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## United States Senate

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September 25, 2025

The Honorable Lee M. Zeldin  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Zeldin,

Your recent reinterpretation of the Clean Air Act's New Source Review (NSR) permitting requirements will translate to direct harm to human health here in the United States. By allowing pre-construction activities for major polluting facilities—including data centers and associated power generation infrastructure—to proceed without securing the air quality permits required under federal law, you are greenlighting irreparable harm to our air, environment, and local communities. This gift to Big Tech deliberately undermines the Clean Air Act and violates the EPA's mission to protect human health and the environment, unconscionable actions for an Environmental Protection Agency (EPA) Administrator. I urge you to immediately suspend implementation of this guidance and recommit EPA to its core duty: protecting human health and the environment for all people, regardless of race, income, or zip code.

Congress established the NSR permitting program as part of the 1977 Clean Air Act Amendments.<sup>1</sup> The point was to require polluting facilities to obtain permits *before* plant construction or expansion, in order to give EPA the ability to assess the dangers a facility might pose to its neighbors and requires it to take steps to minimize them. For example, advance permitting can help protect communities from spikes in pollution by requiring facilities to install pollution control technology.<sup>2</sup> Failing to follow the NSR's requirements puts public health at risk.

According to reports, the EPA is now deciding whether it will follow the NSR's permitting requirements on a "case-by-case basis."<sup>3</sup> But EPA has neither released any documentation that

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<sup>1</sup> *New Source Review (NSR) Permitting*, U.S. Environmental Protection Agency <https://www.epa.gov/nsr>

<sup>2</sup> *FACT SHEET: New Source Review (NSR)*, U.S. Environmental Protection Agency <https://www.epa.gov/sites/default/files/2015-12/documents/nsrbasicsfactsheet103106.pdf>

<sup>3</sup> Sean Reilly, *EPA revamps air permitting to boost artificial intelligence* Politico (Sept. 9, 2025), <https://subscriber.politicopro.com/article/2025/09/epa-revamps-air-permitting-to-boost-artificial-intelligence-pro-00552056>.

details your novel approach to enabling pollution nor sought any public comment on this decision. Making these decisions in an arbitrary and opaque manner appears to violate federal law and cannot be justified by your unfounded argument that they are necessary to “dominate the global AI revolution.”<sup>4</sup> Your misguided and potentially illegal approach will only increase the number of communities polluted by the rapid and unfettered proliferation of data centers around the country.

Your decision to undermine key Clean Air Act protections not only flouts the law but openly does so at the expense of public health, especially as communities choke on pollution from the expansion of power generation meant solely to power data centers for AI. Boxtown, a neighborhood in South Memphis is a disturbing and immediate example. There, xAI, an artificial intelligence company, constructed and operates a massive data center with on-site gas turbines without sufficient permitting or pollution controls, resulting in significant increases in dangerous air pollution.<sup>5</sup> This facility was built in a predominantly Black neighborhood already ranked among the highest in the nation for asthma-related hospitalizations. Your new interpretation of our Clean Air Act protections will only put more communities at risk of similar destruction.

Your continued decimation of our environmental laws is a terrible deal for Americans, enabling more pollution and more data centers in our back yards, all so Big Tech can reap bigger profits. Allowing companies to begin construction on facilities that will eventually increase pollution without requiring any permitting intentionally undermines the NSR program and signals to industry that public health and environmental protections are now negotiable in the name of their profits.

Facilitating high-emissions infrastructure under the banner of AI development neither relieves the EPA of its legal obligations to enforce environmental safeguards nor justifies the sidelining of public participation, cumulative impact analysis, and pollution control requirements. To help me better understand how the EPA intends to proceed with changes to the NSR permitting program, please respond to the following questions no later than October 6, 2025:

1. With respect to the NSR permitting program, what has changed, who approved it, and where is it written? Please produce the guidance and the approval record.
2. What law or rule lets construction start before air permits are issued? Please produce any legal analysis on which you are relying.
3. What counts as “pre-construction” under your approach? Please identify what EPA is allowing (and not allowing) before permits are issued.
4. Which projects have proceeded under this new approach so far? Please identify any projects, including their location, expected emissions, controls, and permit status.

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<sup>4</sup> Lee Zeldin, *Trump’s EPA clearing the regulatory path for America to dominate the global AI revolution*, Fox News (July 17, 2025), <https://www.foxnews.com/opinion/lee-zeldin-trumps-epa-clearing-regulatory-path-america-dominate-global-ai-revolution>.

<sup>5</sup> Akash Sriram, *Musk’s xAI increased Tennessee gas turbines without permits, community groups say*, Reuters (Apr. 10, 2025), <https://www.reuters.com/sustainability/boards-policy-regulation/musks-xai-increased-tennessee-gas-turbines-without-permits-community-groups-say-2025-04-09/>.

5. How will the public find out and be heard before ground breaks? Will you post each decision and modeling files and allow a comment period? How does EPA's adoption of its new approach comply with the Administrative Procedure Act?
6. If pollution ends up higher than expected—or a project later triggers NSR—what happens? Will you stop operations, require retrofits, and assess penalties?

The EPA is not responsible for Big Tech's profits, it is responsible for protecting the health of our communities and our environment. Please start acting like it.

Sincerely,



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Edward J. Markey  
United States Senator