

**TESTIMONY OF RAUL GARCIA**  
**LEGISLATIVE DIRECTOR FOR HEALTHY COMMUNITIES**  
**EARTHJUSTICE**  
**BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES**  
**JOINT ENERGY, CLIMATE, & GRID SECURITY SUBCOMMITTEE AND ENVIRONMENT,**  
**MANUFACTURING, & CRITICAL MATERIALS SUBCOMMITTEE LEGISLATIVE HEARING:**  
**“UNLEASHING AMERICAN ENERGY, LOWERING ENERGY COSTS, AND STRENGTHENING SUPPLY**  
**CHAINS.”**  
**FEBRUARY 7, 2023**

Good Morning Chairman Duncan, Ranking Member DeGette, Chairman Johnson, and Ranking Member Tonko:

Thank you for inviting me to testify today. My name is Raul Garcia, and I am the Legislative Director for Healthy Communities at Earthjustice, the nation’s oldest and largest nonprofit public interest environmental law organization. Please accept this testimony for the hearing’s official record. My testimony addresses serious concerns and strong opposition to the draft bills discussed in this hearing. Overall, these bills create a false narrative aimed at circumventing critical environmental and public health protections in order to greenlight harmful corporate polluters that profit at the expense of frontline communities across the country.

The bills attempt to create exemption after exemption for harmful industries to avoid complying with laws like the Clean Air Act (CAA), the Toxic Substances Control Act (TSCA), and the Solid Waste Disposal Act (SWDA), among many others. Before addressing the problems with some of the specific proposed legislation, we must remember that the laws they seek to waive are important

for the health and safety of all people in this country. They were passed for a reason. The CAA, for example, is the most important legal tool available to protect the air we breathe from harmful pollutants caused by dirty industries. In a similar way, TSCA sets up protections so that toxic substances like lead, asbestos, and PFAS are not manufactured and consumed in ways that harm our communities. In turn, the SWDA establishes requirements for polluting industries to clean up areas that they have contaminated to such toxic levels that they pose a serious threat to human life. Concretely speaking, these laws are at times the only line of defense that our communities—your constituents—have to prevent even more devastating and ever-increasing numbers of respiratory diseases like asthma, cardiovascular conditions, and other serious illnesses like cancer.

The bills in question in today's hearing are a litany of waivers that would allow dirty corporate industries to violate the environmental and health requirements in our laws. Many of them would waive protections for what they label as "critical energy resources" or some similar phrasing. However, none of these bills actually define what those "critical" resources would be. Instead, they rely on the discretion of the Department of Energy to make that determination. This means that, at any given point, anything can be deemed as "critical," subject to the whims of whoever is at the Department of Energy. There is nothing in these bills that would stop any random and harmful industry from being falsely labeled as "critical." The bills before the subcommittees today are a trojan horse that would bypass critical health protections to line the pockets of dirty polluters and toxic chemical manufacturers. To be clear, this is not about critical resources that our country needs; it is about giving a free pass to deadly chemicals like lead, asbestos, sulfuric acid, mercury, and PFAS that are not critical to our national energy interests. In effect, these waivers would allow even the most harmful polluters to manufacture and spread the deadliest poisons into our air, water, and even our homes with impunity.

Together, many of the bills presented before the subcommittees create a narrative that our environmental and health protections exist to stop or significantly hamper energy and other development. This is utterly false. Our environmental and health protections are designed to ensure that energy production and other industrial activities are safe for our communities, especially those living at the fenceline and in close proximity. We have the capability to advance our technologies, create responsible clean energy development, and deliver it across the country in a way that protects our health and our children's future. Congress should avoid advancing bills that eliminate these critical public health protections and facilitate harmful energy production and poisonous chemical manufacturing. Lawmakers should instead focus on strengthening protections and holding bad actors who violate our laws and betray your constituents accountable for their actions. We reject the false choice between energy creation and human health. We can and must have both.

I offer the following as clear examples of the problems that plague the bills being proposed today:

**H.R. \_\_, To amend the Toxic Substances Control Act with respect to critical energy resources, and for other purposes.**

We express our strong opposition to the draft bill: "To amend the Toxic Substances Control Act for critical energy resources, and for other purposes." In just three short pages, the bill would reverse and eviscerate several of the core reforms to the nation's chemical safety law, even after **TSCA passed the House and Senate overwhelmingly with bipartisan support just a few years ago. It was reported out of this Committee unanimously and passed the House 403-12.** In fact, nine of the nay votes were from Democrats, many of whom believed the final bill wasn't strong enough. Every Republican on this Committee who was in Congress in 2016 and cast votes voted in

favor of the legislation, including Chairs McMorris-Rogers, Duncan, and Johnson, and Representatives Burgess, Latta, Guthrie, Griffith, Bilirakis, Bucshon, Hudson, Walberg, Carter, Palmer, and Weber.

The draft legislation would make it virtually impossible for EPA to meaningfully review the safety of new chemicals that are classified as “critical energy resources,” regardless of their health risks. The bill promotes cursory assessments, followed by default approvals, of any new chemical that is deemed necessary for a “critical energy resource,” no matter how toxic, how persistent, or how mobile in the environment. These chemicals could be used in anything from fracking to petrochemicals to mining.

The revisions to TSCA would sacrifice the health and safety of the public – including children, workers, the elderly, and fenceline communities – to expedite production of any potentially toxic chemical that the industry can persuade the Department of Energy, which is not charged with reviewing the health and safety of chemicals, to deem a “critical energy resource.” We already know the limitless scope of what the chemical industry is likely to claim as “critical” based on their recent insistence that some of the most toxic chemicals in existence are “critical” for renewable energy or energy security, including PFAS,<sup>1</sup> asbestos,<sup>2</sup> and lead.<sup>3</sup> **TSCA’s failure to protect the public from asbestos, as well as other toxic chemicals like TCE and methylene chloride, served as**

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<sup>1</sup> ACC, *PFAS: Critical to Renewable Energy*, <https://www.americanchemistry.com/chemistry-in-america/chemistries/fluorotechnology-per-and-polyfluoroalkyl-substances-pfas/pfas-critical-to-renewable-energy>

<sup>2</sup> ACC, *ACC Urges EPA to Reconsider its Flawed Chlor-alkali Proposal*, <https://www.americanchemistry.com/chemistry-in-america/news-trends/press-release/2022/acc-urges-epa-to-reconsider-its-flawed-chlor-alkali-proposal>

<sup>3</sup> International Lead Association, *Using Lead Responsibly is Critical to Achieving a Sustainable and Low Carbon Future*, <https://ila-lead.org/sustainability/>

**Congress's catalyst to strengthen the law. To now roll back TSCA's protections in order to fast-track approval of chemicals like asbestos would be a sad irony.**

The draft bill would:

- Mandate that EPA's risk evaluation of chemicals, rather than continuing to focus on the potential health risks, must also include the consideration of all cost and other "non-risk factors" when evaluating whether the chemical substance poses an unreasonable risk (as opposed to basing safety determinations solely on risks to health or the environment). The prioritization of economic considerations over public health protection was the major flaw that had stymied progress under the old TSCA, and **Congress's deliberate shift to risk-based evaluations and decision-making was the fundamental reform that brought the law back to life** after being ineffective for decades and badly in need of reform.
- Allow new chemicals to begin production before EPA has completed its determination whether they pose an unreasonable risk to human health or the environment. Because Congress wanted EPA to make an affirmative determination of safety for all new chemicals, TSCA explicitly provides that no new chemical can enter production until that determination has been made. **The bill would completely reverse this vital health-protective policy.**
- In addition to the newly-added consideration of costs and any other non-risk factors to EPA's analysis, which will lengthen the time necessary for review, the bill simultaneously prevents EPA from extending the review period for chemicals designated "critical energy resources." The inevitable result will be rushed and superficial reviews that fail to identify risks to health and the environment or incomplete reviews that result in default approvals of

unsafe chemicals. As we have seen over and over, **where a toxic chemical begins manufacture without a thorough review by EPA, it is almost impossible to end its production, or retrospectively establish sufficient protections** from the chemical to protect the public.

- Create a limitless loophole from TSCA’s chemical assessment and health protection requirements. **“Critical energy resource” is an open-ended and undefined concept that could apply to virtually any chemical** that plays a role in the production, refining, distribution, and use of energy and is designated as “critical” by the Department of Energy. Once a substance is deemed to be a “critical energy resource,” and therefore is fast tracked through the TSCA pre-manufacture notice process, **there is no limit on how the substance can then be used, beyond its ostensible “critical energy resource” use, and no constraint on non-energy applications that could also be harmful to health and the environment.**

The bill would establish a precedent for enacting further loopholes to gut the health protective provisions of the Act. **If it is acceptable to gut health reviews of chemicals for “critical energy resources,” what is the principle that will prevent other broad categories or uses of potentially toxic chemicals from also getting special treatment** under Section 5 of TSCA?

Notably missing from the draft bill are any findings demonstrating the need for the bill. In fact, **there is no evidence that the public must sacrifice health protections from toxic chemicals in exchange for clean energy.** We can develop and deploy new energy technologies without waiving chemical review requirements or placing the communities burdened by PFAS and other toxic

chemicals at risk. The draft bill's rejection of that clean and health-protective energy future sells American innovation short. **Overwhelmingly, the public wants more, not less, protection from toxic chemicals.**<sup>4</sup> Yet the draft bill would roll back critical public health protections and weaken the nation's bedrock chemical safety law.

### **H.R. \_\_, the "Securing America's Critical Minerals Supply Act."**

This draft legislation modifies the organization and jurisdiction of the Department of Energy, which seems rather mundane at first glance. However, the draft legislation is about far more than critical minerals, as it uses the amorphous definition of "critical energy resource," which could include essentially anything pertaining to energy. The Environmental Protection Agency (EPA) and Department of Interior (DOI) would have their authority to protect communities and the environment removed, even though they have the expertise and mandate to protect our health, water, and lands. The Department of Energy's new authority would effectively have the only metrics for consideration in production be economic or "security", which will mean that our environment and communities will be left behind.

### **H.R. \_\_, To amend the Clean Air Act to prohibit the phase out of gasoline and prevent higher prices for consumers and for other purposes.**

This legislation is an attack on the Environmental Protection Agency's Risk Management Program (RMP), which are safeguards intended to protect workers, fence-line communities, and first-responders from chemical disasters. The bill would amend the Clean Air Act to exempt refineries

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<sup>4</sup> University of California San Francisco Program on Reproductive Health and the Environment, *Public Opinion on Chemicals*, <https://prhe.ucsf.edu/public-opinion-chemicals>

that use dangerous hydrofluoric acid (HF) from conducting a safer alternatives assessment. Safer technology and alternatives assessments are commonsense best practices that help facilities innovate and identify opportunities to prevent disasters and save lives. Alternatives identified in such assessments can prevent chemical disasters, such as the one that occurred in 2019 at the HF alkylation unit at the Philadelphia Energy Solutions Refinery in Philadelphia, Pennsylvania. This devastating series of explosions injured five workers and a first responder, led to the evacuation of 4,000 people, and culminated in over 1,000 workers being laid off with no severance and almost no notice when the plant shut down. During the incident, over 5,000 pounds of highly toxic HF were released, and the estimated property damage loss was \$750 million.

As the climate rapidly changes, the risk and severity of chemical disasters and releases are being exacerbated by extreme weather, making EPA's Risk Management Program even more important in preventing catastrophic disasters that lead to injury and loss of life and property. When industrial facilities, including HF refineries, located in these areas fail to adequately prepare for extreme storms, wildfires, earthquakes, heat waves, floods, rising sea levels, and other natural disasters this can lead to a cascading series of harms, including toxic chemical exposures, on top of the effects of the weather event itself.

This bill would disregard recommendations and information from the U.S. Chemical Safety Board and the Government Accountability Office and instead caters to the American Petroleum Institute and other fossil fuel interests. The dangers of HF are well-established, and millions of Americans live in the worst-case scenario zone for a toxic release. Congress should reject this bill and support EPA as they update the Risk Management Program Rule and work to better protect industrial workers, environmental justice and fenceline communities, and first-responders.



**H.R. \_\_, To authorize the Administrator of the Environmental Protection Agency to waive application of certain requirements, sanctions, or fees, with respect to processing or refining of critical energy resources at a critical energy resource facility, and for other purposes.**

This legislation would allow the Environmental Protection Agency (EPA) to waive the Clean Air Act (CAA) and Solid Waste Disposal Act (SWDA) requirements for waste produced during production of energy related products. The CAA and SWDA are essential for protecting our health and the environment from the hazards of countless types of industry waste. The draft legislation would exempt certain energy facilities from provisions of the SWDA, potentially including everything from fracking wastewater, to mine processing facilities and tailing sites to nuclear facilities. The SWDA was passed to protect human health and the environment from hazardous waste; exempting these types of waste from these laws threatens public health. It would destroy drinking water, increase negative health impacts on Indigenous and frontline communities, and pollute our public lands as well as the air we breathe. The EPA consistently classifies energy production waste as the most toxic, and often the waste site is impossible to completely remove contamination from, or it exists for hundreds of years.

**H.R. \_\_, To amend the Solid Waste Disposal Act to treat the owner or operator of a critical energy resource facility as having been issued an interim permit for the treatment, storage, or disposal of hazardous waste, and for other purposes.**

This legislation bypasses normal permitting processes, by advancing interim permitting for certain energy facilities. The draft legislation would thus allow the facilities to operate before securing a permit, whose entire purpose is to review the facility's impact on air, water, and the community. By preemptively providing these interim permits, the result would almost certainly be an increase of

negative health consequences and the destruction of cultural resources due to toxic pollutants being released into our air and water. The facilities that could receive an interim permit without a full understanding of their impact include everything from mining waste in tailings ponds, to fertilizers and petrochemicals.

**H.R. \_\_, To require the Administrator of the Environmental Protection Agency to authorize the use of flexible air permitting with respect to certain critical energy resource facilities, and for other purposes.**

This draft legislation would take the science out of decisions around air permitting, regarding flexible permitting for certain energy facilities. It would allow the Environmental Protection Agency (EPA) to circumvent the transparent process of approving or denying flexible air permitting. Doing so could insert politics into the decision and potentially allow the EPA Administrator to increase air pollution from vaguely defined “critical energy resource facilities,” subsequently harming public health and contributing to climate change. Similar to the other bills I’ve discussed, the facilities this could apply to are vast. If up to the discretion of the Department of Energy, they could include some of the worst offenders of pollution, including oil and gas, mining and petrochemicals.

## **Conclusion**

Earthjustice represents and partners with communities on the frontlines of the climate and environmental justice crises across the country. Each day we see the real human consequences of what happens when polluting industries fail to follow the law. From the petrochemical plants lining Cancer Alley in the Gulf to the legacy of mining on Indigenous lands, we know what happens when environmental protections are removed, and people are left at the mercy of industry to regulate

themselves. The bills before the sub-committees today will exacerbate the problem. Under the guise of guarding our national energy interests and security, these bills seek to gut commonsense protections and safeguards that all Americans, but especially environmental justice communities, depend on to protect them in their neighborhoods, workplaces, and homes. We look forward to continue working with the Committee to ensure that our country remedies existing environmental injustices, strengthens environmental protections to prevent those injustices from occurring in the future, and ensures that our clean energy future proceeds in an equitable and just way. Thank you for giving me the opportunity to testify today.

Sincerely,

Raul Garcia

Legislative Director for Healthy Communities

Earthjustice