

October 28, 2026

The Honorable Sheldon Whitehouse
Ranking Member
Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Martin Heinrich
Ranking Member
Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Re: Project Certainty Provisions Effectively Dismantle the Clean Air Act, Clean Water Act and Most Environmental Safeguards

Dear Ranking Members Whitehouse and Heinrich, Minority Leader Schumer, and Senators,

We write to express our alarm and strong opposition to the deregulatory “project certainty” provisions that will collectively lock in near-permanent fossil fuel dominance in the United States in exchange for minimal gains for renewable energy. Voting for such provisions would represent a sweeping betrayal of your past commitments to protect clean air, clean water, public lands, water and wildlife conservation, and environmental justice. They collectively all but make it impossible for a future president to unwind the harm caused by the Trump administration’s fossil fuel agenda, will hand AI hyperscale data centers and fossil fuel developers new tools to obstruct a future president’s climate agenda, and permanently lock in environmental injustice in the communities already suffering the most from toxic pollution.

Section 1401 Locks in the Trump Administration’s Environmental Policies Permanently

Section 1401(b) sweepingly directs that all federal agencies “shall not take any new action” that would “revoke, rescind, withdraw, terminate, suspend, amend, or alter” any federal authorization or permit that is in effect on or after September 16, 2026, and prohibits all federal agencies from taking “any other action” that interferes with construction “or operation at full capacity of a project.” This language immunizes tens of hundreds of thousands of existing facilities and projects around the country from ever having to meet any more stringent pollution controls or more stringent environmental protections ever again.

In *Massachusetts v. EPA*, the Supreme Court noted that federal agencies “do not generally resolve massive problems in one fell regulatory swoop” and instead “whittle away at them over time.” Indeed, the entire structure of the Clean Air Act and Clean Water Act is based on incremental improvements in controlling pollution, usually at five year intervals, and based on improving technology. Section 1401 is so broad that it will overrule the mandates of our existing environmental laws and would effectively prohibit any attempt to address pollution from any existing facility ever again. Even worse, this provision locks in the Environmental Protection

Agency's (EPA) interpretation and policy positions to the midway point of the Trump Administration after the most sweeping regulatory rollbacks in this nation's history. Any and every attempt by the EPA to correct even the slightest overreach by the Trump administration could easily fall within the plain meaning of taking "any other action" that "interferes" with the "operation at full capacity" of a facility.

If this legislation becomes law, the EPA will be crippled, and it will be all but impossible for it to take even the most modest steps, including even modest enforcement actions, in the future to regulate greenhouse gases, toxic air pollutants, water pollution, or address hazardous waste.

Beyond the EPA, federal agencies that take action to address environmental harms from a project or facility will be legally vulnerable based on the incredibly high threshold to warrant such action — an agency must demonstrate a "specific, urgent, substantial, and proximate harm or damage to life, property, national security, or defense" — and all agencies will be deterred by the sweeping financial penalties of violating the prohibitions in Section 1401 — "not more than 50 percent of the total of all costs incurred ... as of the date of the action." This language alone could allow the fossil fuel industry to threaten the federal government with tens or hundreds of billions of dollars in liability from the Permanent Judgment Fund when an agency like the EPA or the Department of the Interior even attempts to better address environmental damage from any power plant, refinery, LNG export terminal, drilling platform or pipeline moving forward.

Section 1401's financial penalties and potential for gross abuse makes Donald Trump's January 6th Slush Fund look like pocket change in comparison.

Section 1402 Locks in the Dominant Position of the Fossil Fuel Industry Permanently

Section 1402 allows 32 different types of fossil fuel and mining projects — as well as 7 types of renewable energy projects — to file court cases alleging "disparate treatment" if a federal agency denies or delays approval of a project with massive monetary awards if a claim is proven. While seeming to be "technology neutral" this language instead provides a massive structural advantage to fossil fuels and will further lock in their dominant position in the United States for decades to come.

First, the legislation limits the lookback period for establishing a claim to the previous five years and limits any claim from being filed until the fall of 2027 at the absolute earliest (280 days after enactment of this Act). By late 2027 three of the five years of that lookback period will consist of the Trump administration record wherein few renewable energy claims were approved, but every fossil project was rubberstamped. In other words, by gaming the clock, Republican negotiators have ensured that all disparate treatment claims will primarily be based on the current administration's record of permit approvals and denials. By 2029, when four of the five years for the lookback period will cover the Trump administration's record, any attempt by the next President to reject fossil fuel infrastructure in the future will be all but impossible given four years of Trump-era rubberstamped approvals.

Second, Section 1402 establishes "prime facie" evidence of "bias" to include any agency policy, guidance, executive order or other statement by any official. This language would all but

dismantle any future administration efforts to address the climate crisis. For example, if a future President were to issue an executive order similar to President Biden's Executive Order 13990 — *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis* — that executive order could qualify as evidence of “bias” and help the fossil fuel industry succeed with any “disparate treatment” claim. Similarly, any agency policy — including those that went through public notice and comment — that acknowledges climate change and the need to shift away from fossil fuels could constitute proof of “bias.” Even the next National Climate Assessment itself — which the law requires be produced on four-year intervals — could constitute “bias” by the administration if it discusses the need to reduce fossil fuels. Combined again with massive financial penalties, BAAJA would dramatically chill the willingness of federal agencies to take action against the fossil fuel industry no matter how dire the climate crisis becomes.

Third, Section 1402 provides the largest polluting corporations the ability to sue the government for damages based on “disparate treatment.” The concept of “disparate treatment” originates from the Civil Rights Act of 1964. However, Section 1402 turns this concept on its head such that powerful polluters can bring “disparate treatment” claims, but frontline communities will have no recourse in the courts and must suffer more pollution for decades to come. It is hard to imagine a worse legislative provision that sets back the civil rights of the most disadvantaged communities than this.

Project Certainty Will Cease Environmental Progress and Will Reward Fossil Fuels and Tech Oligarchs at the Expense of Environmental Justice

As Section 1401 and 1402 are currently structured, all federal agencies will have virtually no ability to require any additional environmental protections for existing projects and have virtually no ability to deny any future project that is proposed. Thus, while the hope and unfounded belief of the proponents of this legislation is that these two provisions will expand renewable energy, the reality is the opposite. And worse, even if this legislation achieved its goal, it nonetheless relies on an immoral premise rooted in environmental racism: that it is acceptable to subject the most vulnerable Americans — disproportionately Black communities, people of color and Native Americans — to decades more pollution, higher cancer and illness rates, and lower quality of life caused by increased fossil fuel development in their backyards, such that other Americans — almost certainly higher income and coastal — will benefit from clean sources of energy.

Fossil fuel pollution leads to an estimated 350,000 premature deaths in the United States each year, and has been linked to the leading causes of death in the country. But these harms are not evenly distributed across the country. In places like Cancer Alley in Louisiana, ordinary people face cancer rates at 47 times the EPA's acceptable risk levels. People living in these types of frontline communities across the country have shorter lifespans, worse cancer and health risks, and die at rates far greater than the national average. “Project certainty” means certain illness, suffering, and higher mortality rates for decades to come, and is profoundly unjust.

The historical reality is this: the United States has made profound leaps forward in protecting the environment because our bedrock environmental laws gave communities a voice in decision-

making and put the public interest before corporate profit. Using the Clean Air Act, the Clean Water Act, the Emergency Planning and Community Right-to-Know Act, the National Environmental Policy Act and other legal tools, state Attorneys General, community groups, tribal nations and non-profit organizations scraped and fought for every environmental step forward this country has made. At every step of the way, fossil fuels and corporations have waged regulatory war against better environmental protections, but because our nation's laws were strong, those efforts failed.

The efforts of advocacy and legal efforts of countless groups and millions of ordinary people stopped the Keystone XL pipeline and the Constitution pipeline, they led to strong emissions standards for vehicles, forced the closures of hundreds of coal-fired power plants across the United States and forced the EPA to set stronger standards for toxic air pollutants, toxic water pollutants, and cleanups of coal plants around the nation. Our existing environmental laws have served as the only meaningful check on the fossil fuel industry. And while those laws have been imperfect and still left some communities behind, they still represent our best hope for achieving environmental justice in the future. Congress should not turn against our most disadvantaged communities in favor of large corporate polluters, but instead work to strengthen the Clean Air Act and other laws to fully address existing environmental injustice — an action that would meaningfully address the climate crisis.

The loudest voices that demand and now lobby for “project certainty” are fossil fuel companies, AI data center oligarchs including Elon Musk and the wealthiest elites in this nation. None of them are advocating to pass permitting reform because they want to address the climate crisis. They are advocating to pass permitting reform because they know permit certainty means ever greater profits, even more centralized political influence, and even more centralized wealth. We cannot solve the climate crisis by giving AI data centers and the fossil fuel industry a golden ticket that secures their future, this legislation does just that.

We urge you to oppose this pernicious legislation.

Sincerely,

198 methods
350 Bay Area Action
350 Conejo / San Fernando Valley
350 Santa Barbara
350 Triangle
350Hawaii
805 Action - Santa Barbara's Youth Activists
A Community Voice
A2 (Anthropocene Alliance)
Alaska Community Action on Toxics
Animals Are Sentient Beings, Inc
Azul
Bold Alliance
Bozeman Birders

California Communities Against Toxics
California Land Watch
Californians for Western Wilderness
CalWild
Cascade Forest Conservancy
Cascadia Wildlands
Center for Biological Diversity
Center for Environmental Health
Citizens Awareness Network
Citizens for a Healthy Community
Citizens Resistance At Fermi Two (CRAFT)
CleanEarth4Kids.org
Climate First: Replacing Oil & Gas (CFROG)
Climate Justice Alliance
Climate Mobilization - San Diego
Climate Reality Project Greater New Orleans Chapter
CLUE-SB Environmental Justice work group
Coalition for a Nuclear Free Great Lakes
Comunidades Aliadas Tomando Acción (CATA)
Concerned Citizens of St. John
Connecticut Coalition for Economic and Environmental Justice
Conservation Law Foundation
Consumer Watchdog
Cook Inletkeeper
Creation Justice Ministries
CURE
Cut The Plastic Environmental Mitigation Solutions
Dayenu: A Jewish Call to Climate Action
Don't Waste Michigan
Earth Action, Inc.
Earthworks
Education, Economics, Environmental, Climate & Health Organization (EEECHO)
Elders Climate Action
End Climate Silence
Environmental Defense Center
Environmental Protection Information Center (EPIC)
Farmworker Association of Florida
Food & Water Watch
Fossil Free California Votes
FOUR PAWS USA
Friends of the Earth-US
Glendale Environmental Coalition
Great Old Broads for Wilderness
Greater New Orleans Interfaith Climate Coalition
GreenLatinos
Heal the Bay

Healthy Ocean Coalition
Heartwood
Hilltown Vision
Inclusive Louisiana
Institute for Policy Studies Climate Policy Program
Interfaith Climate Action Network of Contra Costa County
International Marine Mammal Project of Earth Island Institute
JUJustice Washington
Kettle Range Conservation Group
Klamath-Siskiyou Wildlands Center
Los Angeles Audubon Society
Los Padres ForestWatch
Milwaukee Riverkeeper
Minnesota Division Izaak Walton League of America
Moms for a Nontoxic New York (MNNY)
Montana Environmental Information Center
Mtn Bio
National Coalition Against Cryptomining
New Hampshire Audubon
New Hampshire Network for Environment, Energy, Climate
New York Public Interest Research Group (NYPIRG)
North American Marine Alliance
North Central Washington Audubon Society
Nuclear Information and Resource Service
Ocean Defense Initiative
Ohio Nuclear Free Network
Oil and Gas Action Network
Oil Change International
Oregon Conservancy Foundation
Oregon Physicians for Social Responsibility
Oregon Wild
Partnership for Policy Integrity
PDANJ
Pelea Movement
Pesticide Action & Agroecology Network
Physicians for Social Responsibility
Physicians for Social Responsibility - KC
Physicians for Social Responsibility Maine
Physicians for Social Responsibility Texas
Pipe Line Awareness Network for the Northeast
Port Arthur Community Action Network (PACAN)
Powder River Basin Resource Council
Predator Defense
Progressives for Climate
Project Eleven Hundred
Protect Penn-Trafford

Resource Renewal Institute
San Francisco Bay Physicians for Social Responsibility
San Luis Obispo Mothers for Peace
Santa Barbara Channelkeeper
Santa Cruz Climate Action Network
Save Our Parks
Save Our Shores
Save the Scenic Santa Ritas Association
Sea Turtle Conservancy
Shark Stewards- The Earth Island Institute
Snake River Alliance
SoCal 350 Climate Action
Society of Fearless Grandmothers-SB
Standing Trees
Stockton Environmental Justice Education and Advocacy
Sunflower Alliance
Surfrider Foundation
The Surfrider Foundation, San Luis Obispo
The Urban Wildlands Group
Third Act
Turtle Island Restoration Network
Unitarian Universalist Service Committee
Unitarian Universalists for Social Justice
Uranium Watch
Voters For Animal Rights (VFAR)
WaterWatch of Oregon
Western Environmental Law Center
Western Nebraska Resources Council
Western Organization of Resource Councils
Western Watersheds Project
Western Wildlife Conservancy
WildEarth Guardians
WildLands Defense
Wyoming Wilderness Association
Wyoming Wildlife Advocates