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ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE

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MEMORANDUM

June 15, 2017

To: Subcommittee on Environment Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Subcommittee Markup of H.R. 806, the "Ozone Standards Implementation Act of 2017;" H.R. __, the "Nuclear Waste Policy Amendments Act of 2017;" H.R. __, the "Brownfields Enhancement, Economic Redevelopment, and Reauthorization Act of 2017"

On **Thursday, June 15, 2017, at 10:00 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommittee on Environment will hold a markup of: H.R. 806, the "Ozone Standards Implementation Act of 2017;" H.R. __, the "Nuclear Waste Policy Amendments Act of 2017;" and H.R. __, the "Brownfields Enhancement, Economic Redevelopment, and Reauthorization Act of 2017." While legislative hearings have been held on each of these bills, no Administration witnesses have appeared to answer Members' questions regarding these legislative proposals. On June 13, 2017, Ranking Members Pallone and Tonko sent a letter to the Republican majority requesting that the markup be postponed, to give the appropriate federal agencies time to appear before the subcommittee and provide feedback on the legislation. As of the time of this memorandum's release, the majority had not responded to the minority's request.

I. H.R. 806, THE OZONE STANDARDS IMPLEMENTATION ACT OF 2017

On March 22, 2017, the subcommittee held a legislative hearing on H.R. 806. No witness representing the Environmental Protection Agency (EPA) was invited by the majority to offer testimony about the bill and its sweeping changes to the Clean Air Act (CAA) or to respond to Members' questions and thoughts about the bill.

During the 114th Congress, the Committee held three hearings on EPA's ozone standard and H.R. 4775, legislation virtually identical to H.R. 806: June 16, 2015, June 12, 2015, and

April 14, 2016. Unlike this hearing, the majority invited governmental witnesses to testify on behalf of the EPA and state environmental agencies at two of those hearings. For further background information on EPA's ozone standard and the Committee's consideration of H.R. 4775, please consult the previous memoranda relating to those hearings.

A. EPA's 2015 National Ambient Air Quality Standard For Ozone

The CAA requires EPA to set national ambient air quality standards (NAAQS) for certain pollutants that endanger public health and the environment.[1] These health-based standards are the cornerstone of the CAA. EPA sets primary NAAQS at concentration levels sufficient to protect the public health with an "adequate margin of safety." For the six criteria pollutants – lead, particulate matter ($PM_{2.5}$ or PM_{10}), ozone, nitrogen dioxide (NO_2), sulfur dioxide (SO_2), and carbon monoxide – the primary NAAQS identifies the level of ambient air pollution that is "safe" to breathe. While costs are not considered in establishing these standards, costs can be considered in developing plans to achieve the necessary pollution reductions to meet the standards. EPA must review each NAAQS every five years and make revisions as appropriate.

On October 1, 2015, EPA issued a final rule strengthening the ozone NAAQS from 75 parts per billion (ppb) to 70 ppb.[2] This decision was based on the review of thousands of studies showing ozone's effects on public health and welfare. Ozone, also known as smog, has a number of health impacts, ranging from increased asthma attacks and cases of acute bronchitis in children to premature death. Ozone also damages vegetation, including crops and ecosystems. The revised standard is consistent with the recommendations of the independent Clean Air Scientific Advisory Committee (CASAC), which had concluded that the science supports a standard within a range of 70 ppb down to 60 ppb.[3] The estimated net benefits of the updated ozone NAAQS are up to $4.5 billion, excluding the state of California whose estimated net benefits under NAAQS could reach up to $1.3 billion.

EPA Administrator Pruitt has been a vocal opponent of the 2015 ozone NAAQS, and he has directed the agency to review and potentially revise the final rule.[4] To that end, EPA recently announced a one-year delay of its statutory deadline to make final attainment area

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[1] Clean Air Act at § 109.

[2] U.S. Environmental Protection Agency (EPA), *National Ambient Air Quality Standards for Ozone*, 80 Fed. Reg. 65292 (Oct. 26, 2015) (final rule).

[3] *See* U.S. EPA, *Overview of EPA's Updates to the Air Quality Standards for Ground-Level Ozone* (Oct. 1, 2015) (www.epa.gov/sites/production/files/2015-10/documents/overview_of_2015_rule.pdf).

[4] *See Pruitt v. EPA: 14 Challenges of EPA Rules by the Oklahoma Attorney General*, New York Times (Jan. 14, 2017) (www.nytimes.com/interactive/2017/01/14/us/politics/document-Pruitt-v-EPA-a-Compilation-of-Oklahoma-14.html#document/p335/a334755); *Trump may change or scrap Obama ozone standard*, Greenwire (Apr. 10, 2017) (www.eenews.net/greenwire/stories/1060052869/).

designations, citing the need for more time to complete their review of the standard.[5] Drastic cuts proposed to EPA's FY 2018 budget would also further undermine the 2015 ozone NAAQS, especially for those states that depend on critical grant funding to improve air quality and implement the CAA.[6]

B. Impacts of H.R. 806

H.R. 806 would drastically alter the CAA to weaken air quality protections, allow more pollution, and threaten public health. Most of the changes specifically target the 2015 ozone NAAQS; however, the bill also undercuts the NAAQS process for all other criteria pollutants. These proposed changes would significantly undermine the features of the CAA that have driven important progress in improving air quality and public health.

The overall effect of the proposed changes included in H.R. 806 will be to delay the implementation of health-based air quality standards, make achievement of more protective standards more difficult, and inject cost and technological feasibility considerations into the standards-setting process. The bill would also fundamentally alter those CAA provisions that ensure EPA's decisions to protect public health are informed by the most up-to-date scientific data, findings, and knowledge about air pollutants and their health and environmental impacts. For a more detailed section-by-section analysis of H.R. 806, please see the attached appendix.

II. H.R. __, THE NUCLEAR WASTE POLICY AMENDMENTS ACT OF 2017

The Subcommittee on Environment held a legislative hearing on a discussion draft entitled "The Nuclear Waste Policy Amendments Act of 2017" on April 24, 2017. For further background information, please see the memo from the legislative hearing. A summary of the committee print is attached to this memo.

A. Background

Nuclear power reactors in the United States generate an average of 2,200 metric tons of spent nuclear fuel every year. The inventory of spent nuclear fuel in the United States is now over 72,000 metric tons and is expected to grow to 139,000 metric tons by 2067.[7] Most of the current inventory is stored onsite where it was generated, in wet pools or dry casks.[8] Spent fuel is generally stored in pools for five years, and then transferred to dry casks after it has cooled to

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[5] U.S. EPA, *EPA to Extend Deadlines for 2015 Ozone NAAQS Area Designations* (Jun. 6, 2017) (www.epa.gov/newsreleases/epa-extend-deadline-2015-ozone-naaqs-area-designations).

[6] *See* National Association of Clean Air Agencies, *Impacts of Proposed FY 2018 Budget Cuts on State and Local Air Quality Agencies* (May 22, 2017) (www.4cleanair.org/sites/default/files/Documents/NACAAFundingReport-FY2018.pdf).

[7] Government Accountability Office, *Outreach Needed to Help Gain Public Acceptance for Federal Activities that Address Liability*, at 11 (Oct. 2014) (GAO-15-141).

[8] *Id.* at 14.

within the heat limits of the casks.[9] However, capacity for storage in wet pools has been exhausted, requiring more fuel to be transferred to dry casks.

B. The Nuclear Waste Policy Act

In 1982, Congress passed the Nuclear Waste Policy Act (NWPA) directing the Department of Energy (DOE) to remove spent nuclear fuel from commercial nuclear power plants, in exchange for a fee, and to transport spent fuel to a permanent geologic repository beginning no later than January 31, 1998.[10] The law also established an objective, scientifically-based process for selecting two repository sites. In the years following passage of the NWPA, DOE's efforts to identify potential sites were met with strong local opposition. In 1987, Congress amended the NWPA and designated Yucca Mountain, Nevada as the sole site to be considered for a permanent geologic repository.[11] As discussed in several hearings on this topic during the 114th Congress, a mix of funding shortfalls, the state of Nevada's strong opposition to the Yucca siting, and other factors have prevented DOE from completing a nuclear waste repository at Yucca Mountain.

C. Nuclear Regulatory Commission Review

On January 29, 2015, NRC issued the final volumes of its Safety Evaluation Report summarizing the Yucca Mountain application, the technical staff's safety review, and staff findings and recommendations. The report noted that DOE's license application met regulatory requirements, except for certain requirements related to ownership of land and water rights. The report recommended that "the Commission should not authorize construction of the repository because DOE has not met certain land and water rights requirements…and a supplement to DOE's environmental impact statement (EIS) has not yet been completed."[12] In March 2015, NRC announced that its staff would prepare a supplement to DOE's EIS to address "the impacts of the proposed repository at Yucca Mountain on groundwater as well as the impacts from groundwater discharges to the surface."[13] In May 2016, NRC issued its supplement, finding that the estimated radiological doses in the groundwater surrounding the site are small because they are a small fraction of the background radiation dose.[14]

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[9] *Id.* at 7.

[10] Nuclear Waste Policy Act of 1982, codified at 42 U.S.C. 10101 et seq.

[11] P.L. 100-203.

[12] U.S. Nuclear Regulatory Commission, *NRC Publishes Final Two Volumes of Yucca Mountain Safety Evaluation* (Jan. 29, 2015) (www.nrc.gov/reading-rm/doc-collections/news/2015/15-005.pdf).

[13] U.S. Nuclear Regulatory Commission Chairman Stephen G. Burns, *Prepared Remarks Before United States Energy Association Meeting, National Press Club* (Apr. 30, 2015) (pbadupws.nrc.gov/docs/ML1512/ML15121A048.pdf).

[14] U.S. Nuclear Regulatory Commission, *Supplement to the U.S. Department of Energy's Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear*

D. Fiscal Year 2018 Budget

In May, President Trump released his fiscal year 2018 budget. The DOE Budget Request includes $120 million to "resume the NRC licensing process for Yucca Mountain and initiate a robust interim storage program."[15] In addition, the NRC Budget Request includes $30 million for the continuation of the licensing proceeding for the potential construction authorization of a repository.[16] This is the first time since 2009 that licensing activities for the Yucca Mountain repository have been funded in a Presidential budget proposal.

III. H.R. __, THE BROWNFIELDS ENHANCEMENT, ECONOMIC REDEVELOPMENT, AND REAUTHORIZATION ACT OF 2017

A. Background

The Brownfields program was originally established by EPA in conjunction with the agency's work to implement the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), and was formally authorized in 2002.[17] EPA and Congress created the program to assist communities with the cleanup of brownfields sites, defined as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."[18] The program primarily focuses on properties that are abandoned or underutilized and are not addressed under other federal remediation authorities.[19]

Cleanup of brownfields sites encourages economic redevelopment and reduces exposure to harmful contaminants. Cleanup of brownfields properties can also increase nearby property values (between $500,000 and $1.5 million for properties within one mile), increase efficiency,

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Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (May 2016) (www.nrc.gov/docs/ML1612/ML16125A032.pdf).

[15] U.S. Department of Energy, *FY 2018 Congressional Budget Request* (May 2017).

[16] U.S. Nuclear Regulatory Commission, *Congressional Budget Justification Fiscal Year 2018* (NUREG-1100).

[17] The Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118 (2002).

[18] *Id.*

[19] Congressional Research Service (CRS), *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act* (June 14, 2012) (R41039).

and decrease pollution.[20] Every EPA brownfields dollar spent leverages $16.11 on average. As of May 1, 2017, the program has leveraged almost $24 billion and over 124,000 jobs.

At the time the Brownfields Act was adopted, there were an estimated 450,000 brownfields properties. According to EPA figures, more than 25,000 properties have been assessed and nearly 64,000 acres have been revitalized throughout the lifetime of the program. While the Brownfields program is widely popular because of its economic, public health, and environmental benefits,[21] it has never been reauthorized.

B. Committee Print on Brownfields Reauthorization

On April 4, 2017, the Subcommittee on Environment held a legislative hearing on a discussion draft for Brownfields Reauthorization. Witnesses at that hearing represented the U.S. Conference of Mayors, the National League of Cities, the Environmental Council of States, the Association of State and Territorial Solid Waste Management Officials, and the National Brownfields Coalition. The witnesses unanimously supported reauthorizing the Brownfields program. They also unanimously supported minor changes to the program to increase flexibility in the program.

The committee print circulated for the upcoming subcommittee markup reauthorizes the program without changing the authorization levels and makes those small changes to increase flexibility. The print has changed since the hearing based on technical assistance provided by the EPA, testimony at the hearing, and bipartisan discussions. The most significant change is the specification that authorization levels for the program would not change. A detailed summary of the committee print is attached to this memo.

[20] U.S. EPA, *Brownfields Program Accomplishments and Benefits* (accessed June 13, 2017) (www.epa.gov/brownfields/brownfields-program-accomplishments-and-benefits).

[21] *Id.*