UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

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Dear Ms. Siegel, Ms. Boeve, Mr. Schwartz, and Mr. Carlesco:

I am responding to a petition from the Center for Biological Diversity, dated December 2, 2009, to set National Ambient Air Quality Standards for greenhouse gases; a petition from the New York University School of Law Institute for Policy Integrity, dated February 19, 2013, to regulate greenhouse gases under Section 115 of the Clean Air Act; and a petition from Food & Water Watch, dated April 3, 2019, to regulate greenhouse gases as hazardous air pollutants under Section 112 of the CAA.

The EPA has reviewed your petitions and the information available on the issues you raised. For the reasons discussed in the enclosed response, the EPA denies your petitions, except as to the portions of the IPI petition identified in footnote 3, as to which the EPA takes no action.

I would like to thank you for your interest in these issues. The EPA looks forward to working with you and other stakeholders as we continue to protect human health and the environment in accordance with law.

Sincerely,

Andrew R. Wheeler

Enclosure

Denial of Petitions to Establish National Ambient Air Quality Standards for Greenhouse Gases, to Regulate Greenhouse Gases under Clean Air Act Section 115, and to Regulate Greenhouse Gases as Hazardous Air Pollutants

This document is in response to a petition from the Center for Biological Diversity (CBD), dated December 2, 2009, to set National Ambient Air Quality Standards (NAAQS) for greenhouse gases (GHG); a petition from the New York University School of Law Institute for Policy Integrity (IPI), dated February 19, 2013, to regulate GHG under Section 115 of the Clean Air Act (CAA); and a petition from Food & Water Watch (FWW), dated April 3, 2019, to regulate GHG as hazardous air pollutants (HAP) under Section 112 of the CAA.

Specifically, CBD requests that EPA list GHG as criteria pollutants pursuant to CAA § 108(a)(1), issue air quality criteria for GHG pursuant to CAA § 108(a)(2), propose primary and secondary NAAQS for GHG pursuant to CAA § 109(a), make available certain information about controlling GHG emissions pursuant to CAA § 108, including 108(f), issue final NAAQS for GHG along with techniques for controlling them pursuant to CAA § 108(b)(1), and aid the states in the State Implementation Plan (SIP) process pursuant to CAA § 110. Center for Biological Diversity & 350.org, Petition to Establish National Pollution Limits for Greenhouse Gases Pursuant to the Clean Air Act (Dec. 2, 2009) (hereinafter "CBD Petition").

IPI requests that EPA find that the prerequisites for controlling international air pollution pursuant to CAA § 115 have been satisfied for GHG, require states to revise SIPs to make reasonable progress toward abatement of GHG pollution, and advise states on implementation options under CAA § 115. Institute for Policy Integrity, Petition for Rulemakings and Call for Information Under Section 115, Title VI, Section 111, and Title II of the Clean Air Act to Regulate GHG Emissions at 12 (2013) (hereinafter "IPI Petition").

FWW requests that EPA list GHG as HAP under CAA § 112 and take steps to set emissions standards pursuant to that section. Food & Water Watch, Petition for Listing and Rulemaking Under Section 112 of the Clean Air Act to Establish Greenhouse Gases as Hazard [sic] Air Pollutants and to Set National Emission Standards for Hazardous Air Pollutant Emissions (Apr. 3, 2019) (hereinafter "FWW Petition").

Because EPA determines that regulation of international pollution pursuant to CAA § 115 is appropriate only for criteria pollutants that are subject to a NAAQS pursuant to CAA § 108, and because all three petitions raise questions of statutory interpretation dealing with GHG, EPA addresses all three petitions together.

Statutory Background

National Ambient Air Quality Standards

"For the purpose of establishing [NAAQS]," CAA § 108 provides that EPA shall publish and from time to time thereafter revise a list of air pollutants known as "criteria pollutants" that meet each of three requirements. First, "emissions of [the pollutant], in [the Administrator's] judgment [must] cause or contribute to air pollution which may reasonably be anticipated to endanger

public health or welfare." CAA § 108(a)(1)(A). Second, the air pollutant must "result from numerous or diverse . . . sources." CAA § 108(a)(1)(B). Finally, the pollutant must be one "for which [the Administrator] plans to issue air quality criteria under this section." CAA § 108(a)(1)(C). Congress originally identified five criteria pollutants: carbon monoxide, ground-level ozone, particulate matter, nitrogen dioxide, and sulfur dioxide. To date, EPA has added only one to the list: lead.

For each pollutant on the list, EPA develops air quality criteria pursuant to CAA § 108(a)(2). The criteria "shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities." The criteria must include, to the extent practicable, information on variable factors, including other pollutants, that alter the pollutant's health or welfare effects, and "any known or anticipated adverse effects on welfare."

EPA promulgates "primary" and "secondary" NAAQS pursuant to CAA § 109. The primary standards are set such that the attainment and maintenance of the standards, in the judgment of the EPA Administrator, based on the air quality criteria, and allowing for an adequate margin of safety, are requisite to protect the public health. The secondary standards are set such that the attainment and maintenance of the standards are requisite to protect the public welfare from any known or anticipated effects. EPA may not consider the costs of meeting the NAAQS in setting the standards.

Within one year of EPA's promulgation of a new or revised NAAQS, each State must recommend designations of its regions as nonattainment, attainment, or unclassifiable. CAA § 107(d)(1)(A). EPA must finalize designations within two years after the NAAQS are finalized. CAA § 107(d)(1)(B)(i). Within three years from the NAAQS promulgation, States are required to adopt and submit to EPA State implementation plans (SIPs), pursuant to CAA § 110, providing for the implementation, maintenance, and enforcement of the NAAQS. The Act's requirements for SIPs are more detailed and stringent for areas not meeting the standards (nonattainment areas) than for areas meeting the standards (attainment areas).

States can petition EPA to exclude emissions data resulting from certain "exceptional events" pursuant to CAA § 319(b).

States are required to bring nonattainment areas into attainment with the NAAQS as expeditiously as practicable, but no later than attainment dates that are at most "10 years from the date of designation as nonattainment." CAA § 172(a)(2)(A).

States must address interstate transport of a pollutant that significantly contributes to another state's nonattainment or interferes with another state's maintenance of the NAAQS. CAA § 110(a)(2)(D)(i)(I).

If a nonattainment area fails to attain the NAAQS by the deadline, EPA publishes a notice of failure to attain. One year after the notice of failure to attain is published, a state is required to submit a revision to the applicable implementation plan for the area that includes "all measures that can be feasibly implemented in the area in light of technological achievability, costs, and

any nonair quality and other air quality-related health and environmental impacts." CAA §§ 179(d)(1), 181(b)(2), 186(b)(2) & 188(b)(2).

A SIP must be revised whenever the Administrator finds that the plan is "substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements established under this chapter." CAA § 110(a)(2)(H)(ii).

A state that fails to submit a complete SIP, has its SIP disapproved by EPA, or fails to implement a required SIP is subject to sanctions. EPA may prohibit the Department of Transportation from awarding highway grants to noncompliant states. CAA § 179(b)(1). And new sources in such a state are subject to a requirement to obtain two tons of emissions reduction from other sources in the same nonattainment area for every one ton of emissions from the new source. CAA § 179(c)(1).

EPA is required to promulgate a federal implementation plan within two years of disapproving a SIP or finding that a state has failed to submit a required SIP. CAA § 110(c)(1).

Listing a criteria pollutant pursuant to CAA § 108 precludes regulation of that air pollutant from existing sources as a hazardous air pollutant under CAA § 112, *see* CAA § 112(b)(2), or under CAA § 111(d), which is intended to provide for regulation of air pollutants not otherwise subject to the major regulatory programs under the Act, *see* CAA § 111(d)(1)(A).

International Pollution

SIP revision can also be triggered under CAA § 115, which requires the Administrator to notify a state governor if the Administrator believes, based on information from an international agency, that "any air pollutant or pollutants" from that state "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country," but only if the Administrator determines that the foreign country has given the United States "essentially the same rights" as § 115 gives to the foreign country. CAA § 115(c). A notice to the state pursuant to § 115(a) is deemed to be a finding pursuant to § 110(a)(2)(H)(ii), "which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment to a foreign country." CAA § 115(b).

Hazardous Air Pollutants

CAA § 112(b)(1) provides a list of substances that Congress identified as hazardous air pollutants (HAP) in the 1990 CAA Amendments. These HAP have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects, and developmental effects.

The CAA directs the EPA to identify and list source categories that emit HAP and then to set emission standards for those listed source categories. Standards promulgated under CAA section 112(d) are commonly referred to as National Emission Standards for Hazardous Air Pollutants (NESHAP).

CAA § 112(b)(2) gives the Administrator authority to add to the CAA § 112(b)(1) list "pollutants which present, or may present through inhalation or other routes of exposure, a threat

of adverse human health effects (including, but not limited to, substances, which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition or otherwise." CAA § 302(k) defines an air pollutant as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." CAA § 112(a)(7) defines the term "adverse environmental effect" as "any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

CAA § 112(b)(3)(A) specifies that any person may petition the Administrator to modify the list of HAP contained in CAA § 112(b)(1) by adding or deleting a substance. CAA § 112(b)(3)(B) sets out the substantive criteria for granting a petition. It calls for the Administrator to add a substance to the CAA section 112(b)(1) list "upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects." The Administrator is required under CAA § 112(b)(3)(A) to either grant or deny a petition within 18 months of the receipt of a complete petition by publishing a written explanation of the reasons for the Administrator's decision. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review. CAA § 112(b)(3)(A).

Under CAA § 112, new regulated sources must meet HAP emission standards that are no less stringent than the emission limitation achieved by the best controlled similar source. CAA § 112(d)(3). Existing regulated sources must meet emission standards that are no less stringent than the average emission limitation achieved by a specified subset of the best performing existing sources. CAA § 112(d)(3)(A) & (B).

Once a pollutant is listed as a HAP under CAA § 112, EPA is obligated to regulate all "major sources" of that pollutant. And, once a source qualifies as a "major source" of any hazardous air pollutant, EPA must regulate all HAP from that source. CAA § 112(c)(2).

Listing and regulating a pollutant as a HAP precludes regulation of that pollutant under CAA § 111(d). *See* CAA § 111(d)(1); *see also* Affordable Clean Energy Rule, Response to Comments, Chapter 1, Docket Item # EPA-HQ-OAR-2017-0355-26741, at 11 (confirming EPA's position on the section 112 exclusion as stated in Clean Power Plan Final Rule); Clean Power Plan Final Rule, 80 Fed Reg 64,662, 64,710 (Oct. 23, 2015) ("CAA section 111(d) contains an exclusion that limits the regulation under CAA section 111(d) of air pollutants that are regulated under CAA section 112.").

<u>EPA's Response to CBD's Petition to Establish a GHG NAAQS</u>

Upon consideration of CBD's petition, EPA has determined that a NAAQS for GHG would be inconsistent with the text and structure of the Clean Air Act. The NAAQS regime is designed for

local pollutants that state-level regulation can meaningfully control. GHG is a global pollutant that is dispersed evenly throughout the global atmosphere. No state implementation plan could possibly have any measurable effect on the concentration of GHG within its own borders, and no state could ever come into attainment, on the basis of state-level action, with CBD's preferred level of 350 parts per million (ppm) CO_2 or any other standard set below current global concentrations. The statutory devices that incentivize SIP submission and NAAQS attainment within specific geographic areas would serve no useful function in a circumstance of nationwide and perpetual nonattainment. For these reasons, EPA determines that it would be unreasonable and inappropriate to establish a NAAQS for GHG. It follows that EPA could not reasonably plan to issue air quality criteria for GHG and therefore could not reasonably list GHG as a criteria pollutant.

Statutory Text

As CBD acknowledges, before EPA can set a national pollution standard for a new pollutant pursuant to CAA § 109, the Agency must first list the new pollutant pursuant to § 108(a)(1), and then issue air quality criteria for the pollutant pursuant to § 108(a)(2). That statute leaves no ambiguity about the reason for the creation and revision of the list of criteria pollutants. It is "[f]or the purpose of establishing national primary and secondary ambient air quality standards" that the Administrator is required to publish and revise the list. The rest of the provision must be interpreted through the lens of this express statutory purpose. *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 387 (1983) ("[C]ourts will construe the details of an act in conformity with its dominating general purpose." (quoting *SEC v. C. M. Joiner Leasing Corp.*, 320 U.S. 344, 350-51 (1943))). It would be illogical therefore to list a criteria pollutant that could not reasonably be regulated pursuant to a NAAQS.

The third statutory condition that must be satisfied before a pollutant may be listed makes clear that a pollutant should not be listed unless it is an appropriate subject for NAAQS regulation. That condition provides that a pollutant should only be listed if it is one "for which [the Administrator] plans to issue air quality criteria under this section." CAA § 108(a)(1)(C); *see St. Joe Minerals Corp. v. EPA*, 508 F.2d 743, 744 (3d Cir. 1975), *vacated as moot*, 425 U.S. 987 (1976) ("The Administrator is to include in the list of pollutants all substances for which air quality criteria had previously been established and any others which, in the Administrator's opinion, (1) detracted from the public health or welfare; (2) originated from numerous sources; and (3) *merited controls*.") (emphasis added).

CBD's petition effectively reads the third condition out of the statute. CBD argues that "[w]hen the provisions of subpart (A) and (B) have been met, listing the pollutant and proceeding with the additional requirements of sections 108-110 is mandatory, and EPA lacks any discretion to decline to regulate." CBD Petition at 15. CBD's only basis for this position is a single judicial decision from the 1970s. In *Natural Res. Def. Council v. Train*, the United States Court of Appeal for the Second Circuit ignored the text of CAA § 108(a)(1)(C). Instead of interpreting the statutory language actually enacted by Congress, the court overlooked the text and turned immediately to legislative history:

> The EPA contention that the language of § 108(a)(1)(C) "for which (the Administrator) plans to issue air quality criteria" is a separate and third criterion to be met before § 108 requires listing lead and issuing air quality standards, thereby leaving the decision to list lead within the discretion of the Administrator, finds no support in the legislative history of the 1970 Amendments to the Act.

545 F.2d 320, 325 (2d Cir. 1976).

Only after its foray into legislative history did the court turn to "the literal language of § 108(a)(1)(C)," which it set aside as "somewhat ambiguous" in a two-sentence analysis:

> While the literal language of § 108(a)(1)(C) is somewhat ambiguous, this ambiguity is resolved when this section is placed in the context of the Act as a whole and in its legislative history. The deliberate inclusion of a specific timetable for the attainment of ambient air quality standards incorporated by Congress in §§ 108-110 would become an exercise in futility if the Administrator could avoid listing pollutants simply by choosing not to issue air quality criteria.

545 F.2d at 327.

If there were any ambiguity about § 108(a)(1)(C), the Supreme Court's subsequent decision in *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984), would require that it be resolved in favor of the agency's reasonable interpretation, not a court's. But there is no ambiguity to resolve. The third condition of CAA § 108 plainly turns on whether the Administrator "plans to issue air quality criteria under this section." CAA § 108(a)(1)(C). A pollutant that cannot plausibly be controlled under the NAAQS regime should not be the subject of air quality criteria, and when the Administrator does not plan to issue criteria for a pollutant, it should not be listed, according to the plain language of the statute.

The kind of statutory interpretation employed by the Second Circuit in *Train* that looks for meaning first in legislative history and only secondarily in the words of the statute has fallen out of favor with the courts in the intervening decades as inconsistent with the judicial role. *See Morley v. CIA*, 719 F.3d 689, 693 (D.C. Cir. 2013) (Kavanaugh, J., concurring) ("[W]e should not reflexively cling to FOIA decisions that were decided on the basis of legislative history during an era when statutory text was less central to statutory interpretation.").

Moreover, the Second Circuit misread the legislative history. The Senate Report that the court quoted observes that what is now § 108 "*directs* the Secretary to publish" the initial list. S. Rep. on S. 4358, 91st Cong., 2d Sess. By contrast, when speaking of revision, the Report says only that "[h]e *can* add to the list periodically." *Id.* (emphasis added); *see also id.* ("Others *may* be added to this group as knowledge increases"). This non-mandatory language reflects the discretion inherent in the decision whether to "plan[] to issue air quality criteria." CAA § 108(a)(1)(C). And although the legislative history reflects the assumptions of some legislators that EPA would issue a long list of criteria pollutants ("fluorides, nitrogen oxides, polynuclear organic matter, lead, and odors") within 30 days of passage, a legislator's expectations about the application of a law are not dispositive of the law's meaning. *See Oncale v. Sundowner Offshore Servs., Inc.*, 523

U.S. 75, 79 (1998) ("[I]t is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed."), *quoted in Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1749 (2020).

The Second Circuit's assumption in 1976 about how the Clean Air Act—still relatively new at the time—would work in practice has proven incorrect in the intervening decades. Lead remains the only criteria pollutant EPA has added to the original list of five. It is clearly not the case that every dangerous pollutant that originates from multiple sources must be added to the list of criteria pollutants. The various pollution control mechanisms of the Act work in tandem with each other to protect public health.

The Second Circuit's "structural" argument also fails. EPA's reading does not render the "the mandatory language of § 108(a)(1)(A) . . . mere surplusage." 545 F.2d at 325. The phrase "shall . . . revise" in CAA § 108(a)(1) has meaning under EPA's reading. The word "shall" makes the listing mechanism mandatory. Because of this mandatory language, the Administrator cannot bypass it simply by issuing criteria for a pollutant that has not been listed, a result that would undermine the public notice benefit of the listing process. And the statutory timetable for attainment is not an "exercise in futility," 545 F.2d at 327, but continues to drive state and federal action in response to EPA's increasingly stringent NAAQS for the six existing criteria pollutants.

The court of appeals adopted without analysis the district court's argument that the phrase "for which he plans to issue air quality criteria" applies only to the initial list of criteria pollutants. *See Natural Res. Def. Council, Inc. v. Train*, 411 F. Supp. 864, 868 (S.D.N.Y. 1976), *endorsed by* 545 F.2d at 325. This interpretation has no basis in the text of the statute, and it ignores that "and" is conjunctive. The entire series of three conditions, joined by "and," applies by the rules of grammar to the phrase that precedes it—"each air pollutant." 42 U.S.C. § 108(a)(1). Therefore, all three of the conditions must be met to trigger the listing requirement.

Structure

EPA's statutory interpretation of CAA § 108(a)(1) is supported by the structure of the CAA. It would not be reasonable to set a NAAQS for GHG for the same reason it would make no sense to "plan to issue air quality criteria" for GHG: The NAAQS regime's cooperative federalism approach to air pollution control is designed for local pollution that can be remedied by local action, not pollutants like GHG that are dispersed globally throughout the atmosphere and cannot be remedied by local controls.

The absurdity of setting a NAAQS for GHG is evident in the utter futility of the prospect. As the Department of Energy observed, "A GHG NAAQS standard would put the entire United States in either attainment or non-attainment, and it would be virtually impossible for an individual State to control or reduce GHG concentrations in its area and, thus, to make significant strides toward remaining in or reaching attainment." ANPRM, 73 Fed. Reg. at 44,367; *see also id.* ("There is little or nothing that a single State or region can do that will appreciably alter the atmospheric GHG concentration level in that particular State or region. Thus it is hard to see how a GHG NAAQS, which required States to take action to reduce their emissions to meet a

particular air quality standard, would actually work."); *id.* at 44,363 (DOT). EPA will not presume that Congress intended to legislate a meaningless exercise. *See Jackson v. The Archimedes*, 275 U.S. 463, 468 (1928) ("[A] purpose so wholly futile is not to be attributed to Congress.").

The prospect of perpetual nationwide nonattainment is inconsistent with the structure of the NAAQS regime, which is built around statutory deadlines enforced with statutory penalties designed to incentivize attainment and maintenance of the NAAQS. As EPA has previously observed, "it would appear to be an inescapable conclusion that the maximum 10-year horizon for attaining the primary NAAQS is ill-suited to pollutants such as greenhouse gases with long atmospheric residence times. . . . Thus, despite active control efforts to meet a NAAQS, the entire United States would remain in nonattainment for an unknown number of years." ANPRM, 73 Fed. Reg. at 44,481; *see also id.* at 44,381 (White House CEA and OSTP) ("Activities currently proposed for regulation will have no impact on public welfare for decades.").

States might try in vain to exempt themselves from the obligation to attain the NAAQS by a date certain by proving that timely attainment is impossible due to foreign GHG emissions. Under CAA § 179B, EPA may approve a SIP that does not demonstrate attainment by the deadline under specified circumstances. But no State would be able to make the required showing that its SIP "would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date . . . but for emissions emanating from outside of the United States." CAA § 179B(a)(2). Even if all the foreign countries of the world were to immediately cease anthropogenic emissions of GHG, it is unlikely that a hypothetical NAAQS would be attained by the attainment date, due to the long atmospheric lifetime of GHG[1] and the comparatively high contribution of GHG from natural sources.[2]

Perpetual nationwide nonattainment would yield a regulatory morass as nonattainment triggers new transportation conformity burdens. As the Department of Transportation explained, "[i]f the entire Nation were found to be in nonattainment for carbon dioxide or multiple greenhouse gases, and transportation and general conformity requirements applied to Federal activities, a broad range of those activities would be severely disrupted. For example, application of transportation conformity requirements to all metropolitan area transportation plans would add layers of additional regulations onto an already arduous Federal approval process and expand transportation-related litigation." ANPRM, 73 Fed. Reg. at 44,363.

If EPA were to adopt a GHG NAAQS, "controls on specific source categories would flow from independent state-level decisions, and could result in a patchwork of regulations requiring different types and levels of controls in different states." ANPRM, 73 Fed. Reg. at 44,483. Although state-by-state variation makes sense for local air pollutants that have area-specific sources and effects, it would be inefficient in the extreme for a pollutant that is present everywhere in the same concentrations. Eventually, the cooperative federalism framework of the NAAQS regime would collapse as ineffectual SIPs would give rise to ineffectual federal

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[1] *See* IPCC, Climate Change 2007: The Physical Science Basis, at 33-34, Table TS.2, Table 2.14, https://www.ipcc.ch/site/assets/uploads/2018/05/ar4_wg1_full_report-1.pdf.
[2] *Id.* at 2-3.

implementation plans (FIPs). In the meantime, states would be forced to play a meaningless regulatory charade with no hope of having any measurable effect on the GHG levels within their borders.

Other features of the Clean Air Act's NAAQS regime would make no sense applied to GHG:

- States must "provide for establishment and operation" of air quality monitoring devices. CAA 110(a)(2)(A). This requirement has no relevance to a global air pollutant like GHG that is dispersed around the world. It has no location-specific effect that could be measured by an air quality monitor.
- Under certain circumstances, when determining their attainment status, States may be able to exclude certain monitored air quality exceedances or violations if the State demonstrates, and EPA concurs, that the exceedance or violation was caused by some types of "exceptional events" that are natural events or unlikely to recur. But this statutory feature is designed for local pollutants that trigger exceedances at specific air quality monitors. GHG's status as a long-term pollutant that is dispersed globally would make it difficult if not impossible for a state to make the required demonstration that a particular "exceptional event caused a specific air pollution concentration at a particular air quality monitoring location." CAA § 319(b)(3)(B)(ii).
- The CAA's interstate transport and "good neighbor" provisions are likewise designed for local pollutants. *See* CAA § 126 (interstate transport) (cited in CAA § 110(A)(2)(D)(ii)); CAA § 110(a)(2)(D)(i)(I) (good neighbor). The globally dispersed quality of GHG is such that every emission from one state affects all other states equally. Given the far greater contributions from foreign sources that have the exact same effect (ton for ton) on any given state's nonattainment, and given that every state is upwind of every other state when it comes to a globally dispersed pollutant, the interstate transport and good neighbor provisions would not function as intended if applied to a hypothetical GHG NAAQS.

Policy Considerations

The plain meaning and structure of the Clean Air Act precludes regulation of greenhouse gas as a criteria pollutant pursuant to NAAQS. But this outcome is also supported by several policy considerations that confirm the reasonableness of EPA's interpretation. In the alternative, these considerations reasonably support the Administrator's discretionary decision not to "plan[] to issue air quality criteria under this section." CAA § 108(a)(1)(C).

A GHG NAAQS would reduce America's bargaining power and undermine international cooperation. Even petitioner CBD recognizes that the "global problems" of climate change "cannot be solved unless each nation limits its own emissions sufficiently to achieve its share of the reductions necessary to stabilize atmospheric greenhouse gas concentrations." CBD Petition at iii. But a GHG NAAQS would regulate only the United States. It would have no direct beneficial effect on the GHG reductions of other countries, nor could a NAAQS be made contingent on the actions of foreign countries. As the White House Council of Economic Advisers and the White House Office of Science and Technology Policy have recognized,

unilateral adoption of a GHG NAAQS would undermine the United States' ability to negotiate with foreign countries for a fair and effective global GHG regime: The CAA "does not permit regulations to depend on mitigation actions taken by other countries. The failure to allow for contingencies of this sort removes an important tool for inducing other countries to take actions that benefit Americans and the rest of the world." ANPRM 73 Fed. Reg. at 44,383.

A GHG NAAQS would damage American competitiveness and worsen pollution. Adopting a GHG NAAQS would drive carbon-intensive industries overseas to less regulated jurisdictions, increasing pollution and damaging the U.S. economy. As the Department of Commerce explained, "embrac[ing] emissions reductions outside of an international agreement with the world's major emitters . . . would put U.S. firms at a competitive disadvantage by raising their input costs compared to foreign competitors, likely resulting in emissions leakage outside of the United States and energy-intensive firms relocating to less regulated countries. Such an outcome would not be beneficial to the environment or the U.S. economy." ANPRM, 73 Fed. Reg. at 44,376; *see generally id.* at 44,413-14. The White House Council of Economic Advisers agreed that "acting in a globally uncoordinated fashion will put the United States at a competitive disadvantage, will induce economic distortions, and may actually be counter productive in reducing GHGs. . . . If businesses in other countries do not suffer the penalty for emitting GHGs, production has an incentive to move abroad, even when producing in the U.S. would be more economically efficient." *Id.* at 44,383. CBD's petition claims that a nationwide GHG standard would help to "address[] interstate leakage concerns by requiring the participation of those states that have yet to take action." CBD Petition at ii; 32. But CBD neglects the much larger leakage problem that would occur if the United States were to adopt a GHG standard unilaterally.

A GHG NAAQS would be inefficient. When setting a NAAQS, EPA may not consider the cost of compliance but must set the standard at the level that is "sufficient, but not more than necessary" to "protect public health from the adverse effects of the pollutant" with an "adequate margin of safety." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 465, 473 (2001) (quoting CAA § 109(b)(1)). As the Department of Energy has observed, "[t]his limitation inhibits a rational balancing of factors in determining and setting a GHG NAAQS based on the science available, the availability and cost of emission controls, the resulting impact on the U.S. economy, the emissions of other nations, etc." ANPRM, 73 Fed. Reg. at 44,367. This precludes rational regulations. As the White House Council of Economic Advisers has explained, "[t]o obtain economic efficiency, it is necessary to equalize marginal abatement costs across sources, which is extremely unlikely to occur if states are required to meet the same standard." ANPRM, 73 Fed. Reg. at 44,382.

A GHG NAAQS would hurt American agriculture. Clean Air Act programs, including the NAAQS "were neither designed for, nor are they suitable to, regulation of greenhouse gases from agricultural sources." ANPRM, 73 Fed. Reg. at 44,376 (USDA). The Department of Agriculture has explained that "[u]nder a NAAQS regulatory program, agricultural sources may need to employ Reasonably Available Control Measures ('RACM') or, at a minimum, include the use of Reasonable Available Control Technologies ('RACT')," but "agriculture is primarily dependent on biological processes which are not readily re-engineered. Given the nature of many

agricultural source emissions, RACM and RACT may not exist or may be cost prohibitive." *Id.* at 44,377.

A GHG NAAQS would hurt America's small businesses. Given the uniform distribution of GHG and the resulting nationwide nonattainment, the Small Business Administration has explained that small entities would bear a disproportionate share of the costs of implementing a GHG NAAQS:

> [E]stablishing a GHG NAAQS would set in motion a number of statutory control measures that would be costly, inefficient, and ineffective. Small entities could have to contend with new barriers to construction and expansion, new restrictions on operating cars and trucks, and the potential for having to retrofit their existing buildings with GHG controls or to purchase equivalent credits. These NAAQS control measures would subject vast numbers of small entities across the country to standardized, inflexible, GHG control requirements for the first time. The full impact of these new burdens on these small entities could be devastating.

ANPRM 73 Fed. Reg. at 44,393.

EPA's Response to IPI's Petition to Regulate GHG under CAA § 115[3]

Because the text and structure of the Clean Air Act preclude a NAAQS for GHG, *see supra*, it also precludes the use of CAA § 115's mechanism for regulating foreign effects of domestic emissions of the pollutant. That is because § 115 depends upon the existence of a NAAQS SIP that is controlling the pollutant at issue. CAA § 115 operates by requiring the Administrator, when a reciprocity requirement is satisfied, to compel a state to revise its SIP when the state's pollution is endangering public health or welfare in a foreign country. (The Administrator's notice to the state under § 115 operates as a finding pursuant to § 110(a)(2)(H)(ii) that the SIP is inadequate.) The statutory remedy is for the State to revise its plan so that it adequately protects human health and welfare in the foreign country. If the state does not have a SIP that covers the relevant pollutant, then neither the Administrator's notice nor the statutory remedy makes any sense. Thus, EPA has previously acknowledged that "Section 115 could not be used to require states to incorporate into their SIPs measures unrelated to attainment or maintenance of a NAAQS." ANPRM, 73 Fed. Reg. at 44,483; *see id.* at 44,482 ("The Administrator could exercise his authority under [Section 115] *if* EPA were to promulgate a NAAQS for GHG." (emphasis added)).

EPA has previously rejected a request to regulate GHG under CAA § 115, because that provision applies only to criteria pollutants:

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[3] IPI also asks EPA to regulate GHG under section 111, Title II, and Title VI of the CAA. This denial does not address those portions of IPI's petition. EPA notes that it is already regulating GHG under these provisions. *See, e.g.*, Affordable Clean Energy Rule, 84 Fed. Reg. 32,520 (July 8, 2019); Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24,174 (April 30, 2020); Determination 36 for Significant New Alternatives Policy Program, 85 Fed. Reg. 79,863 (Dec. 11, 2020).

> [C]onsistent with the authority in section 110 of the CAA under which SIPs are approved, only measures that are related to attainment and maintenance of the NAAQS (including procedural and interim requirements) should be approved by EPA as part of a federally enforceable implementation plan. *See, e.g.*, 67 Fed. Reg. 17,368 (April 2, 2004) ("An important element of [the SIP approval] process is not to include in the SIP portions of those regulations that are not related to attainment or maintenance of the NAAQS or to the requirements for SIPs under the Act."). In fact, on numerous occasions in the past twelve years, EPA has acted to remove from state SIPs provisions that were not reasonably related to the NAAQS. . . . It would be inconsistent with this long standing interpretation for EPA to issue notices requiring states to revise their SIPs to address CO_2 emissions and climate change issues. . . . The CAA does not authorize the Administrator to require states, as your submittal requests, to adopt SIP provisions regarding CO_2 emissions in order to reduce any impact on climate change, as such provisions would not be reasonably related to attainment and maintenance of the NAAQS.

Letter from Brian McLean, Dir., Office of Atmospheric Programs, EPA, to Albert Kochl, Staff Attorney, Ecojustice Canada (Feb. 29, 2008).

Petitioner IPI admits that "Section 110 does facially appear exclusive to the NAAQS program due to its title, 'State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards.'" Institute for Policy Integrity, Petition for Rulemakings and Call for Information Under Section 115, Title VI, Section 111, and Title II of the Clean Air Act to Regulate GHG Emissions at 12 (2013) (hereinafter "IPI Petition"). Yet IPI argues that regulation of GHG under CAA § 115 is not limited to criteria pollutants for which a NAAQS has been established. IPI points to the phrase "any air pollutant" in § 115 as evidence that the statute must apply beyond criteria pollutants. *Id.* But this argument is unavailing.

The Supreme Court has instructed that the phrase "any air pollutant" must be interpreted in context. Thus "any air pollutant" for purpose of PSD and Title V permitting is limited to "*regulated* air pollutants." *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 316 (2014) (citing 43 Fed. Reg. 26403, *codified as amended*, 40 C.F.R. § 52.21(b)(1)-(2), (50)). In the context of new source performance standards, "any air pollutant" is limited to "air pollutants *for which EPA has promulgated new source performance standards.*" *Id.* at 317 (citing CAA § 111(a)(2), (4); 36 Fed. Reg. 24877 (1971), *codified as amended*, 40 C.F.R. § 60.2; 40 Fed. Reg. 58419 (1975), *codified as amended*, 40 C.F.R. § 60.14(a)). And in the context of permitting a major source to operate in a nonattainment area, "any air pollutant" is limited to "pollutants *for which the area is designated nonattainment.*" *Id.* at 317 (citing CAA § 172(c)(5), 302(j); 45 Fed. Reg. 52745 (1980), *promulgating* 40 C.F.R. § 51.18(j)(2), *as amended*, § 51.165(a)(2)).

Likewise, in the context of CAA § 115, in which Congress has expressly incorporated the NAAQS/SIP regime by reference, "any air pollutant" must be limited to air pollutants whose emissions are controlled pursuant to a NAAQS SIP. The Administrator's notice under CAA § 115(a) operates as a finding that a NAAQS SIP is "substantially inadequate to attain the [NAAQS] which it implements or otherwise comply with any additional requirements established under this chapter." CAA § 110(a)(2)(H)(ii). And Section 115 can only be

effectuated by "a plan *revision* with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment" to public health or welfare in a foreign country. CAA § 115(b) (emphasis added). State plans exist to attain and maintain standards for criteria pollutants; it would not be reasonable to require their revision for other pollutants that are not controlled by the NAAQS.

IPI points out that CAA § 110(a)(2)(D)(ii) requires a SIP to "contain adequate provisions . . . insuring compliance with the applicable requirements of [CAA §§ 126 and 115]." IPI infers from this that SIPs may therefore govern non-criteria pollutants. But this reasoning is question begging. The more natural reading of CAA § 110(a)(2)(D)(ii) is that it governs international transport of criteria pollutants—the same pollutants covered by the NAAQS that the SIP implements.

During the Carter Administration, in an effort to control international acid rain pollution, Administrator Costle took a broader view of CAA § 115. He stated in private correspondence and without explanation that Section 115 "is broadly drafted to encompass all forms of air pollution-related endangerment to public health or welfare and is not limited to interference with U.S. air quality standards or significant deterioration programs." Letter from Douglas M. Costle, Admin. EPA, Sen. George Mitchell (Jan. 13, 1981), *reprinted in New York v. Thomas*, 613 F.Supp. at 1472, 1488. But EPA never acted on this interpretation, and the D.C. Circuit rejected a claim that the letter compelled the Agency to issue SIP notices to states producing pollution that caused acid rain deposition in Canada. *Thomas v. State of N.Y.*, 802 F.2d 1443, 1447 (D.C. Cir. 1986) (Scalia, J.) ("We conclude that if Administrator Costle's findings left the EPA no alternative but to issue SIP notices ultimately causing the termination or restriction of the operations of many utilities and manufacturers—if they *forced* the EPA to take direct and substantial regulatory actions—they could not be promulgated without notice-and-comment procedures.").

Any bilateral reciprocal agreement on GHG emissions with another country would be inadequate to substantially reduce GHG accumulation in the atmosphere, because all the nations of the world contribute to GHG pollution. Indeed, regional efforts at GHG control could be counter-productive, because, as described above, they may cause emitters to relocate to less-regulated jurisdictions. And the EPA does not believe that Congress would have given it authority to regulate on a global scale one of the present day's most contentious political questions with the most profound economic and geopolitical implications, through a statutory mechanism designed to deal with cross-border emissions of local air pollutants through state-level regulation. *See generally Whitman*, 531 U.S. at 468 ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.").

EPA's Response to FWW's Petition to List GHG as a Hazardous Air Pollutant

FWW's petition to list GHG as a hazardous air pollutant pursuant to CAA § 112 is based on a projection of GHG's indirect effects on human health and the environment. FWW points to EPA's 2009 finding that elevated concentrations of greenhouse gases in the atmosphere may

reasonably be anticipated to endanger the public health and to endanger the public welfare of current and future generations" through climate change. FWW Petition at 3. FWW cites IPCC projections that GHG will cause "a mean surface temperature increase of 3.7°C to 4.8°C by 2100." FWW Petition at 7 (citing IPCC, "Summary for Policymakers," Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (2014)). Specifically, FWW alleges that climate change is causing or will cause the following environmental and welfare effects: harm to food production and forestry, impaired access to water, sea level rise, increased energy demand, infrastructure damage, and changes in wildlife habitat that hurt biodiversity. FWW Petition at 10. FWW also alleges that climate change will cause the following public health effects: increased mortality from heat waves, flooding, and storm surge; aggravated respiratory illness and asthma from increased ground-level ozone and plant growth; and increased food-, water-, and insect-borne diseases. FWW Petition at 11.

All of these circumstances are secondary effects of climate change to which GHG emissions are a contributing factor. They are not direct effects of exposure to GHG molecules.

The EPA concludes that it would be improper to list a substance as a hazardous air pollutant based on its *indirect* effects on human health or the environment. The text of CAA § 112 demonstrates that the statute is concerned with substances that themselves cause immediate harm to health and the environment. CAA § 112(b)(2) gives the Administrator the power to add to the list of HAP "pollutants which present, or may present, through inhalation or other routes of *exposure*, a threat of adverse human health effects . . . or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise." The parallel phrases "through . . . exposure" and "through ambient concentrations, bioaccumulation, deposition or otherwise" are best interpreted to require immediate, not secondary, health and environmental effects to justify a hazardous air pollutant listing. To be sure, the phrase "or otherwise" could be read broadly in another context to allow consideration of indirect environmental effects. But in this context, coming as it does after a list of direct means of environmental harm, "or otherwise" is best interpreted to refer to other direct mechanisms by which a HAP may cause environmental harm. *See United States v. Williams*, 553 U.S. 285, 294 (2008) ("[T]he commonsense canon of *noscitur a sociis* . . . counsels that a word is given more precise content by the neighboring words with which it is associated.").

CAA § 112's focus on direct effects distinguishes it from other provisions of the Clean Air Act that are silent as to the mechanisms by which a pollutant causes harm. For example, CAA § 202(a)(1) requires the Administrator to set emissions standards for "any air pollutant from any class . . . of new motor vehicles . . . which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." Thus, the 2009 Endangerment Finding under § 202(a)(1) did not require EPA to conclude that GHG itself directly endangers health or welfare. It was enough to find that GHG emissions would contribute to elevated temperatures, which would in turn contribute to climate change, which would in turn contribute to secondary effects, which would in turn harm health and welfare. By contrast to CAA § 202(a)(1), § 112 requires that the pollutant itself directly cause the harm—whether by

inhalation or other routes of exposure (in the case of human health effects) or by concentration, bioaccumulation, deposition, or other direct mechanisms (in the case of the environmental effects).

Although petitions to modify the HAP list are treated in the statute's succeeding paragraph, which does not use the term "exposure," *see* CAA § 112(b)(3)(B), the statute is best interpreted as a whole to require direct harm whether the Administrator is revising the list on his own initiative pursuant to CAA § 112(b)(2) or in response to a petition pursuant to CAA § 112(b)(3). A petition to modify the HAP list is a petition "under this subsection," CAA § 112(b)(3), so the Administrator's evaluation of a pollutant's causation of adverse effects should be the same in either circumstance. *See* 82 Fed. Reg. 2357 ("CAA section 112(b)(2) provides additional guidance on how the Administrator's decision [on a petition under CAA § 112(b)(3)(B)] is to be formed by identifying carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction, and acute or chronic toxicity as types of adverse health effects."). Thus, it would not be reasonable for the Administrator to list a substance in response to a petition under CAA § 112(b)(3)(B) that he could not list on his own initiative under CAA § 112(b)(2).

Read in this light, CAA § 112 does not permit the Administrator to list GHG as a HAP. Greenhouse gas is not emitted in concentrations that could cause direct adverse effect on human health via exposure. Human beings inhale and ingest CO_2 and other GHG in relatively high concentrations without ill effect, so no plausible exposure to these substances at the concentrations in which they operate as GHG would threaten adverse health effects. Likewise, GHG does not have a direct environmental effect "through ambient concentrations, bioaccumulation, deposition, or otherwise." GHG's adverse effects are indirect: In FWW's account, GHG traps heat in the atmosphere, which contributes to climate change, which in turn contributes to adverse environmental effects.

Further, GHG could not be regulated based on its *environmental* effects without reference to *health* effects. CAA § 112(b)(2) prohibits listing on the basis of adverse environmental effects alone any substance that is already regulated under Title VI: "No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment." Hydrofluorocarbons (HFCs) are a subset of well-mixed GHG that are currently regulated under some sections of Title VI. Accordingly, even if FWW could identify direct (as opposed to indirect) environmental effects of GHG, EPA would be unable to list the "mix of six long-lived and directly-emitted greenhouse gases" under CAA § 112 as FWW requests,[4] because of the lack of exposure-based health effects.

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[4] FWW Petition at 1. The predicate for FWW's petition is the 2009 Endangerment Finding, which assessed the harm from these GHG collectively as a single pollutant. *See* Endangerment Finding, 74 Fed. Reg. 66,496, 66,497 (2009) ("Specifically, the Administrator is defining the 'air pollution' referred to in CAA section 202(a) to be the mix of six long-lived and directly-emitted greenhouse gases: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)."); *id.* at 66,516 ("In this final action, the Administrator finds that the air pollution is the combined mix of six key directly-emitted, long-lived and well-mixed greenhouse gases (henceforth 'well-mixed greenhouse gases'), which together, constitute the root cause of human-induced climate change and the resulting impacts on public health and welfare.").

FWW's interpretation of CAA § 112 to allow listing GHG as HAP is at odds with the best evidence of Congress's intent—the list of HAP it codified with the passage of CAA § 112. Congress included in that list pollutants that present direct adverse health and environmental effects, it did not list either well-mixed GHG or individual GHG. If Congress had intended EPA to have the authority to regulate climate-forcing agents under section 112, it could have given EPA that authority expressly, similar to the direct authority given to EPA to regulate substances that cause harmful effects to the ozone layer. *See* Title VI, 104 Stat. 2649, 42 U. S. C. §§7671–7671q.

The practical consequences of FWW's interpretation further demonstrate its unreasonableness. CAA § 112 obligates EPA to regulate HAP from all major sources. The term "major source" is defined as a stationary source that emits "10 tons per year or more of any hazardous air pollutant." CAA § 112(a)(1), (c)(2). Many thousands of sources currently unregulated under CAA § 112 emit ten tons or more per year of CO_2, including buildings like schools, small apartment complexes, and hospitals. *Cf. UARG v. EPA*, 573 U.S. 302, 324 (2014). Subjecting these sources to regulation for the first time under CAA § 112 would bring about an extraordinary expansion and transformation of the CAA § 112 regulatory scheme. As the Supreme Court said in rejecting the Agency's effort to let GHG emissions trigger PSD and Title V regulation, "The fact that EPA's greenhouse-gas-inclusive interpretation . . . would place plainly excessive demands on limited governmental resources is alone a good reason for rejecting it." *UARG*, 573 U.S. at 323-24.

And as with the Agency's interpretation in *UARG*, the Petitioners' interpretation of EPA's authority under § 112 "is also unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization." *UARG*, 573 U.S. at 324; *see also id.* (citing *Brown & Williamson*, 529 U.S., at 159-60 (requiring a clear statement from Congress when an agency claims to discover in a long-extant statute an unheralded power to regulate "a significant portion of the American economy"); *MCI Telecommunications Corp. v. American Telephone & Telegraph Co.*, 512 U.S. 218, 231 (1994); *Industrial Union Dept., AFL–CIO v. American Petroleum Institute*, 448 U.S. 607, 645–46 (1980) (plurality opinion)).

Other Considerations

In addition to the statutory reasons discussed above, and even if the EPA were authorized to list and regulate GHG as criteria pollutants under CAA §§ 108 and 115 and to regulate GHG as a HAP under CAA § 112, EPA is also denying these petitions as an exercise of its discretion to prioritize the allocation of its limited agency resources.

As is true for all federal agencies, the EPA has a limited budget and limited staff resources, and so has to prioritize its actions when deciding what actions to take and what actions to defer or decline to take. To illustrate how this need to prioritize limited resources impacts our decision here, we will focus on three points.

First, the EPA is required to conduct numerous actions that have mandatory statutory deadlines under the CAA, some of which are further governed by court orders and consent decrees

imposed as the result of mandatory duty claims. For example, the EPA must review (and revise if appropriate) the NAAQS for each of the six currently listed criteria pollutants (ozone, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and fine and course particulate matter) every five years. 42 U.S.C. § 7409(d)(1). With regards to HAP, EPA must review and revise the emission standards for each of the dozens of listed source categories every eight years. *Id.* § 7412(d)(6). Under the D.C. Circuit's recent decision in *Louisiana Environmental Action Network v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020), this duty also includes filling gaps in emission standards for previously unregulated HAP and emissions units. EPA has little or no discretion to lower the priority of those actions. Based on EPA's past experience, listing and regulating GHG as criteria pollutants and HAP under CAA §§ 108, 115, and 112 would be a lengthy and resource-intensive set of tasks and would divert resources from the aforementioned mandatory reviews of existing NAAQS and NESHAP, as well as EPA's GHG regulations under CAA § 111 and other high-priority actions.

Second, even focusing just on the EPA's regulation of GHG emissions, the Agency must decide which sources of GHG to regulate first, and how to achieve that regulation. To that end, EPA has chosen to regulate GHG emissions from stationary sources under CAA § 111. *See, e.g.*, 84 Fed. Reg. 32,520 (July 9, 2019) (promulgating CAA § 111(d) emission guidelines for existing coal-fired power plants); 80 Fed. Reg. 64,510 (Oct. 23, 3015) (setting CAA § 111(b) standards of performance for new, modified, and reconstructed coal- and gas-fired power plants); 81 Fed. Reg. 59,322 & 81 Fed. Reg. 59,276 (Aug. 29, 2016) (setting CAA § 111(b) standards of performance and issuing CAA § 111(d) emission guidelines for municipal solid waste landfills). EPA, as the expert agency, is in the best position to select the appropriate statutory authority for addressing a given environmental challenge and has done so in this instance.

Further, it is important to recognize that the EPA's ongoing regulation of GHG under CAA § 111(d) would have to be halted and reversed if the EPA were to list and regulate GHG as criteria pollutants under CAA § 108 or as HAP under CAA § 112, due to the exclusions stated in CAA § 111(d)(1)(A). This would both undo significant aspects of EPA's regulation of GHG emissions to date and be a poor use of EPA's limited resources.

Conclusion

The Clean Air Act's NAAQS regime and § 115 are well suited to local pollutants that have the greatest effect on—and can be meaningfully controlled by the localities where they are emitted. That is not true of GHG, which are dispersed throughout the global atmosphere. Likewise, § 112 is designed to address HAP that cause direct health and environmental effects by exposure, concentration, or otherwise in relatively low concentrations by a few sources. These provisions are not designed to handle globally dispersed pollutants that are emitted in great amounts by myriad sources and have only indirect health and environmental effects.

Congress has the power to craft a comprehensive solution to the problem of greenhouse gas emissions, but such a solution will necessarily involve equitable participation by the other nations that emit significant amounts of GHG. EPA cannot create such a solution unilaterally, and it has not been given the statutory tools that would be necessary. Because the text and

structure of the CAA preclude the regulation of GHG under these statutory provisions, EPA denies the petitions of CBD, IPI, and FWW, except as to the portions of the IPI petition identified in footnote 3, as to which the EPA takes no action.