

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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**Protect the Clean Air Act**  
**Oppose H.R. 1**

February 15, 2011

Dear Colleague,

H.R. 1, the Full-Year Continuing Appropriations Act of 2011, is an attack on the public health and environmental protections that keep our air safe to breathe and our water safe to drink. One of the most egregious assaults on public health and the environment in the legislation is section 1746, which bars the Environmental Protection Agency from addressing carbon pollution. This provision undermines the Clean Air Act, while imposing a job-destroying construction ban in many states.

According to the National Academy of Sciences and the premier scientific organizations of all the world's major economies, carbon pollution is changing the climate and endangering public health and the environment. But section 1746 bars EPA from taking action to address this threat. It states:

None of the funds made available to the Environmental Protection Agency by this division or any other Act may be expended for purposes of enforcing or promulgating any regulation (other than with respect to section 202 of the Clean Air Act) or order, taking action relating to, or denying approval of state implementation plans or permits because of the emissions of greenhouse gases due to concerns regarding possible climate change.

The Clean Air Act currently requires that new power plants, new oil refineries, and other major new sources of carbon emissions take steps to reduce their carbon emissions. This requirement makes sense because it is easier for facilities to plan for emission reductions before construction than to install retrofits afterwards. EPA says sources should be able to comply just by being energy efficient. Section 1746 would prevent EPA from implementing this commonsense requirement.

EPA has also indicated it plans to set minimum federal standards for the two largest sources of carbon pollution: power plants and oil refineries. Section 1746 would prevent EPA from even proposing these standards.

Section 1746 has other less obvious harmful effects. It would:

- **Impose a *de facto* construction ban in many areas of the country.** The Clean Air Act requires the largest new and expanded facilities to obtain pre-construction permits that address greenhouse gas emissions. Section 1746 would have the effect of preventing EPA from issuing such pre-construction permits in many jurisdictions. While some states and counties have the authority to issue pre-construction permits addressing greenhouse gas emissions, others rely on EPA to issue the permits. In those jurisdictions, the effect of section 1746 will be to prevent facilities from obtaining permits that are required by law prior to the start of construction. This construction ban would apply to all or parts of the following states and territories: Arizona; Arkansas; California; Connecticut; Idaho; Florida; Kentucky; Massachusetts; Nebraska; Nevada; Oregon; Puerto Rico; Texas; Virgin Islands; and Wyoming. It would block dozens of ongoing projects, including new or expanding power plants, refineries, cement kilns, and large manufacturing plants. The result would be the loss of thousands of construction jobs and permanent jobs at new factories and power plants.
- **Block implementation of the renewable fuel standard.** The Renewable Fuel Standard (RFS) promotes biofuels by ensuring that transportation fuel sold in the U.S. contains certain volumes of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel. The required volume of each type of fuel is established annually by EPA. Each of the categories of fuels must meet statutory requirements relating to their greenhouse gas emissions. For example, advanced biofuels must have lifecycle greenhouse gas emissions that are at least 50% less than the emissions of conventional gasoline. This summer, EPA needs to propose the volume requirements for calendar year 2012. Section 1746 would prevent EPA from doing so. If EPA cannot set the volume requirement, then the RFS will not function next year.
- **Prohibit EPA from enforcing existing greenhouse gas monitoring and reporting requirements.** As part of the 1990 Clean Air Act Amendments, Congress required power plants to report their carbon emissions to EPA. These requirements were expanded to other very large sources, such as refineries and cement kilns, in 2007. Section 1746 would block EPA from enforcing these reporting requirements, preventing the public from finding out how much pollution large facilities are releasing.
- **Bar EPA from implementing voluntary programs to cut pollution.** Section 1746 would prohibit EPA from carrying out highly successful voluntary programs, such as EnergyStar, SmartWay, and the Global Methane Initiative.

These programs have saved consumers and industry billions of dollars, while reducing air pollution and our dependence on foreign oil.

- **Interfere with EPA's implementation of Title VI of the Clean Air Act.** Title VI of the Clean Air Act prevents depletion of the stratospheric ozone layer. For the last two decades, EPA – with the support of the regulated industry – has implemented this program in a manner that factors in climate change. Section 1746 would interfere with this successful program, preventing EPA from approving the use of less harmful substitutes to ozone-depleting substances.

Section 1746 is a lose-lose-lose proposition that harms public health, the environment, and our economy. It is one of the many reasons we are opposing this terrible piece of legislation.

Sincerely,

  
HENRY A. WAXMAN  
Ranking Member

  
BOBBY L. RUSH  
Ranking Member, Subcommittee on Energy and Power