April 1, 2025

All Senators
United States Capitol
Washington, D.C. 20510

Dear Senator,

On behalf of the undersigned organizations, we urge you to oppose S.J. Res. 31,[1] a joint resolution providing for disapproval under the Congressional Review Act ("CRA")[2] of a rule submitted by the Environmental Protection Agency ("EPA") titled "Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act." We base our opposition on two grounds: (i) the rule it would overturn is a crucial tool to protect the American public from some of the most toxic air pollutants; and (ii) using the CRA to legislate in this space would create profound regulatory uncertainty and would throw the Federal government's ability to protect the public from highly toxic airborne pollution dangerously into doubt.

I. THE ENACTMENT OF S.J. RES. 31 WOULD JEOPARDIZE PUBLIC HEALTH.

The Clean Air Act[3] requires EPA to regulate emissions of some of the most toxic air pollution—including lead, mercury, arsenic, benzene, and metals, which are dangerous in fractions of ounces and are known to cause cancer, birth defects, and other serious maladies[4]—as "hazardous air pollutants" ("HAPs").[5] Facilities that have the potential to emit 10 tons per year of any one HAP, or 25 tons per year of any combination of HAPs, are treated as "major sources" of toxic air pollution.[6] "Major sources," such as chemical plants, are subject to maximum achievable control technology ("MACT") standards,[7]

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[1] S.J. Res. 31, 119th Cong. (2025). S.J. Res. 31 has a counterpart in the House, H.J. Res. 79, 119th Cong. (2025). We, of course, extend our opposition herein to that measure.

[2] 5 U.S.C. §§ 801–08 (2018).

[3] 42 U.S.C. §§ 7401–7671q (2018).

[4] *See generally Notice of Source Category Listings for the Specific Pollutants (Section 112(c)(6))*, ENVTL. PROT. AGENCY, https://www3.epa.gov/airtoxics/112c6/112c6fac.html (hereinafter "EPA Listing Notice") ("Hazardous air pollutants are also known as air toxics; these are pollutants which are known or suspected to cause cancer or other serious health effects such as birth defects or reproductive effects.").

[5] *See* 42 U.S.C. § 7412.

[6] *See id.* § 7412(a)(1), (c)–(d), (g), (i) (defining "major source[s]" and setting out parameters for their regulation).

[7] *See id.* § 7412(g)(2).

which are based on the attainment of emissions levels already achieved by the best-controlled sources in the industry.[8]

For decades, EPA policy (known colloquially as "once in, always in") required that "major sources" that had complied with MACT standards and lowered their HAP levels must continue doing so—even if, after compliance, their total HAP emissions were reduced to levels below the "major source" threshold.[9] That sensible approach was displaced in 2020 by an ill-considered rule (the "2020 Rule") that would have upended this practice.[10] Fortunately, that misguided effort was curtailed in part in 2024 by the rule presently in S.J. Res. 31's crosshairs (the "2024 Rule"),[11] which ensured that facilities emitting seven of the 187 most dangerous pollutants ("super-toxics") covered by the Clean Air Act remain subject to strict pollution controls.[12]

The 2020 Rule allowed nearly 50 percent of "major source" facilities (approximately 4,000 in total) across the nation to increase their emissions of some of the most dangerous air pollution regulated by the Clean Air Act overnight, and with no guaranteed monitoring or reporting.[13] The 2024 Rule prevents some of the most harmful increases enabled by the 2020 Rule, even as it retains that rule. Should S.J. Res. 31 be enacted, and the 2024 Rule struck down—without a clear answer as to what the state of regulatory affairs would be in S.J. Res. 31's aftermath[14]—the threats to public health could be devastating. In short, the door could open for the air we breathe to be contaminated at an unprecedented rate by some of the most toxic air pollution that Congress has identified. These super-toxics cause, among other things,

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[8] *See generally* 40 C.F.R. §§ 63.40–63.56 (2024) (detailing MACT requirements). Industrial facilities started meeting these standards as early as the mid-1990s.

[9] *See* Memorandum from John Seitz, Dir., EPA Office of Air Quality Planning & Standards, to EPA Reg'l Air Div. Dirs., Potential to Emit for MACT Standards – Guidance on Timing Issues (May 16, 1995), *available at* https://www.epa.gov/sites/default/files/2018-02/documents/pteguid.pdf.

[10] *See* Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act, 85 Fed. Reg. 73,854 (Nov. 19, 2020).

[11] Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act, 89 Fed. Reg. 73,293 (Sep. 10, 2024).

[12] *See id.* at 73,293–94. As EPA has observed:

> These seven pollutants [alkylated lead compounds, polycyclic organic matter (POM), hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans (TCDF) and 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)] were among the pollutants of concern identified by the International Joint Commission of the United States and Canada, and the Great Lakes Commission, as well as EPA's Great Waters Program because of their persistence and tendency to bioaccumulate in the environment. These pollutants are also associated with adverse health effects such as nervous system damage and reproductive effects.

EPA Listing Notice, *supra* note 4.

[13] *See Proposal MM2ARIA Data Spread Sheet 12 2018*, Docket ID No. EPA-HQ-OAR-2019-0282-0057, ENVTL. PROT. AGENCY, July 26, 2019, tbl. 1-1, *available at* https://downloads.regulations.gov/EPA-HQ-OAR-2019-0282-0057/content.xlsm (navigate to cells C9–10 of "Summary of Illustrative Cost Savings for the Primary (75% Cutoff) Scenario (2014$)").

[14] *See infra* Part II.

cancer, developmental disorders, and neurological problems even at extremely low levels of exposure.[15]

This should be reason enough to vote "no" on S.J. Res. 31, but there is further cause to oppose this misbegotten bill.

II. THE CRA IS AN INAPPROPRIATE TOOL FOR REPEALING THE 2024 RULE.

We do not contend that the 2024 Rule is the perfect tool for the regulation of "major sources" of HAPs. We would advocate for a rule that provides even *stronger* protections for public health; we recognize that certain industry actors, more interested in ameliorating costs, would argue the opposite. Regardless of one's stance, however, *there should be universal agreement that using the CRA to set the 2024 Rule aside is a mistake*—and, potentially, a dangerous one.

First, it is uncertain what the ultimate regulatory state of play will become if the 2024 Rule is set aside using the blunt-force instrument that is the CRA. If the answer is that the 2020 Rule would occupy the field, that rule still is the subject of unresolved litigation currently held in abeyance.[16] Might we revert to the longstanding "once in, always in" policy if the 2020 Rule ultimately is struck down? If not, a regulatory vacuum would ensue that would, at a minimum, take time to fill—time that the public's welfare cannot afford, as emissions of the most highly toxic air pollutants would be allowed to increase across the country. Either way, it is clear that this use of the CRA is a terrible gamble when it comes to protecting the air we breathe.

Second, use of the CRA to strike down the 2024 Rule may prevent further similar regulation, including regulatory efforts that may be undertaken by the present administration. The CRA provides that rules disapproved under its auspices cannot be replaced by "a new rule that is substantially the same" as the one struck down.[17] The scope of this prohibition is essentially untested and could pave the way for a less—or more—protective future rulemaking when it comes to the reclassification of "major sources." *The problem is, no one can be sure.* Moreover, such a bar on new regulation may not be contestable in court, given the CRA's proscription on the judicial review of determinations made pursuant to the statute.[18] Thus, we could be left with a regulatory landscape that leaves the public wholly unprotected—or perhaps even one that the present administration views as unpalatable—and find ourselves stuck in place. This is an unthinkable risk to assume when it comes to the regulation of the Clean Air Act's most toxic air pollution and the health of the American people.

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[15] *See supra* note 12 and accompanying text; Paolo Boffetta et al., *TCDD and Cancer: A Critical Review of Epidemiologic Studies*, 47 CRITICAL REVIEWS IN TOXICOLOGY 622 (2011), *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC3154583/pdf/btxc41-622.pdf.

[16] *See* Mot. to Govern at *1–2, *Cal. Cmtys. Against Toxics v. E.P.A.*, No. 21-1024 (D.C. Cir. Mar. 3, 2025), ECF No. 2103514 (demonstrating that EPA still is evaluating its position on the 2020 rule).

[17] 5 U.S.C. § 801(b)(2).

[18] *See id.* § 805.

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In short, whether you support the rule that it targets or not, you must oppose S.J. Res. 31. It is a perilous legislative half-measure in an area that requires serious deliberation and responsible lawmaking, and it cannot be permitted to proceed.

Thank you for your attention to this matter.

Sincerely,

Alliance of Nurses for Healthy Environments
American Lung Association
American Public Health Association
Asthma and Allergy Foundation of America
Children's Environmental Health Network
Climate Action Campaign
Earthjustice Action
ecoAmerica/Climate for Health
Environmental Protection Network
Health Care Without Harm
International Society for Environmental Epidemiology North America Chapter
Natural Resources Defense Council
Oncology Advocates United for Climate and Health
Physicians for Social Responsibility
Sierra Club
Southern Environmental Law Center