

Three Reasons to Vote No on the "Dirty Air Acts"



David Doniger

Policy Director, NRDC Climate Center, Washington, D.C.

[Blog](#) | [About](#)

Posted February 3, 2010 in [Solving Global Warming](#)

Don't Dismantle the Clean Air Act As A Tool To Protect Us From Global Warming

The Clean Air Act has protected Americans from dangerous air pollution for 40 years. It has saved hundreds of thousands of lives^[1] and protected our lakes, forests, and other natural treasures from untold damage. Now it's time to rely on this landmark law to help protect us from global warming. This requires nothing different than what we've done for other kinds of pollution: follow the science, act when pollution endangers our health and welfare, and use available and affordable technology to clean up the largest pollution sources – vehicles, power plants, and big factories. It's practical, effective, and affordable.

Now some members of Congress want to dismantle the Clean Air Act as a tool to protect us from global warming:

- A “resolution of disapproval” sponsored by Reps. Jerry Moran (R-KS) and Marsha Blackburn (R-TN) would overturn the Environmental Protection Agency’s scientific finding that global warming pollution is dangerous to our health and welfare, and would prohibit use of the Clean Air Act to protect us from that pollution. (*H.J. Res. 66, companion to S.J. Res 26, Sen. Lisa Murkowski (R-AK).*)
- A bill introduced by Rep. Earl Pomeroy (D-ND) would reverse the Supreme Court’s landmark 2007 global warming decision by declaring that carbon dioxide and other greenhouse gases are not air pollutants. (*H.R. 4396*).

Both proposals would harm the health and welfare of millions of Americans by blocking use of the Clean Air Act to reduce global warming pollution. They would stop long-overdue action to hold the biggest polluters accountable for their global warming pollution and block investments to reduce America's oil dependence and jump-start a vibrant clean energy economy.

Here are three reasons Congress should reject these Dirty Air Acts.

Congress should not veto modern science or block action to protect Americans’ health from dangerous air pollution.

When Congress wrote the Clean Air Act it wisely made science central to decision-making. The law requires that when science identifies new threats to health and the environment, new steps

must be taken to protect the public. The Congress that wrote this law expected EPA to act when new dangers arose, without waiting for a later Congress to pass new laws.

Science has demonstrated that carbon dioxide and other greenhouse gases harm public health and the environment.

In a landmark 2007 decision, the Supreme Court ruled that greenhouse gases are air pollutants under the plain terms of the Clean Air Act. The Court held that EPA must take action if the administrator finds, based upon the science, that they are dangerous to public health and welfare.

Massachusetts v. EPA

Sponsors of these bills wrongly claim that EPA is acting without Congressional direction. But the Supreme Court ruled in 2007 that Congress wrote the Clean Air Act not only to remedy the air pollution problems known four decades ago, but also to address new dangers as science identifies them. The Court explained that Congress gave EPA the responsibility to address *all* kinds of dangerous air pollutants, including greenhouse gases:

Indeed, the Act's sweeping definition of "air pollutant" includes "any air pollution agent or combination of such agents, including *any* physical, chemical ... substance or matter which is emitted into or otherwise enters the ambient air" § 7602(g) (emphasis added). Carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt "physical [and] chemical ... substance[s] which [are] emitted into ... the ambient air." The statute is unambiguous.

Because greenhouse gases fit well within the Clean Air Act's capacious definition of "air pollutant," we hold that EPA has the statutory authority to regulate the emission of such gases from new motor vehicles.

If EPA makes a finding of endangerment, the Clean Air Act requires the agency to regulate emissions of the deleterious pollutant from new motor vehicles.

549 U.S. 487 (2007). Quoted passages are from pp. 528-29, 532, and 533.

That's the "endangerment finding" that Administrator Lisa Jackson made in December, based on a thorough scientific assessment and after reviewing hundreds of thousands of public comments.

Overtaking this scientific finding would be like vetoing the Surgeon-General's report that smoking causes lung cancer. Congress should not be denying modern science. And Congress should not dismantle the Clean Air Act as a tool to respond to global warming.

These bills would wreak havoc in the auto industry by blocking federal clean car standards supported by industry, labor, environmentalists and states.

Last May, President Obama announced an historic agreement on national clean car standards. These consensus standards set under the Clean Air Act will cut vehicles' carbon pollution by 30 percent, save consumers billions at the gas pump, reduce our dependence on foreign oil, and help the American auto industry rebuild by making cars and trucks that make sense for the 21st century. For the first time, the auto companies, labor, states, and environmentalists all have agreed on a path forward for cleaner, more efficient cars.

The Moran-Blackburn and Pomeroy proposals would wreak havoc for the automobile industry. Without the endangerment finding and the authority to limit greenhouse gases, EPA could not issue these national clean car standards. Without those national standards, auto makers would have to meet the state-level standards adopted by California and at least 13 other states. The national standards are a win-win, providing more emission reductions for the environment and national uniformity for the industry – benefits that would be lost if these bills succeed. That's why the Alliance of Automobile Manufacturers and the United Auto Workers support the new auto standards and why they opposed a similar effort to tamper with the Clean Air Act in the Senate last September.

The Clean Air Act will only require emission controls that are available and affordable and will require them only on big polluters; there will be no impact on hotels, hospitals, and other small sources.

Lobbyists for power plants and other big carbon polluters are peddling two falsehoods: that issuing the endangerment finding and the clean car standards will lead to putting new burdens on hotels, hospitals, and homes, and will block construction of big new power plants and industrial projects. Neither claim is true.

For decades, the Clean Air Act has required companies that build or expand big power plants and factories to get a construction permit showing that they will use technology that is available and affordable to limit dangerous pollutants such as sulfur dioxide, particulates, and nitrogen oxide.

When big new pollution sources are built or when big existing ones are expanded, it's just common sense to make sure that they use available and affordable technology to keep their pollution increase as small as reasonably possible. That idea has worked for conventional pollutants for decades, and it will work for greenhouse gases too.

So what will the owners of power plants, refineries, or other big facilities actually have to do?

- First, companies don't need construction permits to continue using current facilities, even if they run them at higher capacity.
- Second, if a company wants to expand its facility, it doesn't need a construction permit unless the facility's pollution levels are going to go up. Many factory improvements –

de-bottlenecking and efficiency projects, for example – increase output without increasing emissions, and they will be unaffected.

- Third, when a company builds a new plant or an expansion project that *will* increase emissions, it only has to apply emission control measures that are available and affordable. Just as for other pollutants, if there are no feasible measures to cut carbon emissions, or if they are too costly, the permitting agency need not require them.

These are reasonable steps to take. Why would we want big new or expanded facilities to pollute more than they have to when affordable means exist to curb their emissions?

EPA has no intention to put carbon controls on small sources, and the agency is carefully tailoring its regulations to assure that only the biggest carbon pollution sources – those emitting at least 25,000 tons per year – will be covered. So there will be no impact on schools, homes, hospitals, small businesses, or other small sources.

* * *

The Moran-Blackburn and Pomeroy dirty air proposals would deny modern science, wreak havoc in the auto industry, let big carbon polluters off the hook, and leave millions of Americans unprotected from the dangers of global warming. They would dismantle the protections we have and replace them with nothing. The sponsors of these bills don't have a better plan. Indeed, they have opposed new legislation to limit carbon pollution. Congress should reject these ill-designed proposals and pass comprehensive climate and energy legislation to complement the practical, effective, and affordable public health protection provided by the Clean Air Act.

[1] U.S. Environmental Protection Agency, “The Benefits and Costs of the Clean Air Act, 1970 to 1990,” (Oct. 1997), page 36, Table 9 (http://www.epa.gov/oar/sect812/1970-1990/chptr1_7.pdf) and Appendix D, Table D-13 (http://www.epa.gov/oar/sect812/1970-1990/appen_d.pdf).