

**Testimony of Surbhi Sarang, Senior Attorney, Environmental Defense Fund
on EPA’s proposed rule *Begin Actual Construction in the New Source
Review (NSR) Preconstruction Permitting Program*, 91 Fed. Reg. 26958
(May 13, 2026) at May 28, 2026 public hearing.**

My name is Surbhi Sarang and I am a senior attorney at the Environmental Defense Fund. EDF is a nonprofit organization that leverages expertise in science, economics, and the law to deliver transformational solutions to address the biggest environmental challenges of our time with the support of over 3 million members. EDF opposes EPA’s proposal to allow sources to begin construction of non-emitting components before obtaining a New Source Review permit.

Through the Clean Air Act’s New Source Review program, Congress ensured that construction, operation, or modification of major sources of industrial pollution would not occur without first examining its impact on local air quality. During New Source Review, experts consider critical questions like (1) whether increases in pollution from a facility will cause a violation of national health-based standards for local air quality; (2) what air pollution control technologies should be utilized; and (3) whether there are better alternatives to construction or modification of the facility.¹

When a facility is proposed in an area with poor air quality—or that is in nonattainment with the National Ambient Air Quality Standards—New Source Review requires consideration of potential alternative sites and of whether the benefits of the facility outweigh the environmental and social costs of its location, construction, or modification.²

¹ 42 U.S.C. § 7475(a).

² 42 U.S.C. § 7503(a)(5).

The program critically requires that communities receive notice that a permit will be issued and an opportunity to comment on the draft permit.³

Congress ensured that decisions about the location and construction of new industrial sources of pollution are made only *after* consideration of air quality and environmental impacts and with input from the affected community. EPA's proposal to allow owners and operators to begin construction before a New Source Review permit is issued—and before there has been *any* consideration of impacts to local air quality, alternatives, or control technologies—unlawfully undermines this intent.

EPA's proposal significantly weakens the validity and value of the review process. Permitting authorities will face significant pressure to conform permit terms to accommodate construction and investment that has already occurred. It is highly unlikely there will be meaningful consideration of alternatives, siting, and control technologies if the infrastructure for the emitting-component of a facility has already been decided, built, and paid for by the time a permit is sought.

EPA has also provided no evidence that weakening New Source Review is necessary to allow for economic growth. Between 1980 and 2024—all while owners and operators have been required to obtain a permit before beginning construction of a major source of pollution—the U.S. GDP per capita has grown from \$12,574 to \$84,534.⁴

And contrary to EPA's assertions, this policy will in fact stymie—not support—the development of affordable power for American families. EPA singles out Artificial

³ 42 U.S.C. § 7475(a)(2).

⁴ See World Bank Group, GDP per capita (current US\$) – United States, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2024&locations=US&start=1980> (last accessed May 28, 2026).

Intelligence (AI) infrastructure and power generation to support data centers as beneficiaries of this proposal. But reducing review of new fossil fuel power plants to support data centers and AI increases the risk of saddling American families with higher healthcare costs and energy bills and reduces transparency for which the American public is overwhelmingly asking. Obtaining a New Source Review permit before beginning construction of a new power plant is particularly important because meaningful review could determine whether new sources of demand on the grid are met by clean, affordable resources (including renewable energy, battery storage, or flexible grid resources) or by outdated, expensive, and polluting fossil fuel energy.

EPA's proposal is contrary to the text and purpose of the Clean Air Act and would result in financial and health costs for communities across the country. EDF strongly opposes the proposal and urges EPA to withdraw it. Thank you for considering this testimony.