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VIA ELECTRONIC AND CERTIFIED U.S. MAIL

Lee Zeldin, Administrator
Office of the Administrator (1101A)
U.S. Environmental Protection Agency
Room 3000, WJC South Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
Certified Mail # 9589071052704610464808

Aaron Szabo, Assistant Administrator
Office of Air and Radiation (6103A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460
Certified Mail # 9589071052704610464792

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: CO₂ 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-CO₂ 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,

³ See Qian Luo & Jesse D. Jenkins, *US EPA’s Power Plant Rules Reduce CO₂ 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,

STATE OF NEW YORK
LETITIA JAMES
ATTORNEY GENERAL

/s/ Morgan A. Costello
MORGAN A. COSTELLO
Deputy Bureau Chief
MICHAEL J. MYERS
Senior Counsel for Air Pollution
and Climate Change Litigation
JOHN BRODERICK
LIBBY DIMENSTEIN
ASHLEY M. GREGOR
Assistant Attorneys General
Environmental Protection Bureau
NYS Office of the Attorney General
The Capitol
Albany, NY 12224
(518) 776-2392
Morgan.Costello@ag.ny.gov
Michael.Myers@ag.ny.gov
John.Broderick@ag.ny.gov
Libby.Dimenstein@ag.ny.gov
Ashley.Gregor@ag.ny.gov

**COMMONWEALTH OF
MASSACHUSETTS**
ANDREA JOY CAMPBELL
ATTORNEY GENERAL

/s/ Turner H. Smith
TURNER H. SMITH
Deputy Bureau Chief
AMY LAURA CAHN
Special Assistant Attorney General
JULIA JONAS-DAY
Assistant Attorney General for Climate
Change
EMILY SWANSON
Assistant Attorney General
Energy and Environment Bureau
Office of the Massachusetts Attorney
General
One Ashburton Place, 18th Fl.
Boston, MA 02108
(617) 963-2782
Turner.Smith@mass.gov

STATE OF ARIZONA
KRIS MAYES
ATTORNEY GENERAL

/s/ Benjamin L. Champion
BENJAMIN L. CHAMPION
Special Assistant Attorney General
Environmental Protection Unit
Office of the Attorney General
2005 N. Central Ave
Phoenix, AZ 85085
(520) 628-6653
Benjamin.Champion@azag.gov

STATE OF CONNECTICUT
WILLIAM TONG
ATTORNEY GENERAL

/s/ Scott N. Koschwitz
MATTHEW I. LEVINE
Deputy Associate Attorney General
SCOTT N. KOSCHWITZ
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5250
scott.koschwitz@ct.gov

STATE OF COLORADO
PHILIP J. WEISER
ATTORNEY GENERAL

/s/ Carrie Noteboom
CARRIE NOTEBOOM
Assistant Deputy Attorney General
Ralph L. Carr Judicial Center
Colorado Department of Law
1300 Broadway, 10th Floor
Denver, CO 80203
(720) 508-6285
carrie.noteboom@coag.gov

STATE OF DELAWARE
KATHLEEN JENNINGS
ATTORNEY GENERAL

/s/ Vanessa L. Kassab
IAN R. LISTON
Director of Impact Litigation
RALPH K. DURSTEIN III
VANESSA L. KASSAB
Deputy Attorneys General
ROBIN L. JACOBS
Assistant Attorney General
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 683-8899
vanessa.kassab@delaware.gov

STATE OF HAWAII
ANNE E. LOPEZ
ATTORNEY GENERAL

/s/ Lyle T. Leonard
LYLE T. LEONARD
Deputy Attorney General
465 S. King Street, #200
Honolulu, HI 96813
(808) 587-3052
Lyle.T.Leonard@hawaii.gov

STATE OF MAINE
AARON M. FREY
ATTORNEY GENERAL

/s/ Emma Akrawi
EMMA AKRAWI
Assistant Attorney General
Natural Resources Division
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800
Emma.Akrawi@maine.gov

STATE OF ILLINOIS
KWAME RAOUL
ATTORNEY GENERAL

/s/ Jason E. James
JASON E. JAMES
Assistant Attorney General
MATTHEW J. DUNN
Chief, Environmental Enforcement/
Asbestos Litigation Division
JOANNA BRINKMAN
Complex Litigation Counsel
Illinois Attorney General's Office
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
(217) 843-0322
jason.james@ilag.gov

STATE OF MARYLAND
ANTHONY G. BROWN
ATTORNEY GENERAL

/s/ Steven J. Goldstein
STEVEN J. GOLDSTEIN
Assistant Attorney General
Office of the Attorney General of
Maryland
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
410-576-6414
sgoldstein@oag.maryland.gov

STATE OF MICHIGAN
DANA NESSEL
ATTORNEY GENERAL

/s/ Hadley E. Tuthill
HADLEY E. TUTHILL
Assistant Attorney General
Michigan Department of Attorney General
Environment, Natural Resources, and
Agriculture Division
525 W. Ottawa Street
Lansing, MI 48909
(517) 335-7664
TuthillH@michigan.gov

STATE OF NEW JERSEY
JENNIFER DAVENPORT
ATTORNEY GENERAL

/s/ Lisa J. Morelli
LISA J. MORELLI
Deputy Attorney General
New Jersey Division of Law
25 Market Street
Trenton, NJ 08625
(609) 376-2740
Lisa.Morelli@law.njoag.gov

STATE OF NORTH CAROLINA
JEFF JACKSON
ATTORNEY GENERAL

/s/ Asher P. Spiller
ASHER P. SPILLER
Senior Deputy Attorney General
TAYLOR H. CRABTREE
Special Deputy Attorney General
ABE S. EICHNER
Assistant Attorney General
P.O. Box 629
Raleigh, NC 27602
(919) 716-6600
aspiller@ncdoj.gov
tcrabtree@ncdoj.gov
aeichner@ncdoj.gov

STATE OF MINNESOTA
KEITH ELLISON
ATTORNEY GENERAL

/s/ Peter N. Surdo
PETER N. SURDO
Special Assistant Attorney General
Manager, Rule of Law Division
Office of the Minnesota Attorney General
445 Minnesota Street Suite 600
Saint Paul, MN 55101
(651) 300-6637
peter.surdo@ag.state.mn.us

STATE OF NEW MEXICO
RAÚL TORREZ
ATTORNEY GENERAL

/s/ J. Spenser Lotz
J. Spenser Lotz
Assistant Attorney General
Environmental Protection Bureau
201 Third St. NW, Suite 300
Albuquerque, NM 87102
(505) 616-7560
slotz@nmdoj.gov

STATE OF OREGON
DAN RAYFIELD
ATTORNEY GENERAL

/s/ Paul Garrahan
PAUL GARRAHAN
Sr. Assistant Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4540
Paul.Garrahan@doj.oregon.gov

**GOVERNOR OF THE
COMMONWEALTH OF
PENNSYLVANIA**
JOSH SHAPIRO

JENNIFER SELBER
GENERAL COUNSEL

/s/ Robert A. Reiley
ROBERT A. REILEY
Deputy Chief Counsel
The Pennsylvania Governor's Office of
General Counsel
Office of Chief Counsel, Department of
Environmental Protection
RCSOB, 400 Market Street, 9th Fl.
Harrisburg, PA 17105-8464
(717) 787-0478
RReiley@pa.gov

STATE OF VERMONT
CHARITY R. CLARK
ATTORNEY GENERAL

/s/ Hannah Yindra
HANNAH YINDRA
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-3186
Hannah.Yindra@vermont.gov

STATE OF RHODE ISLAND
PETER F. NERONHA
ATTORNEY GENERAL

/s/ Nicholas M. Vaz
NICHOLAS M. VAZ
Assistant Attorney General
Rhode Island Office of the Attorney General
Environment and Energy Unit Chief
150 South Main Street
Providence, RI 02903
(401) 274-4400 ext. 2297
nvaz@riag.ri.gov

STATE OF WASHINGTON
NICHOLAS W. BROWN
ATTORNEY GENERAL

/s/ Zachary S. Packer
ZACHARY S. PACKER
CHRISTOPHER H. REITZ
Assistant Attorneys General
Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117
(564) 669-8864
zachary.packer@atg.wa.gov

STATE OF WISCONSIN
JOSHUA L. KAUL
ATTORNEY GENERAL

/s/ Gabe Johnson-Karp
GABE JOHNSON-KARP
Assistant Attorney General
Wisconsin Department of Justice
17 West Main Street
Post Office Box 7857
Madison, WI 53707-7857
(608) 267-8904
gabe.johnson-karp@wisdoj.gov

CITY OF CHICAGO, ILLINOIS
MARY B. RICHARDSON-LOWRY
CORPORATION COUNSEL

/s/ Myriam Zreczny Kasper
MYRIAM ZRECNZY KASPER Deputy
Corporation Counsel
GABRIELLE SIGEL
Assistant Corporation Counsel Supervisor
BRADLEY R. RYBA
Assistant Corporation Counsel
City of Chicago Department of Law
2 North LaSalle Street, Suite 580
Chicago, IL 60602
(312) 744-3564
Myriam.Kasper@cityofchicago.org
Gabrielle.Sigel@cityofchicago.org
Bradley.Ryba@cityofchicago.org

DISTRICT OF COLUMBIA
BRIAN L. SCHWALB
ATTORNEY GENERAL

/s/ Lauren Cullum
LAUREN CULLUM
Special Assistant Attorney General
Office of the Attorney General
for the District of Columbia
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001
lauren.cullum@dc.gov

**CITY AND COUNTY OF DENVER,
COLORADO**
MIKO ANDO BROWN
CITY ATTORNEY

/s/ Kristin Brainerd
KRISTIN BRAINERD
Assistant City Attorney
Denver City Attorney's Office
201 W. Colfax Avenue, Dept. 1207
Denver, CO 80202
(720) 913-3212
Kristin.Brainerd@denvergov.org

CITY OF NEW YORK, NEW YORK
STEVEN BANKS
CORPORATION COUNSEL

/s/ Alice R. Baker

ALICE R. BAKER

Senior Counsel

TESS DERNBACH

Senior Counsel

New York City Law Department

100 Church Street

New York, NY 10007

(212) 356-2314

albaker@law.nyc.gov

tdernbac@law.nyc.gov