

ONE HUNDRED NINETEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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MEMORANDUM

June 9, 2025

TO: Members of the Subcommittee on Environment
FROM: Committee Majority Staff
RE: Hearing titled “Short-Circuiting Progress: How the Clean Air Act Impacts Building Necessary Infrastructure and Onshoring American Innovation.”

I. INTRODUCTION

The Subcommittee on Environment will hold a hearing on Wednesday, June 11, 2025, at 10:15 a.m. (ET) in 2322 Rayburn House Office Building. The hearing is entitled, “Short-Circuiting Progress: How the Clean Air Act Impacts Building Necessary Infrastructure for Onshoring American Innovation.” The hearing will focus on how the Clean Air Act impacts building infrastructure and onshoring American innovation, along with the following bills:

- H.R. ___, Clean Air and Economic Advancement Reform Act (CLEAR Act)
- H.R. ___, Clean Air and Building Infrastructure Improvement Act

II. WITNESSES

- **James W. Boylan**, Chief, Air Protection Branch, Georgia Environmental Protection Division;
- **Chad Whiteman**, Vice President, Environment and Regulatory Affairs, U.S. Chamber of Commerce;
- **Paul Noe**, Vice President, Public Policy, American Forest & Paper Association; and
- **John Walke**, Director, Federal Clean Air & Senior Attorney, Natural Resources Defense Council.

III. BACKGROUND

A. Clean Air Act

The Clean Air Act (CAA) relies on a system of cooperative federalism to regulate air quality across the country. Under this system, EPA identifies ambient air pollutants that may

reasonably be anticipated to endanger public health and welfare and establishes National Ambient Air Quality Standards (NAAQS) for each pollutant.¹ To date, EPA has established NAAQS for six common air pollutants: carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, ozone, and particulate matter. The CAA requires the primary standards for these pollutants to be set at a level that, in the judgment of the Administrator, is “requisite to protect public health,” allowing for an “adequate margin of safety.” EPA also sets secondary standards that are intended to protect public welfare from the effects of air pollution, e.g., damage to vegetation, crops, and wildlife.

The CAA requires EPA to review each NAAQS on five-year intervals and to promulgate new standards as appropriate on five-year intervals as well. EPA uses a multi-step process to assess scientific studies on the effects of air pollution and develop options for revising a NAAQS. The CAA has established a federal advisory committee—known as the Clean Air Scientific Advisory Committee—to review the science and to recommend revisions to the NAAQS. In setting NAAQS, EPA cannot consider the cost of implementing the standards.² NAAQS must be based on the air quality criteria.

After EPA establishes a NAAQS, the states assume primary responsibility for implementing and enforcing the standards.³ No later than one year after EPA promulgates a new or revised NAAQS, each state must recommend “initial designations” to EPA regarding which areas are in attainment based on air quality monitoring data and modeling, and EPA then designates whether an area is in attainment, non-attainment, or unclassifiable (due to lack of data) for each NAAQS.⁴ States with non-attainment areas are required to submit and develop a State Implementation Plan (SIP) that demonstrates how attainment within NAAQS will be achieved by identifying specific programs, regulations, and emissions control programs to limit emissions of air pollutants.

The CAA’s “Prevention of Significant Deterioration” requirements apply to major sources (and major modifications) of existing emissions sources in attainment and unclassifiable areas, and they generally impose emission limits and permit requirements on the construction and modification of major sources that will not degrade air quality; whereas, “Non-Attainment New Source Review” requirements apply in areas that are designated as non-attainment and generally impose the most stringent emission limits and emission offsets as part of permit requirements for construction and modification of new and existing sources to allow the area to move toward attaining the NAAQS standard.

The Clean Air Act’s “good neighbor” provision requires EPA and states to address interstate transport of air pollution that affects downwind states’ ability to attain and maintain NAAQS. Under the CAA even an area whose ambient air concentration complies with the relevant NAAQS must be designated as non-attainment if it “contributes” to a NAAQS violation in a “nearby area.”⁵ Section 110(a)(2)(D)(i)(I) of the CAA requires that each state, in its SIP,

¹ 42 U.S.C. §§ 7408(a)(1), 7409(a)-(b).

² See generally, *Whitman v. American Trucking Assn*, 531 U.S. 457, 465-472, 475-76 (2001).

³ See 42 U.S.C. § 7407(a).

⁴ *Id.* § 7407(d)(1)(A).

⁵ *Id.* § 7407(d)(1)(A)(i).

prohibit emissions that will significantly contribute to non-attainment of NAAQS, or interfere with maintenance of a NAAQS, in a downwind state. If a state does not submit a SIP or the state's SIP fails to prevent a state from emitting air pollutants that will contribute significantly to non-attainment in another state, the CAA requires EPA to issue a Federal Implementation Plan (FIP). A downwind state can file a petition under CAA section 126 asking the EPA to regulate pollution from sources in another state when pollution is impairing its air quality. In addition, other federal agencies are required to work with states, Tribes, and local governments in the design of projects in non-attainment areas so that emissions caused by the project's activities will "conform" with the implementation of the state's SIP.

B. Particulate Matter Standards

EPA's recent review and revisions of NAAQS for fine particulate matter has generated concern that the new annual standard is too close to background levels, will lead to an increase in the number of areas designated as non-attainment, and negatively impact infrastructure development and economic growth. Particulate matter (PM) is a complex mixture of extremely small particles that can be directly emitted from sources such as forest fires, or form when gases react in the air. EPA initially established PM NAAQS standards in 1971 and subsequently reviewed and revised these standards per statutory requirements in 1987, 1997, 2006, 2012, and 2020. These NAAQS include standards for "fine" particulate matter, which includes particles 2.5 micrometers in diameter or smaller, known as "PM2.5."

EPA has established health-based "primary" PM2.5 standards for both annual and 24-hour averaging times. The primary 24-hour PM2.5 standard was last revised in 2006, from a level of 65 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 35 $\mu\text{g}/\text{m}^3$. The primary annual standard had, since 2012, been set at a level of 12 $\mu\text{g}/\text{m}^3$. Following the last statutory review of PM completed in December 2020, the EPA decided to retain the existing standards.

However, in June 2021, EPA announced it would reconsider the December 2020 decisions for retaining the PM2.5 standards by developing a "supplement" to the previous scientific review. EPA completed its reconsideration and published its final rule tightening the annual PM2.5 primary on March 6, 2024, reducing the primary annual PM standard from 12.0 $\mu\text{g}/\text{m}^3$ to 9.0 $\mu\text{g}/\text{m}^3$.⁶ The rule retained the primary and secondary 24-hour PM2.5 standard at 35 $\mu\text{g}/\text{m}^3$. The rule is subject to ongoing litigation in the U.S. Court of Appeals for the D.C. Circuit and, on February 25, 2025, the court granted EPA's motion to hold the case in abeyance to allow the new administration the ability to review the rule. On March 12, 2025, EPA announced the reconsideration of the previous administration's PM NAAQS.

C. Improving Air Quality Trends

Over the last several decades—with the combination of the CAA, effective state implementation, and manufacturing and industrial innovation—the nation's air quality has

⁶ 89 Fed. Reg. 16202.


improved dramatically.⁷ According to EPA air quality data, PM 2.5 concentrations have decreased 37 percent nationally between 2000 and 2023.⁸


Air Quality Trends Show Clean Air Progress

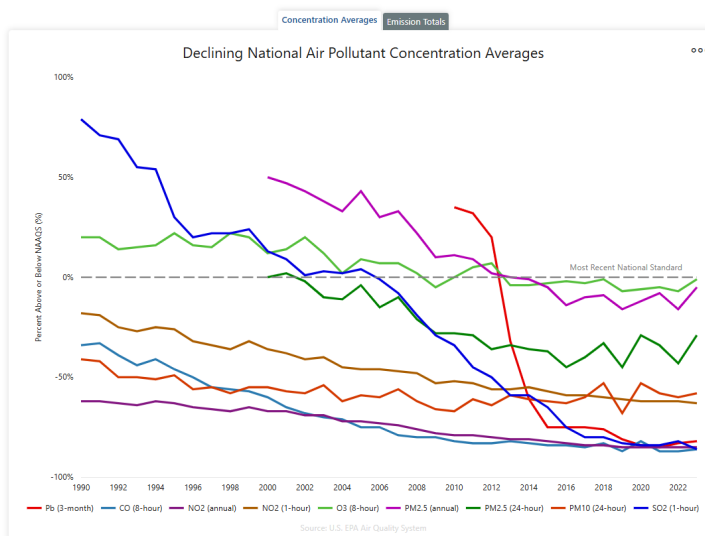
Nationally, concentrations of air pollutants have dropped significantly since 1990:

- Carbon Monoxide (CO) 8-Hour, ▼ 79%
- Lead (Pb) 3-Month Average, ▼ 87% (from 2010)
- Nitrogen Dioxide (NO₂) Annual, ▼ 62%
- Nitrogen Dioxide (NO₂) 1-Hour, ▼ 55%
- Ozone (O₃) 8-Hour, ▼ 18%
- Particulate Matter 10 microns (PM₁₀) 24-Hour, ▼ 29%
- Particulate Matter 2.5 microns (PM_{2.5}) Annual, ▼ 37% (from 2000)
- Particulate Matter 2.5 microns (PM_{2.5}) 24-Hour, ▼ 29% (from 2000)
- Sulfur Dioxide (SO₂) 1-Hour, ▼ 92%
- Numerous hazardous air pollutants, or air toxics, have declined with percentages varying by pollutant

Despite increases in air concentrations of pollutants associated with fires (carbon monoxide, particle pollution, and ozone), national average air quality concentrations remain below the current, national standards.

 Air quality concentrations can vary year to year, influenced not only by pollution emissions but also by natural events, such as dust storms and wildfires, and variations in weather.

 Click pollutant names in the chart legend to hide or include trend lines, and hover over any line to display percentages above or below the most recent standard. Click the Emission Totals tab to view emission trends.



IV. ISSUES FOR DISCUSSION

- The process and timelines for reviewing and revising NAAQS.
- The timeliness of EPA's review of SIPS and the use of FIPS.
- The impact that forest fires and exceptional events can have on attaining NAAQS.
- How non-attainment designations can impact infrastructure development and economic growth.
- Air quality trends in recent decades.

V. LEGISLATION

The Subcommittee will discuss two legislative discussion drafts to reform the NAAQS program.

A. H.R. ____, CLEAN AIR AND ECONOMIC ADVANCEMENT REFORM ACT (CLEAR ACT)

⁷ *Our Nation's Air*, EPA, <https://gispub.epa.gov/air/trendsreport/2024/#introduction> (last visited June 6, 2025).

⁸ *Particulate Matter (PM2.5) Trends*, EPA (last updated Aug. 16, 2024), <https://www.epa.gov/air-trends/particulate-matter-pm25-trends>.

- This legislation would make several changes to the process for establishing and implementing NAAQS, including extending the current NAAQS review cycle from five years to ten years, allowing consideration of attainability, providing states the opportunity to address concerns in a SIP submission before a FIP is issued, and eliminating certain demonstration requirements in a SIP to promote increased technological innovations in control technologies.
- The legislation would also amend the CAA to modify how certain events including fires, drought, and heat, are considered as part of the NAAQS process. The legislation would also add a new section 179C that provides, with respect to any non-attainment area classified as severe or extreme for ozone or as serious for particulate matter, that sanctions for implementation plan deficiencies under section 179 or fees for failure to attain the air quality standard under section 185 will not apply in certain situations. The inapplicability of sanctions and fees under this section does not affect any obligations under the Act to implement measures to attain national ambient air quality standards.
- The legislation would also require the CASAC to include at least 3 people representing state air pollution control agencies and includes a new provision that requires those appointed from state air pollution control agencies to be from different regions of the country and to require the EPA Administrator to request, and the CASAC to provide, advice regarding adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of NAAQS.

B. H.R. ____, CLEAN AIR AND BUILDING INFRASTRUCTURE IMPROVEMENT ACT

- This legislation would require the EPA Administrator to concurrently publish regulations and guidance for implementing a revised NAAQS and prevent the new or revised standards from applying to preconstruction permit applications until the Administrator has published such final regulations and guidance. It also clarifies that nothing in the subsection eliminates the obligation of a preconstruction permit applicant to install the best available control technology and lowest achievable emission rate technology, and clarifies that nothing in the subsection limits the authority of a state, local, or Tribal permitting authority to impose more stringent emissions requirements pursuant to a state, local, or tribal law than NAAQS.
- The legislation also provides that the 2024 PM_{2.5} standard shall not apply to the review and disposition of a preconstruction permit application if a permit application is completed on or before the date of promulgation of the final designation of an area; or a public notice of a preliminary determination on a draft permit is provided within 60 days after the date of final designation of an area.
- It also provides that the section shall not be construed to eliminate the obligation of a preconstruction permit applicant to install best available control technology

and lowest achievable emission rate technology, as applicable, or limit the authority of a state, local, or tribal permitting authority to impose more stringent emissions requirements than the NAAQS.

VI. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Byron Brown and Katharine Willey of the Committee Staff at (202) 225-3641.