

Center for Biological Diversity * Conservatives for Responsible Stewardship * Earthjustice
Environment America * Environmental Defense Fund * League of Conservation Voters
League of Women Voters * Natural Resources Defense Council
Physicians for Social Responsibility * Sierra Club * Southern Environmental Law Center
Union of Concerned Scientists * Voices for Progress

April 14, 2016

Dear Representative:

On Thursday, April 14, the House Energy and Commerce Energy & Power Subcommittee is holding a hearing on H.R. 4775—the so-called “Ozone Standards Implementation Act.” The undersigned environmental, science, and health groups believe this bill represents one of the most irresponsible compilations of attacks on Clean Air Act health standards ever to be introduced in Congress. If this bill were to become law, it would be very detrimental for our nation’s air quality, public health and Americans’ right to clean, safe air. The legislation systematically weakens the Clean Air Act without a single improvement. It eliminates Americans’ 46-year right to healthy air based on medical science, and substitutes a process in which politics and profits will dictate acceptable air quality. The bill delays life-saving health standards that already are years overdue. Each section of this bill would effect a radical rewrite of the Clean Air Act. The following section-by-section analysis explains in greater detail exactly how this draft legislation would weaken the Clean Air Act and worsen air quality and public health in ways not allowed under current law.

Section 2(a): This section denies Americans the right to clean, healthy air for up to eight years longer than current law allows. EPA recently strengthened national health standards for ground-level ozone (or smog) pollution, and states have one year to tell EPA which areas have healthy air and which do not. Following that, EPA has one year to designate unhealthy areas, which triggers cleanup of unhealthy, polluted air. States must implement the standards within three years of their adoption. H.R. 4775 delays all these requirements by *eight years*, meaning that cleanup steps by polluters will be delayed by eight years, and Americans will not even have the right to know if the air they breathe is unhealthy.

Section 2(b): This section weakens the Clean Air Act by letting corporations that apply for air pollution permits pollute at levels that national health standards recognize to be unsafe. The bill provides that facilities applying for air pollution permits need not meet the updated 2015 ozone health standards if they submit a draft or complete application any time before the drawn out, eight-year delayed deadline in section 2(a). Adding insult to the injury of an eight-year delay, section 2(b) reverses longstanding Clean Air Act safeguards by letting the largest sources of air pollution exceed health standards. Congress has prohibited this evasion for nearly

40 years. Section 2(b) would make new polluters “winners” at the expense of existing businesses in an area, as well as any future businesses seeking to expand, by letting new entrant polluters worsen an area’s air quality inordinately. This makes it harder and more costly for other businesses to expand or grow, if the new polluter pushes the area near or over an unhealthy classification. Indeed, the provision gives a perverse incentive for these facilities to pollute a community as quickly and severely as possible, all the way up to the level of outdated ozone standards, knowing that the safer 2015 standard will need to be met later. This section plays favorites with big polluters and ensures that we all lose from dirtier, less safe air.

Sections 3(a)(1) & (a)(2): Section 3 would radically weaken the Clean Air Act to *double* the time period in which the U.S. EPA is required to review national health standards for ozone, soot, lead and other dangerous pollutants. Current law requires that EPA review the science on ozone, soot, and four other common pollutants every five years, and update standards for these pollutants if the science indicates the standards should be updated. It is critical to understand, however, that even with this 5-year statutory deadline, in practice EPA has reviewed health standards every 8 years or longer. What this means is that delaying the statutory deadline from 5 to 10 years would in effect delay EPA’s updates to standards for even longer than 10 years. As we learn more about air pollution, we understand it is more dangerous to human health, with especially harmful impacts on children and their developing lungs and hearts. Delaying review of the best medical science does not make current air pollution levels safe— it just means more Americans will suffer unhealthy air pollution levels longer. Section 3(a)(2) singles out health standards for ozone, and prohibits the EPA from even proposing new health standards before 2025, ten years after updated ozone standards were finalized in 2015. The bill imposes this shocking prohibition with no regard for advancement of medical science, Americans’ health, or how many Americans will suffer harm due to the bill’s arbitrary political ban.

Section 3(b): This section overthrows Americans’ 46-year-old right to clean, safe air under the Clean Air Act, which is based on medical science and health considerations. H.R. 4776 substitutes a process that will be dictated by politics and polluter compliance costs. The bill radically worsens the Clean Air Act’s bedrock health standard-setting process by authorizing EPA to depart from the appropriate, medically-based health standard, by taking into account “technological feasibility” when EPA finds that a range of levels are requisite to protect health with an adequate margin of safety. This legislative maneuver pretends that unhealthy air becomes healthy if polluter feasibility complaints find receptive politicians. The Clean Air Act since 1970, backed by a unanimous Supreme Court ruling authored by former Justice Antonin Scalia, makes clear that EPA must consider only medical and public health data to set clean air health standards that protect all Americans, including children, the elderly and asthma sufferers. H.R. 4775 would pollute a medical process with money (and, invariably, politics) and

undermine the Act's very foundation of clean air health standards, leaving millions of Americans exposed to dangerous air pollution even when medical science tells us that amount of air pollution is unsafe.

Section 3(c): This section compounds the harms of section 3(b) by requiring EPA's independent science advisors to redirect time spent reviewing science and health data for adopting protective health standards, toward time considering social and economic factors related to *complying* with standards. This not only seeks to impermissibly inject economic factors into setting what are supposed to be medical health standards, but also turns a process always concerned with public health and medical science into a forum for political lobbying, rent-seeking and corporate favoritism. This would further undermine the Clean Air Act's concern with clean, safe air for all Americans.

Section 3(d): This section provides that if implementing rules for preconstruction permits are not issued simultaneously with a new health standard, major facilities that apply for air pollution construction permits do not need to meet updated air quality health standards, and may instead pollute at unsafe levels. This significantly weakens and departs from longstanding current law.

Section 3(e): This section weakens the Clean Air Act to excuse parts of the country suffering the worst smog pollution from having contingency plans in case they do not meet their air pollution reduction obligations. It makes no sense to give the worst polluted areas an exemption from a requirement to make sure pollution control measures effectively reduce pollution. For the most polluted parts of the country, it is critical that states and municipalities do everything they can to protect Americans' health and environment by cleaning up smog pollution. Excusing them from these requirements takes these parts of the country backward and penalizes their citizens with laxity that current law does not allow.

Sections 3(f) & (g): Sections 3(f) and 3(g) again weaken the Clean Air Act by injecting polluter cleanup costs into requirements meant to ensure reasonable further progress to reduce smog and soot pollution. Injecting compliance costs retreats from the current law's focus on public health and whether cutting pollution is achievable. These provisions also significantly weaken and depart from longstanding current law.

Section 3(h): This section weakens the Clean Air Act's treatment of "exceptional events"—generally natural air pollution events that the Act does not count when determining compliance with national air quality standards if specific conditions are met. This section of the bill would recklessly expand this narrow exception to make it easier to exclude conclusive proof of unsafe air quality when it is influenced by stagnant air, high temperatures, or a lack of precipitation. There is nothing exceptional about such events and they often combine with industrial air

pollution to cause unsafe air. During these types of events, people are suffering real health impacts from the very real poor air quality that exists. Pretending these events are exceptional or that bad air quality is not harmful to peoples' health does not make it so.

Section 3(i): This section requires a report to Congress on air pollution from foreign sources and their impacts on air quality in the United States. The mandate is unaccompanied by any funds to prepare and issue the report and will pull agency resources away from statutory responsibilities to protect Americans' health and air quality.

H.R. 4775 would systematically weaken the Clean Air Act by authorizing increased air pollution, delays in safe air for the public, and even the elimination of Americans' longstanding right to clean, safe air. The bill would even allow EPA to deceive Americans about whether the air is safe to breathe, by departing from a safe level founded on medical science to unsafe levels that accommodate polluter cleanup costs. Since 1970, the federal Clean Air Act has been organized around one governing principle—that the EPA must set health standards for dangerous air pollution, including smog, soot and lead, that protect all Americans, with “an adequate margin of safety” for vulnerable populations like children, the elderly and asthmatics. H.R. 4775 eviscerates that principle and protection. We know more now about the dangers of air pollution than ever before. H.R. 4775 takes us backwards when we need more progress. We urge you to oppose H.R. 4775, to protect our families and their rights to clean air.

Sincerely,

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