



Why Polluters Love the “Clear Skies” Legislation

Top Ten Ways S. 131 Weakens Current Clean Air Safeguards

Industry polluters support the President’s air pollution legislation because it’s a sweetheart deal that weakens and eliminates numerous sections of the Clean Air Act, which has protected public health and the environment for 35 years.

The “Clear Skies” plan:

- **Weakens clean air act requirements for most industries;**
- **Weakens requirements to minimize mercury and toxic pollution;**
- **Repeals local air quality protections ;**
- **Weakens protections against haze and pollution for our national parks;**
- **Revokes local and state authorities to control pollution;**
- **Delays deadlines for achieving clean air.**

Weakens Clean Air Act Requirements for Most Industries, Not Just Power Plants

1. *The legislation creates enormous new loopholes for a broad range of industrial air polluters.* “Additional facilities” (e.g., non-power plants) that opt into weaker pollution control requirements under the legislation are *additionally* exempt from several major requirements of the Clean Air Act, including limits on toxic emissions, local air quality protections (e.g., New Source Review) and visibility protections against haze pollution in parks and wilderness areas.

Repeals Requirements to Minimize Mercury and Toxic Pollution

2. *The administration legislation repeals the requirement that EPA establish a Maximum Achievable Control Technology (MACT) standard for air toxics emission from power plants.* The bill also would exempt 52% of all power plant units from the very mercury reduction requirements the bill itself sets out. EPA is left with establishing controls for non-mercury toxic pollutants under far less stringent provisions, and is barred from promulgating any such regulations until 2018. Furthermore, S.131 establishes additional hoops that EPA must jump through before it can determine whether it should regulate non-mercury toxic emissions from power plants.

3. *The legislation eliminates protections against toxic pollution from non-utilities.* S. 131 allows a broad array of facilities that are currently subject to the MACT toxics standards to evade these controls by opting into the bill’s emissions program for either mercury, nitrogen oxides or sulfur dioxide pollution. Facilities using this loophole will not have to control their emissions of any hazardous air pollutant (HAP) other than mercury. The list of hazardous pollutants that would go unregulated includes those that cause cancer and birth defects. For the first time in the history of the Clean Air act, up to 69,000 dirty units would be suddenly handed the benefit of escaping toxic pollution regulations already on the books, covering some 74,000 tons of toxic pollution annually.

Revokes Local and State Authorities to Control Air Pollution

4. *The bill eliminates state s’ authority to pursue upwind polluters.* The legislation would eliminate protections against interstate air pollution by prohibiting states from asking EPA for relief from upwind polluters in other states. Section 126 of the Clean Air Act currently allows downwind states to pursue pollution reductions from upwind plants that are fouling their air. The legislation bars this state right until 2015, no matter how badly out-of-state pollution is fouling a victim state’s air quality. Even then, the legislation creates an impossible showing to make sure downwind states will remain unprotected – the bill forces victimized states to make an exhaustive showing that they have examined and accomplished every other cost-effective pollution reduction from small businesses, the driving public and other industries in their state before seeking additional reductions from out-of-state power plants.

5. *The legislation revokes local authority to require emissions limits of new emission sources in areas still suffering from unhealthy air (non-attainment areas).* Regulators are directed to “deem” that a new or modified facility “will not interfere” with attainment efforts in areas with unhealthy air, as long as those areas have been in “full compliance” with the Clean Air Act for the preceding three years (notwithstanding that the area still does not attain health standards and may not have for any of the three previous years).

Weakens Local Air Quality Protections

6. *The legislation repeals the New Source Performance Standard (NSPS) program,* which requires new plants to install state-of-the-art pollution controls. Under the bill, NSPS is replaced with a one-shot statutory standard, essentially foregoing benefits of advances in pollution control technology. EPA would have no mandatory duty to review and upgrade the standard to reflect technological advances in pollution control. The bill would also exempt modified units from NSPS.

7. *The bill repeals New Source Review (NSR),* which requires a plant to install modern pollution controls if it undergoes a physical or operational change that would cause its *actual* annual emissions to increase significantly. The legislation changes this threshold so it would only be triggered if a plant’s *maximum* hourly emissions were expected to exceed any of its hourly emissions from the previous five years, and furthermore only if that unit is deemed to have been “reconstructed” rather than modified. This would allow massive increases in annual air pollution from facilities, and is a meaningless test designed never to be triggered. The bill also prohibits states from applying NSR to modified sources under their EPA-approved State Implementation Plans and effectively ignores the effect of new emission sources on non-attainment areas.

Repeals Protections Against Haze and Pollution In our National Parks

8. *The legislation repeals the current Clean Air Act requirement that affected facilities apply Best Available Retrofit Technology (BART) to protect visibility in National Parks.* The requirement is only retained for sources within 31 miles of a Class I park area, even though it is well established that pollution sources well beyond 31 miles harm national parks. The bill also weakens the authority of federal land managers, including park superintendents, to comment on permits for new plants that would affect a parks’ air quality. Managers would be limited to commenting on plants within a 31 miles radius of the park, whereas currently managers comment on permits for plants up to 250 miles away.

9. *The bill eliminates the BART requirements for non-utility units* that choose to ‘opt-in’ to the bill. Non-utility plants that opt-in get a 20 year delay to comply with regulations intended to improve park air quality.

Overturns Commitment of Timely, Healthy Air Quality for Americans

10. *The legislation delays deadlines for achieving safe air.* The bill would allow delays in the deadlines by which areas must attain the ozone and PM2.5 public health standards by providing non-complying areas (so-called “transitional areas”) with an automatic extension of attainment dates to 2015. Additional flaws in the legislation would allow even the delayed 2015 deadline to be pushed back to 2022. In contrast, the Clean Air Act currently requires all PM2.5 nonattainment areas and 8-hour ozone nonattainment areas (with the exception of a few in California) to meet air quality standards by 2010.

The 2015 deadline for transitional areas would also frustrate the ability of downwind states to use current authorities to petition for more timely pollution cuts in upwind states. The current Clean Air Act requires power plants to make faster, deeper pollution cuts in order to meet public health standards and deadlines. By accepting the electric industry’s preferred weak targets and slower timetables for SO₂ and NO_x controls, the administration would set in motion a guaranteed delay in meeting health standards that would otherwise be feasible and cost-effective (thereby resulting in thousands more premature deaths, asthma attacks, hospitalizations, and missed work and school days).

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