



Oregon

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TESTIMONY OF ALI MIRZAKHALILI

ON:

H.R. 161, New Source Review Permitting Improvement Act (Rep. Griffith)
H.R. ____, Fire Improvement and Reforming Exceptional Events Act (FIRE) 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. ____, Air Permitting Improvements to Protect National Security Act

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

ENERGY AND COMMERCE SUBCOMMITTEE ON ENVIRONMENT

SEPTEMBER 16, 2025

Chairman Palmer, Ranking Member Tonko, and Members of the Subcommittee, my name is Ali Mirzakhilili, and I serve as Oregon's Administrator of Air Quality. I also serve as Co-Chair of National Association of Clean Air Agencies' (NACAA) Permitting and New Source Review Committee. In addition, I served for two decades as Delaware's Director of Air Quality. My testimony reflects years of experience working with the Clean Air Act in the east and the west and many years of issuing permits in attainment and non-attainment areas. Thank you for the opportunity to testify on the proposed New Source Review Permitting Improvement Act, Fire Improvement and Reforming Exceptional Events (FIRE) Act, Foreign Emissions and Nonattainment Clarification for Economic Stability (FENCES) Act, and Air Permitting



Improvements to Protect National Security Act, and to explore with you the opportunities for permitting reform under the Clean Air Act.

Benefits from Implementation of the Clean Air Act

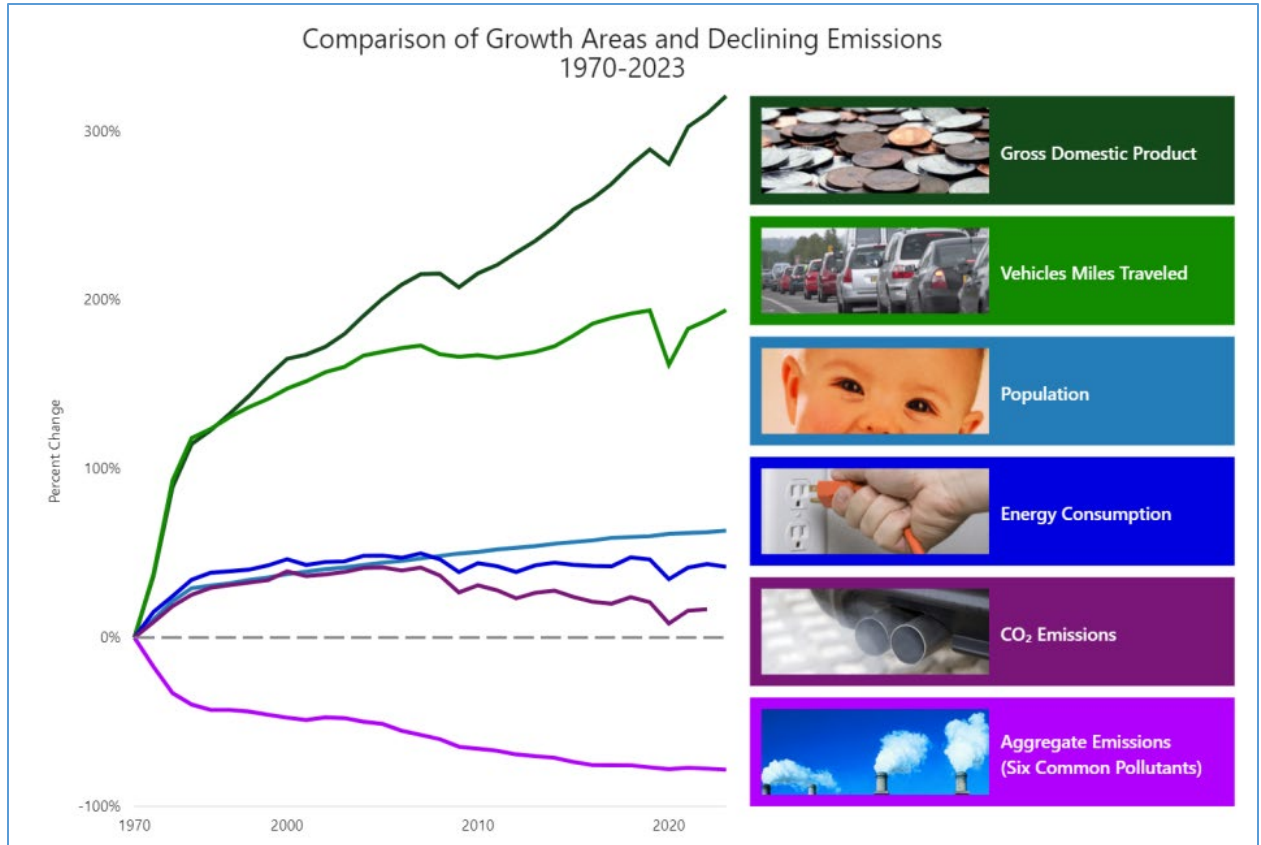
The Clean Air Act has allowed for continued growth in the national gross domestic product while reducing air pollution and improving air quality for millions of people. EPA notes that, between 1970 and 2020, the combined emissions of six common pollutants (PM_{2.5} and PM₁₀, SO₂, NO_x, VOCs, CO and Pb) dropped by 78 percent while the U.S. economic indicators remained strong. During that time, EPA published two peer-reviewed papers assessing the health benefits to the public because of emissions reductions from the implementation of the Act. The 1997 EPA Report to Congress stated that, between 1970 and 1990, pollution reductions under the Act prevented 205,000 early deaths, 10.4 million lost I.Q. points in children due to lead exposure, and millions of other cases of health effects. A prospective study by EPA, published in 2011, notes that, in 2020, the Clean Air Act Amendments of 1990 will prevent over 230,000 early deaths and that the benefits of the emissions reductions exceed costs by a factor of more than 30 to one. EPA also published the chart below that provides areas of growth in the U.S. and reductions in emissions between 1970 and 2023.



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The chart above shows that, while GDP, vehicle miles traveled and population have increased, energy consumption, CO₂ emissions, and aggregate emissions of six common pollutants have continued their downward trend.

I feel compelled to repeat my prior testimony to this chamber that the Clean Air Act has not only been one of our nation's most effective environmental statutes, but it will also likely go down in history as one of the most effective domestic laws ever passed. Therefore, as the Committee considers revising the Clean Air Act, it is important to remember the outcomes of implementing the Act. Will the proposed revisions continue to preserve the substantial public



health benefits from pollution reduction that were achieved at the same time as America experienced significant increases in gross domestic product or will it break that fundamental tenet. I have applied this principle in formulating my comments on proposed amendments.

New Source Review Permitting Improvement Act

The bill proposes to revise paragraph (4) of Section 111(a) of the Clean Air Act to change the term “modification” to include “...a change increases the amount of any air pollutant emitted by such source only if the maximum hourly emission rate of an air pollutant that is achievable by such source after the change is higher than the maximum hourly emission rate of such air pollutant that was achievable by such source during any hour in the 10-year period immediately preceding the change.” The bill also states that the term ‘modification’ does not include a change at a stationary source that is designed to reduce the amount of any air pollutant emitted by the source per unit of production or to restore, maintain, or improve the reliability of operations at, or the safety of, the source, except, with respect to either clause (i) or (ii), when the change would be a modification as defined and the Administrator determines that the increase in the maximum achievable hourly emission rate of a pollutant from such change would cause an adverse effect on human health or the environment.

These proposed changes are concerning in several ways and would not improve overall efficiency of permitting by states because of added complexity. The bill would require a source to produce records of the past 10-years of hourly emissions to determine its maximum hourly emission rate. This is beyond the records retention window of many facilities and will represent a burdensome challenge for those operations that may not be equipped with continuous



emissions monitoring. Assessing accurate emissions on an hourly basis in such instances may require producing multiple other records such as production rates, material usage, control equipment operating records and much more. The permitting agency will need to review and accept the data as valid and then decide that the future emissions will not be higher than the historical rate that was determined during this process. The proposed language in “(ii) to restore, maintain, or improve the reliability of operations at, or the safety of, the source,” exempts such activities from emissions analysis outright. It is hard to imagine a modification at any source that would not qualify under this exemption. This Act as written, would exempt all existing facility changes from review. This could therefore allow considerable air quality degradation and public health impact. The proposal provides that the Administrator could determine that “the maximum hourly emission rate of a pollutant from such change would cause an adverse effect on human health or the environment”. If these changes are not considered a modification, the source would not need to seek approval from a permitting authority before making the change. How would the Administrator, or a State permitting authority for that matter, know that the change occurred to decide that the change would have an adverse effect on human health or the environment? The proposed change in the bill creates the opportunity for adverse impacts to human health or the environment to occur and for the applicable permitting authority to be unaware of the impacts. This creates a liability for the source, which, may have to deal with after-the-fact determination that an unacceptable impact is occurring, and must make changes to their processes or install controls and potentially face litigation. EPA’s Cost Control Manual explains, and it is common industry knowledge, that it is always most cost effective to design a process with the necessary pollution control technology from the start.



Retrofitting a process after the fact is more complex to implement, more expensive, and often requires down time of the process.

The bill proposes to revise Subparagraph (C) of section 169(2) and Paragraph (4) of section 171 of the Clean Air Act so that modifications or changes do not include a change at a major emitting facility that does not result in a significant emissions increase, or a significant net emissions increase, in annual actual emissions at such facility.” This is an exemption on top of the earlier overly broad hourly-rate exemption. Indeed, this is a nested exemption. The modification could be exempt if the modified unit’s claimed future actual emissions would not exceed what is defined as “significant” or failing that if the claimed future actual emissions from the facility would not increase more than the same “significant” level. Essentially, a facility could shut down a unit and more than double the emissions of another existing unit without triggering modification leave alone consideration of emission control. Where emissions emanate from a facility matters when assessing air quality impacts. It particularly matters to neighboring communities. Permitting agencies assess these impacts during their reviews and exempting these changes means that such reviews will not occur.

The Clean Air Act is designed to protect public health. Avoiding permit review introduces risk that a physical change or change in the method of operation at a facility puts public health at risk. States review modifications at a facility to ensure public health is protected and to give certainty to the source undergoing the modification that the change meets all applicable requirements. The proposed change in the bill will introduce unnecessary uncertainty for changes at sources. Uncertainty for the regulated entity, uncertainty for the State, and



uncertainty for the public. Instead, I recommend that we focus on making improvements to the New Source Review and minor source permitting processes. State permitting authorities, like DEQ, work to review permit applications as expeditiously as possible with the resources available to the agency. EPA supports permitting authorities with tools, like the RACT/ BACT/ LAER Clearing House. Further investments into the clearinghouse would allow State permitting authorities to more quickly conduct their control analyses to determine applicable controls for modifications that trigger NSR or otherwise help meet NAAQS. Adequately resourcing EPA to support State permitting authorities through improved and updated ambient models, training resources for permit writers, and permit writing resources helps State permitting authorities do their work faster.

Fire Improvement and Reforming Exceptional Events Act (FIRE) Act

The bill proposes to amend Section 319(b) of the Clean Air Act to revise the definition of exceptional event to include a natural event, an event caused by a human activity that is intended to mirror the occurrence or reoccurrence of a natural event or caused by human activity that is unlikely to recur. The bill also proposes to revise the definitions of exclusions to exceptional events, stating that exceptional events do not include stagnation of air masses that ordinarily occur, meteorological inversions, or air pollution relating to source noncompliance. The bill includes a new defined term of an 'action to mitigate wildfire risk', includes transparency and reporting requirements, and augments the requirements in the determination of clear causal relationship.



I support increased pace and scale of prescribed fire as a wildfire mitigation tool. The bill, however, contains a few ambiguities, expanding the type and frequency of activities included under the definition of “exceptional events.” The expansion appears to go well beyond prescribed fire. For example, the proposed definition of “action that mitigates wildfire risk” includes reference to State-approved practices. It is unclear what would qualify as a State-approved practice, how those would be consistent, and how EPA would verify that those approved practices are being followed to ensure the proposed exceptional event meets the requirements of the Act. The current version of Section 319(b) of the Clean Air Act provides EPA, authority to consider prescribed fire as an exceptional event. EPA promulgated rules that include consideration of prescribed fire as an exceptional event (see 40 CFR 51.14(b)(3))¹. The revision proposed in the bill creates ambiguity on what would be considered as an action that mitigates wildfire risk.

The bill broadens the definition of an exceptional event and does not appear to limit the type of activity to prescribed burning. This section also includes events caused by human activity that are unlikely to recur unless they mirror natural event reoccurrence. In the case of the preparation for, and execution of prescribed burns, activities often occur over the course of multiple seasons. This can include the initial mechanical removal of excess fuels and first entry through third entry prescribed burns. Additionally, different sections of a unit, or different units around a community are often burned over subsequent years, creating smoke impacts to

¹ Exceptional Events Rule, Code of Federal Regulations, <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-50/section-50.14>



communities year over year. These burns create planned, recurring events and are not on a naturally occurring cycle.

The bill proposes revisions that go beyond what can be construed as helpful for wildfire mitigation and expanded prescribed burns and resemble poison pills. The Act currently excludes: "(i) stagnation of air masses or meteorological inversions; (ii) a meteorological event involving high temperatures or lack of precipitation; or (iii) air pollution relating to source noncompliance". The bill proposes to replace the current exclusions list with "(I) ordinarily occurring stagnation of air masses; (II) or meteorological inversions; (III) air pollution relating to source noncompliance." Under this new list of exclusion, states would be permitted to request exceptional events for high temperature days or lack of precipitation and stagnation events that are out of the ordinary. These proposed amendments to Section 319(b)(1)(B) appear to be an attempt to allow rebranding of poor air quality by excluding data that may have been caused by stagnation, hot days or dry days which are the exact days when we experience air pollution. The implication is that air quality agencies only need to concern themselves with providing good air quality on good days. States develop State Implementation Plans designed to require air pollution reduction to meet the NAAQS cognizant of prevailing meteorology which includes hot days and dry days. Different states have different weather conditions that may or may not enhance the formation or deposition of some NAAQS pollutants. Public health is impacted regardless of whether an event is eligible for exclusion as an exceptional event. Allowing for high temperature or lack of precipitation as an exceptional event will allow some areas of the country to disregard high pollution events as exceptional and prevent the necessary pollution reduction work that is needed to protect public health.



The current exceptional event rule includes prescribed burns that occur on a wildland. The bill proposes to revise the types of land where prescribed fire would be eligible for exceptional event consideration.

Section 3(A)(i) states that protection of public health is the highest priority and that communication to the public and air quality data should be screened and made available to the public. Previous draft versions of this bill provided funding and placed an emphasis on research and coordination between Federal, State, and local agencies. These efforts take time and resources to develop and maintain; resources that are no longer available. In Oregon, we know that increased mitigation activities and clean air can happen together, and we are supportive of efforts to increase the use of prescribed fire and other wildfire mitigation work.

DEQ, along with the Oregon Department of Forestry and Oregon Health Authority, signed onto a [Joint statement of Intent to Cooperate](#) with the U.S. Forest Service, U.S. Environmental Protection Agency, and sister agencies in Washington, focused on increasing the pace and scale of prescribed fire while protecting public health from smoke². In 2024, the group formed a taskforce and executed a pilot in Bend, Oregon, to increase the pace of wildfire risk reduction work in the wildland-urban interface on the west side of town. The group formed an incident management team to plan the burn, prepare pre-burn communications, conduct smoke forecasting, and outreach to the community.

² Joint Statement of Intent to Cooperate, USFS, https://www.fs.usda.gov/sites/nfs/files/legacy-media/r06/2024-Joint_Statement_of_Intent_to_cooperate_2-20-2024.pdf



During the pilot, just over 1,800 acres were burned when the prior annual average for prescribed burning was 200 to 300 acres. The pilot included increased public outreach to inform as much of the community as possible of the burns and to give residents and visitors knowledge of how to protect themselves from potential smoke impacts. Air quality sensors were placed in the homes of volunteers to determine the extent of prescribed fire smoke indoors, and additional monitors were placed around the community to detect outdoor air quality impacts. Expanded forecasting, modeling and data collection also occurred during the burns to determine smoke transport during and after burns and to identify potential shortcomings in existing models. An [After Action Review](#) was completed by the University of Oregon and identified learning opportunities and areas for improvement in public outreach, communication, and cross-agency coordination and collaboration³. Evaluations of the forecasting and modeling, community surveys, and a review data from indoor and outdoor air quality monitors are in final draft and review stages and will further examine the efficacy of models and the extent of smoke impacts.

The West Bend Pilot was a success, and it occurred under the current version of the Clean Air Act. Further exempting prescribed fire activities from NAAQS consideration does not protect public health. Bringing all the partners, from Federal, State and Local levels, together to utilize their various expertise and authorities to work together on the common objective of increasing the pace and scale of prescribed fire to reduce wildfire risk and also protect the

³ West Bend Prescribed Fire After Action Review (2024), University of Oregon,

<https://resilient.uoregon.edu/wildfire-smoke-center/preparation-response>



public from smoke impacts is the right approach. I urge the Committee to consider including funding and resourcing for planning, outreach and engagement activities, including adequate resourcing of Federal, State and Local partners involved in this work.

Reducing and Eliminating Duplicative Environmental Regulations Act (RED Tape) Act

The title of this bill implies that it intends to eliminate duplicative reviews. It charges the EPA Administrator to “review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator contained in any legislation proposed by any Federal department or agency.” However, it removes all environmental impact reviews of subsequent federal projects for construction or subsequent federal actions that may flow from that legislation. Unless the intent is to require future legislations proposed by any federal agency to be so specific to include all projects and activities that can flow from it, the bill does not eliminate duplication, it simply shields projects from review. The consequence of this could be a late realization of environmental impact, delays in permitting and cost overruns.

Foreign Emissions and Nonattainment Clarification for Economic Stability (FENCES) Act

This bill introduces significant complications for administering a permitting program which I presume are unintended. For instance, by classifying an area as attainment (despite the background pollution concentrations), the CAA requires implementation of Prevention of



Significant Deterioration for major sources and protection air quality increment for all sources being permitted. A new permit cannot be issued to any facility under this construct no matter how well-controlled because the background concentration already exceeds NAAQS, and any amount of increase would only exacerbates the extent of non-attainment. Provisions for non-attainment areas on the other hand, allow permitting of new sources by requiring advanced controls and emissions offsets to improve background air quality. I recommend amending Section 179B of the ACT to obligate EPA to address cross-border and international pollution and allow states to submit SIPs reflective and reliant on that federal responsibility. No sanctions should apply because of EPA's failure to deliver on its responsibility.

Air Permitting Improvements to Protect National Security Act

The bill proposes to revise the Section 172 of the CAA to allow new or modified advanced manufacturing facility or critical mineral facility located in a nonattainment area to apply for national security waiver that would exempt the facility from requirements for offsetting of increased emissions of air pollutants. The bill also proposes to require the permitting authority of a State to allow owners or operators of facilities that receive a national security waiver to offset by alternative or innovative means. In lieu of imposing an alternative offset measure, the permitting authority may impose an emissions fee to be paid to the permitting authority. The fee must be no greater than 1.5 times the average cost of stationary source control measures adopted in the area during the previous 3 years and the fees collected must be used by the State to maximize emission reductions in the area.



Like my comments on the New Source Review Permitting Act, I believe that the proposed bill, if adopted, would have unintended consequences. Removing from the Act the requirement to seek offsets in nonattainment areas, even for specific industry, will inhibit the ability of that nonattainment area from attaining the NAAQS. Any industry in the nonattainment area that is not eligible for a national security waiver would be required to seek offsets. Emissions from a source that receives a national security waiver may push an airshed further into nonattainment, triggering more stringent requirements like increased offset ratios and additional regulatory burdens.

The bill adds additional burden to States who develop State Implementation Plans for these nonattainment areas. Fees collected in the proposed bill are calculated using information on cost of control in the nonattainment area. The bill does not differentiate between pollutant, control type, industry, existing versus new sources or control efficiency. EPA's cost control manual is used by States for evaluating control costs, and those costs range depending on source specific information. States would need to invest significant resources and time into tracking and evaluating control costs within the nonattainment area that is not necessarily available or known to the State. Charging fees for emission reduction projects will require State resources and capacity to implement.

I agree that areas under a nonattainment plan must also have opportunities for economic growth, whether through expansions of existing industry or the ability for a new industry to build a facility. Offsets ensure that economic development can continue while further progress towards attainment is made. Robust banking and trading programs to track and make



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offsets available is an important programmatic element in nonattainment planning. Inclusion of these programs in SIP development ensures that emission reductions are real, will benefit the nonattainment area, and are permanent.

In conclusion, the proposed amendments fail to preserve the fundamental tenants of the Clean Air Act which is to protect public health while providing opportunities for economic growth. The proposals allow significantly more pollution by introducing new offramps and exemptions. The proposals do little to provide cleaner air but create pathways for rebranding the polluted areas as clean. We can do better and must do better. I appreciate that slow and inefficient regulatory processes can be frustrating and costly. I also understand the temptation to solve the problem by cutting out the process altogether. However, these processes add value by protecting public health, providing regulatory certainty and improving the quality of air we breathe. The processes can be improved by simplifying applicability of rules rather than adding offramps and exemptions. I recommend focusing on process improvements for projects that are undergoing reviews. State and local permit professionals are eager to make recommendations on ways the permitting processes can be improved, and I look forward to future engagement.

Thank you for the opportunity to testify. I am happy to answer any of your questions.