Responses by John Walke, the Natural Resources Defense Council, to Questions for the Record for the Legislative Hearing on H.R.___, the Clean Air and Economic Advancement Reform Act and H.R.___, the Clean Air and Building Infrastructure Improvement Act, before the Subcommittee on Environment, Committee on Energy and Commerce, U.S. House of Representatives, June 11, 2025

The Honorable Morgan Griffith (R-VA)

Question 1. In response to questions at the hearing, you noted that the NAAQS reviews take an average of eight to ten years, which is considerably longer than allowed under the Clean Air Act's Section 109(d) mandatory five-year review deadline. Do you support amending the Clean Air Act to extend the review cycle deadline from five years to eight or ten years, assuming the new deadline remains an enforceable, non-discretionary duty subject to citizen suits under the Act?

Answer 1. No. NAAQS reviews historically have taken an average of eight to ten years when the Clean Air Act's statutory review deadline of five years (42 U.S.C. § 7409(d)(1)) is currently and long has been an enforceable, non-discretionary duty subject to citizen suits under the Act. Congress should not weaken the Clean Air Act and delay review and revision of the national health standards for harmful air pollution from five years to eight or ten years. The historic record demonstrates that EPA would violate the new statutory deadline of eight or ten years by additional years, and deny Americans safe, healthy air quality for even longer than is currently the case with a five-year NAAQS review deadline.

There is overwhelming proof for this conclusion in the implementation history of the 1990 Clean Air Act Amendments. There, Congress adopted an outside 10-year deadline for EPA to adopt emissions standards for all categories and subcategories of sources emitting hazardous air pollutants, with an enforceable, non-discretionary duty subject to citizen suits to promulgate all such standards "not later than 10 years after November 15, 1990," 42 U.S.C. § 7412(e)(1)(E), that is not later than November 15, 2000. Indeed, Congress was even more prescriptive and required EPA to issue standards covering at least 40 categories/subcategories by 1992; 25 percent of all categories/subcategories by 1994; 25 percent of all categories/subcategories by 1997; and all categories/subcategories by no later than 2000. *See* 42 U.S.C. § 7412(e)(1)(A) - (E).

EPA violated and missed *each* of these two-year, four-year, and seven-year statutory deadlines for the vast majority of categories and subcategories of Clean Air Act section 112 sources. The agency also violated the 10-year statutory deadline and failed to promulgate emissions standards by November 15, 2000 for the vast majority of categories and subcategories of sources.

Disproportionately few emissions standards were even promulgated during the 1990s. Instead, the record reflects that EPA issued 10 emissions standards 12 years after 1990;[1] 19 standards 13 years after 1990;[2] nine standards 14 years after 1990;[3] one standard 15 years after 1990;[4] one standard 16 years after 1990;[5] 10 standards 17 years after 1990;[6] five standards 18 years after 1990;[7] two standards 19 years after 1990;[8] one standard 20 years after 1990;[9] two standards 21 years after 1990;[10] and one standard 22 years after 1990.[11] *See generally* https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-8. Startlingly, if one adds up the total number of years that EPA was late promulgating just the Clean Air Act section 112 emissions standards for which EPA missed the 10-year enforceable, non-discretionary statutory deadline, those years would total 296 years. These are regulatory-year-equivalents that Americans were denied the benefits of safeguards against hazardous air pollution that cause cancer, brain damage, infertility and birth defects.

EPA violated this one *outside* 10-year enforceable, non-discretionary statutory deadline *over 60 times*, which *additionally* encompassed multiple violations of the separate two-year, four-year and seven-year enforceable, non-discretionary statutory deadlines. Against this historic record spanning nearly four decades, it is not plausible or responsible to assert that EPA would meet delayed NAAQS review deadlines of eight or ten years, even if the new deadline remained an enforceable, non-discretionary duty subject to citizen suits. Instead, the unmistakable result would be that Americans would be denied the health and air quality benefits of safe, healthy air for far longer than today's average eight-to-ten-year review cycles, and even longer than today's five-year enforceable, non-discretionary statutory review deadline. No witness or member at the June hearing offered any reasonable justification why Americans should be denied safe, clean air longer than the Act's five-year statutory deadline. If Congress wants to improve the timeliness of the Clean Air Act's NAAQS review cycles, the better and more responsible way to do that is to appropriate adequate funds to EPA to complete NAAQS reviews within the five-year statutory deadline, accompanied by the clear directive that the agency must do so.

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[1] *See* https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-8 (40 C.F.R. Part 63, Subparts QQQ, HHHH, JJJJ, NNNN, SSSS, TTTT, UUUU, XXXX, QQQQQ, SSSSS).
[2] *Id.* (40 C.F.R. Part 63, Subparts FF, AAAA, FFFF, OOOO, QQQQ, RRRR, WWWW, BBBBB, CCCCC, FFFFF, GGGGG, HHHHH, IIIII, JJJJJ, KKKKK, MMMMM, PPPPP, RRRRR, TTTTT).
[3] *Id.* (40 C.F.R. Part 63, Subparts M, PPP, EEEE, IIII, YYYY, ZZZZ, AAAAA, EEEEE, MMMMM.
[4] *Id.* (40 C.F.R. Part 63, Subpart LLLL).
[5] *Id.* (40 C.F.R. Part 63, Subpart YYYYYY).
[6] *Id.* (40 C.F.R. Part 63, Subparts OOOOO, YYYYY, DDDDDD, EEEEEE, FFFFFF, GGGGGG, PPPPPP, QQQQQQ, SSSSSS, TTTTTT).
[7] *Id.* (40 C.F.R. Part 63, Subparts ZZZZZ, BBBBBB, CCCCCC, HHHHHH, XXXXXX).
[8] *Id.* (40 C.F.R. Part 63, Subparts ZZZZZZ, CCCCCCC).
[9] *Id.* (40 C.F.R. Part 63, Subpart DDDDDDD).
[10] *Id.* (40 C.F.R. Part 63, Subparts JJJJJJ, EEEEEEE).
[11] *Id.* (40 C.F.R. Part 63, Subpart UUUUU).

Question 2. In response to questions, you also said that areas should not be designated as nonattainment if a combination of background concentrations and wildfires pushes an area over the standard. You further stated that you would support changes to existing rules and processes under the Clean Air Act for Exceptional Events and International Transport if needed to expedite and make these processes more efficient. Given the significant number of states impacted by wildfire emissions and the cost of developing and submitting petitions under Section 319 for Exceptional Events and international transport demonstrations under Section 179B, what specific reforms would you recommend to make these programs workable for states? How do you define background concentrations?

Answer 2. I would support responsible regulatory or guidance-based changes and improvements to make exceptional event determinations more workable for air quality violations caused by wildfires. I am not an expert in Community Multiscale Air Quality (CMAQ) photochemical modeling or the Expedited Modeling of Burn Events Results (EMBER) dataset used by EPA, state and local air pollution control agencies, and other experts to address air quality monitoring data influenced by wildfires or prescribed fires eligible to be treated as exceptional events. Nor am I a fire manager or state, local or tribal air pollution control official submitting exceptional even petitions related to wildfires. I have submitted public comments in response to two rulemaking proposals by EPA related to its Exceptional Events Rule, however; it is in that capacity that I am prepared to offer comments and recommendations in response to any regulatory or guidance changes proposed by EPA, informed by the experience and views of the aforementioned experts.

Both EPA and the U.S. Court of Appeals for the D.C. Circuit define "background ozone"—as one example of "background concentrations"—under the Clean Air in the following manner:

> Under the Clean Air Act, "background ozone" is ozone "that would exist in the absence of any man-made emissions inside the U.S." 80 Fed. Reg. at 65,436. This includes ozone generated by both natural sources anywhere (*e.g.*, a wildfire) and foreign man-made sources (*e.g.*, a factory in Mexico). *See id.*

Murray Energy Corp. v. EPA, 936 F.3d 597, 622 (D.C. Cir. 2019). I have no different, contradictory definition of "background concentrations."

Question 3. Dr. James Boylan from the Georgia Environmental Protection Division stated at the hearing that he has fourteen staff members currently working on preparing Exceptional Event petitions. He has also noted in public presentations that the state is preparing 129 Exceptional Event petitions for 2021 to 2023 air quality measurements. Do you believe this is a reasonable burden to place on states? How many states do you think have the budget and staffing to support this level of effort?

Answer 3. The information in the question appears to suggest that there have been *more than* 129 monitored violations of national clean air health standards in Georgia from 2021 to 2023 (since no one is arguing that all monitored violations in the state are eligible for treatment as exceptional events). That is an unreasonable burden on the health and air quality of Georgians or any Americans that demands the attention and concern of public officials and the public at large, whether caused by wildfires or pollution from industry or motor vehicles. The Clean Air Act allows the exclusion of monitored violations of national health standards caused by air pollution that results from eligible exceptional events. A better solution than accepting incorrect determinations would be having Congress and administrations adequately fund grants to state and local air pollution control agencies, under Clean Air Act Sections 103 and 105 of the Clean Air Act, part of the State and Tribal Assistance Grant (STAG) program. The National Association for Clean Air Agencies (NACAA) testified before the Senate Appropriations Committee in June of this year that:

> [f]ederal grants to state and local air quality agencies (under Sections 103 and 105 of the CAA) were not much higher in FY 2024 than 20 years ago, representing a substantial decrease in purchasing power when factoring in inflation. During this time, air quality issues have become more complicated and costly. Moreover, while federal grants were originally intended to cover 60 percent of the cost of implementing the CAA, they cover less than a quarter of that amount today, with the remainder already coming largely from state and local programs themselves.

Testimony of the National Association of Clean Air Agencies (NACAA) Submitted to the Senate Appropriations Committee Subcommittee on Interior, Environment, and Related Agencies Regarding the FY 2026 Budget for the U.S. Environmental Protection Agency (June 13, 2025), https://www.4cleanair.org/wp-content/uploads/NACAA-6_13_25-Senate-Testimony-FY-2026-1.pdf. The current administration proposed extreme cuts of 55% to the FY26 EPA budget, which in turn would devastate federal funding to the STAG program.[12]

NACAA's testimony asked Congress to "provide increased, rather than reduced, funding for state and local agencies to implement the Clean Air Act," noting a survey of NACAA member state and local agencies indicating "that the appropriate federal funding role for supporting state and local agencies would require more than double the FY 2024 appropriation of $236 million." *Id.*, NACAA Testimony, at 1, n. 1 (https://www.4cleanair.org/wp-content/uploads/NACAA-FY26-Funding-Survey-Memo-4-2-25.pdf). The Clean Air Act guarantees all Americans the right to clean, safe air. Congress should carry out its appropriations role to fund state and local air pollution control agencies at levels sufficient to uphold that right. Congress should not weaken

[12] https://www.epa.gov/system/files/documents/2025-05/fy-2026-epa-bib.pdf.

the Clean Air Act to eliminate or diminish that right, in the name of burden reduction or otherwise.

Question 4. **Section 319 of the Clean Air Act defines Exceptional Event to mean "an event that affects air quality, is not reasonably controllable or preventable, and is an event caused by human activity that is unlikely to recur at a particular location." Given that prescribed burns are reasonably controllable and likely to recur in line with forest management practices, do you believe the statute, as currently drafted, clearly allows prescribed burns to be considered Exceptional Events? Would you support statutory amendments to clarify the exclusion of prescribed burns and other activities to reduce the risk of wildfires?**

Answer 4. No, I would not support that unnecessary statutory amendment. The Clean Air Act defines an exceptional event in relevant part as "an event caused by human activity that is unlikely to recur at a particular location"—not one merely 'likely to recur in line with forest management practices.' Those reflect two different conceptions of recurrence. Moreover, since adoption of EPA's 2016 Exceptional Events Rule, agency regulations have stated that prescribed fires can be a human-caused event eligible for treatment as an exceptional event.[13] The EPA regulations and related guidance address each prong of the statutory "exceptional event" definition, including the "not reasonably controllable or preventable" prong. No party challenged the 2016 Exceptional Events Rule's regulatory treatment of air quality monitoring data influenced by prescribed fires. The period for timely lawsuits challenging the 2016 Rule has long since passed. There is no need or cause for amending the Clean Air Act to treat prescribed fires as exceptional events. That is especially true for legislation that also suffers from so many other elements weakening the Clean Air Act, as detailed at length in my written testimony opposing the two draft bills under consideration at the June 11, 2025 hearing.[14]

Question 5. The Sierra Club has challenged EPA's approval of a 2023 Michigan Exceptional Event petition (88 Fed. Reg. 32,584 May 19, 2023) and (88 Fed. Reg. 32,594), claiming in part that Michigan had failed to demonstrate a "clear causal" relationship between the wildfires and the standard violation despite submitting extensive evidence. This litigation and related uncertainty further discourage states from spending limited

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[13] *See* 81 Fed. Reg. 68,216, 68,247-57, 68,277-78 (Oct. 3, 2016) (revised 40 C.F.R. § 50.14(b)(3), treatment of prescribed fires as eligible exceptional events), https://www.epa.gov/sites/default/files/2018-10/documents/exceptional_events_rule_revisions_2060-as02_final.pdf; *see also*, EPA, *Exceptional Events Guidance: Prescribed Fire on Wildland that May Influence Ozone and Particulate Matter* Concentrations (Aug. 2019), https://www.epa.gov/sites/default/files/2019-08/documents/ee_prescribed_fire_final_guidance_-_august_2019.pdf.

[14] *See generally* https://www.congress.gov/119/meeting/house/118385/witnesses/HHRG-119-IF18-Wstate-WalkeJ-20250611.pdf.

resources on Exceptional Event petitions. How would you define a "clear causal" relationship, and what changes would you recommend simplifying this demonstration and reduce uncertainty? Do you support the Sierra Club's challenge?

Answer 5. I am unfamiliar with the disputed factual and/or legal issues underlying the Sierra Club's challenge to EPA's approval of the 2023 Michigan petition. I am similarly unfamiliar with the submitted evidence. Accordingly, I can offer no informed view about the challenge or the evidence. The Clean Air Act, EPA regulations, and common sense warrant a clear causal relationship between wildfires and the violation of national clean air health standards; otherwise, Americans rightly would lack confidence in the process, its accuracy, and its reliability. I do not have additional suggestions for defining a "clear causal" relationship at this time. The one strong recommendation I do have at this time is to increase federal funding to state and local air pollution control agencies, as discussed in my answer to Question 3, above. Because every approved exceptional event petition involves the excusal of a violation of a monitored national health standard and the acceptance of unsafe air pollution, however, Americans should expect the process to be conducted thoroughly and correctly, not hastily or inaccurately in the name of simplification or reducing uncertainty for petitioners.

The Honorable Frank Pallone, Jr. (D-NJ)

Question 1. Republicans have repeatedly attacked the final Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 89 Fed. 16,202 *et seq.* (March 6, 2024). During the hearing, one of my Republican colleagues indicated that a majority of states oppose this new standard and that opposition "says an awful lot about that standard and whether it is accurate or not". Do you have a response to that assertion?

Answer 1. The National Association of Clean Air Agencies (NACAA) in December 2023 supported strengthening the NAAQS for particulate matter (PM) and urged EPA to reconsider the unsafe 2012 $PM_{2.5}$ annual health standard left in place by EPA in December 2020. NACAA wrote that EPA's reconsideration "reinforce[s] our association's support for swift action by your Administration to finalize more protective National Ambient Air Quality Standards (NAAQS) for particulate matter (PM)."[15] NACAA is "the national, nonpartisan, nonprofit association of

[15] https://www.4cleanair.org/wp-content/uploads/NACAA-PM-NAAQS-Letter-to-President-Biden-12_21_2023-1-1.pdf (Dec. 2023 NACAA Letter).

157 air pollution control agencies in 40 states, including 117 local air agencies, the District of Columbia and five territories." *Id.*

Addressing the failure by EPA in December 2020, to strengthen the unsafe 2012 annual $PM_{2.5}$ health standard, NACAA went on to state in its December 2023 letter:

> From the outset of this Administration, NACAA has encouraged EPA's reconsideration of the agency's December 18, 2020, final decision to retain, without revision, the 2012 PM NAAQS. We have done so because after closely observing the review process that led to the April 30, 2020, proposal of that decision we concluded that the review process was flawed; that it resulted in a flawed proposed decision by the EPA Administrator, particularly with respect to the health-based (primary) $PM_{2.5}$ standards; that the Administrator's proposed action should be withdrawn; and that a revised review process should be undertaken.

Id., at 1.

While it is unclear what 'majority of states' the member was referring to at the June 2025 hearing, it appears the reference may have been to 24 Republican state attorneys general suing to overturn the safer standard[16]—not bi-partisan state and local air pollution control officials who are members of NACAA, more expert in air quality standards under the Clean Air Act than state attorneys general, and who supported the safer standard and its scientific basis.

Finally, opposition to a safer annual health standard for $PM_{2.5}$ air pollution under the Act says nothing, in itself, about the scientific accuracy of the standard. The Clean Air Act and a unanimous Supreme Court decision[17] require health standards for $PM_{2.5}$ and other criteria air pollutants to be set at levels that are "requisite to protect the public health" with "an adequate margin of safety," 42 U.S.C. § 7409(b)(1), without any authority on EPA's part to consider implementation costs or other economic considerations. *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 464-476 (2001). In the press release announcing the March, 2024 lawsuit by the state attorneys general challenging the safer $PM_{2.5}$ standard, Kentucky Attorney General Russell Coleman charged that the safer standard was about "advancing President Biden's radical green agenda."[18] Attorney General Coleman went on to charge that "the new rule could block permitting of new manufacturing facilities, drive out good paying jobs from Kentucky, prevent new infrastructure construction and raise costs on small businesses." *Id.* These characterizations have nothing to do with the accuracy of the health standard or the scientific evidence on which it

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[16] *See* March 6, 2024 Petition for Review in the U.S. Court of Appeals for the D.C. Circuit, https://www.ag.ky.gov/Press%20Release%20Attachments/States%20Petition%20for%20Review.pdf (lawsuit challenging the safer 2024 EPA health standard for $PM_{2.5}$, filed by 24 state attorneys general).

[17] *Whitman v. American Trucking Assoc. Inc,* 531 U.S. 457 (2001).

[18] *See "*Kentucky Attorney General Russell Coleman is suing the U.S. Environmental Protection Agency over revised air quality standards for soot pollution," https://www.lpm.org/news/2024-03-08/kentucky-sues-the-epa-over-strengthened-particle-pollution-standards.

was based. Moreover, these implementation cost allegations leveled against the safer health standard are ones that the Clean Air Act and a unanimous Supreme Court decision make clear are unlawful considerations. *Id.*; *see Whitman*, 531 U.S. at 464-476.

In 2022, *all* members of EPA's expert Clean Air Scientific Advisory Committee concluded that the annual $PM_{2.5}$ health standard left unchanged by EPA in December 2022, 12 $\mu g/m^3$, was "not sufficiently protective of public health and should be lowered," "agree[ing] with the EPA's assessment that there are large populations at risk of $PM_{2.5}$ health effects" at 12 $\mu g/m^3$.[19] A strong majority[20] of CASAC members found "that an annual average in the range of 8-10 $\mu g/m^3$ would be appropriate." *Id.*at 3. The CASAC majority highlighted studies showing:

> positive associations between $PM_{2.5}$ exposure and mortality with precision among populations with mean concentrations likely at or below 10 $\mu g/m^3$; epidemiologic studies in the United States showing such associations at concentrations below 10 $\mu g/m^3$ and below 8 $\mu g/m^3$; Canadian studies, some of which show such associations at concentrations below 10 $\mu g/m^3$ and below 8 $\mu g/m^3$; a meta-analysis of 53 studies, 14 of which report such associations at concentrations below 10 $\mu g/m^3$ down to 5 $\mu g/m^3$; [and] protection of at-risk demographic groups….

Id. Even the sole non-concurring CASAC member agreed that a strengthened "range of 10-11 $\mu g/m^3$ for the annual $PM_{2.5}$ standard would be appropriate." *Id.* No CASAC member supported retaining the unprotective standard of 12 $\mu g/m^3$ backed by the state attorneys general lawsuit. *Id.* EPA adopted a $PM_{2.5}$ annual health standard of 9 $\mu g/m^3$,[21] squarely within the 8-10 $\mu g/m^3$ range recommended by CASAC.

Question 2. During the hearing, Republicans frequently referred to background levels of $PM_{2.5}$. Republicans and some witnesses claimed that the current $PM_{2.5}$ standard is close to a "background level" of 8 $\mu g/m^3$, which leaves industries little "headroom" to add to the area's pollution level before the area would be out of compliance. As a result, witnesses and Republicans claim that the new standard will impede manufacturing and innovation.

a. Is this an accurate representation of "background" $PM_{2.5}$?

b. Republicans shared a map using data from the National Association for Manufacturers (NAM), which implied that most counties would not be able to meet

[19] Letter from CASAC to EPA Administrator Michael S. Regan, at 2 (March 18, 2022), https://www.4cleanair.org/wp-content/uploads/PM-NAAQS-CASAC-Responses-to-EPA-PM-Draft-PA-031822.pdf.
[20] Just one CASAC member did not concur with the lower end of this recommended range. *See id.*, Letter from CASAC.
[21] 89 Fed. Reg. 16,202 (March 6, 2024), https://www.govinfo.gov/content/pkg/FR-2024-03-06/pdf/2024-02637.pdf.

the new standard of 9 μg/m³.1 Does this map accurately represent the regulatory landscape for the new $PM_{2.5}$ standard? Why or why not?

Answer 2a.

This is not an accurate representation of "background" $PM_{2.5}$. In the preamble to the final 2024 $PM_{2.5}$ reconsideration rule, EPA said that "background PM is defined as all particles that are formed by sources or processes that cannot be influenced by actions within the jurisdiction of concern."[22] This "background" PM "cannot be influenced by actions within the jurisdiction of concern" and is uncontrollable by domestic authorities and thus is conceptually distinct from pollution that is created from human activities in the United States, which could be controlled. *Id.*

The "background" PM at any specific location cannot be directly measured, but may be assessed via computer modeling and by drawing inferences based on the types of PM captured at certain air quality monitoring stations. *Id.* EPA reports that, based on these assessments, "background" levels of $PM_{2.5}$ likely range from 0.5-3 $\mu g/m^3$ or 1-3 $\mu g/m^3$, *id.*—nowhere close to the 8 $\mu g/m^3$ asserted at the June 2025 hearing. This has led EPA to conclude that "[a]t annual and national scales, estimated background PM concentrations in the U.S. are small compared to contributions from domestic anthropogenic sources." *Id.* EPA's assessment aligns well with the lowest $PM_{2.5}$ levels reported at air quality monitors in the United States.[23]

Others sometimes give "background" PM different meanings, such as including pre-existing air pollution, regardless of its source, a usage that suggests current pollution conditions in an area are somehow natural and not possible to reduce. That suggestion is wrong. Human-caused pollution touches all parts of our nation—46% of the population in the U.S. (over 156 million people) live in counties with unhealthy levels of air pollution.[24] Worldwide, air pollution leads to nearly 8.1 million premature deaths every year.[25]

Answer 2b.

The red map presented at the hearing does not accurately represent the regulatory landscape for the new $PM_{2.5}$ standard. There are over 3,000 counties in the nation. *See, e.g.*, 82 Fed. Reg. at 54,232 n.2. In the rulemaking record, EPA projected how many counties would need additional

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[22] 89 FR 16,202, 16,218 (Mar. 6, 2024).
[23] U.S. EPA, $PM_{2.5}$ Design Values, 2022, tbl.5a (May 23, 2023), https://www.epa.gov/system/files/documents/2023-05/PM25_DesignValues_2020_2022_FINAL_05_23_23.xlsx.
[24] *See, e.g.*, *EPA v. EME Homer City*, 572 U.S. 489, 496-97 (2014); American Lung Association, State of the Air report, *available at* https://www.lung.org/research/sota/key-findings
[25] Health Effects Institute, State of Global Air, *available at* https://www.healtheffects.org/announcements/new-state-global-air-report-finds-air-pollution-second-leading-risk-factor-death.

$PM_{2.5}$ emissions reductions in order to attain the strengthened annual standard of 9 $\mu g/m^3$ by 2032. This was the date that EPA reasonably assumed would be the earliest deadline for attaining the standard, for Moderate nonattainment areas (the lowest classification), based on then-expected nonattainment "designations" in late 2025.[26] The agency adopted this approach in early 2024 precisely because it did not expect to make designations until late 2025. EPA further adopted the reasonable assumption that states and counties, and their regulated mobile sources and stationary sources, would continue to implement existing and forthcoming measures (as the law requires) to meet the 24-hour $PM_{2.5}$ standard (35 $\mu g/m^3$) and the *prior*, just-replaced annual $PM_{2.5}$ standard of 12 $\mu g/m^3$.

Based on this information and assessments, EPA projected that only *52 counties* out of the 3,000 counties would need to undertake additional pollution reduction efforts to meet the standard by 2032, the majority of them in the West and California.[27] EPA then projected how many countries would remain in nonattainment in 2032, after applying currently anticipated, reasonably costly emission control measures; the agency projected that *only 25 counties* would need additional reductions beyond 2032 to meet the standard. *Id.*, at 191-193 & Table 3-9. Of these, two counties are in the northeast, two in the southeast, four in the west, and 17 in California. *Id.*, at 191-193 & Table 3-9. Out of the 25 counties, 20 needed to reduce annual $PM_{2.5}$ emissions by less than 1,000 tons per year to meet the standard; the remaining five counties all were in California and none needed to reduce emissions more than 2,600 tons per year. *Id.*, at 191-193 & Table 3-9.

In 2012, when EPA last strengthened the health standards for $PM_{2.5}$, the National Association of Manufacturers claimed that there would be massive job losses and economic costs from the standard EPA ultimately finalized.[28] They were badly wrong. A report by the American Lung Association noted that the NAM report

> came up with a wildly inflated number of economic activity "exposed" to impacts from stronger standards. The report looked at places that would have to clean up under a more protective standard of 8 μg/m3,[29] then simply tallied up *all the manufacturing economic activity* in those places. These numbers have nothing to do with the actual cost of reducing particulate matter pollution nor will all these manufacturers be required to install and operate new pollution controls. The report explicitly states multiple times, "This is not a projection of the likely impact of a tighter $PM_{2.5}$ standard." But that

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[26] EPA, Final Regulatory Impact Analysis for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, at 3 (EPA-452/R-24-006, Jan. 2024), https://www.epa.gov/system/files/documents/2024-02/naaqs_pm_reconsideration_ria_final.pdf ("$PM_{2.5}$ RIA").

[27] *Id.*, $PM_{2.5}$ RIA, at 10 ("This includes 12 counties in the northeast, 7 counties in the southeast, 10 counties in the west, and 23 counties in California.")

[28] Environomics, Briefing Paper on the Costs and Benefits of EPA's Proposed Reduction in the PM2.5 National Ambient Air Quality Standards (NAAQS) 6-8 (Dec. 10, 2012), https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/oira_2060/2060_12122012b-1.pdf.

[29] EPA adopted an annual health standard for $PM_{2.5}$ of 12 $\mu g/m^3$ in 2012, not 8 $\mu g/m^3$. 78 Fed. Reg. 3086 *et seq.* Jan 15, 2013).

qualifier did not appear in the TV ads, media releases or many other publicly available documents using the report.[30]

The same holds true for NAM's lobbying against the safer annual $PM_{2.5}$ health standard. Implicit in the 2024 NAM report is the "'strong implied assumption' in its model that the manufacturing sector cannot improve its processes to be cleaner and more efficient before 2031."[31] In contrast, industry witnesses at the hearing and elsewhere rightly tout industry's ability to innovate.

Though industry will highlight the progress we've made to date to clean up air pollution as a reason to halt continued progress, missing from that acknowledgement is the fact that progress has been made precisely *because of* the National Ambient Air Quality Standards and the bipartisan solutions carefully crafted in the Clean Air Act, not in spite of those tools.

In sharp contrast to the false and misleading map presented at the hearing, this official EPA map published at the time of the strengthened annual $PM_{2.5}$ health standard presents a very different picture of U.S. counties with $PM_{2.5}$ levels above the 9 $\mu g/m^3$ standard, based on the latest ambient monitoring data available to EPA at the time.[32] Notably, half of these counties already are in nonattainment with the previous standard of 12 $\mu g/m^3$ standard, meaning only the other half of the counties below could face new nonattainment designations.

[30] American Lung Association, Clearing the Air: Particle Pollution at an Inflection Point, pg. 3 (emphasis added), *available at* https://www.lung.org/getmedia/ea09c277-01b6-4eba-97d4-399f98b88ece/Clearing-the-Air-PM-Brief-12-7-23.pdf.
[31] https://earthjustice.org/experts/robyn-winz/putting-industry-claims-to-rest-data-reveals-economic-success-amidst-clean-air-rules.
[32] https://www.epa.gov/system/files/documents/2024-02/2024-pm-naaqs-final-2020-22-dv-map.pdf.

Most Counties with Monitors Already Meet the Strengthened Particle Pollution Standard
(Based on 2020-2022 Air Monitoring Data)

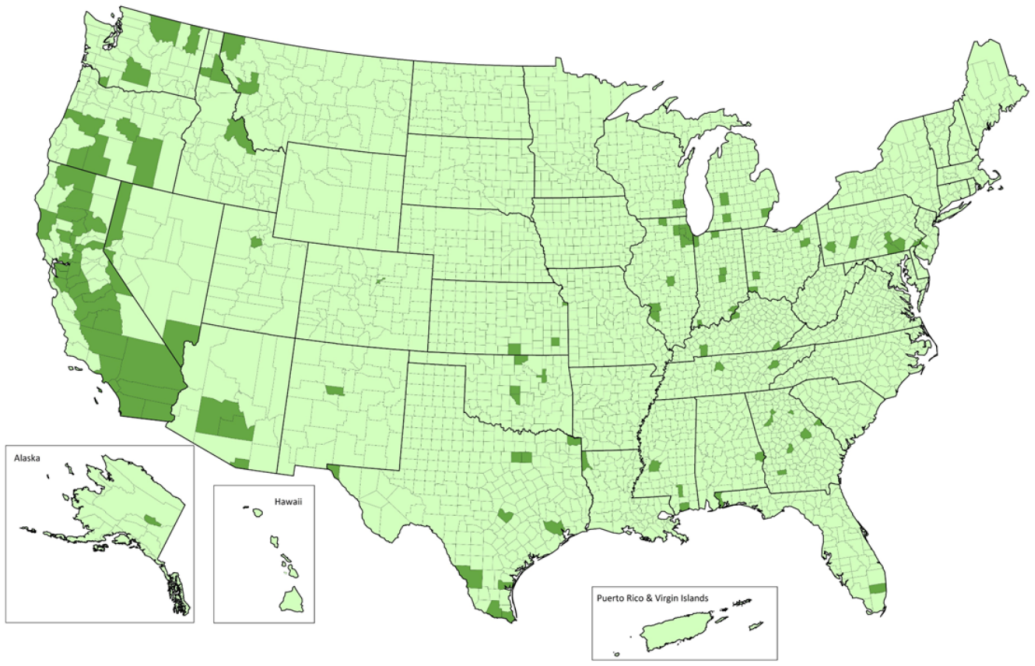

Figure 1: Based on 2020-2022 air monitoring data, the dark green areas on the map indicate counties that do not meet the annual PM2.5 standard of 9 ug/m3. View the data (pdf). (courtesy U.S. EPA)

Note: The map above reflects monitored counties with complete monitoring data. Future final designations of attainment/nonattainment will not be based on these data, but likely on monitoring data collected between 2022 and 2024. Of the 119 counties with 2020-2022 design values above 9 ug/m3, 59 counties are totally or partially contained in nonattainment areas for current PM2.5 standards. In years 2021 and 2022, EPA is aware that some states have already identified possible exceptional events that may have impacted air quality in the U.S. and may be relevant to designations decisions. (This information is provided for illustrative purposes only and is not intended to predict the outcome of any forthcoming designations process.)

This is unsurprising. The red map presented at the hearing as one based on NAM data first appeared, as far as I can tell, in a November 2023 report by the U.S. Chamber of Commerce.[33] The essential flaw with that map is that it projects $PM_{2.5}$ nonattainment designations based upon a series of practices that EPA does not use, EPA never has used, and EPA is never expected to use. That counterfactual decision on the Chamber's part resulted in more projected red nonattainment areas on the NAM map shown at the hearing than the projected green nonattainment areas on the EPA map.

One abuse that will be familiar to members at the hearing is that the Chamber report included higher $PM_{2.5}$ concentrations resulting from *wildfires* in the report's nonattainment projections for the flawed map: "The 2023 wildfire emissions significantly raised the ambient concentrations of $PM_{2.5}$, by as much as 2-3 $\mu g/m^3$ throughout most of the country. Looking at just the counties that have ambient monitors, the increase in the number of counties that would be designated as

[33] *See* U.S. Chamber of Commerce, "EPA's Proposed Air Quality Standards Will Cause Permitting Gridlock Across Our Economy," at 5 (Nov. 2023), https://www.uschamber.com/assets/documents/AChamber-PM2.5-Report-_-11.8.23-Final-Draft.pdf ("Chamber Report").

nonattainment can be seen in Figure 2 below." Chamber Report, at 3. The report did this, despite the Clean Air Act and EPA regulations treating wildfires as "exceptional events" for purposes of nonattainment designations and other regulatory actions.[34] EPA and states have every incentive, and act accordingly, to exclude elevated $PM_{2.5}$ pollution levels resulting from wildfires.

Seth Johnson, a Clean Air Act attorney at Earthjustice, first identified and analyzed numerous additional abuses with the Chamber report and the now-notorious red map. First, Johnson notes that "[t]he Chamber suggests that the EPA would universally designate as nonattainment those counties 'adjacent to' counties with monitors that report air quality violated the new standards (perhaps only in urbanized areas)."[35] But Johnson notes that:

> The EPA has never applied such a robotic approach to designations, but instead has applied a nuanced, 5-factor analysis that looks at much more than what county is next to what. Relevant factors include the sources, amounts, and types of emissions in a county or part of a county, wind and weather patterns, and the geography and topography of the area.[36]

The location of industrial activities in the United States makes clear that huge swaths of "adjacent" counties on the Chamber's red map will not be designated nonattainment—and have not been for prior designations for the $PM_{2.5}$ and ozone health standards. As noted earlier, EPA never has used the Chamber's approach: "[p]ast experience makes clear that EPA has not designated areas as the Chamber suggests it does, but instead makes careful judgments about what counties and parts of counties to include in a nonattainment area, with most soot nonattainment areas consisting of 1-2 counties or partial counties." *Id.*

The Chamber's invented approach differs from EPA's designation approach in still more ways:

> the Chamber's methodology for "calculating" design values diverges far from the official methodology. The Chamber does not base its calculations on actual data for 2023, which is still incomplete, but apparently fills in unknown data with 2022 data. This is not normal. EPA's rules specify precisely how to calculate design values and how to address missing data. Those rules in no way suggest the Chamber's methodology has any validity.

Id. Individually, any one of these abuses would over-estimate future nonattainment areas. Compounding the abuses, as the Chamber report and red map do, misrepresents EPA's past, present and future approaches to nonattainment designations, while misleading viewers about the safer $PM_{2.5}$ health standard with an easily misunderstood map.

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[34] *See* 81 Fed. Reg. 68,216, 68,217, 68,278 (Oct. 3, 2016) ("we apply the provisions in CAA section 319(b) to a specific set of regulatory actions (*e.g.*, designations").
[35] *See* Chamber Report, at 4.
[36] Johnson, Seth, Earthjustice, "Chamber of Commerce's Dubious Analysis of Clean Air Rules Is Wrong," Dec. 4, 2023, *available at* https://earthjustice.org/experts/seth-johnson/chamber-of-commerces-dubious-analysis-of-clean-air-rules-is-wrong (original hyperlinks omitted) ("Earthjustice Analysis").

And what about the Chamber map's light red color, which covers the *rest of the United States* in a misleading attempt to argue that economic activity will be jeopardized … everywhere? The data relied on by the Chamber lack merit since they are based on overstated projections of design values and include air quality data that will not matter for regulatory purposes.

The Chamber's report also assumes that no wildfire data would be excluded as an "exceptional event," contrary to history and past practice. In fact, permitting for large sources in attainment areas will be eased as a result of wildfire data. The Chamber acknowledges, as it must, that permitting for large sources in attainment areas relies on air dispersion modeling, which largely depends on the data fed into the model. EPA's guidelines for these models explicitly account for fire-affected monitoring data and highlight that it may be removed from the data set.

Question 3. Witnesses at the hearing expressed frustration with the new source review (NSR) permitting program, stating that the program discourages deployment of more efficient emission control technology at industrial facilities.

a. Do you agree with this characterization? Why or why not?

Answer 3a. I disagree with this characterization. The Clean Air Act's New Source Review (NSR) pre-construction permitting program—with requirements for modern air pollution controls, offsets of any remaining emissions increases, air-quality impact analyses, and public participation—imposes those requirements only when industrial facilities ***significantly increase*** total, annual emissions of regulated air pollutants like $PM_{2.5}$ pollution, sulfur dioxide, or precursors to smog, such as nitrogen oxides or volatile organic compounds. If industrial facilities deploy more efficient emissions control technologies that decrease total, annual emissions, maintain emissions levels, or even increase emissions up to but not beyond regulatory "significance" thresholds (*e.g.*, 40 tons per year), then facility operators are *not* required to obtain NSR permits. They are not required to meet regulatory requirements for modern pollution controls, offsets of any remaining emissions increases, air-quality impact analyses, and public participation.

When NSR critics allege that the program discourages deployment of more efficient emission control technology at industrial facilities, they mean activities that ***significantly increase*** total, actual, annual emissions of dangerous air pollutants—*beyond* regulatory "significance" thresholds—then complain that these significant increases in total, annual air pollution cannot evade preconstruction review but instead require permits. Industrial activities that significantly increase total, annual emissions of dangerous air pollution do not deserve the label, 'more efficient,' in my view. But even if they did, the Clean Air Act for good reason always has required and should continue to require those significant increases in dangerous air pollution to

be mitigated, and subjected to air quality impact analysis and offsets in nonattainment areas prior to construction—in order to protect Americans' health, air quality, national parks and environment.

Americans care about increases in total, actual air pollution that worsens air quality and harms their health, not failures to increase theoretical 'capacity'—a facility's maximum hourly emissions rate from the past—the metric historically used by NSR's industry critics to characterize supposedly 'more efficient' operations. Adopting the wildly deregulatory 'maximum hourly emissions rate' test to measure pollution increases would weaken the Clean Air Act drastically and sanction enormous increases in total, actual amounts of dangerous air pollutants. Such a severe rollback would ensure that dangerous air pollution increases escape air pollution controls and regulatory review in the real world. For the parents of a child being rushed to the emergency room due to an asthma attack caused by massive soot pollution increases from a nearby power plant, it is no solace to tell them that the higher pollution levels that choked their daughter's breathing did not result from the plant exceeding its thereotical "maximum hourly emissions rate." Asthma attacks, heart attacks and strokes are brought on by higher levels of actual, harmful air pollution in the real world, regardless of whether those higher amounts are caused by increases above the artificial concept of a plant's maximum hourly emissions rate compared to some point in the plant's past.

Moreover, it is the case in my experience (encompassing over 30 years with the NSR program) that these allegations and complaints usually are cloaked in generalities and assertions, without evidence or actual factual examples held up to objective scrutiny. For example, in a well-known 2017 article, the authors asserted that "it has arguably been more economic in some cases to continue to operate relatively old, inefficient, and high-polluting plants than to install new facilities or upgrade existing facilities with better pollution control technology."[37] Notably, the authors did not identify any real-world example, much less "some cases," where this was true and substantiated. Rather, the authors cited "evidence" backing this claim in an EPA 2001 NSR report prompted by then-Vice President Cheney's energy task force. But that EPA report itself lacked evidence to support the repeated claim; it was itself an example of a government report simply repeating self-serving industry assertions as evidence assertions made, again, without evidence or actual factual examples held up to objective scrutiny.

[37] Fraas, *et al.*, "EPA's New Source Review Program: Time for Reform?", 47 ELR 10026, n.27. This article cited "evidence" backing this claim in an EPA 2001 NSR report prompted by then-Vice President Cheney's energy task force. But that EPA report itself lacked evidence to support the claim, and was itself an example of a government report simply repeating self-serving industry assertions as evidence. *See* U.S. EPA, New Source Review Report to the President (2002)*; see also* U.S. EPA, "Final Report on Review of Agency Actions That Potentially Burden the Safe, Efficient Development of Domestic Energy Resources Under Executive Order 13783," (Oct. 25, 2017) (asserting that "[i]n some circumstances, the NSR process discourages the construction of new facilities or modifications of existing ones that could result in greater environmental improvements"—but backing the 'discouragement' claim and the 'greater environmental improvements' claim with no proof and no verifiable facts).

Such scrutiny would have revealed that each assertion that the program discourages deployment of more efficient emission control technology at industrial facilities in fact involved (1) activities that ***significantly increase*** total, annual emissions of regulated air pollutants—*beyond* regulatory "significance" thresholds; and (2) that critics wished that these significant increases in total, annual amounts of dangerous air pollution could evade preconstruction review, and evade modern air pollution controls, air quality impact analyses, and pollution offsets in nonattainment areas.

Finally, none of the witnesses at the June 2025 hearing identified an actual project where the NSR program allegedly discouraged deployment of more efficient emissions control technology that would *reduce* overall emissions, despite having raised generalized complaints about "thwarted" "energy efficiency and modernization projects that could reduce actual emissions."[38] This is unsurprising. To the contrary, as noted earlier, projects that *reduce* total, actual emissions of dangerous air pollution do not require NSR permits, as a matter of law.

b. H.R. 161, the New Source Review Permitting Improvement Act, was identified as a solution to these concerns. This bill would amend the definition of "modification" under section 111 of the Clean Air Act. What would be the impact of this legislation, if enacted? How would communities be impacted by such legislation?

Answer 3b. I testified in 2018 before this Subcommittee opposing two bills substantially similar to H.R. 161 that also would drastically weaken the Clean Air Act's New Source Review safeguards.[39] Like those bills, H.R. 161 would let industry pollute more, by significantly higher amounts, and in the process, evade air pollution controls, air quality impact analyses, pollution offsets in nonattainment areas, and public participation and accountability.

H.R. 161 would overturn four decades of Clean Air Act safeguards concerned with increases in actual, total emissions of harmful air pollution such as ozone, $PM_{2.5}$ and sulfur dioxide. It would replace those greater protections with a test for air pollution controls, offsets and air quality impact analysis that would apply only if a polluter ever managed to exceed, implausibly, its vastly higher *capacity* to emit air pollution, measured from some point in the plant's past. By doing so, the bill would allow increases in actual emissions totaling hundreds or even thousands

[38] *See* Testimony of Paul Noe, American Forest & Paper Association and American Wood Council , at 13, https://democrats-energycommerce.house.gov/sites/evo-subsites/democrats-energycommerce.house.gov/files/evo-media-document/witness-testimony_noe_env_naaqs-leg_06.11.2025.pdf.
[39] *See* Testimony of John Walke, Natural Resources Defense Council, before the Subcommittee on Environment, Committee of Environment and Commerce, U.S. House of Representatives (Feb. 14, 2018), https://www.congress.gov/115/meeting/house/106852/witnesses/HHRG-115-IF18-Wstate-WalkeJ-20180214.pdf.

of tons per year from individual facilities to evade pollution controls, offsets, air quality analyses and regulatory/public oversight.

The Clean Air Act—and Americans—are rightly concerned with total increases in actual emissions of harmful air pollutants. Significant increases in actual emissions must be controlled either with Best Available Control Technology (BACT) in areas meeting national health standards, or Lowest Achievable Emissions Rate (LAER) control technology—as well as the offset of remaining emissions increases—in areas failing to meet those health standards. H.R. 161 would overturn and render meaningless the Clean Air Act's 40-year concern with significant increases of actual, dangerous emissions, and also overturn the leading NSR federal court opinion upholding the law's critical emissions increase requirement.[40]

If the Clean Air Act always had reflected this bill's lax and starkly deregulatory approach, then EPA, state regulators and the public would have been unable to uphold and enforce the Act against *millions of tons* of widespread, dangerous and illegal air pollution increases from coal-burning power plants, oil refineries, glass manufacturers, cement manufacturing plants, and plants that manufacture sulfuric and nitric acid that were the subject of EPA enforcement initiatives begun in the late 1990s.[41] The extreme approach in H.R. 161 would have allowed air pollution *increases* of this magnitude, mind you, not simply continuing pollution levels in amounts already making air quality polluted and unsafe for Americans.

H.R. 161 would allow massive increases in actual emissions of harmful air pollution, so long as a polluting facility does not exceed its maximum capacity to pollute, measured by its "maximum hourly emissions rate," or "maximum achievable hourly emissions rate."[42] Further, the bill would allow massive increases in actual emissions of harmful air pollution resulting from industrial changes "*designed to* reduce the amount of any air pollutant emitted by the source *per unit of*

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[40] *New York v. EPA*, 413 F.3d 3, 39 (D.C. Cir. 2005).

[41] *See generally* EPA Air Enforcement initiatives, New Source Review and Prevention of Significant Deterioration, https://www.epa.gov/enforcement/air-enforcement#nsr. EPA has said that settlements in NSR enforcement cases against acid, glass, and cement manufacturing facilities resulted in cumulative estimated emissions reductions of 190,000 tons of sulfur dioxide and 50,000 tons of nitrogen oxides from FY2008-FY2016. *See* https://19january2017snapshot.epa.gov/enforcement/national-enforcement-initiative-reducing-air-pollution-largest-sources_.html#:~:text=Goal,pollution%20reduction%20targets%20are%20met. The agency said in 2019 that pursuant to the successful NSR enforcement initiative for these three industrial sectors, the agency "[had] required controls or commenced investigations at 91 percent, 96 percent, and 90 percent of facilities in the glass, cement, and acid manufacturing sectors, respectively." 84 Fed. Reg. 2,848, 2,850 (Feb. 8, 2019). In that same 2019 notice, EPA said that "[t]he EPA and state regulatory approaches and [NSR] enforcement efforts in [the electric power sector] have resulted in a 90 percent reduction in sulfur dioxide emissions and an 83 percent reduction in nitrogen oxide emissions since 1997, while gross generation has increased by 10 percent." *Id.* Finally, EPA estimated that as of 2011, the NSR enforcement initiative launched against oil refineries in 2000 had resulted in *annual* emissions reductions of more than 95,000 tons of nitrogen oxides and 260,000 tons of sulfur dioxide. *See* https://www.epa.gov/enforcement/petroleum-refinery-national-case-results#:~:text=EPA's%20national%20Petroleum%20Refinery%20Initiative,the%20Nation's%20petroleum%20refining%20capacity.

[42] *See* H.R. 161, "New Source Review 5 Permitting Improvement Act," https://www.congress.gov/119/bills/hr161/BILLS-119hr161ih.pdf.

production"—thereby, allowing pollution increases of hundreds, thousands or even tens of thousands of *tons* from *individual* facilities if the change led to the industrial facility increasing its hours of operation.[43] *Id.* (emphasis added). Indeed, the "designed to" language in this provision of H.R. 161 would allow these massive pollution increases even if a change did *not* reduce the amount of air pollution emitted per unit of production, negating the contention that the bill is about efficiency improvements.

As I testified in 2018 critiquing earlier legislative versions of H.R. 161:

> Americans care about increases in actual air pollution that worsens air quality and harms their health, not failures to increase theoretical 'capacity'—a facility's maximum hourly emissions rate from the past. Both bills would sanction enormous increases in dangerous air pollutants, ensuring such increases escape control and review in the real world. For the parents of a child being rushed to the emergency room due to an asthma attack caused by massive soot pollution increases from a nearby power plant, it is no solace to tell them that the higher pollution levels that choked their daughter's breathing did not result from the plant exceeding its "maximum hourly emissions rate." Asthma attacks, heart attacks and strokes are brought on by higher levels of actual, harmful air pollution in the real world, regardless of whether those higher amounts are caused by increases above the artificial concept of a plant's maximum hourly emissions rate from some point in the plant's past.

See supra n.39, Testimony of John Walke, at 6.

EPA and federal courts have recognized again and again that basing NSR only on emissions increases that exceed a facility's higher maximum hourly emissions rate would allow changes that cause actual, significant emissions increases to evade review, pollution controls and offsets: this "could sanction greater actual emissions increases to the environment, often from older facilities, without any preconstruction review."[44] EPA has explained how these actual emissions increases would result, taking the example of a widget factory: a physical change at a facility could "allow the owner to use [a] machine at much higher levels (*e.g.*, more hours per day or week) than it had in the past. As a result, *actual emissions (measured in [tons per year]) could*

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[43] *Id. See also* U.S. EPA, Technical Support Document, at 3-1; 5-3 ("We believe it is unlikely that an [electric generating unit] would increase its efficiency without also increasing its operating and physical capacity," including availability.), in docket for EPA's Proposed "Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration and Nonattainment New Source Review: Emissions Increases for Electric Generating Units," 72 Fed. Reg. 26,202 (May 7, 2007).

[44] 67 Fed. Reg. 80,186, 80,205 (Dec. 31, 2002). *See also*, *id.* ("actual emissions increases resulting from unreviewed projects could go largely undocumented until a [NSR] review is performed by a new or modified facility that ultimately must undergo review. By that time, however, a violation of an increment could have unknowingly occurred."), *id.* ("We agree that a potential-to-potential test for major NSR applicability could lead to unreviewed increases in emissions that would be detrimental to air quality.").

more than double due to the increase in utilization even though hourly potential emissions remain the same."[45]

It is important to realize that the highest hourly emissions rate that a source could have achieved, or has achieved, does not reflect the source's actual hourly emissions, on a day-to-day basis. Indeed, in a case study undertaken by EPA's enforcement office, "the achievable hourly emission rate was calculated to be *more than ten times higher* than the average hourly emission rate in the five-year period prior to the change."[46] This provides some idea of the reckless magnitude of actual emissions increases that could occur by adopting the "maximum (achievable) hourly emissions rate" approach in H.R. 161.

To illustrate the magnitude of harm that the bill would unleash, one can look to prior steps by EPA's enforcement office to examine the weakening effect of a "maximum achievable hourly emissions rate test" on NSR, and the enormous emissions increases that would result. Examining actual emissions data for coal-burning electric generating units ("EGUs") from the EPA Clean Air Markets Division, the agency's enforcement office concluded that a maximum hourly achievable emissions rate test would fail to control actual annual emissions increases of 50 tons per year of SO_2 and 978 tons per year of NO_x in one case study (EPA Enforcement Memo, at 10); increases of 13,096 tons per year of SO_2 in another case study (*id.*, at 2); increases of 939 tons per year of SO_2 and 1,405 tons per year of NO_x in another (*id.*, at 20); and increases of 1,700 tons per year of SO_2 and 507 tons per year of NO_x in a fourth case study (*id.*, at 27). Realize that there are many EGUs today whose *total* emissions of SO_2 and NO_x are lower than the amount of pollution *increases* that H.R. 161 would facilitate from individual EGUs and potentially thousands of other emissions units across the economy.

In one especially startling example in the EPA analysis, the annual SO_2 emissions *increase* that evaded pollution control was *over 327 times* the level that EPA considers *de minimis* and therefore exempt from controls.[47] These emissions increase levels that H.R. 161 would exempt are significantly higher than even the major stationary source threshold for *brand new power plants* (100 tons per year) that the Clean Air Act make subject to modern air pollution control equipment (reflecting BACT and LAER) and pollution offsets in nonattainment areas. And in many cases, again, these uncontrolled emissions increases are well above the total SO_2 and NO_x emissions from *entire individual power plant units*. H.R. 161 would relieve power plants and thousands of other industrial facilities from the obligation to control and offset just these types of enormous increases in dangerous air pollution.

It is critically important to emphasize that H.R. 161 does not eviscerate the clean air safeguards and obligations described above just for power plants. The bill's extreme approaches apply to

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[45] 61 Fed. Reg. 38,250, 38,269 (July 23, 1996) (emphasis added).
[46] Memorandum from Adam M. Kushner, Director of EPA's Air Enforcement Division, Office of Enforcement and Compliance Assurance, to William Harnett, dated August 25, 2005, at 3 (emphasis added) ("EPA Enforcement Memo").
[47] *Id.*, EPA Enforcement Memo, at 27.

any “stationary source,” meaning the entire universe of industrial pollution facilities regulated under the Clean Air Act: hazardous waste incinerators, oil refineries, chemical manufacturing plants, lead smelters, cement and acid manufacturing plants, and many hundreds of other industrial sectors and types of polluting equipment. All would be allowed to increase emissions of harmful air pollutants like nitrogen oxides, sulfur dioxide, particulate matter and lead, while evading air pollution controls, offset of remaining emissions in areas with currently unhealthy air, analysis of violations of health standards and regulatory/public oversight.