

United States Senate  
WASHINGTON, DC 20510

October 1, 2026

The Honorable Lee Zeldin  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Zeldin,

We write to express our strong opposition to the Environmental Protection Agency's (EPA) proposed rule, *Minor New Source Review Program Air Permitting Public Participation Requirements for State Implementation Plans*,<sup>1</sup> which would eliminate longstanding minimum federal requirements for public notice and comment before certain new or modified sources of air pollution receive construction authorization. We urge EPA to withdraw this proposal.

The Clean Air Act's New Source Review (NSR) program requires certain new or modified sources of air pollution to obtain permits and meet applicable air pollution control requirements before construction. Minor New Source Review ("Minor NSR") applies to sources with the potential to emit up to 249 tons per year of non-greenhouse gas pollution, such as particulate matter, NO<sub>x</sub>, or SO<sub>2</sub>,<sup>2</sup> and any amount of greenhouse gas pollution.

Despite the name, "minor sources" can be large, health-harming facilities. The category includes tens of thousands of sources nationwide, including almost all of the proposed fossil fuel-fired power plants and generators that would power data centers.<sup>3</sup> These sources can significantly impact the health of surrounding communities. An estimated 80 million Americans, including approximately 17 million children, already live within 3 miles of a fossil fuel-fired power plant,<sup>4</sup> and these numbers will only grow as companies build new power generation to power additional data centers.

States and local agencies administer minor NSR programs to ensure that construction does not interfere with federal air quality standards designed to protect the public health. While they have

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<sup>1</sup> 91 Fed. Reg. 41591 (July 7, 2026).

<sup>2</sup> 42 U.S.C. § 7479.

<sup>3</sup> Maxine Joselow, "E.P.A. Moves to Curb Public Input on Data Centers", *The New York Times* (Aug. 25, 2026), *See e.g.*, <https://www.edf.org/media/statement-epa-should-withdraw-proposal-would-erase-public-notice-and-comment-air-pollution>.

<sup>4</sup> Memo from the Congressional Research Service to Senate Committee on Environment and Public Works, "Total Population within Specified Distance of Fossil-Fueled Power Plants (July 10, 2025); EPA, "Power Plants and Neighboring Communities," <https://www.epa.gov/power-sector/power-plants-and-neighboring-communities>; Per the 2023 U.S. Census, 21.7% of the United States population is under 18. U.S. Census Table S0201, <https://data.census.gov/table/ACSSPP1Y2023.S0201?q=percent+of+population+that+is+children>.

flexibility in administering these programs, for more than 50 years, federal requirements have included an opportunity for communities to understand and provide input on proposed facilities that may affect the air they breathe. Under current regulations, state and local permitting authorities must make relevant permit information and their analysis of a project's air quality impacts available for at least 30 days of public comment.<sup>5</sup>

EPA's proposal would eliminate that federal baseline and allow state and local permitting authorities to scale back or even eliminate notice requirements and opportunities for public participation.<sup>6</sup> Under EPA's proposal, a state could provide no public notice or opportunity to comment at all on certain minor NSR preconstruction permits. This is unacceptable.

We agree that permitting should be efficient, predictable, and capable of supporting the infrastructure our country needs. But faster permitting should not come at the expense of transparency or communities' ability to shape the decisions that affect them. Public notice and comment are basic safeguards that identify local concerns, improve proposed projects, and build public trust in the development process.

These safeguards are particularly important as data center construction accelerates nationwide. These facilities often rely on diesel generators, gas turbines, or other equipment capable of emitting dangerous pollutants.<sup>7</sup> Communities are asking questions about the impacts this will have on their health and environmental wellbeing, including air quality. The federal government should encourage transparency and public engagement around these projects, not make it easier to shroud their construction in secrecy.

EPA argues that state and local authorities are "closest to the issues and the public" and should therefore have greater discretion over public participation.<sup>8</sup> But the people closest to these projects are those who live and raise families nearby. At a minimum, they deserve notice and information about potential air quality impacts, and an actionable opportunity to make their voices heard and meaningfully shape the outcome before a final decision is made.

With this in mind, please respond to the following question by October 23:

1. What evidence has EPA received or analyzed that public comment and participation requirements have meaningfully slowed or otherwise impeded the development of infrastructure that requires Minor NSR? Please state the motivation for proposing this

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<sup>5</sup> 40 C.F.R. § 51.161(a)–(b); Public availability of

information. <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-51/subpart-I/section-51.161>

<sup>6</sup> 40 C.F.R. § 51.161(a)–(b); Minor New Source Review Program Air Permitting Public Participation Requirements for State Implementation Plans, (July 7, 2026), <https://www.federalregister.gov/documents/2026/07/07/2026-13667/minor-new-source-review-program-air-permitting-public-participation-requirements-for-state>

<sup>7</sup> Tabuchi, Hiroko, New York Times, "Trump's Vision for A.I. Dominance Comes With Major Air Pollution" (August 5, 2026). <https://www.nytimes.com/2026/08/05/climate/data-centers-pollution-trump-ai-energy.html>

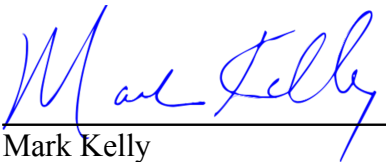
<sup>8</sup> U.S. Environmental Protection Agency, "EPA Proposes to Streamline State and Local Permitting Process for Minor Sources" (July 1, 2026). <https://www.epa.gov/newsreleases/epa-proposes-streamline-state-and-local-permitting-process-minor-sources>

rule and provide supporting data and analyses to support this motivation in quantifiable terms.

2. Did EPA communicate with, or receive communications from, any data center owners or operators regarding this issue before, during, or after the comment period for this proposal? If so, please provide all relevant communications.

At a time when communities across the country are being asked to host more industrial development, EPA should be strengthening public trust and ensuring Americans have a seat at the table, not removing the mechanisms through which they can make their voices heard. We urge EPA to preserve these longstanding protections and ensure that communities continue to have a meaningful voice in decisions that affect the air they breathe. We look forward to your response.

Sincerely,



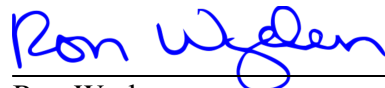
Mark Kelly  
United States Senator



Sheldon Whitehouse  
United States Senator  
Ranking Member  
Committee on Environment  
and Public Works



Chris Van Hollen  
United States Senator



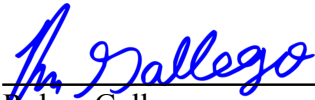
Ron Wyden  
United States Senator



Tammy Duckworth  
United States Senator



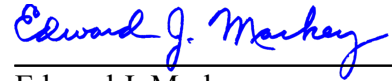
Michael F. Bennet  
United States Senator



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Ruben Gallego

United States Senator



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Edward J. Markey

United States Senator



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Adam B. Schiff

United States Senator