

**TESTIMONY OF KERI POWELL**

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LEGISLATIVE HEARING ON  
FROM GRIDLOCK TO GROWTH: PERMITTING REFORM UNDER THE CLEAN AIR ACT  
BEFORE THE SUBCOMMITTEE ON ENVIRONMENT  
COMMITTEE ON ENERGY AND COMMERCE  
U.S. HOUSE OF REPRESENTATIVES  
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Good afternoon. Thank you, Chairman Palmer, Ranking Member Tonko, and Members of the Subcommittee, for the opportunity to testify today.

My name is Keri Powell, and I am the Air Program Leader and Senior Attorney for the Southern Environmental Law Center (SELC). SELC is a nonprofit, nonpartisan legal and policy organization dedicated to protecting the health and environment of communities across the Southeast. We work alongside the people most affected by pollution, seeking to ensure that they receive the full benefits promised by our nation's environmental laws.

I plan to make six major points in my testimony:

1. Effective permitting is central to achieving the Clean Air Act's goal of clean, healthy air nationwide.
2. The proposed "New Source Review Permitting Improvement Act" would worsen air quality by largely eliminating New Source Review for major modifications to highly polluting existing facilities.
3. The "Air Permitting Improvements to Protect National Security" Act would exempt highly polluting new facilities locating in areas that are violating health-based ambient air quality standards from obtaining offsets needed to prevent air quality from becoming even worse.

4. The Proposed FIRE Act is not only unnecessary to allow for prescribed fires that help prevent wildfires, but it also would make it more likely that prescribed fires would lead to unhealthy air quality.
5. The proposed FENCES Act would reduce incentives for states to achieve healthy air quality.
6. By mostly eliminating EPA's authority to review and comment on the environmental impacts of federal projects and proposed regulations by other federal departments and agencies, the proposed RED Tape Act would eliminate an important public health and environmental safeguard.

## **I. INTRODUCTION**

The Clean Air Act, at its core, is a public health law. Its standards are designed to protect health with “an adequate margin of safety.”<sup>1</sup> That phrase appears throughout the statute, and it reflects Congress's clear intent: to protect even the most vulnerable children, the elderly, and those with pre-existing illnesses.

The results are striking. By 2020, the Act prevented 230,000 premature deaths annually.<sup>2</sup> It reduced asthma attacks, heart disease, and respiratory illnesses. As documented by U.S. EPA, the Clean Air Act's benefits exceed its costs by a factor of more than 30 to 1.<sup>3</sup>

The genius of the Clean Air Act is that it replaced political discretion with clear, science-based guardrails. That certainty has been good for communities and good for

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<sup>1</sup> Clean Air Act § 109(b)(1), 42 U.S.C. § 7409(b)(1).

<sup>2</sup> U.S. Environmental Protection Agency, The Benefits and Costs of the Clean Air Act Amendments of 1990 (2011), Summary Report, at 14 (<https://www.epa.gov/sites/default/files/2015-07/documents/summaryreport.pdf>).

<sup>3</sup> U.S. EPA, “Benefits and Costs of the Clean Air Act 1990-2020, the Second Prospective Study,” <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act-1990-2020-second-prospective-study> (visited Sept. 14, 2025).

industry. Weakening these safeguards would only create more confusion, more lawsuits, and more delay.

I'm here today to talk about the critical importance of Clean Air Act permitting requirements in protecting the public from a broad array of devastating illnesses and health problems that can result from breathing polluted air. For most of my career, beginning in the late 1990s, I have focused on ensuring that federal, state, and local governments faithfully implement the Clean Air Act's permitting requirements so that they achieve Congress' lofty and laudable public health goals. I've worked with communities across the country to help them understand Clean Air Act permitting and ensure that permits for facilities of concern protect them from dangerous air pollution. Early in my career I wrote an air permitting guide for communities that is still in use today. Together with EPA staff, I traveled around the country teaching people how to participate effectively in air permit proceedings. Along the way, I heard powerful stories from people who feared that air pollution exposure had caused loved ones to die from cancer, who regularly had to shelter in place in their homes or workplaces during facility malfunctions and who were concerned about their kids ending up in the emergency room with life-threatening asthma attacks.

Clean Air Act permitting is critical for protecting the health of communities, not simply needless paperwork. In my experience working both inside and outside of government, serious applicants who are committed to complying with the Clean Air Act rather than skirting it get their permits.

The Clean Air Act requires large new and modified facilities to install modern pollution controls and take other steps to ensure that they will not cause unhealthy air quality, significantly worsen air quality in areas where the air is clean, or cause vista-obscuring haze in special places like our national parks. Permits are the way we apply and enforce those requirements.

Since it was last amended in 1990, the Clean Air Act has demonstrated that economic growth and clean, healthy air go hand in hand. The Clean Air Act's permitting requirements do not cause gridlock. Rather, they are central to effective implementation of the Clean Air Act, which is one of America's greatest public health achievements. It has allowed us to breathe cleaner air, avoid premature deaths, and grow our economy at the same time. The proposals before you today would undermine that legacy.

**II. Why Effective Clean Air Act Permitting is Central to Achieving the Clean Air Act's Goal of Clean, Healthy Air Nationwide.**

Many people assume that so long as our nation has strong air pollution control laws in place, that is enough to ensure clean, healthy air. It isn't. Clean Air Act requirements are generally implemented by state and local agencies through permitting. It is often up to permitting staff to design the specific air pollution control requirements and emission limits that apply to an individual facility. And even where requirements are specified in federal rules or in the Clean Air Act, itself, how these requirements are applied to facilities in their permits is critical. Air pollution control requirements can be complex, and it is up to the permitting agencies to ensure that permits correctly identify applicable requirements.

Sometimes we find that permits carve out unlawful exceptions from compliance. And importantly, permits must be written in a way that makes it clear what a facility must do to comply, and ensures that the facility will engage in monitoring, recordkeeping, and reporting sufficient to demonstrate to regulators and the public that they are complying.

Weakening Clean Air Act permitting requirements weakens air quality protections. We cannot have clean, healthy air without robust permitting requirements.

For decades, the Clean Air Act's permitting requirements have served us well. They have played a central role in effective implementation of the Clean Air Act, one of our nation's most successful federal laws. In fact, few laws in American history have delivered as much as the Clean Air Act. Since 1970, emissions of six common pollutants have dropped

by nearly 70 percent while U.S. Gross Domestic Product has tripled.<sup>4</sup> That is not gridlock — that is progress.

The Clean Air Act has also proven to be one of the best economic investments this nation has ever made. According to the Environmental Protection Agency, the 1990 amendments alone yield more than \$2 trillion in annual benefits, compared with a fraction of that in compliance costs.<sup>5</sup> Additionally, The Clean Air Act drives innovation, spurring development and adoption of catalytic converters, scrubbers, and low-NO<sub>x</sub> burners.

These benefits come in the form of avoided medical expenses, fewer missed workdays, and longer, healthier lives. These successes are not confined to one part of the country. They are national but they are also deeply felt in the Southeast where SELC works. In Atlanta, the health benefits of reducing ozone pollution became clear during the 1996 Summer Olympics, when reduced ozone levels correlated with an 11.1 percent drop in childhood asthma emergency room visits.<sup>6</sup> Subsequently, implementation of federal and state clean-air regulations in metro Atlanta achieved more durable ozone pollution reductions, estimated to have prevented 9-17% of asthma emergency-department visits in 2012-2013 versus a no controls scenario.<sup>7</sup> In Birmingham, reductions in fine particulate

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<sup>4</sup> U.S. Environmental Protection Agency, *Our Nation's Air: Status and Trends Through 2023* (EPA 454/R-23-004, 2023), <https://gispub.epa.gov/air/trendsreport/2024/#home>.

<sup>5</sup> U.S. Environmental Protection Agency, *The Benefits and Costs of the Clean Air Act, 1990 to 2020* (EPA Report to Congress, 2011). <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act-1990-2020-second-prospective-study#:~:text=In%20March%202011%2C%20EPA%20issued%20the%20Second%20Prospective.o ne.%20The%20report%20was%20updated%20in%20April%202011.>

<sup>6</sup> Friedman MS, Powell KE, Hutwagner L, Graham LM, Teague WG. Impact of Changes in Transportation and Commuting Behaviors During the 1996 Summer Olympic Games in Atlanta on Air Quality and Childhood Asthma. *JAMA*. 2001;285(7):897–905. doi:10.1001/jama.285.7.897

<sup>7</sup> Atlanta, long-term regulations & prevented asthma ED visits Russell AG et al. *Health Effects Institute Research Report 195* (2018)- <https://www.healtheffects.org/publication/impacts-regulations-air-quality-and-emergency-department-visits-atlanta-metropolitan>

pollution led to declines in hospitalizations for respiratory disease among seniors.<sup>8</sup> In Charlotte ozone protections correlated with fewer school absences.<sup>9</sup>

As our nation looks to promote industrial growth and renew critical infrastructure, we should rededicate ourselves to strong and effective permitting. All Americans, across political lines, want to know that their health is not being threatened by air pollution from facilities located in their communities. That is the fundamental purpose of Clean Air Act permitting.

Rather than weakening this essential tool for protecting air quality, Congress should be providing more support to the state and local agencies charged with issuing and enforcing permits. They need technical and scientific support, legal support, and funding. What they do not need is fuzzy requirements full of loopholes that prevent them from issuing strong permits that protect public health in their communities.

### **III. The Proposed “New Source Review Permitting Improvement Act” Would Worsen Air Quality by Largely Eliminating New Source Review for Major Modifications to Highly Polluting Existing Facilities.**

Far from “improving” major New Source Review (“NSR”), the so-called “**New Source Review Permitting Improvement**” Act (H.R. 161) would essentially eliminate NSR for emissions-increasing changes made to our nation’s largest industrial sources. This would have serious adverse consequences for public health. SELC strongly opposes weakening this critical program.

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<sup>8</sup> Joel Schwartz, Air Pollution and Hospital Admissions for the Elderly in Birmingham, Alabama, *American Journal of Epidemiology*, Volume 139, Issue 6, 15 March 1994, Pages 589-598, <https://doi.org/10.1093/oxfordjournals.aje.a117048>

<sup>9</sup> Gilliland, F D et al. “The effects of ambient air pollution on school absenteeism due to respiratory illnesses.” *Epidemiology (Cambridge, Mass.)* vol. 12,1 (2001): 43-54. [https://journals.lww.com/epidem/fulltext/2001/01000/the\\_effects\\_of\\_ambient\\_air\\_pollution\\_on\\_school.9.aspx](https://journals.lww.com/epidem/fulltext/2001/01000/the_effects_of_ambient_air_pollution_on_school.9.aspx)

Over the past several decades, NSR preconstruction permitting has been instrumental in protecting and improving our nation's air quality, ensuring that new and modified large industrial facilities will not cause unhealthy air quality, significantly worsen air quality in clean air areas, or cause vista-obscuring haze in national parks and other specially protected areas.

NSR works by requiring large new facilities to utilize modern pollution controls and requiring existing large facilities to do the same whenever they make changes that will significantly increase their emissions. In other words, existing facilities must modernize their pollution controls at the same time they modernize their industrial processes. It is how we avoid locking in dirty technologies for decades to come. As noted earlier, these permits do more than simply apply existing statutory and regulatory requirements—they are the vehicle for state and local agencies to *establish* the required controls and operating requirements.

At present, the Clean Air Act requires major NSR for a physical or operational change to an existing large facility that would significantly increase the facility's *actual annual emissions*. This makes sense, because large annual increases in actual emissions can easily lead to violations of federal ambient air quality standards, which are set at levels needed to protect people from getting sick. Likewise, such actual emissions increases can undoubtedly significantly worsen air quality in areas where the air is relatively clean. The proposed bill would redefine "modification" to require NSR only for those changes that increase both a facility's actual annual emissions *and its maximum hourly capacity* to emit air pollution, as measured up to a decade earlier. Importantly, the highest hourly emissions rate that a source could have achieved is far higher than the amount a source actually emits on a day-to-day basis. Thus, the proposed bill would enable a source to make a change that vastly increases actual annual emissions to the atmosphere without undergoing NSR. In the

unlikely circumstance that a project *is* projected to increase a source's hourly capacity to pollute, the bill would still exempt the project from NSR if it is "designed to reduce the amount of any air pollutant emitted by the source per unit of production" or to improve "safety." As a result, if this bill passes, virtually no physical or operational change at an existing large industrial facility will be required to comply with NSR's pollution control and ambient air impact safeguards.

Increased air pollution resulting from sources that are allowed to expand without complying with NSR is not a hypothetical problem. At Plant Barry in Alabama, SELC challenged expansions that would have increased harmful emissions without NSR review. Only through enforcement of NSR were modern controls installed, cutting pollutants that cause asthma and heart disease. In North Carolina's industrial corridor, communities concerned about massive diesel backup fleets for new data centers used NSR's public notice requirements to demand accurate emissions analyses before permits were issued.

If NSR is weakened, those protections disappear. Communities will be left breathing the increased pollution without the benefit of modern pollution controls—pollution controls that are already widely in use elsewhere.

Importantly, eliminating NSR applicability for most emissions-increasing modifications to existing industrial sources would not only reduce the number of sources subject to NSR, but it also would eliminate the strong incentive sources currently have to ensure that planned changes do not increase actual annual emissions so they can avoid NSR. Such changes are usually covered by "minor" NSR permits that include restrictions that keep emissions below the major modification threshold. If this bill were passed, its harmful result would be seen not only in fewer sources complying with NSR's pollution control and impact analysis requirements, but also in an even larger number of sources no longer

finding it necessary to ensure that their actual annual emissions remain below the major NSR applicability threshold.

Finally, though so-called “minor NSR” permits play an important role in ensuring that emissions from a new facility or a modification will not exceed major NSR thresholds, it must be recognized that minor NSR permits are a far cry from major NSR permits. Minor NSR permitting should not be viewed as a backstop or safeguard for new sources and modifications that would escape major NSR under this proposed bill. Unlike major NSR, minor NSR permitting typically does not involve any kind of air pollution monitoring or modeling to demonstrate that the source will not contribute to ambient air quality standard violations. Nor does minor NSR entail any assessment of the source’s impact on visibility in specially protected areas like national parks. Furthermore, in most states, minor NSR permitting does not require use of modern pollution controls, or any controls at all unless they are needed to keep the facility from exceeding major NSR applicability thresholds (which, under the proposed bill, would most likely not be needed). Finally, though federal regulations require a state’s Clean Air Act implementation plan to provide an opportunity for public comment on minor NSR permits, many states ignore that requirement. Thus, the public often receives no notice whatsoever of new facilities and modifications to existing facilities that can substantially worsen air quality. Unfortunately, without public notice and comment, there is no guarantee that a new facility or modification to an existing facility is in fact “minor.” Absent public scrutiny, it is easy for sources to underestimate their emissions, thereby avoiding major NSR requirements even for new sources and modifications that will cause emissions increases that far exceed those that should trigger major NSR’s air pollution control and impact analysis requirements.

**IV. The “Air Permitting Improvements to Protect National Security” Act Would Exempt Highly Polluting New Facilities Locating in Areas That Are Violating Health-Based Ambient Air Quality Standards from Obtaining Offsets Needed to Prevent Air Quality from Becoming Even Worse.**

The proposed “Air Permitting Improvements to Protect National Security” Act would authorize the President to exempt proposed large new or modified semiconductor manufacturing facilities and facilities that extract, process, refine, or mill a “critical mineral” from the requirement to “offset” the new air pollution they will cause with air pollution reductions within the same airshed.

The Clean Air Act only requires offsetting pollution reductions in those places that are already suffering from poor air quality. Allowing polluters to make that poor air quality worse is a terrible idea. We do not need to put the health of the American people in jeopardy to encourage economic growth—we have a long and successful history of doing both. The truth is this: when we protect public health, we strengthen our economy. Workers who are not in the hospital are on the job. Children who are not struggling to breathe are in school, learning and preparing for the future. Clean Air safeguards are not barriers to growth; they are the foundation for it.

Any exemption from pollution offset requirements is highly concerning, but the Presidential exemption from offset requirements is especially problematic since it has no public health guardrails, nor does it provide a requirement for a factual justification or any public participation. SELC does not have confidence that unfettered discretion on an issue of critical public health importance will result in an acceptable outcome. Accordingly, SELC strongly opposes the proposed bill’s Presidential exemption mechanism.

For those sources that do not receive an outright Presidential exemption from offset requirements, the proposed bill would create a pay-to-play loophole, authorizing state permitting authorities to allow “alternative” offsets or charge a fee in place of real, enforceable air pollution reductions. But a fee is not an offset. It does nothing to prevent

new pollution from entering the air today. It provides no certainty that the promised reductions will ever happen, no guarantee that they will be local, and no accountability to the communities forced to bear the burden. We should not let polluters buy their way out of their obligation to protect people.

In short, this measure asks vulnerable communities to accept more smog and soot now, with only vague assurances that something might be done later. That is not protection — it is paying to increase uncertainty, and it abandons the very people the Clean Air Act was designed to protect.

**V. The Proposed FIRE Act Is Not Only Unnecessary to Allow for Prescribed Fires That Help Prevent Wildfires, but it Would Also Make it More Likely That Prescribed Fires Would Lead to Unhealthy Air Quality.**

Clean Air Act section 319 allows states to petition EPA to exclude air pollution caused by “exceptional events” from EPA’s consideration in determining whether an area is violating a national ambient air quality standard. The proposed FIRE Act would revise the definition of “exceptional event” to explicitly include prescribed fires undertaken to reduce the risk and severity of wildfires. The bill also would make other changes designed to make it easier for states to demonstrate that an ambient air quality standard violation resulted from an exceptional event.

The proposed bill is unnecessary because EPA’s regulations already establish criteria for prescribed fires to be treated as “exceptional events.”<sup>10</sup> More importantly, the proposed bill would put public health at risk by relaxing the required demonstration a state must make for an ambient air quality standard exceedance to be disregarded due to it being caused by an exceptional event. Specifically, the proposed bill would relax the existing statutory requirement that a state demonstrate that a “clear causal relationship” exists between the exceptional event and a monitored exceedance of an ambient air quality

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<sup>10</sup> 40 C.F.R. § 50.14.

standard by adding that such demonstration could merely show that a clear causal relationship is “reasonably expected to exist.” In addition, the proposed bill would provide that a prescribed fire could qualify as an “action to mitigate wildfire risk” merely by being “undertaken in accordance with State approved practices” without specifying any public health safeguards, such as EPA review and approval of state smoke management plans. Such lax criteria for exceptional events would contravene the statutory principle in Clean Air Act section 319 “that each State must take necessary measures to safeguard public health regardless of the source of the air pollution.”

SELC recognizes that prescribed fire can play an important role in reducing the magnitude and frequency of wildfires. However, where there is fire there is also smoke, and air pollution from prescribed fires comes with a public health cost. As the Clean Air Act instructs, in administering the “exceptional events” exclusion, EPA must abide by “the principle that protection of public health is the highest priority.”<sup>11</sup> Excluding air pollution from an “exceptional event” for consideration in the determination of whether an area is meeting an ambient standard set to protect public health is an extraordinary step. Such action should be reserved for instances where states have truly done all they can to avoid, reduce, and minimize the sources of that air pollution.

Although most of the discussion around application of the “exceptional event” provision to prescribed fires focuses on preventing wildfire in the West, most of the prescribed fire activity in the United States currently occurs in the Southeast. Southeastern states are already conducting prescribed fires at levels like those proposed for the West.

As part of the process for determining whether areas are meeting the new national ambient air quality standard for fine particulate matter, several southeastern states, including Georgia, are pursuing exceptional events determinations for a substantial number

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<sup>11</sup> 42 U.S.C. § 7619(b)(3)(A)(i).

of exceedances caused by prescribed fires. We recognize that preparing exceptional event demonstrations takes time and that state agencies are seeking to reduce the burden of preparing these demonstrations. However, after closely examining the state exceptional event demonstrations, SELC has reached the conclusion that not enough is being done to prevent air pollution from prescribed fires from causing ambient air quality standard exceedances in the first place.

Prescribed fire differs from wildfire in that we can choose when, where, and how it occurs. We must take advantage of this difference and ensure that we are controlling pollution to the maximum extent possible. Why can't prescribed fires be managed in a way that avoids, or at least minimizes, the likelihood that they will result in unsafe ambient air quality? Not only would more thoughtful and coordinated use of prescribed fire implement the statutory principle that "each State must take necessary measures to safeguard public health regardless of the source of the air pollution," but it also would reduce the burden on states by decreasing the number of air quality exceedances for which they need to petition for an exceptional events exclusion.

Rather than simply deferring to state-approved prescribed fire practices, EPA should ensure that air quality control agencies are doing everything they can to guard against prescribed fires causing unsafe air quality. At present, EPA blindly accepts a state's smoke management plan as adequate for purposes of the Clean Air Act's exceptional event provision without confirmation that the plan requires use of best practices to prevent unhealthy air quality. Likewise, EPA does not consider whether the prescribed fire activity could have been conducted on another date when it was less likely to result in an exceedance.

State efforts to manage smoke from prescribed fires can be improved in several respects. First, state regulators must have the best available information on the number of

prescribed fires planned for each day, the meteorological conditions, and the likely impact on air quality downwind to ensure that fires are coordinated to minimize the impact on air quality. To fulfill their Clean Air Act responsibility to “take necessary measures to safeguard public health,” state regulators must have timely access to information needed to assess the purpose of a particular prescribed fire, the total air pollution prescribed fires on that day are likely to generate, and whether meteorological conditions indicate a risk for an ambient air quality standard violation if those fires occur.

Second, where feasible, state regulators must be encouraged to defer some or all prescribed fires until a later date where available information suggests that fires may cause an ambient air quality standard violation. In southeastern states, prescribed fire is used for a wide variety of purposes, including not only wildfire prevention but also silviculture (tree farming), creating wildlife habitat, creating habitat for game species, land clearing ,and debris removal. Some of these prescribed fire uses fall under EPA’s regulatory definition of an exceptional event and some do not. Moreover, even amongst prescribed fire uses that may qualify as exceptional events, not all are equally time sensitive. Encouraging states to defer lower priority fires to avoid exceeding air quality standards is particularly important where the prescribed fire is used for purposes other than wildfire control.

Third, to reduce the regulatory burden of preparing exceptional event demonstrations, state regulators must be provided with clear guidance and resources to determine whether burn activities qualify as prescribed fire under the provision and to demonstrate the clear causal relationship between the prescribed fires and a monitored exceedance. Based on our review of recent state exceptional event demonstrations, it appears that Southeastern states may not maintain the information necessary to evaluate whether a burn activity qualifies as prescribed fire, and whether prescribed fires are the reason for a monitor exceedance on a given date. Providing clear guidance to states will

allow them to compile the necessary information at the time these burns are authorized and facilitate the submission of exceptional event demonstrations later.

Finally, weakening the clear causal relationship requirement risks excusing air quality violations that result from other, more controllable air pollution sources. Prescribed fires in the Southeast tend to be smaller and more widespread than in the West. As a result, although some prescribed fire smoke may be present on the date of an exceedance, those fires may not be the reason for the exceedance. This concern is particularly important in areas where other pollution sources are likely impacting the monitor as well. Thus, before excusing air pollution as an exceptional event, states must document that prescribed fire are actually the source of the air pollution problem on that day. In states where prescribed fires are or will become widespread, the proposed bill's language allowing regulators to demonstrate merely that a clear causal relationship is "reasonably expected to exist" between prescribed fires and ambient air quality violations risks disguising and excusing more controllable pollution from other sources.

In sum, the decision to excuse air pollution at levels known to make people sick is a weighty one. It must be applied narrowly and only where necessary. Accordingly, Clean Air Act section 319's exceptional event exclusion should be reserved for circumstances where the air pollution causing an ambient air quality exceedance is truly uncontrollable and unavoidable. Prescribed fire is an effective tool for preventing and minimizing wildfires, thereby avoiding the tremendous air pollution resulting from wildfires. But smoke from prescribed fires also presents health risks that must themselves be minimized. Instead of adopting the proposed bill's approach of making it easier for states to demonstrate that EPA should disregard ambient air quality standard violations resulting from prescribed fires, Congress should insist that states and EPA do everything they can to prevent prescribed fires from causing unhealthy air quality. Such an approach is already possible under the

existing language of Clean Air Act section 319, and in fact, is implicit in the “principles” set forth therein providing that EPA must make the protection of public health its highest priority, and that “each State must take necessary measures to safeguard public health regardless of the source of the air pollution.” Accordingly, SELC opposes the proposed FIRE Act.

**VI. The Proposed FENCES Act Would Reduce Incentives for States to Achieve Healthy Air Quality.**

The proposed FENCES Act would let states escape having EPA designate an area as “nonattainment” for a national ambient air quality standard by blaming ambient air quality exceedances on sources outside their borders or outside the country — even though residents are indisputably breathing unhealthy air.

Simply pointing fingers elsewhere does not improve air quality. Such areas won’t even have to take basic steps to improve their air quality, even where such steps are simple and inexpensive. In contrast, the Clean Air Act’s current approach strikes a reasonable balance: polluted areas have to take all the required steps to clean up their air, but if they still can’t achieve compliance with the ambient standard because of foreign emissions, they won’t face penalties for being unable to plan for or reach timely attainment. And if the problem is coming from other states, the Clean Air Act has mechanisms for a state to ask EPA to force other states to clean their air, as the George W. Bush administration did. Residents of these areas thus get the same level of domestic protections as residents of any other area. The proposed bill would strip away that balance: residents of these areas would get second-class protections. Even if it turns out that the foreign emissions were a one-time event, and there was an unusual dip in domestic emissions, the proposed bill would allow such areas to forever evade nonattainment status and the effective controls that flow from such designation.

The national ambient air quality standards are the foundation of the Clean Air Act, requiring EPA to set standards for pollutants at levels that protect public health with an adequate margin of safety.<sup>12</sup> EPA sets the standards based solely on science, not on political or economic considerations. Then states must design and implement plans to achieve them. That framework has worked for fifty years. It is the reason why cities like Los Angeles, Houston, and Atlanta have made dramatic progress toward cleaning up once-unbreathable air. It is why children and the elderly across this country breathe easier today than they did in 1970. For example, the City of Atlanta has struggled with ozone nonattainment since the 1990s. Public engagement and enforcement of air quality standards were critical to bringing the region closer to compliance. *Addit*

The proposed bill would leave the most vulnerable communities—children with asthma, seniors with heart disease, workers exposed on construction sites—without the protections Congress promised them. The Clean Air Act was never meant to be a shell game. It was meant to guarantee that every American has the right to breathe clean, safe air. Weakening NAAQs by exempting emissions as proposed in the FENCES Act would undermine communities exposed to unsafe levels of air pollution. Residents would still breathe dirty air, but the law would ignore it. This would not increase innovation or reduce red tape. Rather, it would make communities sicker and stifle job growth and development and innovation due to lost work and school days due to preventable illnesses.

**VII. By Mostly Eliminating EPA’s Authority to Review and Comment on the Environmental Impacts of Federal Projects and Proposed Regulations by Other Federal Departments and Agencies, the Proposed RED Tape Act Would Eliminate an Important Public Health and Environmental Safeguard.**

Clean Air Act section 309 grants EPA authority to review and comment on the environmental impact of (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and certain other major Federal agency

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<sup>12</sup> Clean Air Act § 109(b)(1), 42 U.S.C. § 7409(b)(1).

actions, and (3) proposed regulations published by any Federal department or agency.<sup>13</sup>

The proposed “RED Tape” Act would eliminate all of EPA’s section 309 authority except for its authority to comment on proposed legislation. SELC opposes this proposed bill.

EPA’s independent review authority under section 309 of the Clean Air Act is essential to ensuring that federal actions subject to the National Environmental Policy Act receive a science-based, accurate evaluation of their air quality and broader environmental impacts. EPA’s reviews, which must be made public, rate both the adequacy of the Environmental Impact Statement and the seriousness of the environmental risks identified. This oversight can lead to stronger mitigation measures and better alternatives. In addition, while section 309 does not empower EPA to unilaterally block a federal action, an unsatisfactory rating by EPA can contribute to an agency’s decision not to proceed with a project that would cause unacceptable harm. Preserving EPA’s Section 309 role is critical to protecting public health.

#### **IV. Closing**

Members of the Subcommittee, the Clean Air Act is one of America’s greatest public health achievements. It has saved lives, driven innovation, and proven that we can grow our economy while cleaning our air. The bills before you would weaken New Source Review, undermine the National Ambient Air Quality Standards, strip away EPA’s oversight, silence public voices, and create a dangerous pay-to-play loophole. They would cut the very guardrails that have kept our progress on track.

On behalf of the Southern Environmental Law Center and the communities we serve, I urge you to reject these rollbacks. Instead, I ask you to strengthen the permitting process by investing in resources and staffing — solutions that improve efficiency without sacrificing the safeguards that protect health. The Clean Air Act is not gridlock. It is a

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<sup>13</sup> 42 U.S.C. § 7609.

promise — a promise of clean, healthy air for every American. I ask you to keep that promise.