

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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September 20, 2011

The Honorable Fred Upton  
Chairman  
Energy and Commerce Committee  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Ed Whitfield  
Chairman  
Subcommittee on Energy and Power  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Upton and Chairman Whitfield:

We are writing to protest the amendment Chairman Whitfield filed yesterday to H.R. 2401, the TRAIN Act. This amendment would make major substantive changes in the Clean Air Act that have never been considered in Committee.

During Committee consideration of TRAIN, Chairman Whitfield offered an amendment that fundamentally changed the bill. The legislation started as a requirement that a newly created government commission evaluate the cumulative impacts of EPA regulations. The Whitfield amendment turned this study bill into a substantive bill by indefinitely delaying two major Clean Air Act regulations, the utility MACT rule, which reduces mercury and other toxic emissions from power plants, and the cross-state air pollution rule, which reduces sulfur dioxide and nitrogen oxide emissions from power plants that cross state boundaries and harm downwind communities' efforts to achieve healthy air quality.

We objected to Chairman Whitfield's amendment on both procedural and substantive grounds. On process, the substantive changes made by the amendment had not been subject to Committee consideration and were circulated to members less than a day before the markup, allowing no time for deliberate consideration.

Chairman Whitfield's floor amendment is an even more egregious abuse of process. It makes radical changes in the Clean Air Act provisions that address toxic air emissions. These changes have never been considered in hearings or debated in Committee. Members are being asked to vote on major changes to the Clean Air Act without any idea what they would do.

The provisions in section 112 of the Clean Air Act that control toxic emissions have been an enormous success since they were enacted in 1990. EPA's regulations under these provisions have required most major sources of air toxics to reduce their emissions, cutting releases of these dangerous chemicals by 1.7 million tons per year. To cite one example, EPA's actions have resulted in outdoor air concentrations of benzene, a carcinogen, dropping by over 50% since 1994.

Chairman Whitfield's amendment fundamentally alters these provisions as applied to power plants by replacing them with a new approach that appears to be unworkable. Current law requires EPA to set a standard for each regulated pollutant that is no less stringent than the actual emissions levels achieved on average for the best-performing 12% of sources. This approach is data-driven and effective. It has been used to set standards for roughly 100 discrete categories of sources over the past two decades.

The new language in Chairman Whitfield's amendment would require EPA to identify the 12% of sources in a source category that are best-performing "in the aggregate" for all toxic pollutants. This approach is completely untested and would require EPA to make subjective judgments about the value of reducing each different regulated toxic pollutant. There is no standard by which EPA can determine whether a plant that emits more carcinogens but less neurotoxins is better or worse performing than a plant that emits fewer carcinogens but more neurotoxins. Yet EPA would be required to determine, for example, whether a plant that emits 150 pounds of mercury, 100 tons of lead, and 200 pounds of arsenic, is better or worse performing than a plant that emits 200 pounds of mercury, 50 tons of lead and 190 pounds of arsenic, per year. Another change would require EPA to impose the least burdensome regulatory alternative authorized by the Act, including work practice standards, which may replace the entire numeric standard-setting process.

The Whitfield amendment makes other changes to the legislation that have not been considered by the Committee. It nullifies, rather than delays, two major air regulations, one finalized and one proposed, requiring EPA to start over on both. It significantly extends the bill's minimum time periods during which the rules may not be enforced from 15 months to seven years (for the mercury air toxics rule) and eight years (for the cross-state air pollution rule). It prohibits EPA from implementing any new rule under one section of the Act (section 110(a)(2)(D)) to address transported air pollution for at least eight years and bars any such rule under another section (section 126) for at least five years. It also requires EPA to allow unrestricted trading under any such program that is ultimately adopted regardless of whether downwind states actually experience the pollution reductions that are the purpose of such rule.

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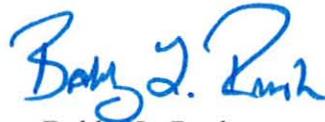
The Committee has held no hearings on the cross-state air pollution rule or the issue of transported emissions. The Committee held one hearing on three air toxics rules, including the utility MACT rule, but that hearing did not address the fundamental changes included in the amendment. No legislative hearing was held on any of this language.

This approach to legislating conflicts with our Committee's proud history of working together to address serious air pollution problems, and it makes a mockery of the Committee hearing process. We urge you to pull your legislation from consideration and hold hearings on it, so that members and the public can understand the effect of your proposal before it is brought to a vote.

Sincerely,



Henry A. Waxman  
Ranking Member



Bobby L. Rush  
Ranking Member  
Subcommittee on Energy and Power