

ONE HUNDRED NINETEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

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MEMORANDUM

September 12, 2025

TO: Members of the Subcommittee on Environment
FROM: Committee Majority Staff
RE: Hearing titled "From Gridlock to Growth: Permitting Reform Under the Clean Air Act."

I. INTRODUCTION

The Subcommittee on Environment will hold a legislative hearing on Tuesday, September 16, 2025, at 2:00 p.m. (ET) in 2123 Rayburn House Office Building. The hearing is entitled, "From Gridlock to Growth: Permitting Reform Under the Clean Air Act." The hearing will focus potential reforms to permitting and environmental reviews under the Clean Air Act, including the following bills:

- H.R. 161, New Source Review Permitting Improvement Act (Rep. Griffith)
- H.R. ___, Air Permitting Improvements to Protect National Security Act
- H.R. ___, Reducing and Eliminating Duplicative Environmental Regulations Act (RED Tape Act)
- H.R. ___, Foreign Emissions and Nonattainment Clarification for Economic Stability (FENCES Act)
- H.R. ___, Fire Improvement and Reforming Exceptional Events Act (FIRE Act)

II. WITNESSES

- **Clint Woods**, Commissioner, Indiana Department of Environmental Management;
- **Mark Gebbia**, Vice President, Environmental and Permitting, Williams;
- **Ashley Kunz**, Senior Director, Environmental Health and Safety, Micron;
- **Danny Seiden**, President and CEO, Arizona Chamber of Commerce and Industry;
- **Keri Powell**, Senior Attorney for Community Health and Air Program Leader, Southern Environmental Law Center; and
- **Ali Mirzakhali**, Air Quality Division Administrator, Oregon Department of Environmental Quality.

III. BACKGROUND

A. Clean Air Act Pre-Construction Permitting

This hearing continues the Subcommittee’s oversight of the Clean Air Act (CAA). While the Subcommittee’s June 11, 2025, hearing (“June 11 hearing”) looked at how National Ambient Air Quality Standards (NAAQS) are developed and implemented,¹ this hearing focuses on how the CAA’s pre-construction permitting requirements impact economic growth and air quality.²

As discussed at the June 11 hearing, the CAA requires the U.S. Environmental Protection Agency (EPA) to establish air quality standards for certain pollutants at a level that, in the judgment of the Administrator, is “requisite to protect public health,” allowing for an “adequate margin of safety.” After a NAAQS is established, states are primarily responsible for implementing and enforcing the standards, first, through a process of designating which geographic areas are in attainment with the NAAQS and, then, by developing a State Implementation Plan (SIP) that demonstrates how the area will maintain or improve its air quality to meet the NAAQS through specific programs, regulations, and emissions control programs that limit emissions of air pollutants.³

There are three kinds of CAA pre-construction review and permit programs, often referred to as “New Source Review” or “NSR” permit programs, depending on the amount of emissions and whether the source is located in an attainment or non-attainment area. The “Prevention of Significant Deterioration” or “PSD” requirements in Section 165 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.⁴ The “Non-Attainment New Source Review” or “NNSR” requirements under Sections 172 and 173 apply in areas that are designated as non-attainment for one or more NAAQS and generally impose the most stringent pollution control, emission limits and emission offset requirements 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.⁵ The third program is for minor sources of emissions and provide states more flexibility in how such emissions are controlled.

B. Concerns about NSR Permit Process

States, manufacturers, and others have raised concerns about the NSR permit program for decades. In 2002, the Bush Administration implemented several changes to the regulations

¹ Short-Circuiting Progress: How the Clean Air Act Impacts Building Necessary Infrastructure and Onshoring American Innovation: Hearing before the Subcomm. On Env’t of the H. Comm. on Energy and Com., 119th Cong. (2025).

² In addition to the New Source Review (NSR) pre-construction permit process, the Clean Air Act also requires the U.S. Env’t. Prot. Agency to review and comment on the environmental impacts of a proposed construction project funded by another agency or other major federal action subject to the National Environmental Policy Act environmental review process. 42 U.S.C. § 7609.

³ 42 U.S.C. § 7410(a)(2)(C).

⁴ 42 U.S.C. § 7475.

⁵ 42 U.S.C. §§ 7502(c)(5), 7503.

implementing the NSR program, including changes in how emissions are calculated and the kinds of facility modifications or upgrades that would trigger NSR review.⁶ The 2002 regulatory reform effort was the subject of multiple litigation challenges and regulatory reversals in subsequent administrations.⁷ In 2018, the Environment Subcommittee held a hearing, titled “New Source Review Permitting Challenges for Manufacturing and Infrastructure,” which highlighted ongoing concerns with how implementation of the NSR program is inconsistent, expensive, and time-consuming for energy producers, project developers, and manufacturers looking to expand existing or build new facilities.⁸

The permit process involves multiple steps, including public notice and comment, and can take several years to complete. Among the challenges regulators and project developers often face in navigating the NSR permitting process is how to interpret statutory and regulatory definitions used to determine when an NSR permit is required. For example, there are often questions over how to define the source of emissions and how emissions from different activities or locations should be aggregated, whether an activity constitutes a modification or repair of an existing source, and how changes in emissions are quantified. Owners and operators of existing sources seeking to install modern pollution control equipment or improve the efficiency of their operations, which may reduce overall emission, may nonetheless trigger NSR permitting requirements, discouraging environmental improvements. Other challenges, as discussed at the June 11 hearing, include how the increased stringency of NAAQS standards to near background levels and emissions that are not controllable by sources in a state, e.g., air pollution from foreign sources or wildfires, are factoring into the ability to obtain pre-construction permits in certain parts of the country.

The current Trump Administration has announced several policy changes intended to reform the permitting process for data centers, advanced manufacturing, and the electric power sectors. For example, on September 2, 2025, EPA issued a letter to the Maricopa County (Arizona) Air Quality Department providing guidance on whether certain construction activities for a semiconductor manufacturing facility would trigger NSR permitting.⁹ EPA advised that the term “beginning actual construction” in the NSR regulations involved construction of an emissions unit, whereas commencing construction of a semiconductor manufacturing facility’s core and shell did not constitute construction activities on an emissions unit and did not trigger NSR permitting.¹⁰ In another example, EPA announced in July 2025 that it was withdrawing a 2024 proposed rule that would have redefined how EPA defines the term “project” and calculates emissions for purposes of NSR permitting, saying the proposal

⁶ Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects, 67 Fed. Reg. 80186 (Dec. 31, 2002) (codified at 40 C.F.R. pts. 51-52).

⁷ NSR Regulatory Actions, U.S. Env’tl Prot. Agency, <https://www.epa.gov/nsr/nsr-regulatory-actions#nsrreform> (last accessed Sept. 11, 2025).

⁸ New Source Review Permitting Challenges for Manufacturing and Infrastructure: Hearing before the Subcomm. on Env’t. of the H. Comm. on Energy and Com., 115th Cong. (Feb. 14, 2018) (background memorandum of the Comm.).

⁹ Letter from Assistant Administrator Aaron Szabo, U.S. Env’t Prot. Agency, to Philip McNeely, Director, Maricopa County Air Quality Department (Sep. 2, 2025), <https://www.epa.gov/system/files/documents/2025-09/tsmc-arizona-begin-actual-construction-epa-response-letter.pdf>.

¹⁰ *Id.*

would have resulted in additional burdens on states, local governments, Tribes, and the regulated community.¹¹

IV. ISSUES FOR DISCUSSION

- How frequent changes in regulations and interpretive guidance create uncertainty for the regulated community and regulatory agencies and the role that Congress can play in providing regulatory clarity and simplifying the permitting process.
- The impact that air pollution from foreign sources, forest fires, and exceptional events can have on air quality and the ability to obtain pre-construction permits under the NSR permit process.
- Challenges that industries critical to national security face in navigating the NSR process and how NAAQS standards that approach background level concentrations impact economic development.
- How the Clean Air Act can be modernized to meet the nation's need for economic security while continuing to deliver clean air and a healthy environment.

V. LEGISLATION

The Subcommittee will discuss one introduced bill and four legislative discussion drafts to reform permitting and environmental reviews under the CAA.

A. H.R. 161, New Source Review Permitting Improvement Act (Rep. Griffith)

- Amends the definition of “modification” in multiple sections to clarify that certain activities that do not increase emissions do not trigger NSR permitting.

B. H.R. ____, Air Permitting Improvements to Protect National Security Act

- Amends Section 173 to exempt advanced manufacturing facilities and critical mineral facilities from the requirement to offset emissions as part of the Nonattainment New Source Review (NNSR) permit process if the President issues a national security determination or if other conditions are met. This is based on a similar provision in Section 173 waiving emission offset requirements for rocket engines.

¹¹ Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Regulations Related To Project Emissions Accounting; Withdrawal of Proposed Rule, 90 Fed. Reg. 34206 (July 21, 2025).

C. H.R. ____, Reducing and Eliminating Duplicative Environmental Regulations Act (RED Tape Act)

- Amends Section 309 to eliminate the requirement for EPA review and provide written comment on federal construction projects or other actions by a federal agency that are already subject to environmental review under the National Environmental Policy Act.

D. H.R. ____, Foreign Emissions and Nonattainment Clarification for Economic Stability Act (FENCES Act)

- Amends Section 179B to exclude emissions from foreign sources from being used to determine whether an area is attaining a NAAQS and considered as part of NSR permitting.

E. H.R. ____, Fire Improvement and Reforming Exceptional Events Act (FIRE Act)

- Amends Section 319(b) to limit how emissions from wildfires, prescribed burns and exceptional events from the air monitoring data can be used to determine whether an area is attaining a NAAQS and to require increased coordination between EPA and affected states regarding exceptional event determinations.

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.