

ORAL ARGUMENT SCHEDULED FOR OCTOBER 14, 2026**IN THE UNITED STATES COURT OF APPEALS**
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-1275

ENVIRONMENTAL DEFENSE FUND, *et al.*,
Petitioners,

v.

LEE ZELDIN, *et al.*,
Respondents.

Petition for Review of Final Action of the
United States Environmental Protection Agency

PETITIONERS' FINAL REPLY BRIEF

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

The Certificate in Petitioners' opening brief remains correct and complete, except that Institute for Policy Integrity is now an amicus curiae in the case supporting Petitioners.

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GLOSSARY

2024 Rule	EPA, <i>Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review</i> , 89 Fed. Reg. 16821 (Mar. 8, 2024)
APA	Administrative Procedure Act
Delay Rule	EPA, <i>Oil and Natural Gas Sector Climate Review: Extension of Deadlines in Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources</i> , 90 Fed. Reg. 55671 (Dec. 3, 2025)
EPA	United States Environmental Protection Agency
Interim Final Rule	EPA, <i>Extension of Deadlines in Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review Final Rule</i> , 90 Fed. Reg. 35966 (July 31, 2025)
Memorandum	EPA, Memorandum to Docket, Economic Impact Analysis (July 23, 2025)
RTC	Response to Comments

INTRODUCTION AND SUMMARY OF ARGUMENT

EPA and its supporting intervenors fail to refute Petitioners' demonstration that the Delay Rule is inconsistent with the Clean Air Act and arbitrary and capricious. EPA's one-sided decision bypassed its statutory obligation to weigh the emissions consequences of its delay, and relied solely on industry compliance concerns that are unsupported by the record and inconsistent with the Agency's own prior findings. EPA's response seeks to recast compliance extensions, monitoring requirements, and compliance assurance provisions as exempt from the ordinary constraints of a Clean Air Act rulemaking. But, as this Court's precedents teach, a decision to delay pollution-control standards may be every bit as significant as a decision to weaken those standards, and both require reasoned analysis. Delaying obligations that are already reducing emissions, or weakening the measures that ensure those reductions occur, has real consequences for public health and the environment and requires justification more robust than EPA has offered here.

Nor is there merit to EPA's other efforts to save the Rule. Petitioners have thoroughly established standing: EPA's unlawful delays will increase pollution and harm Petitioners' members. The Court should apply the ordinary remedy of vacatur to this legally flawed, health-harming rule.

ARGUMENT

I. EPA’s Failure to Consider the Delay Rule’s Emissions Impacts Violated Section 111 and Was Arbitrary and Capricious.

EPA offers no persuasive defense of the Agency’s failure to consider the emissions impacts of delaying many of the 2024 Rule’s central provisions. It both misconstrues its legal obligations to consider emissions impacts and fails to show that it actually did so.

A. EPA Misconstrues Its Obligations Under Section 111 and *ALA*.

This Court held in *American Lung Association v. EPA* (“*ALA*”) that reducing harmful emissions is the “central purpose” of Section 111, and that delays promulgated under that provision are “amendments” to standards. 985 F.3d 914, 993-94 (D.C. Cir. 2021), *rev’d in part on other grounds sub nom. West Virginia v. EPA*, 597 U.S. 697 (2022). EPA therefore must weigh the environmental and public health consequences of the delay against the Agency’s asserted reasons for extending deadlines. *Id.*; *see also Clean Air Council v. Pruitt*, 862 F.3d 1, 6-7 (D.C. Cir. 2017). That requirement is firmly moored in statutory text expressly focused on “emission reduction,” 42 U.S.C. § 7411(a)(1); *contra* Industry Br. 11-12; EPA Br. 46-47; it is unlawful to ignore Section 111’s purpose of reducing emissions. *See ALA*, 985 F.3d at 993-94 (citing *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

Seeking to excuse its noncompliance with these obligations, EPA first argues that *ALA* applies only to Section 111 delays affecting existing (rather than new or modified) sources, and only where the deadline extension affects multiple source categories rather than one. EPA Br. 47-48. But nothing in *ALA* supports these arbitrary limitations: the Court’s recognition of Section 111’s purpose of controlling emissions “before they harm people and the environment” is equally applicable to all sources covered under the section. Indeed, the Court faulted EPA for failing to “explain how slowing the regulatory timeframe with respect to *any* covered emissions or source category might be justified and consistent with the Act’s objective” of reducing emissions. 985 F.3d at 994 (emphasis in original).

EPA also suggests that “simply” extending compliance deadlines does not go to “the substance of the 2024 rule,” and somehow exempts the Agency from Section 111’s requirements. EPA Br. 12, 46; *see also* States Br. 25. To the contrary, this Court’s precedents confirm that extending compliance deadlines is a substantive amendment subject to Section 111. Opening Br. 22-23 (collecting cases).¹ *Clean Air Council v. EPA*, 181 F.4th 1292, 1300-03 (D.C. Cir. 2026),

¹ That *Clean Air Council v. Pruitt* involved an administrative stay, *see* EPA Br. 46, is irrelevant to the Court’s holding that altering “compliance deadlines” is “tantamount to amending or revoking a rule,” 862 F.3d at 6. Nor does EPA answer this Court’s conclusion in *Env’tl. Def. Fund, Inc. v. EPA* that delays of a final regulation “normally constitutes substantive rulemaking under [the] APA,” 716 F.2d 915, 920 (D.C. Cir. 1983); EPA Br. 46, failing to explain why a delay that is

reinforces the principle that except for a stay limited to 90 days under Section 307(d)(7)(B), a compliance extension is a substantive amendment that must satisfy the requirements of the authorizing statute, based upon the record before the agency. *Id.* at 1300-03.

Nor does alleged inherent authority grant EPA leeway to avoid Section 111's mandates whenever it finds purported compliance challenges exist. EPA Br. 23. The very case EPA cites, *Ivy Sports Medicine, LLC v. Burwell*, holds that an agency may *not* invoke inherent reconsideration authority to “short-circuit or end-run” congressionally prescribed requirements. 767 F.3d 81, 87 (D.C. Cir. 2014).

Moreover, EPA attempts to have it both ways: it characterizes the Delay Rule as a non-substantive compliance extension, while at the same time disclaiming any reliance on the only mechanism that Congress expressly provided for extending compliance deadlines without reopening the merits of a decision under Section 111—a three-month stay pending reconsideration under Section 307(d)(7)(B). EPA Br. 23-25. The record demonstrates that EPA delayed the 2024 Rule's provisions “merely to...resolve issues raised in...reconsideration petition[s].” *Clean Air Council v. EPA*, 181 F.4th at 1301; *see* Opening Br. 28-32.²

admittedly “substantive” for APA purposes somehow is not for purposes of the agency's organic statute.

² Unlike in *Clean Air Council v. EPA*, where EPA provided independent, record-supported reasons for the extensions while reconsideration was underway, EPA's asserted justifications here do not satisfy the APA. *See infra* Sections I.B, II.

Indeed, Administrator Zeldin recently described the delays as part of a “three-phase” reconsideration process intended to allow EPA time to “fix the flaws” in the 2024 Rule. *See* Opening Br. 10.³ Although EPA does not dispute that such reconsideration is happening, it expressly takes the position that Section 111 “provides the statutory authority to issue this final action.” 90 Fed. Reg. at 55,673. Thus, by EPA’s own admission, the extensions affected by the Delay Rule are substantive revisions governed by Section 111. EPA cannot avoid the Section 111 requirement to consider emissions impacts under the mistaken premise that it does not apply. *Supra* p. 4; *see Michigan v. EPA*, 576 U.S. 743, 760 (2015) (EPA’s erroneous view that a statutory consideration was “irrelevant” was “enough to decide” that its action was unlawful).

B. EPA Failed to Consider Emissions Impacts as Required by Section 111 and *ALA*.

EPA failed to undertake the analysis Section 111 requires. The Agency’s record of decision reveals zero discussion of the Delay Rule’s public health or

³ *The Fiscal Year 2027 EPA Budget: Hearing Before the Subcomm. on Env’t of the H. Comm. on Energy & Com.*, 119th Cong., at 1:07:56 (Apr. 28, 2026) (statement of Lee Zeldin, Adm’r, EPA), <https://www.youtube.com/watch?v=LrjRJ2wfOwk> (<https://perma.cc/WMV7-44NP>); *see also id.* at 1:53:11, 2:51:48, 2:52:31.

This Court and the Supreme Court have cited agencies’ official statements in considering the nature and scope of the agency’s claimed authority. *See Clean Air Council v. EPA*, 181 F.4th at 1301; *West Virginia v. EPA*, 597 U.S. 697, 727-28 (2022) (relying on Administrator’s congressional testimony as probative of EPA’s regulatory intent and scope of claimed authority).

environmental consequences, nor of any other statutory factor apart from industry's purported compliance challenges. Opening Br. 20-24. EPA mentioned health and environmental impacts only in its Memorandum containing a cursory "Economic Impact Analysis"—which EPA reports played no role in its decision-making. *See* EPA Br. 13; *contra* Industry Br. 18.

EPA's brief points to two statements in the record: that emissions impacts "were considered," and that the extensions would "not interfere with, or unreasonably frustrate, the ultimate emission reduction requirements" of the 2024 Rule. EPA Br. 44-45. Neither demonstrates reasoned consideration of the Delay Rule's emissions impacts.

The first is a conclusory assertion offered in response to comments identifying and quantifying the emissions consequences of the Delay Rule (*see* JA1909-JA1910 (EDF Comment (Oct. 2, 2025))), unaccompanied by any reference to record evidence, supporting analysis, or explanation of why EPA was now dismissing emissions consequences the Agency had previously found significant. *See Cigar Ass'n of Am. v. FDA*, 964 F.3d 56, 61 (D.C. Cir. 2020) ("Merely referencing a requirement is not the same as complying with that requirement. And stating that a factor was considered—or found—is not a substitute for considering or finding it." (citation omitted)); *see also Ctr. for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1198 (9th Cir. 2008) (agency "cannot put a thumb on the scale" by

“fail[ing] to include in its analysis the benefit of...emissions reduction in either quantitative or qualitative form”). Instead, EPA simply pointed back to compliance challenges. *See ALA*, 985 F.3d at 994-95.⁴

EPA’s second statement—that the extensions would “not interfere with, or unreasonably frustrate, the ultimate emission reduction requirements”—is equally bereft of supporting evidence or analysis. EPA Br. 45 (quoting 90 Fed. Reg. at 35,979). It is also logically flawed: the Agency appears to conclude that the extensions would merely postpone emissions reductions rather than cause “additional” emissions. EPA Br. 45. But that is both wrong and irrelevant. EPA’s Economic Impact Memorandum confirms that the Delay Rule’s postponement of emissions controls increases emissions over time.⁵ And “the baseline for measuring the impact of a change or rescission of a final rule is the requirements of the rule itself, not the world as it would have been had the rule never been promulgated.” *Air All. Houston v. EPA*, 906 F.3d 1049, 1068 (D.C. Cir. 2018). Against that baseline, the Delay Rule allows additional, irretrievable pollution that the 2024

⁴ Intervenor’s do not show EPA considered emissions impacts. Their citations refer to EPA’s economic impact analysis (JA0783 (Memorandum to Docket, Economic Impact (July 23, 2025)) (“Memorandum”)), *see* States Br. 27 (citing Response to Comments (“RTC”) at 34, 47; 90 Fed. Reg. at 35,980); Industry Br. 14 (citing RTC at 34)—upon which EPA disclaims reliance, EPA Br. 13—or merely reiterate EPA’s assertions that emissions impacts were immaterial, *see* Industry Br. 10, 18.

⁵ JA0789 (Memorandum at 6 tbl.3).

Rule would have prevented during the delay period and thereafter. *See supra* note 5; ADD_261-9 (Proville-Mirtich).

Nor is it relevant that limited control requirements would remain in place during the delay. EPA Br. 7, 18-19; Industry at 15. “It could have been worse” is not a valid excuse for EPA’s arbitrary suspension of key pollution control measures, which the Agency adopted precisely to strengthen earlier standards. Some 2024 protections, like the Super Emitter Program, have no meaningful interim substitute,⁶ others revert to much weaker standards that EPA strengthened in 2024 specifically to achieve greater emissions reductions,⁷ and the Delay Rule postpones compliance-assurance mechanisms the Agency adopted to ensure reductions are actually achieved.⁸

In short, EPA’s claims that the Delay Rule will “continue to ‘achieve the emission-reduction goals of the [2024 Rule],’” EPA Br. 12, and will “not result in ‘additional’ emissions,” EPA Br. 45, are manifestly wrong. They contradict not only the Delay Rule’s own Memorandum (inadequate as it is) but also EPA’s

⁶ 90 Fed. Reg. at 55,678; *see also* ADD_264-5 n.12 (Proville-Mirtich) (storage tanks).

⁷ Operators are subject to 95% emissions control for process controllers rather than the zero-emissions standard adopted in the 2024 Rule. ADD_264 n.11 (Proville-Mirtich).

⁸ ADD_264 nn.13-14 (Proville-Mirtich) (citing 89 Fed. Reg. at 16,894) (explaining that control-device standards ensure reductions from well completions and flares; flare-monitoring requirements have no interim substitute; and EPA delayed the principal mechanism for demonstrating that closed vent systems reduce emissions).

analysis from 2024 Rule. The Agency simply has not done the requisite work to identify and consider the delay's emissions consequences. That failure renders the Delay Rule arbitrary and capricious. *ALA*, 985 F.3d at 994.⁹

II. EPA's Technical Justifications for the Extensions Are Arbitrary and Capricious.

The Delay Rule's technical justifications are likewise the product of unreasoned decision-making. While EPA gives no consideration to demonstrated emissions impacts, the Agency uncritically and exclusively relies on unsupported industry assertions, dismissing its own prior factual findings and ample contradictory evidence in the record.

In doing so, EPA misapplies the relevant legal standard and defaults to one-sided, unsupported, and vague assertions. The "extreme deference" that EPA seeks is only applicable in cases involving "EPA's evaluation of scientific data," such as complex air quality modeling. *Huntsman Petrochemical LLC v. EPA*, 114 F.4th 727, 735 (D.C. Cir. 2024). Courts do not defer when an agency "provided no actual evidence." *McDonnell Douglas Corp. v. U.S. Dep't of the Air Force*, 375 F.3d 1182, 1190 (D.C. Cir. 2004). Here, EPA points to *no* data at all. For instance, even though the 2024 Rule had largely been in effect for over a year, the Agency

⁹ EPA characterizes Petitioners' argument as about "quantification" or not weighing environmental and health impacts a certain amount. EPA Br. 45-47. That is not Petitioners' argument. Petitioners argue that emissions consequences did not play *any* role in EPA's decision to promulgate the delays.

provides no actual information on the supposed supply-chain bottlenecks it repeatedly invokes. Nor does EPA advance evidence of any (let alone) widespread noncompliance. Instead, the Agency regurgitates generalized industry concerns, all without verification.

As this Court's precedents make clear, EPA cannot rely on self-serving industry statements without data, evidence, or independent investigation. *E.g.*, *Susquehanna Int'l Grp. v. SEC*, 866 F.3d 442, 447 (D.C. Cir. 2017). Reciting an unsupported assertion does not make it true. *See Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 710 (D.C. Cir. 2014) (finding agency action arbitrary where "[r]ule was intended to defeat a bogeyman whose existence was never verified").

Ignoring these on-point cases, EPA relies almost exclusively on *Clean Air Council v. EPA*, 181 F.4th 1300-03. *See* EPA Br. 25-44. But that decision supports Petitioners' claim: it confirms that EPA must have a reasonable technical basis for each alleged obstacle to timely compliance. No such bases exist here.

A. EPA's Factual Conclusions Lack the Requisite Record Support and Ignore Contrary Evidence.

Respondents' briefs obscure the fact that 10 of the 11 deadlines at issue (all but the state plan submission requirement) *had already passed* when EPA unilaterally suspended those regulatory requirements. Nine requirements had been in effect for more than a year. Yet neither EPA nor industry identify a single actual instance of noncompliance; the best they can do is refer vaguely to "*possible*

widespread noncompliance.” Industry Br. 17. The Court “will not defer to a declaration of fact that is ‘capable of exact proof’ but is unsupported by any evidence.” *McDonnell Douglas*, 375 F.3d at 1190 n.4 (citation omitted).

EPA’s justification for the Delay Rule rests almost entirely on petitions for reconsideration, which provide no actual evidence of infeasibility or noncompliance—only bare assertions. In relying on those petitions, the Agency admits it “took the information it received” at face value, without any independent review or verification. EPA Br. 38. The D.C. Circuit has long rejected agencies’ attempts to rubberstamp regulated parties’ self-serving views. *See, e.g., Susquehanna*, 866 F.3d at 447.

For instance, regarding the supply chain for process controllers, EPA exclusively cited to industry assertions that lack data or evidence. The greatest specificity provided is a single bald assertion that the supply chain as of May 2024 required 12 to 18 months’ lead time. JA0138 (INGAA Petition (May 15, 2024)). EPA provided no evidence or data supporting industry’s self-interested views, claiming now—in the teeth of this Court’s precedents—that “[t]here is nothing arbitrary or capricious about EPA relying on information from regulated entities.” EPA Br. 30-31; *contra NetCoalition v. SEC*, 615 F.3d 525, 541 (D.C. Cir. 2010); *Affirmed Energy v. FERC*, 166 F.4th 1070, 1083 (D.C. Cir. 2026). The Agency may not simply assert that industry claims are “credible;” it must actually determine

whether those claims are well-founded, based on record evidence. *Contra* EPA Br. 36-37, 42-43. EPA repeats this error for multiple standards:

- Enclosed combustion device performance testing: EPA cites a single reconsideration petition for the claim that there are not enough testing firms available or time to process requests for alternative methods. *See* JA0083-JA0085 (API/AXPC Petition (Apr. 5, 2024)). But that petition offers no information on testing firms or lead-times for testing. Nor does EPA identify a single permitting authority that is behind on processing requests, let alone estimate delay length; it merely refers to generalized and unsubstantiated “credible concerns.” EPA Br. 35-36.
- Continuous pilot flames and alarms: Again, EPA relies on a single reconsideration petition that makes only generalized assertions about installation difficulties. *See* JA0835-JA0836 (API/AXPC Supplemental Petition (May 6, 2024)). And again, it offers the “credible concerns” refrain. EPA Br. 37.
- Thirty-day potential-to-emit calculation for storage vessels: EPA argues that facilities need time to “obtain additional information,” EPA Br. 38-39, but does not say what information is required or why; nor do the reconsideration petitions that EPA relies upon for support. JA0084-JA0085; JA0827-JA0828.

- Throughput-based trigger for storage vessels: EPA argues that delay would provide time for facility planning and equipment procurement. EPA Br. 40. The Agency does not even identify which equipment is supposedly in short supply, let alone provide evidence to that end. *See* Opening Br. 48-49.
- Legally and practicably enforceable limits: EPA blames the states' lack of progress in issuing compliant limits but offers no assessment of this supposed lack of progress or evaluation of the veracity of such claims. *See* EPA Br. 41 (citing RTC at 15-1; 90 Fed. Reg. at 35,974-76).

In each of these instances, EPA arbitrarily makes assertions that are “capable of exact proof” but [are] unsupported by any evidence.” *McDonnell Douglas*, 375 F.3d at 1190 n.4.

Even if industry's claims were *assumed* to be true, EPA frequently relies on them for points not made in the cited documents. For example, the trade association petition concerning process controllers identified a maximum lead time of 18 months; EPA's Rule inexplicably extends the deadline nearly twice as long, with no other support. Opening Br. 37. Similarly, EPA's brief mischaracterizes industry statements concerning other standards:

- Low-e valves: EPA asserts that there are “inventory and availability issues,” EPA Br. 34, but cites a single reconsideration petition that does not mention supply constraints. Opening Br. 40-42.

- Thirty-day potential-to-emit calculation for storage vessels: The cited reconsideration petition requested a stay for only a subset of tanks, Opening Br. 47-48, yet EPA extended the deadline for *all* tanks without explanation, *see* EPA Br. 39 (mentioning, but not responding to, Petitioners' argument regarding scope of applicability).
- Annual compliance report: EPA argues that commenters expressed confusion as to the Delay Rule's effects. EPA Br. 44. But the commenters' confusion focuses on issues relating to the ongoing reconsideration, not the Delay Rule. Opening Br. 54-55. EPA does not respond to Petitioners' argument on this point. *See* EPA Br. 44.

Perhaps recognizing the lack of record support, EPA claims that unidentified new information justifies the Delay Rule. For example, the Agency claims its delay of state plan submission deadlines reflected “ongoing and recent communications with stakeholders”—communications that are not in the record. *See* Opening Br. 57. And in its brief, the Agency similarly and repeatedly states that its action is based on stakeholder information. EPA Br. 34, 35, 41, 42. Time and again, EPA cites back to its own conclusory statements—not evidence in the underlying record. *See, e.g., id.* at 35 (citing only to interim final rule and response to comments document). State Intervenor similarly point back to EPA's statements, which in turn rely on non-record conversations. States Br. 12-13; *see also id.* at 16-

17 (citing extra-record declarations, which the Court “cannot rely on,” *Engine Mfrs. Ass’n v. EPA*, 88 F.3d 1075, 1099 (D.C. Cir. 1996)).

In the same vein, EPA makes generalized claims of “unanticipated difficulties” with the Super Emitter Program that amounted to “larger real-world programmatic concerns.” EPA Br. 32-33. But EPA identifies no record evidence of internal resource constraints, information that is directly within the Agency’s control. In speculating that future circumstances “could delay providing notifications,” *id.* at 32, EPA ignores that notifications already issued *have been* issued promptly. *See id.* at 33-34. An agency’s claim of special expertise deserves no weight where, as here, the agency “has provided absolutely no evidence to back it up,” *Safe Extensions, Inc. v. FAA*, 509 F.3d 593, 605 (D.C. Cir. 2007), or relies on “sheer speculation,” *Sorenson Comm’ns*, 755 F.3d at 708. And it is perverse for EPA to address potential “concerns” about delayed notifications by *delaying the entire Super Emitter Program itself*.

Faced with these deficiencies, EPA attempts to flip the standard of review on its head, repeatedly accusing Petitioners of “identif[ying] no meaningful evidence...to dispute EPA’s findings.” EPA Br. 31; *see also id.* at 33-35, 38. The Agency is wrong on both law and the facts. The governing standard of review focuses on the evidence—or lack thereof—that *EPA* provides. *Safe Extensions*, 509 F.3d at 605 (courts have “no need to examine” whether petitioners submitted

contradictory evidence where agency “has failed to provide substantial evidence for *its* argument” (emphasis added)); *Ctr. for Auto Safety v. Fed. Highway Admin.*, 956 F.2d 309, 314 (D.C. Cir. 1992) (agency action unsupported by substantial evidence is arbitrary and capricious).

And Petitioners *did* identify record evidence that EPA ignored in its decision-making. For instance, the Agency seeks to dismiss contrary evidence regarding process controllers’ supply chain as “one-off anecdotes.” EPA Br. 31.¹⁰ But that evidence includes comments *from a process control supplier* explaining that it has had no trouble meeting demand. *See Safe Extensions*, 509 F.3d at 605-06 (rejecting agency rationale where reference to “reports of problems in the field” were contradicted by comments from companies that had installed the product without issue). Besides, EPA never addressed or disputed that contrary evidence at the rulemaking stage, and its *post hoc* rationalizations “carry no weight.” *Genuine Parts Co. v. EPA*, 890 F.3d 304, 313-14 (D.C. Cir. 2018).

EPA’s brief similarly seeks to provide a missing response to contrary evidence concerning state plans. *See* EPA Br. 28-29. Nowhere in the rulemaking record did EPA acknowledge, let alone respond to, Petitioners’ detailed comments

¹⁰ Industry incorrectly asserts that EPA considered contrary evidence. Industry Br. 23-24. EPA does not make that claim, with reason: the Agency’s response to comments merely notes the existence of the comments, never acknowledging (let alone countering) the substance of the contradictory evidence. JA2127, JA2170.

about state-plan progress in Colorado, California, Utah, Texas, Wyoming, and Pennsylvania, some of which were in the midst of rulemaking processes. *See* JA1933-JA1934; JA2144 (Resp. 4-22). State Intervenor repeat EPA’s incorrect claim that no state had begun its rulemaking process. States Br. 9, 20. The fact, ignored by EPA, that some states have progressed apace demonstrates that State Intervenor are seeking to leverage their own inaction as a rationale for delay.

As to performance testing for enclosed combustion devices, EPA nakedly asserts it “did not ignore” Petitioners’ evidence. EPA Br. 36. But nowhere in the rulemaking record did EPA even acknowledge Petitioners’ information on available alternative testing methods, as well as seventy-three available models that are exempt from testing. JA1915; *see Sorenson Commc’ns*, 755 F.3d at 709.

Industry Intervenor argue that their own comments on the Interim Final Rule support the deadline extensions. Industry Br. 21-22. But those comments do not remedy EPA’s “unquestioning reliance” on regulated entities’ assertions. *Susquehanna*, 866 F.3d at 447. Further, the Final Rule does not discuss or expressly rely on those comments, and intervenors cannot backfill EPA’s reasoning with *post hoc* rationales. *See Algonquin Gas Transmission Co. v. FERC*, 948 F.2d 1305, 1316 (D.C. Cir. 1991) (declining to consider record evidence agency cited for first time in court). Further, industry’s comments are unpersuasive. Continental’s comments parrot generalized assertions raised in reconsideration

petitions, providing specific compliance information only on the net heating value extension. *See* JA1125-JA1126 (Continental Comments (Oct. 1, 2025)). Yet that extension is not at issue here, as the adjusted deadline passed in June of this year. 90 Fed. Reg. 55,675. Industry Intervenors also rely heavily on comments from trade organization DEPA, Industry Br. 21, which merely repeat large portions of Continental’s comments nearly verbatim. *Compare* JA0899 (DEPA Comments), *with* JA1127 (Continental Comments). As to the additional comments that Industry Intervenors reference without detail or even page citations, Industry Br. 22 n.8, “judges ‘are not like pigs, hunting for truffles buried in briefs’ or the record.” *Potter v. District of Columbia*, 558 F.3d 542, 553 (D.C. Cir. 2009) (Williams, J., concurring) (internal quotation marks omitted). Try as they might, Industry Intervenors cannot compensate for EPA’s failed reasoning.

B. EPA Lacks a Rational Connection Between Its Findings and Its Final Action.

EPA’s brief only highlights the absence of “a rational connection between the facts found and the choice made.” *State Farm*, 463 U.S. at 43. For example, as discussed above regarding the Super Emitter Program, EPA’s incongruous remedy for the supposed problem of “potential” notification delays is to *delay the entire program*, which will altogether prevent—not merely limit—operators’ opportunities to correct super-emitter events.

In another example, EPA points to regulatory confusion with respect to the low-emission valve requirements, citing *Clean Air Council v. EPA*, 181 F.4th at 1299. EPA Br. 35. But in that case, EPA required additional time to resolve an ambiguity. Here, there is no ambiguity: EPA has already identified the correct interpretation in this very rulemaking, 90 Fed. Reg. at 35,973, so suspending the deadline is wholly irrational.

EPA also takes an untenable position on closed-vent systems. In the Delay Rule, EPA argues that, despite the suspension of the “no identifiable emissions” standard, “other [c]ompliance requirements...continue to apply.” 90 Fed. Reg. at 55,676. The Agency contended “that these requirements, *which remain in place and are not being extended*, achieve the emission-reduction goals.” *Id.* (emphasis added). Now, EPA admits that the Delay Rule *did* suspend those additional compliance requirements and, in a footnote, requests a remand to reinstate them. EPA Br. 43 n.7. The Agency thus confirms that a core rationale—that other critical compliance measures remained in place as a backstop—is flatly wrong. And EPA’s request for voluntary remand is entirely inappropriate, as there are no currently effective requirements for inspecting and repairing these systems.

C. EPA’s Changes in Policy Lack Justification.

Petitioners’ Opening Brief described EPA’s original policies and explanations in the 2024 Rule and explained how the Agency lacked record

evidence, let alone the “more detailed justification” needed under *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009), to support the Delay Rule’s about-faces on factual determinations. Opening Br. 35, 43, 47, 51-52, 53, 57-58. In response, EPA either ignores Petitioners’ arguments, *see, e.g.*, EPA Br. 42-43 (failing to acknowledge that EPA rejected in 2024 the precise concerns now raised with respect to closed-vent systems), or furnishes conclusory statements regarding supply-chain issues, *see, e.g.*, EPA Br. 30 (citing EPA’s own prior statements, not record evidence, pertaining to process controllers). But as explained above, the Agency does not identify a shred of data or evidence to support its conclusory statements—despite most of these standards having already been in effect for well over a year at the time of the Interim Final Rule. This falls far short of the standard articulated in *Fox*. EPA’s Delay Rule is thus unsupported by adequate explanation or record evidence.

III. Respondents’ Attacks on Petitioners’ Standing Fail.

Petitioners’ standing in this case is straightforward—the Delay Rule injures Petitioners’ members by postponing emission controls and compliance assurance measures that would have reduced harmful pollution from thousands of oil and gas facilities in airsheds where those members live and recreate, including areas where the air quality already violates federal ozone standards. *See* Opening Br. 16-19. Where “petitioners’ members face exposure to the harms the standards would

mitigate, petitioners have alleged concrete and particularized injuries traceable to EPA's decision to delay...compliance deadlines." *Clean Air Council v. EPA*, 181 F.4th at 1300.

Petitioners' Opening Brief and accompanying 27 affidavits described in detail how the Delay Rule's provisions will injure Petitioners' members—far more information than the “concise recitation” this Court requires for standing. *Sierra Club v. EPA*, 292 F.3d 895, 900-01 (D.C. Cir. 2002); D.C. Cir. R. 28(a)(7); *see also* Opening Br. 16-19. This is a far cry from the situation in *Enterergy Ark., LLC v. FERC*, 134 F.4th 576, 581 (D.C. Cir. 2025), where petitioner “provided neither argument, nor analysis, nor evidence to support its standing.”

Nor are Petitioners' allegations of “health risks” associated with oil and gas pollution too “vague.” EPA Br. 17. EPA cites *Public Safety Spectrum Alliance v. FCC*, No. 24-1363, 2026 WL 2093901 at *4 (D.C. Cir. July 21, 2026), but there the opening brief contained only a “conclusory assertion” that petitioners were subject to the challenged action. Here, Petitioners identified members suffering from asthma, respiratory conditions, congestive heart failure, and other health conditions caused or exacerbated by oil and gas pollution. Opening Br. 17-18; *see also* ADD_253-4 (Proville-Mirtich); ADD_033 (Buma); ADD_324-52 (Southerland-Weisner). EPA's own findings document how the 2024 Rule would have prevented these types of harms and thus support Petitioners' standing. *See, e.g.*, JA0788-

JA0789 (Memorandum at 6-7); 89 Fed. Reg. at 16,835-36, 16841; *Clean Air Council v. EPA*, 181 F.4th at 1300 (citing EPA’s conclusion that delayed rule would reduce kinds of harm declarants alleged); *Air All. Houston*, 906 F.3d at 1059 (same).

EPA downplays the overall impacts of the Rule by describing it as eleven distinct extensions and claiming that Petitioners cannot show an individualized basis for standing with respect to each one. EPA Br. 18. EPA misrepresents Petitioners’ burden: Petitioners need not detail the harm from each specific provision of the Delay Rule because they seek vacatur of the *entire* faulty rule. *Ascendium Educ. Sols., Inc. v. Cardona*, 78 F.4th 470, 478 (D.C. Cir. 2023) (standing to bring any claims that could lead to the Rule’s vacatur where such relief would remedy harm). And in evaluating standing, the Court “must...assume that on the merits [Petitioners] would be successful in their claims.” *City of Waukesha v. EPA*, 320 F.3d 228, 235 (D.C. Cir. 2003).

Indeed, in other environmental rule delay cases, this Court has not examined each individual component of the rule to find Petitioners had standing. In *Air Alliance Houston*, the Court noted that the final rule delayed “dozens” of requirements and held that “[e]ven if the only tangible impact...were delay of [a subset of the delayed provisions], the potential harm [is] sufficient to provide standing” to challenge the entire rule. 906 F.3d at 1055, 1058. And in *Clean Air*

Council v. EPA, which involved the delay of more than a half-dozen compliance deadlines, the Court, without assessing harm as to each standard, explained that “Petitioners’ members aver that delaying the compliance deadlines for the 2024 Rule’s emission standards exacerbates [their health, recreational and aesthetic] harms. Under our environmental standing precedents, this is sufficient to demonstrate standing.” 181 F.4th 1292 at 1300.

EPA is also factually incorrect. It ignores that extending the state plan deadline under section 111(d) affects every single existing source subject to standards, and will cause 1.3 million tons of methane, 350,000 tons of VOCs, and 13,000 tons of hazardous air pollutants by 2039. JA0788. Numerous members’ declarations discuss the harmful effects of emissions from existing sources (in some cases tens of thousands) near where they live and recreate. *See, e.g.*, ADD_017 (Bower-Bjornson); ADD_092 (Deville); ADD_244 (Palacios); ADD_316 (Schreiber).

Instead, EPA focuses almost entirely on the 10 new-source standards at issue. EPA Br. 18-19. But there is no question that the delayed new source standards would have reduced emissions. *See supra* Section I.B. Indeed, EPA previously estimated the 2024 Rule’s new-source standards would have reduced 210,000 tons of VOCs and 5,600 tons of hazardous air pollutants in 2026 alone. ADD_261 (Proville-Mirtich). Although the Delay Rule affects only some portion

of those emissions, it will undoubtedly result in additional pollution from new sources. *See* ADD_263-9 (Proville-Mirtich); *see also* Opening Br. 11 (process controllers alone accounted for 65% of methane from onshore oil production in 2019).

The delayed new-source standards affect process controllers, equipment leaks, storage vessels, and combustion devices—sources that EPA admits are ubiquitous at oil and gas facilities. *See* ADD_257 (Proville-Mirtich). For example, according to EPA, a typical production well has four storage vessels. *Id.* Numerous declarations identify hundreds or even thousands of covered new sources close to places where Petitioners’ members live and recreate. *See, e.g.,* ADD_017 (Bower-Bjornson); ADD_092 (Deville); ADD_244 (Palacios). Petitioners’ members—including members living in areas with unlawfully high ozone levels—have “realistic health concerns” about the effects of this additional pollution. *Clean Wisconsin v. EPA*, 964 F.3d 1145, 1156-57 (D.C. Cir. 2020); *see, e.g.,* ADD_167 (MacFarlane); ADD_278-9 (Ramirez).

EPA argues that it is speculative to suggest that the Super Emitter Program would reduce emissions where Petitioners’ members live. But EPA adopted the Program to “comprehensively address[] the *widespread* problem of abnormally large emission events.” 89 Fed. Reg. at 16,877 (emphasis added); ADD_257 (Proville-Mirtich) (“According to EPA[]...a typical production well...will

experience two large pollution releases on average.”). And even the limited number of reports submitted under the program before the Delay Rule took effect identified, and forced operators to investigate, numerous high-emission events. Opening Br. 39.

Finally, Petitioners provided declarations detailing their members’ particularized harms from climate change and explaining how the methane emissions allowed by the Delay Rule would exacerbate climate harm. Opening Br. 18 n.13; *see also* ADD_118-26 (Jeffery) (NRDC member with coastal property threatened by climate change-driven increased flooding); ADD_039-40 (Buma). EPA ignores this Court’s on-point decision in *NRDC v. Wheeler*, which held that Petitioner NRDC had standing to challenge a greenhouse-gas emission-increasing rule because those emissions contribute to climate change, threatening a member’s coastal property. 955 F.3d 68, 77 (D.C. Cir. 2020); *see also* Opening Br. 18-19 (magnitude of greenhouse gas emissions at stake in this case greater than in *Wheeler*).

IV. The Court Should Vacate the Delay Rule.

Finally, the Court should reject EPA’s suggestion, EPA Br. 50-52, to leave the Delay Rule in place even if it sustains Petitioners’ challenge. Vacatur is the “normal remedy” for unlawful agency action, and remand without vacatur is appropriate only in limited circumstances. *Am. Great Lakes Ports Ass’n v. Schultz*,

962 F.3d 510, 518 (D.C. Cir. 2020); *see also Am. Bankers Ass’n v. Nat’l Credit Union Admin.*, 934 F.3d 649, 674 (D.C. Cir. 2019) (remand without vacatur reserved for “rare cases”) (citation omitted)). No such circumstances exist here.

EPA’s request for remand without vacatur is out of step with this Court’s practice in Clean Air Act cases. This Court remands without vacatur when vacatur “would at least temporarily defeat...the enhanced protection of the environmental values covered by [the agency action]”—by, for example, eliminating a legally-flawed rule that is nonetheless more protective than the *status quo*. *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008) (per curiam) (quoting *Env’tl. Def. Fund v. EPA*, 898 F.2d 183, 190 (D.C. Cir. 1990)); *see also Ctr. for Biological Diversity v. EPA*, 861 F.3d 174, 189 (D.C. Cir. 2017). Here, remand without vacatur would significantly *increase* air pollution, harming public health and effectively giving EPA the benefit of the unlawful delays it sought to effectuate through the Delay Rule. That remedy is inappropriate here.

In any event, the Delay Rule’s legal defects are serious, and vacatur would cause no significant disruptive consequences. *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm’n*, 988 F.2d 146, 150-51 (D.C. Cir. 1993). The Rule suffers from fundamental defects that go to the heart of EPA’s action, including the Agency’s misinterpretation of Section 111 and disregard of its duty to consider emissions impacts. *See ALA*, 985 F.3d at 996 (vacating rule where EPA “fundamentally ‘has

misconceived the law”); *Cigar Ass’n of Am. v. FDA*, 126 F.4th 699, 706 (D.C. Cir. 2025) (courts “must vacate a decision that ‘entirely failed to consider an important aspect of the problem’”); *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 985 F.3d 1032, 1052-53 (D.C. Cir. 2021) (a rule that includes “little if any information about [the] prospective environmental harms” of delayed compliance creates substantial doubt that “the agency chose correctly”). Likewise, EPA’s arbitrary explanations for the extensions create substantial doubt that EPA could lawfully justify the same extensions on remand. *See Heartland Reg’l Med. Ctr. v. Sebelius*, 566 F.3d 193, 198 (D.C. Cir. 2009).

The second *Allied-Signal* factor is “weighty only insofar as the agency may be able to rehabilitate its rationale,” *City of Port Isabel v. FERC*, 111 F.4th 1198, 1218 (D.C. Cir. 2024), but likewise favors vacatur. Neither EPA nor Intervenors identify serious practical consequences from restoring the *status quo*, relying instead on the “regulatory uncertainty that typically attends vacatur of any rule.” *NRDC v. Wheeler*, 955 F.3d at 85. Any disruption is of EPA’s own making: EPA did not merely extend future deadlines for section 111(b) standards; it delayed many deadlines that had already passed, most more than a year before EPA issued the Interim Final Rule. *See supra* Section II.A. Any noncompliance preceded—and cannot be attributed to—the Delay Rule. With respect to section 111(d) state plans, vacatur would restore the March 2026 deadline, leaving states with ample time to

submit plans before EPA would be required to issue a federal plan. *See* 42 U.S.C. § 7410(c)(1) (providing two years for EPA to promulgate a federal plan).

Any disruption, moreover, does not outweigh ongoing harm to Petitioners and the public from leaving the unlawful Delay Rule in place. *NRDC v. Wheeler*, 955 F.3d at 85-86. Remand without vacatur would prolong increased emissions and resulting harms to Petitioners for an indefinite period. *Davis Cnty. Solid Waste Mgmt. v. EPA*, 108 F.3d 1454, 1458-59 (D.C. Cir. 1997) (treating increased emissions resulting from vacatur as a relevant disruptive consequence); *see also NRDC v. EPA*, 489 F.3d 1250, 1264 (D.C. Cir. 2007) (Rogers, J., concurring). Those interim harms cannot be undone.

Finally, EPA's claim that vacatur is "inappropriate" because of the procedural posture would create a perverse loophole in judicial review. EPA Br. 51. The Final Rule expressly "reaffirm[ed]" the Interim Final Rule's extensions after notice and comment, 90 Fed. Reg. at 55,674, thereby adopting the regulatory changes as part of the final agency action now under review. *See Sorenson Commc'ns*, 755 F.3d at 705 n.2. EPA itself explained that its "use of an [Interim Final Rule] is no longer an issue" precisely because the Final Rule reaffirmed the extensions. 90 Fed. Reg. at 55,675. This Court accordingly found challenges to the Interim Final Rule to be moot because Petitioners had not "shown that vacatur of the interim rule would afford them meaningful relief." *See Order, Environmental*

Defense Fund v. Zeldin, No. 25-1164 (D.C. Cir. March 2, 2026) (ECF No. 2161664). If it found any potential for “confusion” stemming from the moribund Interim Final Rule, this Court could expressly order both Rules vacated and clarify that the 2024 standards and deadlines are reinstated. *See, e.g., United Steel v. MSHA*, 925 F.3d 1279, 1287 (D.C. Cir. 2019).

CONCLUSION

The Court should vacate the Delay Rule.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B), undersigned counsel hereby certifies that the foregoing brief contains 6,468 words, as counted by counsel's word processing system, and thus complies with the 6,500-word limit.

Further, this document complies with the typeface and type-style requirements of the Federal Rules of Appellate Procedure, 32(a)(5) and (a)(6), because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 using size 14 Times New Roman font.

Dated: September 1, 2026

/s/ Mary Y. Sasso

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September, 2026 I filed the foregoing brief on Respondents with the Court's CM/ECF system, which will provide copies to counsel of record.

/s/ Mary Y. Sasso

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