October 1, 2026

VIA ELECTRONIC AND CERTIFIED U.S. MAIL

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RE: Notice of Intent to Sue for Failure to Regulate Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Stationary Combustion Turbines Under Clean Air Act Section 111(d)

Dear Administrator Zeldin and Assistant Administrator Szabo:

The undersigned States and Local Governments respectfully give notice under 42 U.S.C. § 7604 and 40 C.F.R. part 54 of their intent to sue Lee Zeldin, in his official capacity as Administrator of the U.S. Environmental Protection Agency (EPA), and EPA for the failure to regulate greenhouse gas emissions from existing fossil fuel-fired stationary combustion turbines as required under section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d). Stationary combustion turbines most commonly burn natural gas, though they can burn other fossil fuels, such as oil or kerosene, as backup. These turbines are often sited in communities that are already overburdened by other polluting sources, and the rapid expansion of data centers is only increasing the demand for stationary combustion turbines. The Clean Air Act has long required EPA to control greenhouse gas emissions from existing fossil fuel-fired stationary combustion turbines, but EPA has never done so. EPA cannot lawfully delay fulfilling that duty any longer.

Two decades ago, in 2006, many of the States and Local Governments petitioned EPA to regulate greenhouse gas emissions from fossil fuel-fired power plants—the largest stationary source of greenhouse gas emissions in the United States. Nearly a decade later, in October 2015, EPA promulgated such standards for new, modified, and reconstructed fossil fuel-fired power plants, pursuant to its authority under section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b). *See* 80 Fed. Reg. 64510 (Oct. 23, 2015) (the 2015 NSPS). EPA's promulgation of the 2015 NSPS

triggered EPA's statutory obligation to issue emission guidelines for existing fossil fuel-fired power plants under section 111(d) of the Clean Air Act.[1]

Over ten years later, EPA has failed to promulgate emission guidelines for existing stationary combustion turbines, despite declaring it "vital" to do so. *See* 89 Fed. Reg. 39798, 39806 (May 9, 2024) (Carbon Pollution Standards). EPA's decision to flout its statutory mandate is an unlawful and unreasonable failure to act. EPA's failure to act has harmed the States and Local Governments that have demanded—for over two decades—that EPA fulfill its statutory duties; and that have experienced, and will continue to experience, catastrophic climate-related harms as a result of EPA's failure to satisfy its obligations. Crucially, EPA's failure to act directly harms overburdened frontline and fenceline communities, who often bear the brunt of co-pollutant harms from existing gas plants that are disproportionately sited in their communities and who are distinctly vulnerable to the threats posed by climate change.

If EPA continues to fail to regulate greenhouse gas emissions from existing natural gas-fired power plants and other stationary combustion turbines, then the undersigned States and Local Governments intend to sue Administrator Zeldin and EPA in the U.S. District Court for the District of Columbia for EPA's unreasonable delay in promulgating emission guidelines under section 111(d), after the 180-day notice period in 42 U.S.C. § 7604(a) has passed.

## I. Factual and Statutory Background

Climate change—which is unequivocally caused by anthropogenic greenhouse gas emissions—poses a substantial threat to the environment, public health, and welfare of the States and Local Governments. *See Am. Lung Ass'n v. EPA*, 985 F.3d 914, 976 (D.C. Cir. 2021), *rev'd on other grounds by West Virginia v. EPA*, 597 U.S. 697 (2022). As EPA itself has consistently found, greenhouse gas emissions from fossil fuel-fired power plants contribute significantly to this threat, representing 25% of U.S. carbon dioxide emissions in 2022.[2] Because of these emissions, the States and Local Governments have experienced devastating and compounding climate-related harms, whether measured in human lives lost, property damage, or financial costs. At the same time, the States and Local Governments are experiencing significant harms to public health and welfare from criteria pollutants, such as nitrogen oxides, sulfur dioxide, and fine particulate matter. Both types of emissions would be significantly curbed if EPA established emission guidelines for existing gas-fired power plants and other stationary combustion turbines.

[1] In 2024, in recognition of its obligation to issue such emission guidelines, EPA finalized the Carbon Pollution Standards to regulate greenhouse gas emissions primarily from existing coal-fired power plants and new gas-fired plants. 89 Fed. Reg. 39798, 40028–35 (May 9, 2024). EPA recently repealed the bulk of the Carbon Pollution Standards without proposing any replacement. *See* 91 Fed. Reg. 58954 (Sep. 17, 2026). The States and Local Governments are challenging EPA's repeal on its merits in the D.C. Circuit and intend to submit an additional notice of intent to sue letter concerning EPA's patently unreasonable delay in regulating these existing sources once the repeal takes effect.

[2] *See* Int'l Energy Agency, Global Energy Review: $CO_2$ Emissions (2025), https://perma.cc/6HU4-F7GK; EPA, Electric Power Sector Trends, https://perma.cc/CZ89-62JY (last updated Oct. 22, 2024).

According to EPA's own modeling, existing stationary combustion turbines will account for the largest portion of greenhouse gas emissions from the power sector by as soon as 2030. 89 Fed. Reg. at 39806. At least one study estimates that regulating existing gas-fired power plants and other stationary combustion turbines could reduce emissions an additional 30–37% below 2022 sectoral greenhouse gas emissions by 2040.[3] In 2023, EPA proposed but did not finalize emission guidelines for these sources. EPA's 2024 Carbon Pollution Standards recognized, however, that "it is vital to promulgate emission guidelines to address [greenhouse gas] emissions from [existing stationary combustion turbines], and that the EPA has a responsibility to do so under section 111(d) of the Clean Air Act." 89 Fed. Reg. at 39806.

Establishing emission guidelines for existing natural gas-fired power plants and other stationary combustion turbines is crucial from an environmental justice perspective. Combustion turbines include "peaker" plants, which are often located in urban environments, have the highest hourly rates of pollution in the power sector, and are commonly sited in overburdened and disadvantaged communities.[4] Indeed, EPA acknowledged public comments stating that these types of gas-fired combustion turbines are "often less efficient, less well controlled for other pollutants such as $NO_x$, and are more likely to be located near population centers and communities with environmental justice concerns." 89 Fed. Reg. at 39806. And multiple commenters have noted viable ways to reduce emissions in their communities, including by adding battery storage systems to peaker plants.[5] EPA's failure to promulgate emission guidelines for existing gas plants has led to public health harms from co-pollutant emissions at the local level, and fenceline communities will continue to be harmed by non-$CO_2$ emissions at the point of combustion.

The Clean Air Act unambiguously requires EPA to establish emission guidelines for existing natural gas-fired power plants and other stationary combustion turbines. Specifically,

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[3] *See* Qian Luo & Jesse D. Jenkins, *US EPA's Power Plant Rules Reduce $CO_2$ Emissions but Can Achieve More Cost-Efficient and Deeper Reduction by Regulating Existing Gas-Fired Plants*, 8 One Earth 4 (Apr. 18, 2025). This same study estimates that implementation of the Carbon Pollution Standards for existing coal and natural gas plants would have resulted in a 51% reduction from 2022 levels, meaning that regulating all existing power plants in the source category would amount to an emissions reduction of 81–87%.

[4] *See, e.g.*, Comment, Climate Justice Alliance, Docket ID No. EPA-HQ-OAR-2023-0072: New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, at 2 (Aug. 8, 2023).

[5] *See, e.g.*, Comment, Clean Energy Group, Docket ID No. EPA-HQ-OAR-2025-0124-0536, Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, at 4 (Aug. 7, 2025) ("[E]nergy storage systems can be added to existing low-load plants as an add-on control. This technology is immediately available, cost-effective, and has a proven track record of peak demand performance and emissions reduction when operated with the objective of doing so.").

section 111(b) of the Clean Air Act requires EPA to establish air pollution emission standards for new and modified stationary sources. 42 U.S.C. § 7411(b). Once EPA has issued new source performance standards (NSPS) for a given source category, section 111(d) mandates that EPA "shall prescribe regulations" that establish emission guidelines for existing sources in that category. *Id.* § 7411(d)(1). Consistent with that mandate, EPA regulations provide that existing source emission guidelines must be issued "concurrently upon or after proposal of [the NSPS]." 40 C.F.R. § 60.22(a).

In 2006, many of the States and Local Governments sued EPA for its failure to regulate greenhouse gas emissions from fossil fuel-fired power plants. *See New York v. EPA*, No. 06-1322 (D.C. Cir., filed Sep. 13, 2006). Following *Massachusetts v. EPA*, 549 U.S. 497 (2007), EPA entered a court-ordered settlement to engage in such rulemaking by May 2012. Three years after that deadline, in 2015, EPA finally promulgated two rules addressing greenhouse gas emissions from both coal and gas-fired power plants, one for new sources and the other for existing sources. *See* 80 Fed. Reg. 64662 (Oct. 23, 2015). Although the existing source regulations were stayed by the U.S. Supreme Court and never went into effect, the 2015 NSPS remain in place, triggering EPA's obligation to promulgate emission guidelines. As discussed above, EPA has not established emission guidelines for existing natural gas-fired power plants and other stationary combustion turbines.

## II. EPA Has Unreasonably Delayed Its Duty to Regulate Greenhouse Gas Emissions from Existing Gas-Fired Power Plants and Other Stationary Combustion Turbines.

EPA has failed to regulate greenhouse gas emissions from existing natural gas-fired power plants and other stationary combustion turbines, despite its duty to regulate these sources under section 111(d). EPA cannot evade section 111(d)'s clear mandate that EPA "shall prescribe regulations" for any category of existing sources for which it has issued NSPS. 42 U.S.C. § 7411(d). EPA promulgated the NSPS for new, modified, and reconstructed fossil fuel-fired power plants, including natural gas-fired stationary combustion turbines, over 10 years ago. Neither EPA's intermittent attempts to promulgate rules, nor EPA's serial attempts to repeal and weaken standards, excuse EPA from its duty to regulate—only Congress can do that. Accordingly, EPA must regulate greenhouse gas emissions from existing gas-fired power plants and other stationary combustion turbines.[6]

[6] This requirement exists despite EPA's recent supplemental proposal to rescind the findings underlying the 2015 NSPS. *See* 91 Fed. Reg. 59002 (Sep. 17, 2026). But EPA's supplemental proposal is still just that—proposed—and is still out for public comment. *See, e.g.*, *In re Murray Energy Corp.*, 788 F.3d 330, 334 (D.C. Cir. 2015) ("[A] proposed rule is just a proposal."). And even if EPA's supplemental proposal is finalized, it will certainly be challenged in court and may not be upheld. The 2015 NSPS remain in effect, and section 111(d) brooks no exception unless and until EPA actually stops—in a final, effective rule—regulating new sources in a category.

## Conclusion

Since 2015, EPA has been obligated to regulate greenhouse gas emissions from existing natural gas-fired power plants and other stationary combustion turbines. EPA's failure to effectively regulate these sources for the last decade has harmed, and will continue to harm, the States and Local Governments. The States and Local Governments thus give this 180-day notice of their intent to compel action through suit under 42 U.S.C. § 7604(a).

Dated: October 1, 2026

Respectfully submitted,


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