

TO AUTHORIZE THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY TO WAIVE APPLICATION OF CERTAIN REQUIREMENTS WITH RESPECT TO PROCESSING AND REFINING A CRITICAL ENERGY RESOURCE AT A CRITICAL ENERGY RESOURCE FACILITY, AND FOR OTHER PURPOSES

MARCH 23, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. RODGERS of Washington, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1140]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1140) to authorize the Administrator of the Environmental Protection Agency to waive application of certain requirements with respect to processing and refining a critical energy resource at a critical energy resource facility, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1140, a bill to require the Administrator of the Environmental Protection Agency to waive application of certain requirements with respect to processing and refining a critical energy resource at a critical energy resource facility, and for other purposes, was introduced by Rep. Greg Pence (R-IN) on February 21, 2023.

H.R. 1140 provides the Environmental Protection Agency (EPA) Administrator authority to issue temporary waivers for any Clean Air Act or Solid Waste Disposal Act requirements the Administrator judges will be necessary to allow operation of a critical energy resource facility, if the Administrator determines the processing or refining of the resource at the facility is needed to meet national security or energy security needs and is in the public interest.

H.R. 1140 requires the Administrator shall ensure any temporary waiver of a requirement, to the maximum extent practicable, does not conflict with any other federal, state, or local environmental requirements and minimizes any adverse environmental impacts.

BACKGROUND AND NEED FOR LEGISLATION

As recently as 1990, the United States was the world's number-one producer of minerals. By 2018, the United States had fallen to 12th overall in global non-fuel minerals production.¹ A 2022 DOE assessment of critical energy resource supply chain risks notes that China's control of key materials in renewable energy is "across the board," with China in control of "80% of rare earths production and refining that are key for components in technologies such as direct drive generators in wind turbines, and China also controls 61% of global lithium refining key for battery storage and electric vehicles. China also controls 100% of the processing of natural graphite used for battery anodes."²

The severity of this overdependence on other countries for critical minerals was brought to the public's attention by the report released during the Trump Administration, which found the United States relies on imports for 31 of the 35 critical minerals necessary for the U.S. defense and economy.³ For 14 of the listed critical minerals, the United States relies completely on imports from other countries; having no U.S. production at all. As indicated in the above DOE assessment, recent Biden Administration reviews confirm U.S. vulnerability.

¹ See testimony of Michelle Michot Foss before the Subcommittee on Environment and Climate Change hearing "Building a 100 Percent Clean Economy: Opportunities for and Equitable, Low-Carbon Recovery," September 16, 2020. (<https://docs.house.gov/meetings/IF/IF18/20200916/111008/HHRG-116-IF18-Wstate-MichotFossM-20200916-U1.pdf>)

² See Department of Energy "America's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition," February 2022, p. 13).

³ See Testimony by the Honorable Mark W. Menezes at the Joint Energy, Climate, and Grid Security Subcommittee and Environment, Manufacturing, and Critical Materials Subcommittee Legislative Hearing, "Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains," February 7, 2023. (energycommerce.gov)

Against this backdrop, Congress has acted⁴ to support research and development, incentives, and interagency planning relating to critical minerals and materials, to reduce dependence on foreign supplies as demand increases for minerals- and materials-heavy energy resources. However, the risks of reliance on supply chains will remain. And to the extent supply disruptions have an impact on the ability to produce energy or power, or the materials necessary to produce energy or power, the United States should be prepared.

Existing authorities in the Federal Power Act, Clean Air Act, Solid Waste Disposal Act, and other statutes provide flexibility for government entities to waive certain requirements to provide for shortages or demand for energy and materials under certain circumstances, including emergencies caused by natural disasters or war. The Clean Air Act, for example, provides some 22 waiver authorities; none however involve application specific to national security or energy security matters that are in the public interest. Section 202(c) of the Federal Power Act, by contrast, provides authorities specifically to order the provision of power and related resources necessary for the delivery of power in times of extraordinary need: “During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in demand for electric energy, or a shortage of electric energy, or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority . . . to require” the generation of electric energy it judges will meet the emergency and serve the public interest.⁵

Growing concerns about increasing reliance on imports of critical energy resources that are vulnerable to disruption or dominated by China, along with the energy experience in Europe, underscore the value of providing flexibility to relevant agencies to address emergent national security and energy security issues. As former DOE Deputy Secretary Mark Menezes has testified before the Committee:

*“While plenty of attention is on the supply chains of critical minerals, we mustn’t forget that, as a nation, we should continue to ensure the operation of our critical energy facilities producing our critical energy resources during emergencies and threats to our energy security. Congress has recognized the importance and efficiency of executive agency action necessary to ensure the speedy recovery from natural disasters. But more needs to be done to provide sufficient energy and fuel supplies to the American people.”*⁶

The Committee finds that H.R. 1140, which is modeled on Sec. 202(c) of the Federal Power Act, provides the EPA Administrator a new, and important, tool to address shortages of critical energy minerals, materials, and resources that threaten national security

⁴See, for example, critical mineral research and development provision in the Energy Act of 2020, the development of an interagency task force and other incentives in the Infrastructure Investment and Job Act, as well as the Inflation Reduction Act tax incentives. Legislation.

⁵See Sec. 202(c) of the Federal Power Act (16 U.S.C. 791a et seq.).

⁶*Op cit.*

and energy security, and that increased supply of which would serve the public interest. The Committee finds further that, the relevant provisions of H.R. 1140 that require the Administrator to avoid or minimize conflicts with other environmental laws, to minimize any adverse impacts, and provide temporary waivers, is consistent with the Congressional intent of the Federal Power Act provisions, which were updated and signed into law in 2015. The Committee finds that H.R. 1140 would help ensure the United States can supply critical energy resources when, in the judgment of the Administrator and in consultation with the Secretary of Energy, temporary waiver of certain requirements will be necessary to meet national security and energy security needs and serve the public interest. The Committee finds that H.R. 1140 represents the kind of practical reforms necessary to secure American critical energy resource supply chains.

COMMITTEE ACTION

On February 7, 2023, the Subcommittees on Energy, Climate, and Grid Security and Environment, Manufacturing, and Critical Materials held a joint hearing entitled, “Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains,” on 17 pieces of legislation, including H.R. 1140. The Subcommittees received testimony from:

- The Honorable Mark Menezes, Former United States Deputy Secretary of Energy, Department of Energy;
- The Honorable Bernard McNamee, Former Commissioner, Federal Energy Regulatory Commission;
- Jeffrey Eshelman, II, President and Chief Executive Officer, Independent Petroleum Association of America;
- Katie Sweeney, Executive Vice President and Chief Operating Officer, National Mining Association;
- Raul Garcia, Legislative Director for Healthy Communities, Earth justice; and
- Tyson Slocum, Director of the Energy Program, Public Citizen.

On February 28, 2023, the Subcommittee on Environment, Manufacturing, and Critical Materials met in open markup session and forwarded H.R. 1140, without amendment, to the full Committee by a record vote of 13 yeas and 6 nays. On March 9, 2023 the full Committee on Energy and Commerce met in open markup session and ordered H.R. 1140 favorably reported, without amendment, to the House by a record vote of 28 yeas and 21 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 28**

BILL: H.R. 1140, To authorize the Administrator of the Environmental Protection Agency to waive application of certain requirements with respect to processing and refining of a critical energy resource at a critical energy resource facility, and for other purposes.

AMENDMENT: An amendment offered by Mr. Cárdenas, No. 1

DISPOSITION: NOT AGREED TO, by a roll call vote of 21 yeas and 24 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers		X		Rep. Pallone	X		
Rep. Burgess				Rep. Eshoo	X		
Rep. Latta		X		Rep. DeGette	X		
Rep. Guthrie		X		Rep. Schakowsky	X		
Rep. Griffith		X		Rep. Matsui	X		
Rep. Bilirakis		X		Rep. Castor	X		
Rep. Johnson		X		Rep. Sarbanes	X		
Rep. Bucshon		X		Rep. Tonko	X		
Rep. Hudson		X		Rep. Clarke	X		
Rep. Walberg		X		Rep. Cárdenas	X		
Rep. Carter				Rep. Ruiz	X		
Rep. Duncan		X		Rep. Peters	X		
Rep. Palmer				Rep. Dingell			
Rep. Dunn		X		Rep. Veasey	X		
Rep. Curtis				Rep. Kuster	X		
Rep. Lesko		X		Rep. Kelly	X		
Rep. Pence		X		Rep. Barragán	X		
Rep. Crenshaw				Rep. Blunt Rochester	X		
Rep. Joyce		X		Rep. Soto	X		
Rep. Armstrong		X		Rep. Craig	X		
Rep. Weber		X		Rep. Schrier			
Rep. Allen		X		Rep. Trahan	X		
Rep. Balderson		X		Rep. Fletcher	X		
Rep. Fulcher		X					
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte		X					

03/09/2023

**COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 29**

BILL: H.R. 1140, To authorize the Administrator of the Environmental Protection Agency to waive application of certain requirements with respect to processing and refining of a critical energy resource at a critical energy resource facility, and for other purposes.

AMENDMENT: An amendment offered by Ms. Blunt Rochester, No. 2

DISPOSITION: NOT AGREED TO, by a roll call vote of 21 yeas and 28 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers		X		Rep. Pallone	X		
Rep. Burgess		X		Rep. Eshoo	X		
Rep. Latta		X		Rep. DeGette	X		
Rep. Guthrie		X		Rep. Schakowsky	X		
Rep. Griffith		X		Rep. Matsui	X		
Rep. Bilirakis		X		Rep. Castor	X		
Rep. Johnson		X		Rep. Sarbanes	X		
Rep. Bucshon		X		Rep. Tonko	X		
Rep. Hudson		X		Rep. Clarke	X		
Rep. Walberg		X		Rep. Cárdenas	X		
Rep. Carter		X		Rep. Ruiz	X		
Rep. Duncan		X		Rep. Peters	X		
Rep. Palmer				Rep. Dingell			
Rep. Dunn		X		Rep. Veasey	X		
Rep. Curtis		X		Rep. Kuster	X		
Rep. Lesko		X		Rep. Kelly	X		
Rep. Pence		X		Rep. Barragán	X		
Rep. Crenshaw		X		Rep. Blunt Rochester	X		
Rep. Joyce		X		Rep. Soto	X		
Rep. Armstrong		X		Rep. Craig	X		
Rep. Weber		X		Rep. Schrier			
Rep. Allen		X		Rep. Trahan	X		
Rep. Balderson		X		Rep. Fletcher	X		
Rep. Fulcher		X					
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte		X					

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COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 30

BILL: H.R. 1140, To authorize the Administrator of the Environmental Protection Agency to waive application of certain requirements with respect to processing and refining of a critical energy resource at a critical energy resource facility, and for other purposes.

AMENDMENT: A motion by Mrs. Rodgers to order H.R. 1140 favorably reported to the House, without amendment (Final Passage).

DISPOSITION: AGREED TO, by a roll call vote of 28 yeas and 21 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers	X			Rep. Pallone		X	
Rep. Burgess	X			Rep. Eshoo		X	
Rep. Latta	X			Rep. DeGette		X	
Rep. Guthrie	X			Rep. Schakowsky		X	
Rep. Griffith	X			Rep. Matsui		X	
Rep. Bilirakis	X			Rep. Castor		X	
Rep. Johnson	X			Rep. Sarbanes		X	
Rep. Bucshon	X			Rep. Tonko		X	
Rep. Hudson	X			Rep. Clarke		X	
Rep. Walberg	X			Rep. Cárdenas		X	
Rep. Carter	X			Rep. Ruiz		X	
Rep. Duncan	X			Rep. Peters		X	
Rep. Palmer				Rep. Dingell			
Rep. Dunn	X			Rep. Veasey		X	
Rep. Curtis	X			Rep. Kuster		X	
Rep. Lesko	X			Rep. Kelly		X	
Rep. Pence	X			Rep. Barragán		X	
Rep. Crenshaw	X			Rep. Blunt Rochester		X	
Rep. Joyce	X			Rep. Soto		X	
Rep. Armstrong	X			Rep. Craig		X	
Rep. Weber	X			Rep. Schrier			
Rep. Allen	X			Rep. Trahan		X	
Rep. Balderson	X			Rep. Fletcher		X	
Rep. Fulcher	X						
Rep. Pfluger	X						
Rep. Harshbarger	X						
Rep. Miller-Meeks	X						
Rep. Cammack	X						
Rep. Obernolte	X						

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OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 1140 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to increase American energy production and restore energy leadership by providing for temporary waivers of certain environmental regulatory requirements to enable production of critical energy resources to meet national security or energy security needs.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 1140 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

RELATED COMMITTEE AND SUBCOMMITTEE HEARINGS

Pursuant to clause 3(c)(6) of rule XIII,
(1) the following hearings were used to develop or consider H.R. 1140:

On January 31, 2023, the Committee on Energy and Commerce held an oversight hearing, entitled: “American Energy Expansion: Strengthening Economic, Environmental, and National Security”. The Committee received testimony from:

- The Honorable Paul Dabbar, Former U.S. Undersecretary of Energy, Department of Energy;
- Donna Jackson, Director of Membership Development, National Center for Public Policy Research, Project 21;
- Robert McNally, President, Rapidan Energy Group; and
- Ana Unruh Cohen, Ph.D., Former Staff Director, U.S. House Select Committee on the Climate Crisis.

(2) The following related hearing was held:

On February 7, 2023, the Subcommittees on Energy, Climate, and Grid Security and Environment, Manufacturing, and Critical Materials held a joint hearing entitled, “Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains,” on 17 pieces of legislation, including H.R. 1140. The Subcommittees received testimony from:

- The Honorable Mark Menezes, Former United States Deputy Secretary of Energy, Department of Energy;
- The Honorable Bernard McNamee, Former Commissioner, Federal Energy Regulatory Commission;
- Jeffrey Eshelman, II, President and Chief Executive Officer, Independent Petroleum Association of America;
- Katie Sweeney, Executive Vice President and Chief Operating Officer, National Mining Association;
- Raul Garcia, Legislative Director for Healthy Communities, Earthjustice; and
- Tyson Slocum, Director of the Energy Program, Public Citizen.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 1140 contains no earmarks, limited tax benefits, or limited tariff benefits.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Waiver for national security or energy security

Section 1(a) provides that, if the EPA Administrator, in consultation with the Secretary of Energy, determines that the processing or refining of a critical energy resource is necessary to meet U.S. national security or energy security needs, then the Administrator may issue a temporary waiver of any requirement under the Clean Air Act the Administrator determines is necessary to allow for processing or refining at a critical energy resource facility to best meet the security needs and serve the public interest. The section provides that the Administrator must ensure any waiver, to the maximum extent practicable, does not conflict with any other federal, state, or local environmental requirement and minimizes ad-

verse environmental effects. The section provides that waivers expire after 90 days, may be reissued with additional conditions, and that facilities will not incur environmental liability for actions under a waiver.

Section 1(b) amends the Solid Waste Disposal Act by inserting a new section providing the identical authorities, procedures, and requirements provided in Section 1(a) to any covered requirement under the Solid Waste Disposal Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

With respect to the requirement of clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, this section was not made available to the Committee in time for the filing of this report.

MINORITY VIEWS

We oppose H.R. 1140, a sweeping bill drafted so broadly that it could exempt all “critical energy resource” facilities from Clean Air Act (CAA) and Solid Waste Disposal Act (SWDA) requirements. The bill would do nothing to strengthen our energy security, undermines critical environmental laws, and would put our communities and the environment at serious risk from mismanagement of hazardous wastes.

BACKGROUND

H.R. 1140 amends two of our bedrock environmental laws, the CAA and the SWDA, to allow the EPA Administrator, in consultation with the Secretary of Energy, to waive application of certain requirements for the broadly defined “critical energy resources facilities.”

The CAA is one of our nation’s bedrock environmental laws, enacted to protect public health and the environment from air pollution. Since its enactment in 1970, the CAA has reduced key air pollutants by roughly 77 percent, while the economy has almost quadrupled in size.¹ The CAA is grounded in the principle of cooperative federalism, with roles and responsibilities for regulators at the Federal and state level, and has long been an effective model for improving air quality in the United States. The CAA covers a wide range of activities, from health-based ambient air quality standards; national pollution standards for sources like motor vehicles and power plants; to emission controls for hazardous air pollutants.²

The SWDA of 1965 was amended by the Resource Conservation and Recovery Act (RCRA) which is what is more commonly used to describe the law governing the disposal of solid and hazardous waste. RCRA set national goals for protecting human health and the environment from the potential hazards of waste disposal, conserving energy and natural resources, reducing the amount of waste generated, and ensuring that wastes are managed in an environmentally-sound manner.³ Subtitle C of RCRA established the “cradle to grave” system for controlling hazardous waste from the time it is generated until it is ultimately disposed. Permits are a critical component of the cradle to grave system and follow the principle of cooperative federalism. While EPA is tasked with set-

¹ Environmental Protection Agency, *Our Nation’s Air, Trends Through 2021* (<https://gispub.epa.gov/air/trendsreport/2022/>) (accessed Mar. 21, 2023).

² Environmental Protection Agency, *Clean Air Act Requirements and History* (www.epa.gov/clean-air-act-overview/clean-air-act-requirements-and-history) (accessed Mar. 21, 2023).

³ Environmental Protection Agency, *EPA History: Resource Conservation and Recovery Act* (www.epa.gov/history/epa-history-resource-conservation-and-recovery-act#:~:text=The%20Resource%20Conservation%20and%20Recovery,of%20municipal%20and%20industrial%20waste) (accessed Mar. 21, 2023).

ting minimum federal standards, authorized states implement and enforce those standards and issue relevant permits.

SUMMARY OF H.R. 1140

Section 1(a) grants the EPA Administrator the authority to issue a temporary waiver of any CAA requirement for a critical energy resource facility. If the EPA Administrator, in consultation with the Secretary of Energy, determines that “by reason of a sudden increase in demand for, or a shortage of, a critical energy resource, or another cause” the processing or refining of a critical energy resource is necessary to meet the national security or energy security needs of the United States, then waivers of any CAA requirements may be granted. However, the legislation does not provide any parameters or metrics for the EPA to use to determine what constitutes an increase in demand for or a shortage of a critical energy resource. Moreover, the legislation also allows the Administrator to issue temporary waivers of any requirement of the CAA—from renewable fuel blending requirements under the Renewable Fuel Standard, to Risk Management Planning requirements to avoid chemical disasters.

Section 1(a)(3) provides that “any omission or action taken by a party that received a waiver under this section will not be considered a violation of any other Federal, State, or local environmental law or regulation.” This loophole is a gross infringement on the rights of States to enact and enforce their own laws, and is likely unconstitutional. Granting amnesty to polluters for any and all violations of every environmental law would render these critical protections meaningless.

Section 1(b) grants the EPA Administrator the authority to issue a temporary waiver of any RCRA requirement for a critical energy resource facility. The bill states that if the EPA Administrator, in consultation with the Secretary of Energy, determines that “by reason of a sudden increase in demand for, or a shortage of, a critical energy resource, or another cause” the processing or refining of a critical energy resource is necessary to meet the national security or energy security needs of the United States, then waivers of any RCRA requirements may be granted. Similar to concerns with Section 1(a), this section does not provide any parameters or guidelines for what constitutes a national security or energy security need.

The Majority has not been able to demonstrate the need for such a sweeping carve-out of RCRA. In fact, energy generators do not usually apply for RCRA permits, but rather ship their waste to RCRA certified sites to manage the waste. Furthermore, RCRA already includes short term timelines for on-site waste storage for both small and large quantity hazardous waste generators. Small quantity generators are allowed to hold waste on-site for up to 180 days (or 270 if the shipping distance is greater than 200 miles) and large quantity generators are allowed to hold waste on-site for up to 90 days.⁴ These flexible short-term options allow many generators to ship waste to an appropriate facility before ever needing a

⁴ Environmental Protection Agency, *Categories of Hazardous Waste Generators* (www.epa.gov/hwgenerators/categories-hazardous-waste-generators) (accessed Mar. 21, 2023).

RCRA permit. In addition, concerns that RCRA permits are delaying the mining and processing of critical minerals, are also misplaced. For over 40 years, wastes from the extraction, beneficiation, and processing of ores and minerals have been exempted from Subtitle C of RCRA.⁵

Despite EPA administering the SWDA, Section 3025(f), as added by H.R. 1140, defines “critical energy resource” as “. . . any energy resource that is essential to the energy sector and energy systems of the United States, and the supply chain of which is vulnerable to disruption,” as determined by the Secretary of Energy. The bill does not define, provide parameters, or metrics for the Secretary to use in making such determinations, essentially allowing the Secretary to deem almost anything a “critical energy resource,” “essential to the energy sector and energy system of the United States,” and “vulnerable to supply chain disruptions.” The bill fails to include any public review, or accountability measures related to the Secretary’s determinations. And putting the Secretary of Energy in charge of determining which environmental requirements EPA and states are allowed to require, sets a troubling precedent.

Due to the all-encompassing definition of “critical energy resource,” essentially any category of industrial facility could be considered critical and could be granted waivers from meeting applicable CAA requirements, and waivers from required permits for treatment, storage, and disposal of hazardous waste under RCRA. The full scope of resources and facilities eligible for CAA and RCRA exemptions is unclear.

CAA waivers could be granted for controlling air toxics from: hazardous waste combustors, Portland cement manufacturers, mercury cell chlor-alkali plants, secondary lead smelters, carbon black production, chemical manufacturing, primary copper smelting, secondary copper smelting, nonferrous metals area sources (zinc, cadmium, and beryllium), glass manufacturing, and gold mine ore processing and production, among others. Wastes from the following manufacturing and industrial processes could benefit from the legislation’s RCRA waivers: spent solvent wastes, electroplating and other metal finishing wastes, dioxin-bearing wastes, chlorinated aliphatic hydrocarbons production, wood preserving wastes, petroleum refinery wastewater treatment sludges, multi-source leachate, wood preservation, organic chemicals manufacturing, pesticides manufacturing, petroleum refining, veterinary pharmaceuticals manufacturing, inorganic pigment manufacturing, inorganic chemicals manufacturing, explosives manufacturing, iron and steel production, primary aluminum production, secondary lead processing, ink formulation, and coking (processing of coal to produce coke).⁶ Furthermore, any facility that processes these hazardous wastes—like solid waste incinerators—could be exempted from required permits for hazardous waste treatment, storage, and disposal under RCRA.

Public engagement is a critical component of the regulatory process. H.R. 1140 removes this important step, allowing the issuance of a CAA or RCRA waiver “with or without notice, hearing, or other

⁵ Environmental Protection Agency, *Special Wastes* (www.epa.gov/hw/special-wastes) (accessed Mar. 21, 2023).

⁶ 40 CFR § 261.31; 40 CFR § 261.32.

report.” This action would leave fence-line communities with no voice in the process, despite bearing the disproportionate risks and harms associated with living near the affected facilities. Every Republican Committee Member voted against an amendment to address this fundamental flaw by requiring notice, public comment, and public hearing before the EPA Administrator may grant a waiver. Every Republican Committee Member also voted against an amendment requiring the EPA Administrator to certify that the bill would not disproportionately harm environmental justice communities before it could go into effect. Environmental justice communities already bear the brunt of pollution from waste facilities and air pollution and shouldn’t be at the forefront of this ill thought-out deregulatory measure.

CONCLUSION

We oppose H.R. 1140. Granting the EPA Administrator the ability to waive any requirement they choose under the CAA and RCRA in the name of so-called national security or energy security events is a bold-faced attempt to weaken two of our nation’s bedrock environmental laws. Exempting polluting industries and hazardous waste management facilities from commonsense, appropriate regulations will put our communities and the environment at risk.

For the reasons stated above, we dissent from the views contained in the Committee’s report.

FRANK PALLONE, Jr.,

Ranking Member, Committee on Energy and Commerce.

