

May 13, 2021

The Honorable Paul D. Tonko
Chairman, Subcommittee on the Environment and Climate Change,
House Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable David McKinley
Ranking Republican, Subcommittee on the Environment and Climate Change,
House Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

Re: Comments on HR 1512, the CLEAN Future Act, Section 631

Dear Chairman Tonko and Ranking Member McKinley:

In conjunction with your hearing today, the American Property Casualty Insurance Association (APCIA) respectfully submits comments on H.R. 1512, the Climate Leadership and Environmental Action for our Nation's Future Act, also known as the CLEAN Future Act. Specifically, APCIA offers comments on section 631, which requires the U.S. Environmental Protection Agency (EPA) Administrator to promulgate regulations that facilities, subject to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), establish and maintain evidence of financial responsibility consistent with risks associated with the impacts of climate change and extreme weather.

APCIA is composed of over 1,200 member companies and 330 insurance groups and represents the broadest cross-section of home, auto, and business insurers of any national insurance trade association. APCIA publicly and actively supports measures to address the impacts of extreme weather, including incorporation of climate-related risk into federal strategic plans to ensure proper preparedness for potential disasters. APCIA supports investment in climate and weather prediction systems that can provide earlier and more accurate warning for extreme weather conditions.

Consistent with its position on climate risk, APCIA believes the EPA's actions to address climate change and resulting extreme weather impacts in its programs is laudable. However, APCIA is opposed to section 631 and its use of CERCLA to address climate change and extreme weather impacts more broadly. This letter focuses on a central concern: that section 631 of the bill would dramatically expand the application of CERCLA's financial responsibility provisions to impose financial obligations on facility owners for climate change impacts on their facilities, which is a highly speculative if not impossible exercise.

The legislation would require facilities to “establish and maintain evidence of financial responsibility consistent ... with the *impacts of climate change and extreme weather on those facilities*, including releases of hazardous substances caused by climate change and extreme weather.” *HR 1512, §631(b)(2)* (ital. added). Modeling the impact of climate change and future extreme weather on a facility would likely be an arbitrary exercise and the pricing of a financial assurance or self-insurance instrument could be prohibitively expensive when one considers, for example, the potential impact of a catastrophic, hazardous substance release. Forcing facilities to seek private or federal financial assurance instruments for a potentially catastrophic, yet highly speculative risk, which would be subject to an evolving federal risk calculation, could lead to counterproductive and disruptive impacts on communities and employment, particularly if facilities are forced to close or relocate because of liability concerns.

In addition, section 631 presumes that mechanisms to satisfy financial responsibility requirements are plentiful and affordable, which is not the case. Even for traditional environmental impairment exposures, such mechanisms are limited and can be costly because such exposures are difficult to assess, unpredictable as to time and extent, potentially catastrophic, and difficult to bring to conclusion. Indeed, most standard commercial liability insurance products exclude such exposures and direct potential purchasers to specifically designed and necessarily limited environmental impairment or pollution liability insurance products that offer limited capacity and that may have a prohibitively high cost. We are also concerned with the definitions of climate change and weather events that grant significant regulatory discretion to the EPA, which adds a significant degree of uncertainty to underwriting these complicated exposures.

While insurance products are available for specific types of extreme weather losses, measuring and calculating the impact of climate change on a facility would be highly speculative as clear definitions and metrics to measure climate risk are elusive. This is particularly true for commercial liability insurance, which is underwritten and priced generally over a one-year time horizon associated with the length of the policy period, contrasted with section 631’s intent to address the long-term impact associated with climate risk.

While owners of some large facilities may be able to self-insure for specific, federally imposed risk assessments, smaller businesses may be forced to seek out expensive financial assurance instruments or, if inaccessible, pay a variable user fee set at the discretion of the EPA. Aggressive use of insurance or other financial responsibility mechanisms under these circumstances is impractical and places organizations seeking solutions to such financial responsibility requirements, and the insurers that seek to provide solutions to their customers, in untenable circumstances.

Moreover, to the extent facility owners currently have environmental impairment liability coverage, the kind of financial responsibility obligations envisioned by the legislation to cover ambiguous climate risk will chill the existing market as insurers would need to consider the potential for new, previously unexpected, and virtually unlimited catastrophic exposures resulting from vaguely defined “climate change” or “extreme weather” risks. This could even result in a contraction of coverages available today that are helping remediate environmental harms.

Objectives tied to improving the long-term health of the earth and the environments within which society exists are, indeed, laudable. However, using insurance to accomplish those objectives in the manner intended by section 631 will have significant unintended consequences. Insurance is designed to respond to discrete events with readily discernible consequences and events impacted by climate are difficult to define. Insurance must be allowed to respond to discrete events and readily discernible consequences, otherwise it will not operate effectively. Congress must recognize the objective of insurance to spread and manage risk.

APCIA appreciates the opportunity to comment on section 631 of the CLEAN Future Act and would be pleased to share additional views on the legislation. APCIA also stands ready to work with the Committee in support of climate-related resiliency measures, including disaster mitigation, planning, preparedness, resiliency standards, response, and recovery.

Respectfully,

A handwritten signature in black ink, appearing to read "Nat Wienecke". The signature is fluid and cursive, with a long horizontal stroke at the end.

Nathaniel F. Wienecke