



TESTIMONY OF SETH L. JOHNSON

Good morning, Committee members, and thank you for inviting me to testify today. My name is Seth Johnson. I'm an attorney at Earthjustice, in Washington, DC, where my practice focuses on clean air, especially the national ambient air quality standards that form a major engine of the Clean Air Act.

I plan to make five major points in my testimony:

1. The Clean Air Act is a health-based, highly effective, and successful law.
2. More pollution reductions are still needed to realize the Clean Air Act's full promise: healthful air for all Americans.
3. Doomsday claims about clean air standards are nothing new and lack merit.
4. The so-called "Air Quality Standards Implementation Act of 2024" would undermine the promise of the Clean Air Act and should not be enacted.
5. Instead, we should ensure EPA and state air agencies have adequate resources and clear mandates to carry out their core missions: ensuring people everywhere in our country enjoy clean, healthy air.

Introduction

Everyone in this country is entitled to breathe clean, healthy air. That is the promise we made ourselves as Americans in 1970 and reaffirmed in 1977 and 1990, when the Clean Air Act was carefully and thoughtfully amended. We have made great strides toward keeping that promise. We must not waver from it.

The Clean Air Act is a highly successful law. It has helped drive massive pollution reductions. These improvements in air quality have promoted the health and well-being of

hundreds of millions of Americans. Air quality improvements have enhanced scenic vistas and helped water quality and ecosystems improve, too.

But work under the Act is not yet done: tens of millions are still waiting for the air to be safe and clean in their communities. Also, the harms from air pollution are often not evenly distributed. All too often, the communities who bear the brunt of harmful air pollution have been historically marginalized. Those historical factors are unfortunately still with us. So, improving air quality does not just improve public health and the environment; it also makes important progress toward realizing justice.

The bill under discussion today would break the promise embodied in the Clean Air Act and would retreat from the best this country offers. Where the Clean Air Act offers vision, optimism, and the promise of justice, the bill is short-sighted, defeatist, and resigned to perpetuating inequity.

The Clean Air Act Is Working: Pollution Down; Economy Up

The Clean Air Act is founded on the premise that, first, Americans have the right to safe, healthy air, based solely on the science about the harmful effects of air pollution.¹ Because everyone has the right to engage in everyday outdoor activities without risking their health and wellbeing, we use this science to set national ambient air quality standards (“standards” or “NAAQS”) that must protect sensitive subpopulations, like children and older adults.² Second,

¹ 42 U.S.C. §§ 7408(a), 7409(b), (d).

² *E.g.*, *American Lung Ass’n v. EPA*, 134 F.3d 388, 389 (D.C. Cir. 1998); *see, e.g.*, 116 Cong. Rec. 42,329, 42,381 (Dec. 18, 1970) (remarks of Senator Muskie) (Clean Air Act “carries the promise that ambient air in all parts of the country shall have no adverse effects upon any American’s health”).

after setting these science-based standards, we work to attain them in a sensible, effective way.³

The net result is that the Clean Air Act catalyzes innovation and we benefit, both in terms of health and welfare, and economically.

The Clean Air Act as it is has a proven record of producing and allowing for both pollution reductions and economic growth. Since 1970, when the modern Clean Air Act started operating, emissions of the air pollution regulated by national ambient air quality standards have dropped by 78%; at the same time, our gross domestic product has tripled.⁴

Indeed, decade after decade, we have seen that good public health policy is also good economic policy. Decades of studies have shown that air pollution harms our health, and at its most extreme leads to mortality. But air pollution also has acute effects that are felt daily by millions of Americans and can include missed work and school days due to respiratory illness, like asthma or COPD. Air pollution also affects our cognitive abilities: For example, children as young as third grade were measured as having lower test scores where air pollution had spiked, even in socially advantaged schools.⁵ Thus, it is no wonder that as air pollution decreases, productivity and economic growth increases. Air pollution not only chokes us, but it chokes the economy. For 54 years, the Clean Air Act has worked successfully to lessen that burden.

³ 42 U.S.C. §§ 7410(a)(2), 7470-7479, 7501-7515.

⁴ <https://gispub.epa.gov/air/trendsreport/2023/#growth>.

⁵ Mullen, Casey, Sara E. Grineski, Timothy W. Collins, and Daniel L. Mendoza. 2020. "Effects of PM2.5 on Third Grade Students' Proficiency in Math and English Language Arts" *International Journal of Environmental Research and Public Health* 17, no. 18: 6931. <https://doi.org/10.3390/ijerph17186931>.

At the same time, though, erroneous doom-and-gloom forecasts from industry have abounded. That pessimism conflicts with our country’s actual experience: deep pollution reductions along with strong economic growth. As policy-makers and academic researchers have repeatedly explained, we have heard the same “doomsday predictions” for decades, even though “history has proven the doomsayers wrong again and again.”⁶ The Clean Air Act “creates a ‘virtuous cycle’ in which clean air standards spark new technology—serving our fundamental belief that we can create jobs and opportunities without burdening our citizens with the effects of pollution.”⁷ One academic study succinctly explains, “One defining feature of the research on the costs of the Clean Air Act is that predicted costs of the regulations are often higher than the costs that actually occur.”⁸ Another found no “significant negative effects on employment in the tightly regulated L.A. basin” and cited a then-forthcoming study that suggested “local air quality regulations” “probably increased labor demand slightly.”⁹

What’s more, some of these industry representatives’ pessimism conflicts with their claims that, among other things, “[a]cross America, manufacturers are providing the solutions to

⁶ Lisa P. Jackson, Adm’r, EPA, Remarks on the 40th Anniversary of the Clean Air Act, As Prepared (Sept. 14, 2010), https://www.epa.gov/archive/epapages/newsroom_archive/speeches/7769a6b1f0a5bc9a8525779e005ade13.html.

⁷ *Id.*

⁸ Janet Currie & Reed Walker, *What Do Economists Have to Say about the Clean Air Act 50 Years after the Establishment of the Environmental Protection Agency?*, 33 *J. of Econ. Perspectives* 3, 19 (2019), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.33.4.3>.

⁹ Matthew E. Kahn, *The Beneficiaries of Clean Air Act Regulation*, 24 *Regulation* 34, 36 (2001), <https://www.cato.org/sites/cato.org/files/serials/files/regulation/2001/4/kahn.pdf>.

the world's most pressing challenges,"¹⁰ and that leading U.S. "industry associations and global corporations...innovate and solve for the world's challenges."¹¹

Overall, the Act has been and continues to be a great deal for our country. EPA has repeatedly found that, looking both retrospectively and prospectively, the benefits of the Clean Air Act significantly exceed the costs.¹² Studies show we have substantially improved air quality, saved and bettered many people's lives, and, in sum, obtained a huge net benefit for our country.¹³

The New Soot Standard Is an Important Advance

Recently, EPA took a long-overdue final action that promises to continue this history of success: it finalized a landmark update to the national ambient air quality standards for particulate matter, strengthening the annual healthy air standard for fine particulate matter, or soot, to 9 $\mu\text{g}/\text{m}^3$.¹⁴ It did so because the scientific evidence overwhelmingly demonstrated the prior standard failed to meet the statutory mandate that it "protect the public health," "with an

¹⁰ <https://nam.org/about/>.

¹¹ <https://www.uschamber.com/about>.

¹² See <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act>.

¹³ Currie & Walker, *supra* n.8, at 15 ("the current estimates suggest that the overall costs are likely to have been substantially less than the estimated benefits in terms of health and other outcomes."), 20 ("Although we have emphasized that forecasters have often overestimated the costs of environmental policies, researchers have also sometimes underestimated the benefits.").

¹⁴ We have explained in detail how the record supported—or even demanded—stronger EPA action than what EPA finalized. See Comments of Appalachian Mountain Club et al., EPA-HQ-OAR-2015-0072-2233.

adequate margin of safety.”¹⁵ Soot kills people.¹⁶ It also causes or is likely to cause many other serious health harms, like heart attacks, strokes, asthma attacks and asthma development and other breathing problems, cancer, and neurological diseases like Parkinson’s or Alzheimer’s.¹⁷

In benefiting public health, the new standard will also advance justice. Soot disproportionately burdens communities of color and low-income communities, with the mortality burden especially disproportionate for Black populations.¹⁸ EPA projects the new standard will reduce, though not eliminate, these disparities.¹⁹

Though not legally relevant, EPA estimates that the net monetized benefits of the stronger soot standard could be as high as \$46 billion.²⁰ That estimate includes only some of the expected benefits. EPA estimates the costs would be two orders of magnitude less: \$590 million.²¹

Once again, though, we have seen some industry interests attack EPA’s new standard. Earthjustice and others have explained the flaws in several of these attacks. For example, we

¹⁵ 42 U.S.C. § 7409(b)(1).

¹⁶ *E.g.*, EPA, Supplement to the 2019 Integrated Science Assessment for Particulate Matter 2-13 to -15, 5-1 to -3 (EPA/600/R-22/028, May 2022).

¹⁷ *E.g.*, *id.* 2-3 to -13, 5-1 to -2.

¹⁸ *E.g.*, EPA, Reconsideration of the National Ambient Air Quality Standards for Particulate Matter 124-25, 616-17 (signed Feb. 5, 2024) (prepublication version), <https://www.epa.gov/system/files/documents/2024-02/pm-naaqs-final-frn-pre-publication.pdf>.

¹⁹ *Id.* 618.

²⁰ EPA, Final Regulatory Impact Analysis for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter 27 tbl.ES-10 (EPA-452/R-24-006, January 2024).

²¹ *Id.*

examined air pollution and economic data in 14 widespread metropolitan areas over 2012 to 2021.²² This time period covered finalization and the beginning of implementation of the 2012 soot standard and the 2015 ozone standard.²³ And, notably, in 2012, when EPA strengthened the soot standard, the National Association of Manufacturers, American Forest & Paper Association, and other trade associations claimed there would be massive job losses and economic costs from the standard EPA ultimately finalized.²⁴

They were wrong. Our analysis found that “economic growth can and does occur alongside reductions in harmful air pollution,” with, on average, the unemployment rate decreasing by 2%, real GDP increasing by 21%, and soot and ozone air quality indices improving by 12%.²⁵ The metropolitan areas we examined included areas in states that a report commissioned by the National Association of Manufacturers highlighted as potentially economically “exposed” to improved air quality regulation at a standard level more stringent

²² Robyn Winz, Putting Industry Claims to Rest: Data Reveals Economic Success Amidst Clean Air Rules (Oct. 10, 2023), <https://earthjustice.org/experts/robyn-winz/putting-industry-claims-to-rest-data-reveals-economic-success-amidst-clean-air-rules>.

²³ *Id.*

²⁴ See Environomics, Briefing Paper on the Costs and Benefits of EPA’s Proposed Reduction in the PM_{2.5} National Ambient Air Quality Standards (NAAQS) 6-8 (Dec. 10, 2012), https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/oira_2060/2060_12122012b-1.pdf. Similar claims were made about the 2015 ozone standard, and several experts refuted those contemporaneously. See Alan Krupnick et al., Defining the Unknown: A Look at the Cost of Tighter Ozone Standards (Resources for the Future Issue Brief 15-03, Sept. 2015), <https://media.rff.org/documents/RFF-IB-15-03.pdf>; Synapse Energy Economics Inc., Clearing Up the Smog: Debunking Industry Claims that We Can’t Afford Healthy Air (Sept. 10, 2015), <http://earthjustice.org/documents/report/clearing-up-the-smog>.

²⁵ *Id.*

than what EPA ultimately set.²⁶ Given the disconnect between reality and the potential economic effects NAM asserted, we noted that NAM’s report contained what it admitted was a “strong implied assumption” in its model that the manufacturing sector cannot improve its processes to be cleaner and more efficient before 2031.²⁷ That admitted assumption is simply not credible, for it is severely undermined by both the history of air pollution control improvements and NAM’s own descriptions of American manufacturers, as described above.

We also refuted another major industry attack on EPA’s standard that came from a short report the U.S. Chamber of Commerce generated.²⁸ As we explained, this attack relied on air quality monitoring data that very likely will have no regulatory relevance under the Clean Air Act because the air quality resulted from wildfires.²⁹ We also explained that the Act carefully allows new industrial facilities to be constructed in both areas that meet standards and areas that violate them.³⁰

Further, though some industry representatives have advanced sweeping claims about the scope of “nonattainment” designations, those claims presume a robotic, badly overbroad

²⁶ Oxford Economics, U.S. Air Quality Standards and the Manufacturing Sector 5 (Apr. 2023).

²⁷ Winz, *supra* n.22.

²⁸ U.S. Chamber of Commerce, EPA’s Proposed Air Quality Standards Will Cause Gridlock Across Our Economy (Nov. 2023).

²⁹ Seth Johnson, Chamber of Commerce’s Dubious Analysis of Clean Air Rules Is Wrong (Dec. 4, 2023), <https://earthjustice.org/experts/seth-johnson/chamber-of-commerces-dubious-analysis-of-clean-air-rules-is-wrong>.

³⁰ *Id.*

approach to designations that EPA has never followed.³¹ Instead, EPA recently announced that it intends to take an approach to making air quality designations that aligns with EPA's historic approach to making designations.³²

Thus, the industry attacks on the economics of the standard are not just legally irrelevant, but also lack merit.

A Path Forward

The bill under consideration should not be adopted. It would weaken the Clean Air Act radically without a single improvement, rob Americans of their 54-year right to healthy air based on medical science, and delay life-saving health standards already years overdue.

The legislation would eliminate the right to truly safe air and health benefits that Americans enjoy under today's law. First, the legislation would abolish the Clean Air Act's exclusive consideration of health and medical science to determine how much air pollution is unsafe for people to breathe. For the first time, Congress would authorize EPA to expose American communities to unhealthy levels of smog and soot and sulfur dioxide and even toxic lead pollution, by prioritizing corporate compliance costs, profits, technological feasibility, or other non-safety factors. The medically based health standards that the Clean Air Act has been

³¹ See Letter from Am. Forest & Paper Ass'n to Jeffrey Zients, Chief of Staff, at attach.2 (Oct. 24, 2023). Specifically, the claims used an interpolation approach to assess air quality in counties lacking official air quality monitors: "Non-monitored county values are calculated using inverse distance weighting average of five closest monitored values."

³² Memorandum from Joseph Goffman, Ass't Adm'r, to Regional Adm'rs, Initial Area Designations for the 2024 Revised Primary Annual Fine Particle National Ambient Air Quality Standard 3-6, attach.3 (Feb. 7, 2024), https://www.epa.gov/system/files/documents/2024-02/pm-naaqs-designations-memo_2.7.2024_-_jg-signed.pdf.

founded on for 54 years instead could become a political football weakened by polluters' predicted compliance costs—costs that often are overestimated.

Second, the bill would double the law's five-year review periods for recognizing the latest medical science and updating health standards, which already are late by five years or longer; this means in practice that unhealthy air would persist for longer than ten years and more Americans would be harmed.

Third, the bill shrinks the number of medical experts and health scientists who serve as Clean Air Science Advisory Committee members advising EPA on how to set medically-based air pollution health standards. Instead, the bill grants nearly half of the member slots to state officials whose expertise is implementation of standards. This is consistent with the legislation's greater concern for implementation affecting industry than with health hazards and medical science impacting the American people, but it is an unjustified change to the Clean Air Act.

Fourth, the legislation would delay the updating and strengthening of health standards for harmful air pollution, by delaying and conditioning Americans' right to safer air quality on EPA's issuance of implementation rules. The guaranteed result would be delayed safeguards, longer exposure to unsafe air pollution across the United States, and the continuation of health hazards that today's law would disallow. The bill even penalizes Americans with dirty air for longer if EPA fails to meet the legislation's deadlines.

Fifth, the bill unaccountably weakens special Clean Air Act safeguards that apply in parts of the United States struggling the most with unsafe smog and soot levels, making it even harder for Americans living there to breathe safe air.

Finally, the legislation amends the Clean Air Act needlessly and carelessly, by redundantly allowing so-called “prescribed burns” to be “exceptional events” under the Act’s NAAQS program, when EPA regulations already define prescribed burns to be exceptional events. The bill’s problematic drafting weakens existing law and regulations, however, by expanding other exemptions for “exceptional events” that are not counted toward compliance with health standards for air quality, even when air pollution levels are unsafe. This will mean more unsafe air more often, with no responsibility to clean it up. These changes should not become law.

Instead of adopting the current bill, Congress should strengthen the Clean Air Act and its implementation. It should proactively ensure EPA and state agencies have adequate resources to carry out their responsibilities to establish and implement national ambient air quality standards that will protect public health and the environment. We also encourage Congress to work on productive statutes like the Public Health Air Quality Act that would improve air quality monitoring and thereby enhance implementation of clean air protections. These steps would help improve public health and advance the vital goals of the Clean Air Act.

I welcome your questions.