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UPDATED: Energy Bill Weakens the Clean Air Act

A. Title XIV, Section 1443 Lets Americans Breathe Dirty Air for Longer

Language in the energy bill released this weekend eliminates clean air protections for millions of Americans. It allows communities with deteriorating air quality to delay cleanup while simultaneously relieving them of the need to adopt additional health safeguards to counteract the worsening situation.

As a result, Americans will suffer from thousands of additional asthma attacks, hospitalizations, emergency room visits and new cases of asthma.

The energy bill eliminates clean air protections for millions of Americans by allowing polluted areas more time to clean up without having to implement stronger air pollution controls. All an area needs to show to get this free pass is that some of their pollution comes into their community from upwind locations. Unfortunately, it appears that virtually every community with poor air quality could meet this test. The net result is that no community will have to clean up until another community goes first. Furthermore, communities that wish to clean up will find it harder than ever as air pollution blows into their communities from areas that have avoided cleanup.

This provision will hurt the economies of both clean and dirty areas. EPA estimates that for every one dollar spent on the Clean Air Act's programs, there are forty dollars gained due to benefits that include fewer asthma attacks, lost work and school days, and premature deaths.

B. Section 970 of Title IX Delays Air Clean Up in Southwest Michigan

Title IX, Section 970 of the energy bill provides for a two-year study and demonstration project of southwest Michigan's 8-hour ozone transport problem. Unfortunately, while this study is in progress, these areas will be delayed in the planning process and from taking all local controls under the Clean Air Act, including New Source Review. This will likely mean more delay and more pollution for people living in areas have unhealthy air quality.

C. Section 402 (f) of Title IV and Section 3108 of Title XXXI allows EPA to Ignore Government-Funded Technologies in Setting New Standards

Also in the Energy bill, under Title IV, subtitle A. section 402 (f), and under Title XXXI Subtitle D section 3108, are \$3.8 billion in subsidies for coal projects and power plant pollution controls. However, these sections specify that any emission reductions achieved or technologies utilized by facilities that receive these subsidies will not count as modern pollution controls for the purposes of Clean Air Act's New Source Performance Standards and New Source Review program requirements. Thus, if these

subsidies bring about emissions reductions, the bar will not be raised on all dirty sources when EPA sets industry-wide standards.

Background

- The 1990 Clean Air Act amendments, signed by the first President Bush, classified cities as marginal, moderate, serious, severe, or extreme based on the severity of their ozone (smog) pollution problem. Areas with higher classifications were given more time to meet clean air standards, but also had to adopt stronger anti-pollution measures. The clean air deadline for moderate areas was 1996, for serious areas 1999, for severe areas 2005, and for extreme areas by 2010.
- When a city misses its clean air deadline, the Act requires that it be reclassified ("bumped up") to the next highest classification. For example, if a serious area failed to meet the ozone health standard by 1999, it was supposed to be reclassified to severe. It would then be given until 2005 to meet the standard, but would also have to adopt the stronger pollution controls required for severe areas.
- Over the past several years, EPA adopted an "extension" policy that extended clean air deadlines for dirty areas without bumping them up to the higher pollution categories. Three separate federal appellate courts all ruled that EPA's "extension" policy violated the language and purpose of the Clean Air Act. In light of these rulings, EPA abandoned the "extension" policy.