

Testimony to the Committee on Environment and Public Works

Legislative Hearing on Discussion Draft of the Wildfire Emissions Prevention Act

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Thank you, Chairman Capito and Ranking Member Whitehouse for the opportunity to testify today. My name is Abirami Vijayan, and I am a senior attorney for the Natural Resources Defense Council (NRDC). NRDC is a nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. I have recently joined NRDC, having previously worked as a Clean Air Act attorney for the U.S. Environmental Protection Agency (“EPA”) for 15 years, including three years as Assistant General Counsel for the National Ambient Air Quality Standards (NAAQS) group within the Office of General Counsel.

From my experience as a former EPA attorney, and working with scientists and experts in air quality, public health, and climate science, I know that wildfires are dangerous to human health and welfare, are exacerbated by climate change, and are increasing every year in intensity. NASA satellites and instruments show that over the past twenty years extreme wildfire activity has more than doubled, particularly impacting the American west. Wildfire destruction costs the United States billions of dollars annually, wildfires cause a significant amount of air pollution that are unsafe for Americans to breathe, including emissions of fine particulate matter (PM2.5) and ozone (smog), which are regulated under the Clean Air Act’s NAAQS program. As it is, over 156.1 million Americans live in areas that suffer unsafe levels of smog or PM2.5 pollution, or both. Breathing PM2.5 and smog can cause a litany of health issues including lung disease, cardiovascular problems, heart attacks, stroke, reproductive issues, and premature death.

Under the Clean Air Act, the EPA sets air quality standards for so-called criteria pollutants, including PM2.5 and ozone, at levels that are protective of human health. Once the EPA sets an air quality standard, states have primary responsibility for assuring that areas within their jurisdiction attain and maintain those standards, and the EPA determines whether states are in attainment. Under section 319 of the Clean Air Act, in determining whether an area is in attainment of the NAAQS, the EPA can exclude air quality data for emissions from “exceptional events.” The EPA’s regulations implementing Clean Air Act section 319 clearly authorizes finding both wildfires and prescribed fires are exceptional events under the statute. Some forest managers in wildfire prone states have turned to the use of prescribed burns as one of many wildfire mitigation tools. While prescribed fires that are used to address wildfire risk historically haven’t been demonstrated to be make-or-

break events that drive states into nonattainment, they do produce pollution, particularly emissions impacting air concentrations of PM_{2.5}.

The EPA has developed a strong regulatory framework and toolkit for states and air agencies that are considering whether to request that prescribed fires be treated as exceptional events and air quality data influenced by such treatment be eligible for certain regulatory exclusion. The EPA's 2016 Exceptional Events Rule, which is codified in the Code of Federal Register under 40 C.F.R. part 50.14, clearly states that prescribed fires can be eligible for treatment as an exceptional event if the required demonstration is made and regulatory criteria are met. The EPA's regulations and related guidance for prescribed fires also address each prong of the statutory "exceptional event" definition, including the statute's "not reasonably controllable or preventable" prong.

The EPA has developed a number of publicly available tools to assist states in meeting the statutory and regulatory requirements for exceptional events and specifically for prescribed fires. For example, in November 2024 EPA issued a demonstration template for prescribed fire events on wildlands that may impact PM_{2.5}. This template provides an overview of the relevant statutory and regulatory requirements, information on what data a demonstration for a prescribed fire should include, and an example narrative conceptual model for a prescribed fire demonstration. Concurrently with this informative template, the EPA also issued a publicly available FAQ document for the 2016 Exceptional Events Rule, containing numerous questions and answers regarding the treatment of prescribed fires under the Rule and how they can meet the criteria for exceptional events under Clean Air Act section 319.

As noted above, wildfires have become significantly more frequent and more intense in recent years. As this trend continues, there is increased interest at all levels of government in the use of prescribed fire and other tools that may mitigate wildfire risk, and states are invested in ensuring that they attain and maintain the NAAQS. These are important considerations. However, having worked on air pollution and climate issues for the entirety of my career, with specific expertise in the NAAQS and exceptional events, I believe that the Wildfire Emissions Prevention Act is unnecessary to address this issue. As I have explained, the Clean Air Act and EPA's regulations already clearly provide for the consideration of prescribed fires under the Exceptional Events program.

In conclusion, the Committee should not advance amendments to the Clean Air Act through the Wildfire Emissions Prevention Act, as the treatment of prescribed fire as an exceptional event is already adequately realized through existing statutory and regulatory requirements. Amending an already extant authority would be redundant at best, and at worst, result in regulatory or legal confusion that could unnecessarily complicate or hinder protection of public health from harmful air pollution resulting from wildfires.

Thank you again for the opportunity to testify, and I would be pleased to answer any questions you may have.