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## EPA reverses last-minute Trump denial of greenhouse gas petitions

BY ALEX GUILLÉN

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The EPA this week reversed the last-second denial by the Trump administration of three long-pending petitions seeking greater regulation of greenhouse gases under the Clean Air Act.

The move does not mean the EPA will grant the petitions, but does keep them alive for potential future action as the Biden administration considers more aggressive climate regulations.

**Background:** The Center for Biological Diversity in 2009 petitioned the EPA to regulate greenhouse gases under the National Ambient Air Quality Standards, the same program that sets limits for pollutants such as particulate matter and ground-level ozone. New York University's Institute for Policy Integrity in 2013 petitioned the EPA to regulate greenhouse gases under Section 115 of the Clean Air Act, a little-used provision that deals with international pollution. And Food & Water Watch in 2019 petitioned the EPA to address greenhouse gases under Section 112, the hazardous air pollutant program.

All three petitions had been pending without answer for years as the Obama administration and the Trump administration focused on regulating stationary sources via Section 111, first through the Clean Power Plan and later the Affordable Clean Energy rule.

**Wheeler denials:** On his last full day in office, then-Administrator Andrew Wheeler [denied all three petitions in a previously unreported action](#). Those parts of the Clean Air Act are not "well suited" to address the diffuse, global nature of greenhouse gas pollution, Wheeler wrote.

"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," Wheeler wrote at the time. "EPA cannot create such a solution unilaterally, and it has not been given the statutory tools that would be necessary."

Coincidentally, Wheeler's denial came on the same day that the D.C. Circuit Court of Appeals [struck down his ACE rule](#) for not fully considering the range of regulatory options under Section 111.

**The reversal:** The Biden EPA on Thursday [withdrew its denial of the petitions](#), sending similar letters to all three organizations.

“I am withdrawing the denial of your petition, as the agency did not fully and fairly assess the issues raised by the petition,” acting Administrator Jane Nishida wrote to CBD. “The EPA intends to further consider the important issues raised by your petition before responding.”

The reversal does not necessarily mean the EPA will grant any of the petitions, but Maya Golden-Krasner, deputy director of CBD's Climate Law Institute, said she is hopeful that it indicates the EPA will take the petitions seriously.

“The climate crisis is now much more urgent even than eight years ago, so we think really now this is the best path forward,” she said.

The EPA did not immediately return questions about the withdrawals.

**Context:** All three of the petitions' policy proposals are more legally fraught and logistically complicated than the Section 111 strategy. For example, under a carbon dioxide NAAQS, states would have to craft a plan to reduce emissions within their borders, even though CO<sub>2</sub> pollution settles roughly evenly throughout the atmosphere. Section 115 has never been significantly tested, and Section 112 has only been used for pollutants that are direct threats to human health, not pollutants like carbon dioxide that are primarily indirect threats.

But some environmentalists have advocated for such strategies because they offer more comprehensive, economy-wide approaches to reducing greenhouse gases than Section 111. That provision requires separate regulations for each individual industry — for example, power plants, oil and gas production, petrochemicals, cement production, and so on. Each sector would require its own rulemaking taking multiple years, and each is responsible for diminishing portions of U.S. emissions.