November 3, 2025

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

Submitted Electronically via Regulations.gov

Re: Comments of the Attorneys General of the States of North Dakota, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, West Virginia, and Wyoming on the Proposed Rule Entitled: Reconsideration of the Greenhouse Gas Reporting Program, 90 Fed.Reg. 44591 [EPA-HQ-OAR-2025-0186; FRL-12720-01-OAR] (Sept. 16, 2025)

Dear Administrator Zeldin:

We appreciate the opportunity to provide comments in support of EPA's proposed reconsideration of the 2009 Greenhouse Gas Reporting Program. *See* Reconsideration of the Greenhouse Gas Reporting Program, 90 Fed.Reg. 44591 (Sept. 16, 2025).

Summary of Comments

The States support EPA's proposal to rescind most of the Greenhouse Gas Reporting Program (GHGRP) for two independent but related reasons: (1) the GHGRP exceeds EPA's statutory authority under Section 114 of the Clean Air Act; and (2) even if EPA had statutory authority to mandate such reporting, the GHGRP's costs substantially outweigh its purported benefits. The States also support EPA's proposal to delay certain methane-related reporting requirements which, although directed by a provision of the 2022 Inflation Reduction Act, need not be mandated until 2034 under the plain text of the 2025 One Big Beautiful Bill Act. These comments briefly review the background for EPA's promulgation of the GHGRP and the agency's authority under Section 114 of the Clean Air Act and then present four primary points in support of EPA's current proposal to rescind most of the GHGRP.

First, EPA's proposed rescission of most of the GHGRP honors the Clean Air Act's text. Congress gave EPA information-gathering powers in Clean Air Act Section 114, but only "for the purpose" of three defined objectives: (a) developing certain standards or plans (such as State Implementation Plans and New Source Performance Standards); (b) determining compliance with promulgated standards; and (c) carrying out other provisions of the Clean Air Act. And historically, EPA used its Section 114 authorities in a limited manner, mandating reporting to support specific and identifiable performance standards or implementation plans, with defined collection periods and discrete datasets. But as with so many other EPA practices, EPA's exercise of its authorities dramatically expanded during the Obama Administration. Unlike prior uses of Section 114, the

Obama EPA's GHGRP blazed a new path that was broad in scope, unbounded in time, and violative of the statutory limitations on EPA's authority to mandate reporting under Section 114.

Second, delaying the mandated reporting of certain methane emissions until 2034 also honors the statutory text. As EPA correctly recognizes, the only greenhouse gas reporting requirements under the GHGRP with a clear statutory basis are certain methane-related emission reporting requirements under Section 136 of the Clean Air Act. Those requirements stem from a statutory amendment made by the 2022 Inflation Reduction Act. However, a 2025 statutory amendment made by the One Big Beautiful Bill Act delayed any necessity for that reporting mandate until 2034. In the interim, there is no need—and arguably no authority—for EPA to impose those significant reporting burdens prior to 2034.

Third, even assuming EPA has discretionary authority to continue mandating the reporting requirements of the GHGRP, history has shown that EPA made the wrong call about the purported costs and benefits of mandating those extensive reporting requirements. EPA has primarily justified the GHGRP's unprecedented breadth by pointing to anticipated future rulemakings to regulate greenhouse gases under Section 111. But Section 111 is not a blank check, as the Supreme Court has held (and as this Administration has since recognized). And even when the Obama and Biden Administrations ignored the constraints of Section 111 to promulgate greenhouse gas regulations that would have necessitated restructuring the entire energy industry, those rules barely gestured to data collected under the GHGRP. EPA's own estimate is that the costs of complying with the GHGRP have exceeded $1.5 billion. Yet in exchange for those massive costs imposed on the American energy industry (and by extension, the American people), the data collected by the GHGRP barely received even a passing mention in subsequent Section 111 rulemaking. So even if EPA has authority to leave the GHGRP in place, history has shown that the massive costs imposed by that rule do not justify any purported benefits that may be derived from it.

And **fourth,** the GHGRP should not be left in place merely because the Treasury Department chose to accrete certain Section 45Q tax credits related to carbon capture, utilization, and storage (CCUS) onto the GHGRP's framework. Many States strongly support the continued development of CCUS; however, this promising technology does not need the GHGRP. Nor does implementation of the Section 45Q tax credit require the mandates of the GHGRP to verify claims data related to underground CO_2 storage. Industry-created standards, such as ISO 27914/27916, already provide accepted methods to measure and verify the geologic storage of CO_2, as recognized by the Treasury Department in other contexts. The States encourage EPA to work with the Treasury Department to revise the claim process for Section 45Q tax credits to eliminate the need for verification under the GHGRP, which imposes massive costs and has an unsteady statutory foundation.

In sum, EPA is correct to propose rescinding most of the GHGRP. The program strays beyond Section 114's text, diverges from decades of targeted and time-bound practice, and has not been proven necessary to support any authorized purpose—past or foreseeable. The Proposed Rule will realign EPA's asserted authority with the limitations of the Clean Air Act, avoid the imposition of billions of dollars in needless costs, and restore a lawful, purpose-driven approach to the mandated reporting requirements enforced under Section 114 of the Clean Air Act.

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Background

I. Section 114 of the Clean Air Act only grants EPA the authority to mandate reporting for specific purposes.

Section 114 is the primary pillar that EPA invoked during the Obama Administration to support the Greenhouse Gas Reporting Program (GHGRP). *See* 74 Fed.Reg. 56260, 56264 (Oct. 30, 2009); *see also* Proposed Rule, 90 Fed.Reg. at 44595 (EPA's mandated reporting of greenhouse gas data over the last fifteen years has primarily been based upon "CAA section 114 authority").

Section 114(a)(1) of the Clean Air Act (CAA) provides:

> (a) For the purpose (i) of developing or assisting in the development of any implementation plan under section 7410 or section 7411(d) of this title, any standard of performance under section 7411 of this title, any emission standard under section 7412 of this title, or any regulation of solid waste combustion under section 7429 of this title, or any regulation under section 7429 of this title (relating to solid waste combustion), (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this chapter (except a provision of subchapter II with respect to a manufacturer of new motor vehicles or new motor vehicle engines)—
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> **(1)** the Administrator may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title with respect to a provision of subchapter II) on a one-time, periodic or continuous basis to—
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> (A) establish and maintain such records;
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> (B) make such reports;
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> (C) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods;
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> (D) sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe);
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> (E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;
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> (F) submit compliance certifications in accordance with subsection (a)(3); and
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> (G) provide such other information as the Administrator may reasonably require;

42 U.S.C. § 7414(a)(1).

Section 114 expressly authorizes only three purposes for which EPA can mandate reporting under that section. Those designated purposes are: (1) assisting in the development of State Implementation Plans and promulgating emission or performance standards; (2) determining whether an entity is in compliance with standards or plans; and (3) carrying out any provision of the Clean Air Act (excluding specified motor vehicle regulations).

Section 114's reporting provision was first introduced into the Clean Air Act in 1970. *See* Clean Air Act Amendments of 1970, Pub. L. No. 91–604, § 4, 84 Stat. 1676, 1678, 1687–88 (1970).

In the 1970 version, Section 114 did not: include solid waste regulation within purpose number 1; apply to manufacturers of emission control equipment or to others that were merely subject to "any requirement" of the Clean Air Act; or authorize the Administrator to require persons to keep records and submit compliance certifications. *Compare* Clean Air Act Amendments of 1970, 84 Stat. 1687, *with* 42 U.S.C. § 7414(a) (2025). Purpose 3 also initially provided for "carrying out section 303,"[1] rather than the current purpose of carrying out "any provision of [the Clean Air Act]." *Compare* Clean Air Act Amendments of 1970, 84 Stat. 1687, *with* 42 U.S.C. § 7414(a) (2025). And the current provision that authorizes the Administrator to impose these requirements "on a one-time, periodic, or continuous basis" was not included when Section 114 was enacted in 1970. Other than those changes, Section 114 is materially identical to when it was enacted.

In 1974, the third purpose in Section 114 was amended to add "carrying out" section 119 of the Clean Air Act (in addition to section 303). *See* Energy Supply and Environmental Coordination Act of 1974, Pub. L. No. 93-319, § 6, 88 Stat. 246, 259 (1974). But that amendment ended up being short-lived. It was replaced in 1977 with the current textual version of purpose 3 when Congress amended Section 114 to, among other things, expand purpose 3 by striking out "section 119 or section 303," and replacing it with "any provision of this chapter" (except with respect to a manufacturer of motor vehicles or motor vehicle engines). *See* Clean Air Act Amendments of 1977, Pub. L. No. 95-95, § 305, 91 Stat. 685, 772, 776 (1977). Thus, the scope of purpose 3—to carry out the purposes of the Clean Air Act (but not other purposes)—has been a part of Section 114 and remained consistent since 1977.

In 1990, the Clean Air Act was substantially amended again. *See* Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399–2712 (1990). As for Section 114, the 1990 Amendments added "or any regulation of solid waste combustion under section 129" to the list of actions covered under purpose 1 of Section 114(a). *See id.*, § 302, 104 Stat. 2574. The Administrator's authority to require collection and reporting "on a one-time, periodic, or continuous basis" was also added. *See*

[1] Section 303, as newly added in the 1970 Amendments, authorized "emergency powers" when the Administrator received evidence that pollution presented "an imminent and substantial endangerment to health." Clean Air Act Amendments of 1970, 84 Stat. 1705–06.

id., § 702(a), 104 Stat. 2681 And provisions governing compliance certifications were also added to the end of Section 114(a). *See id.*, § 702(b), 104 Stat. 2681.

Despite Section 114 being modified in those ways, the "For the purpose" qualification of the Administrator's power has remained the starting point for the text of Section 114(a). Consequently, at all points since 1970, the Administrator has been required to base any mandatory reporting under Section 114 upon one of those three statutorily authorized purposes.

II. Other than the GHGRP, EPA's reporting mandates under Section 114 have been targeted, narrowly tailored, and time-bound.

Historically, EPA's Section 114 authority was exercised to gather targeted information from particular source categories for the purpose of developing or implementing specific implementation plans, performance standards, or emission standards. Those requests were typically directed to specific facilities, processes, or pollutants and focused on emissions directly attributable to the source over a specified period of time, ensuring that the burden imposed was reasonable and justified by a legitimate regulatory purpose.

That was EPA's understanding of its Section 114 authority in the 1970s. As a 1973 Office of General Counsel memorandum explained, a reporting requirement under Section 114 was acceptable "if the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant." *See* EPA, Office of the General Counsel, A Collection of Legal Opinions December 1970–December 1973, Employment of Enforcement Procedures under Section 113 of the Clean Air Act in Concert with National Hearing on Feasibility of Sulfur Oxides Control Technology for Coal-Fired Electric Power Plants (Sept. 14, 1973) (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)).[2] In other words, EPA in the 1970s acknowledged that Section 114 did not allow it to mandate blanket reporting for the indefinite future on the off-chance such data might become useful at some point in the future.

Courts have also recognized the importance of such limitations being placed on EPA's authority under Section 114. Notably, not long after Section 114 was enacted, the First Circuit considered, among other challenges, whether EPA's use of Section 114 to mandate that a specified company report about its use and disposal of a certain chemical violated its rights under the Fourth Amendment. *See United States v. Tivian Laboratories, Inc.*, 589 F.2d 49 (1st Cir. 1978). The court rejected that challenge to Section 114, but it did so by comparing EPA's data gathering authority under Section 114 to that of a subpoena duces tecum, which commonly authorizes agencies to procure corporate records for specified and limited purposes. *Id*. at 53–54; *id.* at 54 (recognizing that the request must be tailored to "a purpose Congress can order"). The court's analysis could have been much more circumscribed if EPA had a greenlight to mandate sweeping reporting requirements indefinitely into the future for any data that it thought might be interesting.

Consequently, courts (and EPA itself) for many decades understood Section 114 as requiring data collection mandates to be specifically tailored to the development or enforcement of particular

[2] Available at https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=9101CNS8.txt.

regulatory requirements, and to not be indefinite. These statutory limits were understood as being essential to prevent regulatory overreach and to protect regulated entities from excessive demands.

Consistent with that understanding, EPA has traditionally used Section 114 to collect specific, targeted data on criteria pollutants such as SO_2, NO_x, and particulate matter from regulated sectors like power plants, refineries, and manufacturing facilities.

Indeed, even during the last several decades (after EPA's promulgation of the GHGRP during the Obama Administration), the data reporting that EPA mandated under Section 114 generally continued to be directly related to a specific standard or plan that EPA sought to implement or enforce. Those reporting requirements also generally provided specific time periods for which the information was sought. For example, over the last two decades, a representative sampling of EPA's other reporting mandates under Section 114 includes:

> 2009 – EPA approved an Information Collection Request (ICR) requiring all US power plants with coal- or oil-fired electric generating units to submit emissions information for use in developing air toxins emission standards. This ICR required a single run of emissions testing. *See* U.S. Environmental Protection Agency, Information Collection Request No. 2362.01 (Dec. 24, 2009) (Attachment A).
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> 2010 – EPA collected information on pollutants emitted from electric arc furnace steelmaking facilities for review of Maximum Achievable Control Technology standard for mercury and a review of New Source Performance Standards, with a five-year look-back period. *See* U.S. Environmental Protection Agency, Information Collection Request No. 2277.02 (Aug. 20, 2010) (Attachment B).
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> 2016 – Analysis of emissions from electric arc furnace steelmaking facilities as part of Maximum Achievable Control Technology standard development—seeking updates to a prior Section 114 request with a one-time data request. *See* U.S. Environmental Protection Agency, Information Collection Request No. 2277.05 (Sept. 13, 2016) (Attachment C).
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> 2022 – Analysis of emissions from chemical manufacturers to review New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants—seeking facility information and requiring testing and one-time sampling of certain operations. *See* U.S. Environmental Protection Agency, Clean Air Act, Section 114(a) Information Collection Request (Jan. 19, 2022) (Attachment D).
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> 2023 – Review of National Emission Standards for Hazardous Air Pollutants for Crude Oil and Natural Gas Facilities—seeking specific prior emissions data. *See* U.S. Environmental Protection Agency, Clean Air Act, Section 114(a) Information Collection Request, (Feb. 2, 2023) (Attachment E).
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> 2024 – Review of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for pulp and paper sector—with a 5-year look-back period.

See U.S. Environmental Protection Agency, Clean Air Act, Section 114(a) Information Collection Request (Nov. 20, 2024) (Attachment F).

III. The GHGRP broke with decades of practice and EPA's own prior understanding of the limitations of Section 114.

In 2008, Congress provided $3.5 million to EPA "for activities to develop and publish a draft rule" "to require mandatory reporting of greenhouse gas emissions … in all sectors of the economy." *See* Consolidated Appropriations Act, 2008, Pub. L. 110–161, 121 Stat. 1844, 2128 (2008). In the accompanying joint explanatory statement, Congress directed EPA to "use its existing authority under the Clean Air Act[.]" 74 Fed.Reg. at 56264.

In true use-or-lose-it fashion, the Obama EPA took the $3.5 million and put together a rule to mandate wide-reaching reporting for greenhouse gas emissions. However, when EPA promulgated the GHGRP, it specifically anchored its legal authority in the Clean Air Act, and it disclaimed any reliance on the 2008 Appropriations Act. *See* 74 Fed.Reg. at 56264. Indeed, the Obama EPA specifically emphasized that the appropriations language did not create the Agency's regulatory authority, and that its authority to promulgate the GHGRP came from the Clean Air Act itself. 74 Fed.Reg. at 56264, 56286.

Specifically, the Obama EPA claimed that its authority to promulgate the GHGRP was under Section 114 for stationary sources and Section 208 for mobile sources. *Id.* Conscious of the need for reporting mandates under Section 114 to be tied to the enumerated statutory purposes, the Obama EPA claimed that data reported under the GHGRP would be utilized for future rulemakings to regulate greenhouse gas emissions under Section 111 of the Clean Air Act. 74 Fed.Reg. at 56277–78, 56287. For mobile sources, EPA cited Section 208's information-gathering authority for possible actions under Title II, including Sections 202, 213, and 231. *Id.* at 56265.

Responding to comments, the Obama EPA claimed that nothing in Section 114 required EPA's reporting mandates to be targeted, and it suggested that wide-sweeping, indefinite, and ongoing greenhouse gas reporting requirements would be reasonable given EPA's plans to engage in future greenhouse gas regulation across multiple Clean Air Act programs. 74 Fed.Reg. at 56286–87.

Following 2009, EPA tinkered with the GHGRP a couple times, but mostly just to expand the source categories that were subject to the program's requirements. *See* 75 Fed.Reg. 39736 (Jul. 12, 2010); 75 Fed.Reg. 74458 (Nov. 30, 2010); 75 Fed.Reg. 74774 (Dec. 1, 2010); 75 Fed.Reg. 75060 (Dec. 1, 2010); and 89 Fed.Reg. 31802 (Apr. 25, 2024).

IV. Major greenhouse gas regulations promulgated by EPA after 2009 have barely acknowledged the GHGRP.

To justify the Rule's promulgation in 2009, the Obama EPA claimed that the GHGRP's mandated requirements to report extensive emissions data "should inform decisions about whether and how to use CAA section 111 to establish New Source Performance Standards for various source

categories emitting [greenhouse gases], including whether there are any additional categories of sources that should be listed under CAA section 111(b)." 74 Fed.Reg. at 56265.

Intervening years have not borne that out. Instead, despite both the Obama and Biden EPAs taking radically expansive views on EPA's ability to promulgate greenhouse gas regulations, the major regulations promulgated under Section 111 restricting greenhouse gas emissions have barely referenced or utilized the data mandated for collection by the GHGRP.

Start with the Obama Administration's Clean Power Plan in 2015. That 300-page rule mentions the GHGRP or otherwise references data derived from that program on a mere two pages. *See* 80 Fed.Reg. 64662, 64688 (Oct. 23, 2015).

The first mention of the GHGRP in the 2015 Clean Power Plan discussed how data extracted by the program aided in "prepar[ing] the official U.S. GHG Inventory to comply with commitments under the United Nations Framework Convention on Climate Change." 80 Fed.Reg. at 64688. However, that was a commitment that existed before the GHGRP and an inventory that EPA managed to put together in 1990—nearly two decades before the 2009 Reporting Program went into effect. *See* 2024 Annual Report and Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2022, at ES-1 (explaining purpose of the report is to comply with 1992 United Nations Framework Convention on Climate Change and the 2015 Paris Agreement).[3]

And the second mention of the GHGRP is a passing comment that "Data collected by the [GHGRP] from large stationary sources in the industrial sector show that the utility power sector emits far greater [carbon dioxide] emissions than any other industrial sector." 80 Fed.Reg. at 64689. That comment included some data about coal emissions compared to all sources, followed by a comment that "the scale of infrastructure required to directly mitigate [carbon dioxide] emissions from existing EGUs through [carbon capture and sequestration] can be quite large and difficult to integrate into the existing fossil fuel infrastructure." 80 Fed.Reg. at 64690.[4]

The next major Section 111 regulation concerning greenhouse gas regulation was the 2019 Affordable Clean Energy Rule. *See* 84 Fed.Reg. 32520 (July 8, 2019). And like the Obama EPA's Clean Power Plan, the Affordable Clean Energy Rule barely referenced the GHGRP or any data collected therefrom. As with the Clean Power Plan, there were only two mentions of it in the entirety of the 267 pages of that rule.

First, in note 147 of the Affordable Clean Energy Rule, EPA referenced data collected under the GHGRP to support the assertion that the Affordable Clean Energy Rule was "not establishing a limit on aggregate greenhouse gases or separate emission limits for other GHGs (such as methane

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[3] Available at https://www.epa.gov/system/files/documents/2024-04/us-ghg-inventory-2024-main-text_04-18-2024.pdf.

[4] Ironically, the Obama EPA's comment about the difficulty about forcing the existing power generation infrastructure to rapidly transition en masse to implementing large-scale carbon capture and storage operations was a point that the Biden EPA would fail to heed a mere eight years later.

(CH_4) or nitrous oxide (N_2O)) as other GHGs represent significantly less than one percent of total estimated GHG emissions … from fossil fuel-fired electric power generating units." 84 Fed.Reg. at 32534. And the other mention, in note 223, was simply to support the assertion that 12 states had active enhanced oil recovery programs—not exactly how one would expect EPA to use the GHGRP (and a fact that no doubt could have been gleaned through other, far less burdensome means). *See* 84 Fed.Reg. at 32549.

Finally, the third major greenhouse gas regulation promulgated after 2009—the Biden Administration's 2024 Carbon Pollution Standards—did not break the mold of barely referencing or utilizing data obtained through the GHGRP. *See* 89 Fed.Reg. at 39798, 39865 (May 9, 2024). Like the Obama Clean Power Plan and the Affordable Clean Energy Rule, it too only referenced or utilized data from the GHGRP twice in a rulemaking that was over 250 pages.

First, the Biden 2024 Carbon Pollution Standards referenced data collected under the GHGRP when discussing how much carbon dioxide one particular facility injected into a saline reservoir. *See* 89 Fed.Reg. at 39847, 39865. And second, the Biden 2024 Carbon Pollution Standards referenced data from the GHGRP to note that leakage from sequestration in carbon capture, utilization, and sequestration is rare, with less than 0.5% of the sequestered amount escaping. *See* 89 Fed.Reg. at 39870.

Over the sixteen years that the GHGRP has been operational, the above references appear to represent the grand total of EPA's utilization of information derived from the Rule. And the mandated reporting under the GHGRP has not been cheap. Using EPA's own cost model estimate, these handful of references have cost American energy producers, and by extension the American people, around $1.5 billion in 2024 dollars. *See* 90 Fed.Reg. at 44603 tbl.2 (derived by multiplying $93.2 million in pre-2024 GHGRP costs by the 16-year life of the program).

V. The Inflation Reduction Act and the One Big Beautiful Bill Act.

In 2022, Congress enacted the Inflation Reduction Act. *See generally* Pub. L. 117-169, 136 Stat. 1818 (2022). As relevant here, the Inflation Reduction Act expressly codified in statute reporting requirements for certain methane emissions from the oil and gas sector by creating Section 136 of the Clean Air Act, entitled ''Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems.'' Pub. L. 117-169, § 60113 (codified at 42 U.S.C. § 7436).

Under that section, EPA was directed to impose and collect a waste emissions charge from applicable facilities for methane emissions that exceed specified thresholds. EPA was also statutorily directed to revise subpart W of the GHGRP to facilitate the calculation of the waste emissions charge that would be owed under the new Section 136. *See* 42 U.S.C. § 7436(h). EPA was directed to make that regulatory amendment to the GHGRP by August of 2024. *See id*. And EPA finalized a rule along those lines by that deadline. *See* Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems, 89 Fed.Reg. 42062 (May 14, 2024).

In 2025, Congress enacted the One Big Beautiful Bill. *See* Pub. L. 119-21, 139 Stat. 72, 156 (2025). As relevant here, the One Big Beautiful Bill amended Section 136 of the Clean Air Act to direct that the methane waste emissions charge discussed in that section "shall be imposed and collected beginning with respect to emissions reported for calendar year 2034 and for each year thereafter." 42 U.S.C. § 7436(g).

Discussion

I. The GHGRP's broad and open-ended requirements exceed EPA's statutory authority under the Clean Air Act.

A. Section 114 does not support the GHGRP.

As discussed *supra*, the Obama EPA primarily relied on Section 114 of the Clean Air Act to promulgate the GHGRP. *See* 74 Fed.Reg. at 56264, 56286.

The Administrator's authority to mandate reporting under Section 114 is in many respects discretionary: for certain statutorily prescribed purposes, "the Administrator *may require*" covered persons to take various monitoring and reporting actions. 42 U.S.C. § 7414(a)(1) (emphasis added); *see also, e.g.*, *Natural Res. Def. Council v. E.P.A.*, 529 F.3d 1077, 1085 (D.C. Cir. 2008) ("section 114 is not a mandatory provision—it only states that EPA 'may' require sources to supply data"); *id.* (because "it is very costly and time-consuming—for both the agency and the emissions sources—to issue information requests under section 114," it was "not unreasonable" to "decline to invoke its section 114 authority when more efficient data-collection methods were available").

However, while the agency has discretion to mandate (or not mandate) most reporting under Section 114, the statute does not provide discretion to mandate data collection and reporting beyond the purposes specifically designated in 42 U.S.C. § 7414(a). The GHGRP's broad, untargeted, and open-ended reporting requirements exceed those purposes.

EPA, like any other agency, "possess[es] only the authority that Congress has provided." *Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109, 117 (2022); *see also, e.g.*, *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). And "agencies are bound, not only by the ultimate purposes Congress has selected, but by the means it has deemed appropriate, and prescribed, for the pursuit of those purposes." *MCI Telecomm. Corp. v. AT&T Co.*, 512 U.S. 218, 231 n.4 (1994); *see also Fed. Elec. Comm'n v. Ted Cruz for Senate*, 596 U.S. 289, 301 (2022) ("An agency, after all, literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute.") (internal quotation omitted); *MCR Oil Tools, L.L.C. v. U.S. Dep't of Transp.*, 110 F.4th 677, 687 (5th Cir. 2024) ("It is axiomatic that administrative agencies may issue regulations only pursuant to authority delegated to them by Congress.") (quoting *Am. Libr. Ass'n v. FCC*, 406 F.3d 689, 691 (D.C. Cir. 2005)).

Section 114 provides constraints on EPA's ability to mandate reporting under that section. The section begins with the text, "For the purpose," and then provides three specific purposes for which "the Administrator may require" certain reporting requirements. 42 U.S.C. § 7414(a)(1).

The plain text of the prefatory clause—which limits the purposes for which "the Administrator may require any person … to" collect information under Section 114(a)—is followed by an em dash, which signals that the prefatory clause is meant to be distributed throughout the remainder of Subsection 114(a). *See Seville Indus., L.L.C. v. U.S. Small Bus. Admin.*, 144 F.4th 740, 745–46 (5th Cir. 2025) ("The provision's 'text and structure … indicate that the language preceding the em dash distributes throughout the statutory sentence.'") (citing *U.S. v. Palomares*, 52 F.4th 640, 650 (5th Cir. 2022) (Oldham, J., concurring)). Thus, the prefatory clause in 42 U.S.C. § 7414(a) "distributes to every item on the ensuing list," *Seville*, 144 F.4th at 746 (citing *Pulsifer v. United States*, 601 U.S. 124, 134 (2024)), which means it distributes to subsections (a)(1), (a)(2), and (a)(3). *See also United States v. Pace*, 48 F.4th 741, 754 (7th Cir. 2022) ("[T]he most important textual basis for this 'distributive' reading is Congress's use of the em dash.").

And such prefatory clauses, like all other words in a statute, must be given effect when interpreting statutory text. *Ascendium Educ. Sols., Inc. v. Cardona*, 78 F.4th 470, 480 (D.C. Cir. 2023) (Walker, J., concurring). If Section 114 were to be interpreted without distributing the three purposes that are provided in the prefatory clause of Section 114(a) to Sections 114(a)(1), (a)(2), and (a)(3), then those statutory words would not be given full effect "without any basis for doing so in the statutory text or structure." *Id.* (citing *Air Transp. Ass'n of Am., Inc. v. U.S. Dep't of Agric.*, 37 F.4th 667, 672 (D.C. Cir. 2022)); *see also Air Transp.*, 37 F.4th at 672 ("We are to construe a statute so as to give effect to every clause and word.") (cleaned up).

In the GHGRP, EPA acknowledged that the 2008 Consolidated Appropriations Act had authorized funding for EPA to develop and finalize a rule "to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States." 74 Fed.Reg. at 56264. Even so, when promulgating the GHGRP, EPA disclaimed that the 2008 Appropriations Act was the statutory authority for the GHGRP: "it is the CAA, not the Appropriations Act, that EPA is citing as the authority to gather the information required by this rule. Sections 114 and 208 of the CAA provide EPA broad authority to require the information mandated by this rule because such data will inform and are relevant to EPA's carrying out a wide variety of CAA provisions." *Id.* And EPA was correct that the 2008 Appropriations Act could not have expanded EPA's authority beyond the limitations Congress imposed in Section 114. *See, e.g.*, *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1558 (D.C. Cir. 1984) (explaining "the established rule that, when appropriations measures arguably conflict with the underlying authorizing legislation, their effect must be construed narrowly").

But despite recognizing that the primary authority to promulgate the GHGRP, if it existed at all, would have to come from Section 114 of the Clean Air Act, the Obama EPA went on to promulgate a reporting rule that blew past the limits of its Section 114 authority.

The Obama EPA's announced goal for the GHGRP was to vaguely enable future regulatory efforts across the Executive branch: "EPA, other government agencies, and outside stakeholders [would be able to use the] economy-wide data [to] assist in future policy development" and make "many future climate change policy decisions"—"the data collected in this rule will provide useful information for a variety of policies." 74 Fed.Reg. at 56265. But Congress's grant of authority to

mandate reporting under Section 114 is only for the purpose of implementing and ensuring compliance with the Clean Air Act. Enabling future policy development by other arms of the Executive Branch—the Department of Commerce, the Department of State, etc.—is not an authorized purpose for EPA to utilize its Section 114 authority.

Moreover, the Obama EPA's ambitions for the GHGRP extended even beyond the Executive branch. The Obama EPA stated that "the information collected by this final rule will also prove useful to legislative efforts to address GHG emissions." *Id.* But Section 114 doesn't provide EPA with the authority to develop a legislative record on the off-chance that Congress may, at some point in the future, find that data useful for crafting future legislation.

The Obama EPA even envisioned a role for the GHGRP in driving state and local policy choices, remarking that data extracted by the GHGRP could be "coupled with efforts at the local, State, and Federal levels to assist corporations and facilities in determining their GHG footprints and identifying opportunities to reduce emissions." *Id.* But yet again, Section 114 provided EPA with no grant of authority to mandate reporting for such a purpose.

With those overly broad conceptions of the GHGRP's future utility in mind, the Obama EPA then set mandatory reporting thresholds that would compel vast quantities of data collection without any clearly intended use or purpose. As the Obama EPA acknowledged, it set "a threshold level [for mandatory reporting] that best satisfies the objective of the reporting rule to collect a national data set that is sufficiently comprehensive for use in analyzing a range of GHG policies and programs." 74 Fed.Reg. at 56272; *id.* at 56273 ("At this threshold, EPA will be able to evaluate the effects of a number of options and policies that could address GHG emissions.").

As subsequently expanded, the Reporting Program established by the GHGRP now covers forty-seven source categories, and each year approximately 8,200 facilities, suppliers, and sites are required to collect and submit data under the program. 90 Fed.Reg. at 44595. As EPA now forthrightly acknowledges, much of that mandated data collection relates to issues where the agency has "never clearly intended to develop regulations." *Id.* And that mandated reporting did not come without a price. As discussed further *infra*, that mandated reporting has imposed billions of dollars in costs. Nonetheless, for the last 16 years, thousands of entities have been mandated to submit billions of dollars' worth of data into the void, where that data has scarcely been used or even referenced in connection with the purposes articulated under Section 114.

This open-ended, never-ending reporting scheme renders Congress's purpose-limitations in Section 114(a) dead letter, as the mandates of the GHGRP have no nexus with an underlying statutory purpose. *Contra*, *e.g., S.E.C. v. Chenery Corp.*, 318 U.S. 80, 94 (1943) ("[A]n order may not stand if the agency has misconceived the law.").

EPA's use of the GHGRP can perhaps best be analogized by parents giving their teenager the car keys with instructions to go out only for essentials, but instead the teenager takes the car for a joyride, justifying it by claiming they might come across a grocery store along the way. Just as the teenager is not honoring the parents' instructions in that scenario, neither is EPA honoring

Congress's with regard to the GHGRP. Implied in each purposeful instruction is the idea that neither the teenager nor EPA can exercise their limited license by galivanting around until they stumble across a use that happens to satisfy the original instruction. Except in the case of EPA's GHGRP, it's not just a tank of gas being wasted—it's about one hundred million dollars in compliance costs being wasted each year.

And it wasn't like the Obama EPA was unaware that it was promulgating a rule designed to test, if not deliberately exceed, the bounds of what the text of the Clean Air Act would support. The Obama EPA acknowledged that commenters had questioned whether the GHGRP was supported by the Clean Air Act, specifically challenging "whether section 114 authorized a broad reporting rule, as opposed to the targeted 114 information requests used by EPA in the past." 74 Fed.Reg. at 56286. The Obama EPA responded to these comments by stating that although "it is true that EPA has used section 114 in a more targeted fashion in the past, there is nothing in the CAA that so limits our ability. EPA is undertaking a comprehensive evaluation of GHGs under the CAA and hence, is issuing a comprehensive reporting rule." *Id.* As was true in so many other contexts, the Obama EPA was consciously aware of the fact it was aggressively stretching the text of its governing statutes to assert new, previously unrecognized powers.

The major questions doctrine therefore also militates for restraint when reexamining the Obama EPA's claim that Section 114 permits mandating un-targeted and un-bounded reporting requirements. The Supreme Court has explained that "[w]e expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance." *Util. Air Regulatory Grp. v. E.P.A.*, 573 U.S. 302, 324 (2014) (internal quotation omitted). In Section 114(a), Congress provided specific limits on EPA's authority to mandate reporting requirements under Section 114. The Obama Administration effectively interpreted those constraints to be meaningless window dressing, and in so doing imposed a mandatory reporting rule that has cost the American people over a billion dollars in compliance costs over the last 16 years. To the extent there is any doubt whether Section 114 can be interpreted as broadly as the Obama EPA claimed, the major question doctrine militates for requiring Congress to have spoken clearly to say the constraints placed on EPA's Section 114 authorities were merely suggestions that can be ignored.

B. Section 208 does not support the GHGRP.

While the Obama EPA primarily relied on Section 114 to promulgate the GHGRP, it also referenced Section 208 to justify mandated reporting for motor vehicles. *See, e.g.*, 74 Fed.Reg. at 56286 ("The requirements applicable to manufacturers of mobile sources are authorized by section 208 because they will help inform various options regarding the regulation of these sources under title II of the CAA."). But EPA's authority under Section 208 for mobile sources fares no better than its authority under Section 114 for justifying the GHGRP.

Section 208 of the Clean Air Act provides that manufacturers of motor vehicles, motor vehicle engines, or motor vehicle or engine parts "shall establish and maintain records, perform tests … make reports and provide information the Administrator may reasonably require to determine whether the manufacturer … has acted in compliance with" Part A (motor vehicle emission and

fuel standards) and Part C (clean fuel vehicles) of the Clean Air Act subchapter on emission standards for moving sources, "or to otherwise carry out the provision of" Parts A and C. 42 U.S.C. § 7542(a). In other words, Section 208 provides EPA with limited authority to mandate reporting from manufacturers of mobile sources, which are carved out of Section 114.

But Section 208 is more limited in its scope than Section 114. Under Section 208, Congress did not authorize EPA to require a source to provide information for *any* Clean Air Act purpose—rather only for the purposes related to motor vehicle emission and fuel standards. *Compare* 42 U.S.C. § 7542(a) (limiting the purpose to "is acting in compliance with this part and part C"), *with* 42 U.S.C. § 7414 (providing catchall of "carrying out any provision of this chapter").

Any purported EPA purpose for collecting data under the GHGRP that exceeds the Clean Air Act purpose requirement in Section 114 for generic stationary sources would, *a fortiori*, be beyond the more limited scope of Section 208, which covers only Parts A and C of the emission-standards subchapter. But even for the mobile source manufacturers identified in the GHGRP, EPA never bothered to identify any specific rulemaking, instead vaguely referencing "several petitions requesting that the Agency regulate emissions from a variety of mobile sources, including motor vehicles, aircraft, nonroad engines, and marine engines," without citing the dockets for any of those petitions. 74 Fed.Reg. at 56286. As with mandated reporting under Section 114, EPA must require a close nexus between a mandatory reporting rule based on Section 208 and the permissible purposes of EPA's authority under Section 208.

However, no part of the GHGRP is limited to vehicle manufacturers in a manner consistent with Section 208's purpose. Instead, mobile source manufacturers were included in the broad General Station Fuel Combustion category under Subpart C. *See* 74 Fed.Reg. at 56261–62. Consequently, Section 208 does not provide an alternative basis to retain the small sliver of mandated reporting for "manufacturers of mobile sources" without an imminent emissions standard applicable under Section 208, and it thus provides an infirm foundation for the rule.

C. Section 821 does not support the GHGRP.

The Obama EPA also passingly referenced Section 821 of the 1990 Clean Air Act Amendments as providing authority for monitoring CO_2 emissions from electric generating units through the GHGRP. *See* 74 Fed.Reg. at 56254 (citing Clean Air Act Amendments of 1990, Pub. L. No. 101-549, § 821, 104 Stat. 2399, 2699 (uncodified)). But Section 821 cannot save the mandates of the GHGRP for at least two reasons.

First, Section 821 applies only to "affected sources" under Title IV's acid rain program—that is, electric generating units—and thus provides no authority for the GHGRP's economy-wide reporting mandates covering forty-seven source categories. Pub. L. No. 101-549, § 821 (applying to "affected sources subject to title V of the Clean Air Act); *id.* § 501, 104 Stat. at 2365 (codified at 42 U.S.C. § 7661) (providing that "affected source" has the "meaning given such term in title IV"); *id.* § 402, 104 Stat. at 2585 (codified at 42 U.S.C. § 7651a) (providing that "affected source" means a source with one or more units subject to the acid rain program provided in Title IV). And

second, electric generating units were already monitoring and reporting CO_2 emissions under the acid rain program's existing Part 75 regulations well before the GHGRP was promulgated, so EPA does not need to layer additional (and far more sweeping) reporting requirements on top of those pre-existing statutory obligations. *See* 40 C.F.R. § 75.13.

At most, Section 821 demonstrates that EPA had authority to collect CO_2 data from one narrow category of sources through an existing program. And it was already collecting that data. Section 821 did not give EPA authority to impose the sweeping, indefinite reporting mandates of the GHGRP for purposes well beyond the mandates of the Clean Air Act.

II. EPA is correct to delay the methane-related reporting requirements that were directed by the Inflation Reduction Act until 2034.

As noted *supra*, one provision of the 2022 Inflation Reduction Act expressly codified in statute reporting requirements to facilitate the collection of "waste emission charges" for certain methane emissions from the oil and gas sector. *See* Pub. L. 117-169, § 60113. The Inflation Reduction Act expressly directed EPA to revise subpart W of the GHGRP to facilitate the calculation of that "waste emissions charge." *See* 42 U.S.C. § 7436(h). EPA was also statutorily directed to make that regulatory amendment to the GHGRP by August of 2024. *See id.*

However, as also noted *supra*, the 2025 One Big Beautiful Bill Act delayed the collection of any such "waste emissions charge" until the year 2034 at the earliest. *See* Pub. L. 119-21, 139 Stat. 72, 156 (2025) (codified at 42 U.S.C. § 7436(g)).

Consequently, the States support EPA's proposal to delay mandated methane-related reporting under subpart W of the GHGRP until at least the year 2034.

Nothing in the current statutory text of Section 136 requires EPA to mandate the reporting of the relevant methane-related emissions before the year 2034. While Section 136(h) required EPA to revise subpart W of the GHGRP by August 2024 to ensure that the "waste emission charges" covered by Section 136 will be "based on empirical data," EPA fulfilled that requirement by issuing a May 2024 Final Reporting Rule. *See* 89 Fed.Reg. at 42066 ("[T]his final rule complies with and is consistent with the directives in CAA section 136(h)."); *see also* 90 Fed.Reg. at 44601 (Proposed Rule explaining as much).

With the requirement to modify subpart W of the GHGRP satisfied by the May 2024 Final Reporting Rule, the only reporting requirements left under Section 136 of the Clean Air Act relate to the collection of the "waste emission charges," which is not scheduled to commence until the year 2034. *See* 42 U.S.C. § 7436(g).

Mandating the reporting of methane-related emission data covered by subpart W of the GHGRP is not cheap. As EPA estimates, mandating the reporting of that data between now and 2034 will impose at least $256 million of costs on the oil and gas industry per year (which will in turn be

passed on to American consumers). *See* 90 Fed.Reg. at 44603 (Proposed Rule explaining estimate annual costs for imposing subpart W reporting requirements).

There is no legitimate reason to impose those reporting costs on the American people when EPA lacks authority to collect the "charge" for which that information would be provided until 2034.

Indeed, if EPA ignored the effect of the One Big Beautiful Bill Act in delaying any collection of the "waste emissions charge" under Section 136, EPA would be at risk of "simply ignor[ing] 'an important aspect of the problem'" if it continued to mandate the reporting of data for the purpose of collecting a "charge" it could not collect. *See Ohio v. E.P.A.*, 603 U.S. 279, 293 (2024) (quoting *Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983)). Congress's conscious choice to delay the collection of any "waste emissions charge" is thus a "changed factual circumstance" requiring EPA's consideration. *See Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005). Ignoring that changed circumstance would be arbitrary and capricious, *id.* at 981, and EPA is right to avoid that result.

III. The costs of the GHGRP far outweigh any purported benefit from the Rule's mandated requirements.

Even assuming that the Clean Air Act gave EPA authority to mandate reporting requirements that are as unlimited in scope and duration as the parts of the GHGRP proposed for rescission, EPA should exercise its discretion to rescind most of the program.

As noted *supra*, the Obama EPA justified promulgation of the GHGRP by claiming that "emissions from direct emitters should inform decisions about whether and how to use CAA section 111 to establish New Source Performance Standards for various source categories emitting GHGs, including whether there are any additional categories of sources that should be listed under CAA section 111(b)." 74 Fed.Reg. at 56265. In other words, the Obama EPA said the sweeping requirements of the GHGRP were appropriate because the federal government anticipated using the information that would be collected to develop and impose sweeping new greenhouse gas emission performance standards under Clean Air Act Section 111.

However, time has not borne out that prediction. The major greenhouse gas regulations promulgated under Section 111 since 2009 have barely made reference to data collected by the GHGRP. And given this Administration's corrected understanding of EPA's limited scope of authority under Section 111, it seems fair to assume such data will not be the cornerstone of any Section 111 rulemaking in the foreseeable future. All-in-all, the GHGRP has shown itself to be of minimal utility when it comes to promulgating greenhouse gas regulations under Section 111. Yet that minimal utility has come at a tremendous expense—over $1.5 billion in costs. *See* 90 FR 44603. So even if EPA has authority to leave the GHGRP in effect, it should exercise its discretion to rescind most of that rule as proposed.

A. The GHGRP's purported utility for promulgating regulations under Section 111 has not been borne out by history.

The Obama EPA's claim that data collected through the GHGRP would significantly support future Section 111 rulemaking has proven to be an expensive mistake.

Since 2009, EPA has promulgated three different greenhouse gas regulations under Section 111 with dramatic implications for the entire American economy. However, not a single one of those rules has focused on data that was collected from the GHGRP. As noted *supra*, EPA's first attempt to totally restructure the American energy system, the so-called Clean Power Plan, referenced data from the GHGRP a mere two times. The Affordable Energy Rule (designed to un-do much of the damage caused by the Obama EPA) did so twice. And then the Biden EPA's attempt to upend the entire American energy system—the Carbon Pollution Standards—also contained a mere two references to data collected from the GHGRP. *See supra* Background, Part IV.

Based on EPA's own cost estimates, those six references to the GHGRP cost the American people approximately $1.5 billion. *See* 90 Fed.Reg. at 44603.

But it's not just the minimal quantity of reliance on data from the GHGRP that is shocking. The quality of how that data was used is similarly anemic.

Take, for example, the Obama EPA's Clean Power Plan. The first and primary citation to data derived from the GHGRP is merely to reference reporting requirements under a United Nations convention. 80 Fed.Reg. at 64688; *see also* 2024 Annual Report and Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2022, at ES-1 (explaining the purpose of that report is to comply with 1992 United Nations Framework Convention on Climate Change and the 2015 Paris Agreement). But complying with United Nations conventions and unratified international agreements—the latter the President has chosen to withdraw from, *Putting America First in International Environmental Agreements*, Executive Order 14162, 90 Fed.Reg. 8455 (Jan. 20, 2025)—is not even a permitted purpose for mandated reporting under Section 114.

The invocation of data from the GHGRP by the Biden EPA's Carbon Pollution Standards was not very inspiring either. The Biden EPA's primary reference to data obtained from the GHGRP was to state: "According to the facility's report to the EPA's Greenhouse Gas Reporting Program (GHGRP), as of 2022, 2.9 million metric tons of CO_2 had been injected into the saline reservoir." 89 Fed.Reg. at 39865. To the extent that information was relevant to the Biden EPA's attempted Section 111 rulemaking, it was information that EPA could have obtained through a traditional Section 114 request—it did not need to come from decades of mandated reporting under the GHGRP with a price tag of well over a billion dollars.

Of the major Section 111 rulemakings since 2009, only the 2019 Affordable Clean Energy Rule arguably used data derived from the GHGRP in the way that the GHGRP actually envisioned. *See* 74 Fed.Reg. at 56265 (using data derived from the GHGRP to assess "whether … to use CAA Section 111" for the rulemaking in question). And using that data, EPA noted that it would not

establish "a limit on aggregate GHGs or separate emission limits for other GHGs (such as methane (CH_4) or nitrous oxide (N_2O)) as other GHGs represent significantly less than one percent of total estimated GHG emissions (as carbon dioxide equivalent) from fossil fuel-fired electric power generating units." 84 Fed.Reg. at 32534. And while that was arguably an appropriate use for data derived from the GHGRP, that information could have been obtained at a much lower cost; it did not require mandating that thousands of individual sources track and report their emissions for over a decade with a billion-plus dollar price tag.

In short: a couple uses of data from the GHGRP in 16 years to support greenhouse gas regulation through Section 111 rulemaking cannot reasonably justify imposing roughly $100 million in annual costs on the American energy industry.

B. The GHGRP is also unlikely to have utility for regulating under Section 111 in the foreseeable future.

Data collected through the GHGRP is also exceedingly unlikely to be used in any material way for promulgating Section 111 rules in the foreseeable future.

Unlike the Obama and Biden Administrations, this EPA is paying heed to the text of Section 111 and actually asking the question that Congress requires the Administrator to consider before regulating a particular pollutant: whether that emission "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7411(b)(1)(A). Answering this question does not require the expansive, open-ended, and temporally unbounded reporting mandates of the GHGRP.

As this Administration's Proposed Repeal of the Biden EPA's Carbon Pollution Standards observed, carbon dioxide emissions from the American power sector are not significant in the context of global carbon dioxide concentrations. *See* 90 Fed.Reg. 25752, 25767–68 (Jun. 17, 2025). If the entirety of American power plant emissions cannot meet the standard to justify promulgating greenhouse gas regulations under Section 111, then the more granular data mandated under the GHGRP is not needed or relevant to the analysis.

C. Voluntary programs in Section 103(g) and the use of GHGRP data in various data programs cannot support the mandates of the GHGRP.

When promulgating the GHGRP, the Obama EPA also suggested that data collected under the GHGRP might be useful for implementing Section 103(g) of the Clean Air Act, stating in a throwaway sentence: "The data overall also would inform EPA's implementation of CAA section 103(g) regarding improvements in nonregulatory strategies and technologies for preventing or reducing air pollutants." 74 Fed.Reg. at 56265. But this suggestion should be a non-starter, and there's a reason why the Obama EPA didn't use Section 103(g) as its primary justification for promulgating the GHGRP.

Section 103(g) requires the Administrator to conduct a "basic engineering research and technology program" for the prevention and control of air pollution. 42 U.S.C. § 7403(g); *see also* 42 U.S.C.

§ 7403(a). The program is to offer "*opportunities* for participation by industry … States … and other interested persons," 42 U.S.C. § 7403(g)(2) (emphasis added)—not mandates or obligations. Participation in any program under this section is thus completely voluntary, as Section 7403(g)(4) reiterates: "nothing in this subsection shall be construed to authorize the imposition on any person of air pollution control requirements." 42 U.S.C. § 7403(g)(4).

The reporting mandates in the GHGRP are of course not optional. They are mandatory obligations for more than 8,000 entities each year. And it defies statutory text and common sense to suggest that EPA can justify imposing the *mandatory* reporting requirements of the GHGRP because they may have utility supporting the *voluntary* programs envisioned by Section 103(g). *Center for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 244 F.3d 144,149 (D.C. Cir. 2001) (recognizing the "distinction between voluntary and mandatory submissions"). So Section 103(g) cannot provide statutory support for the mandates of the GHGRP, and the Obama EPA's suggestion otherwise should be discarded out-of-hand.

Similarly, any contentions that the GHGRP must be retained because GHGRP data is used to support other EPA data programs should be rejected. For instance, GHGRP data currently feeds into EPA's Emissions & Generation Resource Integrated Database (eGRID) database. *See* EPA, Emissions & Generation Resource Integrated Database (eGRID), https://www.epa.gov/egrid. However, administrative convenience and cross-program data-sharing are not among Section 114(a)'s enumerated purposes. And in any event, that data can be obtained from other sources without imposing a $1.5 billion dollar cost on the American people. For instance, before promulgation of the GHGRP, eGRID used Energy Information Administration (EIA) fuel consumption data and emission factors—indeed, eGRID uses EIA data for units without continuous emissions monitoring systems even today. *See* EPA, THE EMISSIONS AND GENERATION RESOURCE INTEGRATED DATABASE: EGRID TECHNICAL GUIDE WITH YEAR 2023 DATA 9 (Jan. 2025) (Exhibit G). There are other examples, but the point is simply this: to the extent that GHGRP data has been fed into various data programs such as eGRID, those uses demonstrate mission creep beyond EPA's statutory authority and do not justify a multi-billion-dollar price tag.

* * *

For more than a decade, the GHGRP has been used for purposes that exceed EPA's statutory authority to mandate the reporting of large volumes of little-used data at enormous cost. Even if the GHGRP could be justified as an exercise of EPA authority under Section 114 of the Clean Air Act, rescission of the rule as a matter of EPA's discretion would be appropriate because the costs have far surpassed any purported benefits.

IV. Carbon capture, utilization, and storage does not need the overbroad and expensive mandates of the GHGRP to succeed.

The States support the proposed repeal of most of the 2009 Reporting Program, including those parts of the rule that govern the reporting of carbon dioxide associated with carbon capture, utilization, and sequestration (CCUS) operations. As discussed *supra*, the proposed repeal restores

Section 114 of the Clean Air Act to its statutory bounds by discontinuing mandated information-collection requirements by EPA that lack any valid statutory purpose or grounding.

One complication with the proposed repeal is that certain CCUS projects and related financial transactions have accreted around the mandates of the GHGRP—particularly for projects seeking carbon-sequestration tax credits under Section 45Q of the Internal Revenue Code. But the continued development of CCUS, to include effectuation of the Section 45Q tax credit, does not depend upon the mandates of the GHGRP for at least three reasons.

First, while industry participants and government regulators have previously used the GHGRP's data for verifying CCUS metrics, market-based verification methods can perform those roles in place of mandatory EPA reporting requirements. *Second*, while regulations promulgated by the Treasury Department and IRS currently use the framework of EPA's GHGRP for implementing the Section 45Q tax credit, those regulations can be revised without causing significant disruption through small adjustments and a limited transition period. And *third*, to the extent that there is concern that EPA needs the GHGRP to monitor the safety of CCUS operations, EPA already has direct statutory authority to oversee and regulate the underground injection and storage of CO_2 under the Safe Drinking Water Act.

A. Markets—not mandates—can be used to implement Section 45Q tax credits for CCUS projects.

Implementing the Section 45Q tax credit requires a standardized way to measure underground CO_2 storage and verify that the sequestered carbon will remain in geological storage. Currently, the Department of the Treasury and the Internal Revenue Service have promulgated regulations relying on EPA's GHGRP (specifically, data reported under Subpart RR of the EPA rule) to verify eligibility for the Section 45Q credit. *See* Credit for Carbon Oxide Sequestration, 86 Fed.Reg. 4728 (Jan. 15, 2021) (T.D. 9944). However, as EPA now recognizes in the Proposed Rule, those uses "do not fall under the purposes of the CAA that authorize [information-collection requests] under CAA [S]ection 114." 90 Fed.Reg. at 44603.

Fortunately, implementing a standardized practice for verifying eligibility for the Section 45Q tax credit does not depend on EPA imposing the overbroad and costly mandates of the GHGRP. This is because the industry has already coordinated for the development of a standard for measuring and verifying underground CO_2 storage under the auspices of the International Organization for Standardization.

That standard, ISO 27914:2017, "establishes requirements and recommendations for the geological storage of CO_2 streams, the purpose of which is to promote commercial, safe, long-term containment of carbon dioxide in a way that minimizes risk to the environment, natural resources, and human health[.]" International Organization for Standardization, ISO 27914:2017 Carbon Dioxide Capture, Transportation and Geological Storage—Geological Storage, 1 (1st ed. 2017). That standard has also already been recognized by, and incorporated into, the Treasury

Department's guidance for Section 45Q carbon sequestration tax credits, so there should be little disruption using it as the verification standard. *See* 86 Fed.Reg. at 4733.

In short: market forces have already established standards for measuring and verifying underground CO_2 storage, which the Treasury Department has recognized. As discussed further below, those standards can be used for determining eligibility and implementing the Section 45Q tax credit; implementing the tax credit does not depend on EPA creating and imposing the mandatory GHGRP (even if EPA had any statutory authority to do so).

B. Treasury Department and the IRS can revise their regulations for implementing Section 45Q tax credits.

As discussed *supra*, EPA's proposed repeal of the GHGRP will render the Treasury Department's current cross-reference to Subpart RR of the GHGRP unsuitable for verifying Section 45Q tax credit eligibility for CO_2 storage projects.

Fortunately, market-based standards for verifying Section 45Q tax credit eligibility exist and they can be substituted for the Treasury Department's current reliance on the GHGRP's mandatory data collection regime. To minimize potential disruption to the Section 45Q tax credit and CCUS projects that have developed in reliance on that credit, the States propose that EPA coordinate with the Treasury Department and the IRS on the following two-step approach.

First, CCUS projects with currently approved Section 45Q tax credits that rely on Subpart RR of the GHGRP for reporting and verification should be permitted to continue relying on those approvals for the remainder of the current credit period. Along those lines, EPA should coordinate with and encourage Treasury Department and the IRS to adopt interim guidance and conforming amendments to 26 C.F.R. § 1.45Q-3 that would provide a temporary safe harbor for Section 45Q tax credits that were issued in reliance on Subpart RR of the GHGRP if and when the GHGRP is repealed and rescinded as currently proposed.

And second, for the longer term, EPA should request and coordinate with the Treasury Department and the IRS to promptly engage in rulemaking that will replace the Section 45Q tax credit's reliance on the GHGRP with a separate verification process. That separate verification process would likely include: (1) compliance with a Class VI CO_2 storage permit and (2) independent certification by a qualified engineer or geoscientist that the project's CO_2 storage and monitoring conforms to the standards of ISO 27914:2017 or incorporates elements therefrom, mirroring the Treasury Department's already-existing recognition of ISO 27916 for CCUS projects. *See* 85 Fed.Reg. 34050, 34062 (June 2, 2020).

This two-step approach—a short-term safe harbor followed by permanent regulatory revision—would provide continuity for the Section 45Q tax credit program while respecting the limits of EPA's statutory authority under the Clean Air Act.

C. Repealing the CCUS subparts of the GHGRP will not impede EPA's ability to regulate underground CO_2 storage.

Activist organizations and others may make the objection that rescinding the GHGRP would interfere with EPA's ability to regulate public health as it relates to CCUS and underground CO_2 injections. But repealing the GHGRP will not impede EPA's ability to oversee the health and safety of underground CO_2 storage. And to the extent EPA might rely on that mandated data collection to regulate underground CO_2 storage, EPA already has the requisite authorities under the Safe Drinking Water Act. *See* 42 U.S.C. § 300f, *et seq.*

Each subpart of the GHGRP that relates to CCUS operations functions as a data-reporting mechanism rather than a regulatory safeguard. For example, Subpart PP covers carbon dioxide suppliers and requires reporting of production and distribution volumes. 40 C.F.R. §§ 98.420–.428. Subpart RR applies to dedicated geologic sequestration projects and requires an EPA-approved monitoring, reporting, and verification plan and lifecycle continuity of annual reporting until EPA approves discontinuation after plugging and abandonment. *Id.* §§ 98.440–.449. Subpart UU applies to facilities that receive carbon dioxide for injection but do not report under RR, and it requires reports of volumes received. *Id.* §§ 98.470–.478. And Subpart VV establishes an enhanced oil recovery sequestration accounting pathway aligned to ISO 27916:2019, incorporates the ISO standard by reference, and requires ISO-compliant recordkeeping and independent engineering or geoscience certification. *Id.* §§ 98.480-.489. None of these provisions imbue EPA with any authority to regulate or otherwise oversee the health and safety of CCUS operations or underground CO_2 storage.

Instead, that EPA authority has already been statutorily bestowed elsewhere. Specifically, the Safe Drinking Water Act's Underground Injection Control Class VI program already provides EPA with comprehensive authorities to oversee and regulate CO_2 sequestration wells. *See* 42 U.S.C. §§ 300h–300h-8; 40 C.F.R. §§ 146.81–.95. And the regulations EPA has promulgated pursuant to that statutory authority require extensive site characterization, construction, and operation standards, mechanical-integrity testing, continuous monitoring, corrective-action planning, and post-injection site care. *See* 40 C.F.R. §§ 146.82–.93. These requirements ensure permanent containment of injected carbon dioxide and empower EPA to oversee and regulate underground sources of drinking water as it relates to CCUS operations and underground CO_2 storage. *See, e.g.,* EPA, *Guidance on Class VI Implementation*, EPA 816-R-16-005, at 16 (2016).[5]

In other words, the Safe Drinking Water Act already empowers EPA to oversee and regulate the safety of CCUS operations and underground CO_2 storage. The GHGRP's requirements add nothing to that aspect of EPA's authority other than additional bureaucratic hoops.

[5] Available at https://www.epa.gov/sites/default/files/2016-09/documents/rrdm_guidance_for_operators_final_2016.pdf.

* * *

EPA's lack of statutory authority to promulgate the GHGRP should not be excused because the Treasury Department chose to accrete verification requirements for certain CCUS-related tax credits onto the Rule's requirements. The Treasury Department and the IRS can ensure continuity for the Section 45Q tax credit through transitional guidance and regulatory amendments that replace reliance on the GHGRP with reliance on recognized industry standards for measuring and verifying underground CO_2 storage. Furthermore, EPA's ability to oversee health and safety safeguards for underground CO_2 storage is not dependent on the GHGRP and would remain in place through the Safe Drinking Water Act's Class VI program.

Conclusion

EPA has inherent authority to reconsider, revise, or repeal prior rulemakings when faced with strong evidence that the prior rule was unlawful or wrongheaded, so long as the agency provides a reasoned explanation. Indeed, "the agency ... *must* consider varying interpretations and the wisdom of its policy on a continuing basis, … for example, in response to changed factual circumstances, or a change in administrations." *Nat'l Cable & Telecomm. Ass'n*, 545 U.S. at 981 (emphasis added, citations omitted).

The Proposed Rule rightly reexamines EPA's lack of statutory authority to promulgate the GHGRP, and it recognizes that the costs of that program far exceed any purported benefits. The States encourage EPA to finalize the proposed rescission of most of the GHGRP.

Sincerely,

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