

Congress of the United States

Washington, DC 20515

June 29, 2026

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

Dear Administrator Zeldin,

The Environmental Protection Agency (EPA) is proposing to weaken one of the Clean Air Act's core public health safeguards by allowing polluting facilities to begin construction before receiving the air quality permits that Congress required them to obtain first. Under the EPA's proposed rule, data centers, gas plants, factories, and other major polluters could begin building infrastructure necessary to support future emissions before EPA determines whether those projects comply with applicable air quality requirements and are appropriate for surrounding communities. Once concrete is poured, infrastructure is installed, and millions of dollars have been invested in a project, denying a permit becomes politically and practically more difficult. That is precisely why, in the 1977 Clean Air Act Amendments, Congress created the New Source Review (NSR) program as a preconstruction permitting regime. We urge you to withdraw this dangerous proposed rule before it transforms environmental review into a rubber stamp for polluters.

The EPA's proposed rule would substantially weaken the NSR program by allowing pre-permit construction on infrastructure that would directly enable air pollution emissions, including piping, wiring, cement pads, and support structures.¹ For facilities such as data centers and power plants that are installing gas turbines and other polluting infrastructure, the proposal would allow significant alterations to a site before EPA completes the permitting process. Congress established the NSR permitting program—commonly known as the “preconstruction permitting” program—through the 1977 Clean

¹ Begin Actual Construction in the New Source Review (NSR) Preconstruction Permitting Program, 91 Fed. Reg. 26,958 (May 13, 2026) (to be codified at 40 C.F.R. pts. 49, 51, 52), <https://www.govinfo.gov/content/pkg/FR-2026-05-13/pdf/2026-09524.pdf>.

Air Act Amendments to ensure that EPA, states, and local officials would evaluate and mitigate threats to nearby communities before facilities are constructed, modified, or operated.² Advance permitting protects communities by requiring air quality analyses, environmental and public-health reviews, consideration of alternative sites, and proper public notice and engagement. The proposal strips the word “preconstruction” of much of its practical meaning by allowing polluters to begin building first and resolve permitting questions later.

The practical effect of the proposal would be to place substantial pressure on permitting decisions before EPA review is complete. Once developers have spent millions of dollars building supporting infrastructure, local officials, regulators, and affected communities face significant pressure to allow projects to move forward despite unresolved environmental concerns. Meaningful consideration of alternative sites, cleaner technologies, or stricter controls becomes less likely once construction is already underway. In practice, the proposal risks converting the NSR process from a genuine environmental safeguard into a post hoc ratification process in which permit approval becomes increasingly difficult to deny and community health concerns are subordinated to protecting private investments.

Unfortunately, this proposal is not an isolated policy change, but part of a broader EPA effort to weaken permitting safeguards that Congress enacted to protect communities from dangerous pollution. In July 2025, EPA withdrew a Biden administration proposal on NSR Project Emissions Accounting that had addressed known abuses of emissions calculations, including efforts to mask pollution increases by pairing new fossil fuel infrastructure with retiring coal plants.³ In September 2025, EPA allowed a developer in Maricopa County, Arizona to begin constructing portions of a semiconductor manufacturing facility before securing an NSR permit.⁴ Also in September 2025, EPA also revised its “Reactivation Policy” to allow dormant major pollution sources to restart operations without obtaining new NSR permits, even where those restarts could substantially increase emissions in surrounding communities.⁵ Viewed together, these actions reflect a broader effort to erode preconstruction review itself and

² See 42 U.S.C. §§ 7470-7492, 7501-7515.

³ Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Regulations Related to Project Emissions Accounting; Withdrawal of Proposed Rule, 90 Fed. Reg. 34,206 (July 21, 2025) (to be codified at 40 C.F.R. pts. 51, 52), <https://www.federalregister.gov/documents/2025/07/21/2025-13598/prevention-of-significant-deterioration-psd-and-nonattainment-new-source-review-nnsr-regulations>.

⁴ Letter from Aaron Szabo, EPA Asst. Administrator for Air and Radiation to Philip McNeely, Director, Maricopa County Air Quality Department (Sept. 2, 2025), <https://www.epa.gov/system/files/documents/2025-09/tsmc-arizona-begin-actual-construction-epa-response-letter.pdf>.

⁵ New Source Review Program “Reactivation Policy,” EPA (last updated Sept. 23, 2025), <https://www.epa.gov/nsr/new-source-review-program-reactivation-policy>.

replace it with a system tilted toward speed, deregulation, and the demands of large industrial polluters.

EPA's proposed rule conflicts with Congress's intent in establishing the NSR program and weakens EPA's obligation to protect human health and the environment before harm occurs. The proposed rule does not identify evidence demonstrating that allowing polluters to build first and seek permits later will produce significant economic benefits. What the rule plainly would do is benefit data center developers, fossil fuel companies, and other major polluters seeking to avoid environmental scrutiny and accelerate construction timelines. In a July 2025 Fox News op-ed, you characterized the NSR program as an obstacle to expanding energy production for AI data centers rather than as a longstanding public-health protection intended to prevent communities from absorbing avoidable pollution.⁶

Congress created the NSR program to stop dangerous polluting projects before irreversible commitments are made, not after construction is already underway and permit approval has become politically difficult to deny. EPA's proposal turns that system on its head. Communities should not be forced to bear additional pollution because EPA chose to prioritize the financial interests of developers and fossil fuel companies over the Clean Air Act's public-health protections. We urge you to withdraw this proposed rule and preserve the Clean Air Act's preconstruction permitting safeguards.

Sincerely,

Edward J. Markey
United States Senator

Jennifer L. McClellan
Member of Congress

Andrea Salinas
Member of Congress

Donald S. Beyer Jr.
Member of Congress

⁶ 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>.



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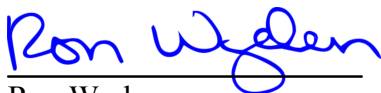
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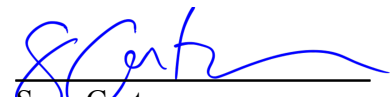
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