, the Adminis-
23 trator shall take final action on such petition, in-
24 cluding promulgation of final action either revising
25 or determining not to revise the action for which re-

1 consideration is sought, within 150 days after the
2 petition is received by the Administrator or the peti-
3 tion shall be deemed denied for the purpose of judi-
4 cial review.”.

5 (2) By amending the third sentence to read as
6 follows: “Such person may seek judicial review of
7 such denial, or of any other final action, by the Ad-
8 ministrator, in response to a petition for reconsider-
9 ation, in the United States court of appeals for the
10 appropriate circuit (as provided in subsection (b)).”.

11 (d) JUDICIAL REVIEW.—Part F of title VIII of the
12 Clean Air Act, as added by section 335 of this Act, is
13 amended by adding at the end the following new section:
14 **“SEC. 862. JUDICIAL REVIEW.**

15 “(a) IN GENERAL.—With respect to a civil action
16 under section 304 or a petition for review under section
17 307 alleging a Federal agency violation of, or failure to
18 perform a nondiscretionary act or duty under, title VII
19 or this title, the provisions of section 304 and section 307
20 apply except as otherwise expressly provided in this sec-
21 tion.

22 “(b) COMMON CLAIMS.—When civil actions arising
23 under title VII or this title are pending in the same court
24 and involve one or more common questions of fact or com-
25 mon claims regarding the same alleged Federal agency

1 violation or failure to act, the court may consolidate such
2 claims into a single action for judicial review. When civil
3 actions arising under title VII or this title are pending
4 in different districts and involve one or more common
5 questions of fact or common claims regarding the same
6 alleged violation or failure to act, such actions may be con-
7 solidated pursuant to section 1407 of title 28, United
8 States Code.

9 “(c) REMEDIES.—

10 “(1) IN GENERAL.—In addition to the remedies
11 available under this Act, a court may provide the
12 remedies specified in this subsection in the case of
13 a violation of title VII or this title.

14 “(2) PAYMENT.—In any civil action alleging a
15 violation of title VII or this title if the court finds
16 that an agency has significantly violated title VII or
17 this title in its failure to perform any nondis-
18 cretionary act or duty under title VII or this title,
19 the court may award a payment, payable by the
20 United States Treasury, to be used for a beneficial
21 mitigation project recommended by the plaintiff or
22 to compensate the plaintiff for any impact from
23 global warming suffered by the plaintiff. The total
24 payment for all claims by all plaintiffs in any such
25 action shall not exceed the amount provided in sec-

1 tion 1332(b) of title 28, United States Code. A court
2 may deny a second payment under this section if the
3 court determines that the plaintiff has filed multiple
4 separate actions that could reasonably have been
5 combined into a single action. No payment may be
6 awarded under this paragraph for violations of an
7 agency's obligation to collect or report information
8 to the public. No court may award any payment
9 under this paragraph in any given year if the cumu-
10 lative payments awarded by courts under this para-
11 graph in such year are equal to or greater than
12 \$1,500,000.

13 “(3) COSTS.—A court may award costs of liti-
14 gation to any substantially prevailing plaintiff or to
15 any other plaintiff whenever the court determines
16 such an award is appropriate in the case of a viola-
17 tion of title VII or this title. Such an award is ap-
18 propriate when such litigation contributes to the
19 Federal agency's compliance with title VII or this
20 title. For purposes of this paragraph, costs of litiga-
21 tion include reasonable attorney fees and expert fees.

22 “(4) EXCLUSIVE REMEDY.—Notwithstanding
23 any other provision of Federal law—

24 “(A) no plaintiff who is awarded a pay-
25 ment under this subsection for a failure to per-

1 form a mandatory duty under title VII or this
2 title may be awarded a payment for such failure
3 under any other Federal law; and

4 “(B) no plaintiff may be awarded a pay-
5 ment under this subsection for a failure to per-
6 form a mandatory duty under title VII or this
7 title if the plaintiff has been awarded a pay-
8 ment for such failure under any other Federal
9 law.”.

10 **SEC. 337. CONFORMING AMENDMENTS.**

11 (a) FEDERAL ENFORCEMENT.—Section 113 of the
12 Clean Air Act (42 U.S.C. 7413) is amended as follows:

13 (1) In subsection (a)(3), by striking “or title
14 VI,” and inserting “title VI, title VII, or title VIII”.

15 (2) In subsection (b), by striking “or a major
16 stationary source” and inserting “a major stationary
17 source, or a covered EGU under title VIII,” in the
18 material preceding paragraph (1).

19 (3) In paragraph (2), by striking “or title VI”
20 and inserting “title VI, title VII, or title VIII”.

21 (4) In subsection (c)—

22 (A) in the first sentence of paragraph (1),
23 by striking “or title VI (relating to strato-
24 spheric ozone control),” and inserting “title VI
25 (relating to stratospheric ozone control), or title