IN THE SUPREME COURT OF MARYLAND

No. 11
September Term, 2025

MAYOR & CITY COUNCIL OF BALTIMORE,
Appellant,
v.
B.P. P.LC., *ET AL.*,
Appellees.

Appeal from the Circuit Court for Baltimore City
Honorable Videtta A. Brown

CITY OF ANNAPOLIS,
Appellant,
v.
B.P. P.LC., *ET AL.*,
Appellees.

ANNE ARUNDEL COUNTY, MARYLAND,
Appellant,
v.
B.P. P.LC., *ET AL.*,
Appellees.

Appeal from the Circuit Court for Anne Arundel County
Honorable Steven I. Platt

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STATEMENT OF THE CASE

Appellants—the Mayor and City Council of Baltimore, the City of Annapolis, and Anne Arundel County—attempt to use *state* law to impose liability on more than two dozen energy companies and one energy trade association for the alleged effects of *global* climate change. Appellants' claims are not limited to allegedly tortious conduct in their respective jurisdictions, or even in Maryland, but instead are based on countless decisions made over more than a century by billions of individuals around the world to use oil and gas for innumerable productive purposes and on the decisions of local, state, and national policymakers in the United States and around the world. Appellants try to obscure their complaints' unprecedented scope, suggesting that their suits seek only to hold Appellees liable for "mislead[ing] consumers and the public about climate change and the central role [Appellees'] knew their fossil-fuel products play in causing it." Appellants' Opening Brief ("OB") 1. But as Appellants admit throughout their brief, the *only* alleged connection between Appellees' purported misconduct (alleged misrepresentations and deception) and Appellants' alleged injuries (*e.g.*, sea-level rise and flooding) is "increased greenhouse gas emissions" worldwide that allegedly "accelerated global warming" and "created hazardous conditions" in their jurisdictions. OB.36-37. Indeed, Appellants assert that "*inflated fossil-fuel consumption*" worldwide—allegedly resulting from Appellees' "deceptive promotion" and "deceptive business practices"—caused their claimed injuries. OB.36, OB.45 (emphasis added).

The circuit courts correctly recognized the untenable nature of Appellants' claims and dismissed them in their entirety. Rejecting all of Baltimore's claims, the Circuit Court

for Baltimore City concluded that "'[a]rtful pleading cannot transform the City's complaint into anything other than a suit over global greenhouse gas emissions.'" E.7 (quoting *City of New York v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021)). That court explained: "[T]he Constitution's federal structure does not allow the application of state law to claims like those presented by [Appellants]" that are based on global emissions, and such claims are "barred" by the Clean Air Act ("CAA"). E.11, E.19. The court also recognized that "[s]tate law cannot provide a remedy to claims involving foreign emissions," and "[f]ederal common law is still required to apply to extraterritorial aspects of claims challenging undifferentiated global emissions." E.14. These holdings sufficed to dismiss Baltimore's entire complaint, but "to make the record complete," the court went on to hold that Baltimore's claims also exceed the bounds of Maryland tort law. E.20-34. The Circuit Court for Anne Arundel County similarly dismissed Annapolis' and Anne Arundel County's claims, explaining that "the U.S. Constitution's federal structure does not allow ... claims like those presented in the instant cases." E.1384.

Appellants complain that the circuit courts "fundamentally misconstrued" their claims. OB.3; *see also* OB.5. But in fact, those courts saw those claims for what they are. Appellants' claims are "entirely about addressing the injuries of global climate change and seeking damages for such alleged injuries," and Appellants' attempt to frame their complaints as *solely* concerning "a deceptive misinformation campaign is simply a way to get in the back door what [Appellants] cannot get in the front door." E.11; *see also* E.1384. Allowing such claims to proceed would not only usurp the power of the federal government

to set climate policy but would also do so retrospectively and far beyond Maryland's borders. This Court should affirm the decisions of the circuit courts.[1]

QUESTIONS PRESENTED

1. Do the federal Constitution and federal law preempt and preclude state-law claims seeking redress for injuries allegedly caused by the effects of out-of-state and international greenhouse-gas emissions on the global climate?
2. Does Maryland law preclude nuisance claims based on injuries allegedly caused by the worldwide production, promotion, and sale of a lawful consumer product?
3. Does Maryland law preclude failure-to-warn claims premised on a duty to warn every person in the world whose use of a product may have contributed to a global phenomenon with effects that allegedly harmed the plaintiff?
4. Does Maryland law preclude trespass claims based on harms allegedly caused by global climate changes arising from the use of a product by billions of third parties around the world outside of the producer's control?

STATEMENT OF FACTS

These cases are part of a long series of ill-conceived climate-change-related suits that "see[k] to impose liability and damages on a scale unlike any prior environmental pollution case." *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 876 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012).

[1] Appellees submit this brief subject to and without waiver of any personal-jurisdiction objections.

The first such lawsuit unsuccessfully asserted state and federal nuisance claims against automobile companies for alleged contributions to climate change. *See California v. Gen. Motors Corp.*, 2007 WL 2726871, at *16 (N.D. Cal. Sept. 17, 2007) (dismissing because claims were nonjusticiable). The next round of litigation asserted claims against direct emitters, such as power companies, but that effort, too, failed. *See Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 429 (2011) ("*AEP*") (holding claims seeking abatement of public nuisance of climate change fail because the federal common law that necessarily governs was displaced by the CAA); *Kivalina*, 663 F. Supp. 2d at 863 (dismissing as nonjusticiable and for lack of standing federal common-law nuisance claims against energy and utility companies); *Kivalina*, 696 F.3d at 854 (affirming dismissal in case where plaintiffs alleged defendants "misle[d] the public about the science of global warming" as displaced by the CAA).

Appellants now reach even further back in the supply chain by suing companies that provide the raw material used by direct emitters—that is, the fossil fuels that billions of individuals, businesses, and governments depend on every day. Over the past eight years, States and municipalities, largely represented by the same private counsel, have brought more than 30 similar cases against energy companies seeking damages for the alleged impacts of global climate change, even as these same government plaintiffs and their residents continue to rely on and benefit from the very oil and gas products they attack in their complaints. But the circuit courts joined the "growing chorus of state and federal courts across the United States, singing from the same hymnal," that has dismissed these suits *on the pleadings* as beyond the limits of state law and barred by federal law. *Bucks*

Cnty. v. BP P.L.C., 2025 WL 1484203, at *6 (Pa. Ct. Com. Pl. May 16, 2025) (non-precedential). These decisions include *City of New York*, 993 F.3d 81; *City of Oakland v. BP P.L.C.*, 325 F. Supp. 3d 1017 (N.D. Cal. 2018) ("*Oakland*"), *vacated on other grounds*, 960 F.3d 570 (9th Cir. 2020); *State ex rel. Jennings v. BP America Inc.*, 2024 WL 98888 (Del. Super. Ct. Jan. 9, 2024) (non-precedential) ("*Delaware*"); *Platkin v. Exxon Mobil Corp.*, 2025 WL 604846 (N.J. Super. Ct. Law Div. Feb. 5, 2025) (non-precedential) ("*New Jersey*"); and *Bucks County*.

As here, plaintiffs in those cases alleged that the defendants "have known for decades that their fossil-fuel products pose a severe risk to the planet's climate" but "downplayed the risks and continued to sell massive quantities of fossil fuels, which has caused and will continue to cause significant changes to the [plaintiffs'] climate and landscape." *City of New York*, 993 F.3d at 86-87; *see* E.41, E.43, E.90, E.113, ¶¶ 1, 6, 102, 145; E.1015, E.1018, E.1090, ¶¶ 1, 8, 109; E.1193, E.1196, E.1272, ¶¶ 1, 8, 110. And, like Appellants, those plaintiffs suggested that defendant energy companies and trade associations are "primarily responsible for global warming and should bear the brunt of these costs," even though "every single person who uses gas and electricity … contributes to global warming." *City of New York*, 993 F.3d at 86; *see* E.44, E.87-90, ¶¶ 7, 91-102; E.1018, E.1023, ¶¶ 9, 22; E.1196, E.1202, ¶¶ 9, 24.

Emissions, which Appellants allege are the mechanism of their injuries, are the result of billions of daily choices—made by governments, companies, and individuals around the world over more than a century—about what types of fuels to use and how to use them. Appellants readily recognize that only *worldwide* conduct, not conduct that

occurred in Maryland alone, could have caused their alleged injuries. E.68-74, E.129-30, ¶¶ 36-45, 178-80; E.1059-62, E.1120-21, ¶¶ 48-56, 160; E.1239-42, E.1302-03, ¶¶ 49-57, 160. As Appellants acknowledge, "it is not possible to determine the source of any particular individual molecule of CO_2 in the atmosphere attributable to anthropogenic sources because such greenhouse gas molecules do not bear markers that permit tracing them to their source, and because greenhouse gasses quickly diffuse and comingle in the atmosphere." E.156, ¶ 246; E.1167-68, ¶ 259; E.1353-54, ¶ 262. Appellants' claims, therefore, expressly seek to impose liability and damages for alleged conduct outside of Maryland and, indeed, around the world.

The Baltimore City Circuit Court granted Appellees' motion to dismiss the complaint. The court ruled that, regardless of how Baltimore characterized its complaint, "the Constitution's federal structure does not allow the application of state law to claims like those presented by Baltimore." E.11. The court emphasized that "[g]lobal pollution-based complaints were never intended by Congress to be handled by individual states." E.12. Further, the federal CAA "speaks directly to the domestic emissions issues in this case" and thus preempts Baltimore's claims. E.18. And "[f]ederal common law is still required to apply to extraterritorial aspects of claims challenging undifferentiated global emissions." E.14.

The Baltimore City Circuit Court also held that Baltimore's claims fail under Maryland law. The court dismissed Baltimore's nuisance claims because Maryland nuisance law applies only with respect to "cases involving a defendant's use of land," not "product liability cases." E.23. The court dismissed the failure-to-warn claims because

they were premised on a duty to warn "the world," which this Court has rejected. E.26. Regarding trespass, the court found the theories of harm too "attenuated to constitute the control necessary to establish liability" under existing law and declined to "extend trespass liability beyond where the Maryland Supreme Court has previously allowed." E.32-33.[2]

The Anne Arundel County Circuit Court likewise granted Appellees' motions and dismissed all claims brought by Annapolis and Anne Arundel County. The court held that the claims were "federally preempted" because "the U.S. Constitution's federal structure does not allow … claims like those presented in the instant cases." E.1384-85. That court did not reach the viability of Appellants' claims under state law. E.1386.

Appellants appealed each case to the Appellate Court. At the parties' joint request, the appeals were consolidated. E.1410-11. Appellees submitted an unopposed bypass petition for a writ of certiorari on April 11, 2025. Appellants jointly answered and cross-petitioned on April 20, 2025, and this Court issued a writ of certiorari on April 24, 2025.

SUMMARY OF ARGUMENT

This Court should affirm dismissal of Appellants' claims. Appellants acknowledge that their *injuries* are, at root, "caused by anthropogenic greenhouse gas *emissions*." E.68-70, ¶¶ 36-39; E.1059-60, ¶¶ 48-53; E.1239-40, ¶¶ 49-54 (emphasis added). Emissions are, in Appellants' words, "[t]he mechanism" of their alleged injuries. E.70, ¶ 39; E.1059, ¶ 49;

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[2] The court also dismissed Baltimore's design-defect and Maryland Consumer Protection Act ("MCPA") claims, E.27-29, E.33-34, which Baltimore has abandoned on appeal, OB.2 n.1. Annapolis and Anne Arundel likewise preserved no objection to the dismissal of the MCPA claim against API. *See* E.1389, E.1404; *see also* E.1173 & E.1359 (amended complaints omitting MCPA claim against API).

E.1239, ¶ 50. Indeed, according to Appellants, "greenhouse gas pollution, primarily in the form of CO_2, is far and away the dominant cause of global warming," E.42, ¶ 3, and their purported injuries are "*all due* to anthropogenic global warming," E.44, ¶ 8 (emphasis added); *see* E.1016, E.1019, ¶¶ 5, 10; E.1194, E.1198, ¶¶ 5, 10. In light of the foundational role of global greenhouse-gas emissions to Appellants' claims, the circuit courts were correct to dismiss the complaints on multiple grounds.

First, the circuit courts properly concluded that the structure of the federal Constitution precludes and preempts state-law claims seeking damages for injuries arising from global emissions. *See* E.11-14. Fundamental principles of federalism embodied in the structure of the U.S. Constitution bar state law from operating in areas of "uniquely federal interests," *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981), and the U.S. Supreme Court has repeatedly held that interstate pollution is one such area, *see, e.g.*, *AEP*, 564 U.S. at 421 (discussing several cases). As the Second Circuit explained in affirming dismissal of nearly identical claims, a "suit seeking to recover damages for the harms caused by global greenhouse gas emissions may [not] proceed under [state] law." *City of New York*, 993 F.3d at 91. Such "sprawling" claims, seeking "damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet," are "simply beyond the limits of state law." *Id.* at 92. Appellants cannot avoid the preclusive and preemptive force of the Constitution's federal structure by artfully (and falsely) characterizing their complaints as concerning only misrepresentations to consumers. The truth is that Appellants seek damages for alleged effects of interstate and international greenhouse-gas emissions, and the U.S. Constitution entrusts such

fundamentally interstate and international matters to the federal government—not state or local governments.

Second, Appellants attack a strawman insofar as they contend that the federal common law regarding transboundary emissions cannot preempt their claims because it has been displaced by the CAA. Appellants completely misapprehend and mischaracterize Appellees' core argument, which is that the federal structure of the Constitution—*not* federal common law—preempts Appellants' state-law claims involving transboundary emissions. Indeed, federal common law formerly governed interstate-pollution claims only because the federal structure of the Constitution precludes the application of state law to such claims, leaving—until displaced by a subsequent applicable federal statute—a vacuum that only *federal* common law could fill. That Constitutional bar did not suddenly disappear or lose its force simply because the CAA, a *federal* statute, displaced the *federal* common law that had previously governed claims involving interstate emissions. That federal common law ever governed in this area at all simply confirms the underlying constitutional principles on which Appellees' argument is premised. As the Second Circuit observed, Appellants' argument to the contrary "is too strange to seriously contemplate." *City of New York*, 993 F.3d at 98-99.

The same constitutional and federal common law principles preclude and preempt Appellants' claims based on *international* emissions. E.14. As the Second Circuit explained in *City of New York*, federal common law is "still require[d]" to govern the international aspects of claims challenging global emissions because the CAA "does not regulate foreign emissions." 993 F.3d at 95 n.7. So too here.

Third, the circuit courts correctly held that the CAA preempts Appellants' claims because they seek relief for harms attributed to interstate emissions. *See* E.18-19. Over 30 years ago, the U.S. Supreme Court interpreted the corresponding terms of the Clean Water Act ("CWA") to "preclude[] a court from applying the law of an affected State against an out-of-state source" because doing so would "upse[t] the balance of public and private interests so carefully addressed by the Act." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 494 (1987). As numerous courts have held, the preemptive scope of the CAA is materially identical to that of the CWA. The CAA "entrusts [the] complex balancing" of whether and how to regulate greenhouse-gas emissions "to EPA in the first instance," with a circumscribed role for States regulating emissions "within [their] domain." *AEP*, 564 U.S. at 427-28. The CAA thus precludes the use of state law to obtain damages for the injuries alleged here—that is, injuries caused by greenhouse-gas emissions released by sources beyond Maryland's borders.

Finally, the Baltimore City Circuit Court correctly held that Baltimore's claims suffer from myriad independent defects under Maryland state law. *See* E.20-34. As to Appellants' nuisance claims, Maryland state courts have not extended public-nuisance law to cases concerning the production, promotion, and sale of consumer products—as opposed to the use of land, E.21—and the Court should reject Appellants' request to adopt such a sweeping theory of nuisance, which has been rejected by courts across the country. Likewise, the Court should not accept Appellants' "novel theory of trespass," which "has not been recognized by Maryland state courts." E.31. Finally, the Court should affirm the dismissal of Appellants' strict-liability and negligent failure-to-warn claims because

Appellants' proposed duty to warn far exceeds any authority under Maryland law: It "would be extended to every single human being on the planet whose use of fossil fuel products may have contributed to global climate change," and would thereby contravene this Court's admonition against "creat[ing] a duty to warn an 'indeterminate class of people.'" E.26.

STANDARD OF REVIEW

An appellate court "reviews the grant of a motion to dismiss for failure to state a claim *de novo*." *Elsberry v. Stanley Martin Cos., LLC*, 482 Md. 159, 178 (2022). The court may also "affirm the judgment of a trial court to grant a motion to dismiss on a different ground than that relied upon by the trial court, as long as the alternative ground is before the Court properly on the record." *Forster v. State, Off. of Pub. Def.*, 426 Md. 565, 580-81 (2012).

ARGUMENT

I. Appellants' Claims Are Precluded And Preempted By The Federal Structure Of The U.S. Constitution And Federal Law.

A. Appellants' Claims Are Barred Because State Law Cannot Constitutionally Be Applied.

As the Maryland circuit courts correctly held, the federal structure of the U.S. Constitution precludes and preempts state-law claims seeking damages for injuries allegedly caused by interstate and international emissions.

The U.S. Supreme Court has repeatedly explained that the federal "Constitution implicitly forbids" States from applying their own law to certain matters "because the interstate nature of the controversy makes it inappropriate for state law to control."

Franchise Tax Bd. of Cal. v. Hyatt, 587 U.S. 230, 246 (2019) (internal quotation marks and ellipsis omitted). There are some "areas, involving 'uniquely federal interests,' [that] are so committed by the Constitution … to federal control that state law is pre-empted." *Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988). Such exclusively federal areas include "interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations" and areas "in which a federal rule of decision is 'necessary to protect uniquely federal interests.'" *Tex. Indus.*, 451 U.S. at 640-41.

The U.S. Supreme Court has made clear that disputes involving interstate "pollution" fall within this category of "controvers[ies] touch[ing] basic interests of federalism" that preclude the application of the varying "law of the individual States." *Illinois v. City of Milwaukee*, 406 U.S. 91, 105 n.6, 107 n.9 (1972) ("*Milwaukee I*"). A State cannot apply its own law to claims dealing with "air and water in their ambient or interstate aspects"; in those contexts, "borrowing the law of a particular State would be inappropriate" because these are "areas of national concern" and, under "the basic scheme of the Constitution," these disputes are not "matters of substantive law appropriately cognizable by the states." *AEP*, 564 U.S. at 421-22 (internal quotation marks omitted); *see Ouellette*, 479 U.S. at 488 ("interstate … pollution is a matter of federal, not state, law"). The "inevitable result" of allowing these suits would be that "States could do indirectly what they could not do directly—regulate the conduct of out-of-state sources." *Id.* at 495. Accordingly, "[f]or over a century, a mostly unbroken string of cases has applied federal law to disputes involving interstate air or water pollution." *City of New York*, 993 F.3d at 91.

Every federal court to have considered the merits of this question has held that state law cannot be used to obtain relief for damages allegedly caused by global climate change. For example, the Second Circuit held that "a nuisance suit seeking to recover damages for the harms caused by global greenhouse gas emissions may [not] proceed under [state] law." *City of New York*, 993 F.3d at 91. The Second Circuit's decision is directly on point and demonstrates why the circuit courts' decisions should be affirmed. There, the plaintiff alleged that certain energy companies (including several Appellees) "ha[d] known for decades that their fossil fuel products pose[d] a severe risk to the planet's climate" yet "downplayed the risks and continued to sell massive quantities of fossil fuels," and were therefore liable under state law for injuries caused by global climate change. *Id.* at 86-87; *see City of New York v. BP P.L.C.*, 325 F. Supp. 3d 466, 469 (S.D.N.Y. 2018) ("the amended complaint contain[ed] extensive allegations regarding Defendants' past attempts to deny or downplay the effects of fossil fuel use on climate change").

The Second Circuit concluded that such "sprawling" claims, seeking "damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet," are "simply beyond the limits of state law." *City of New York*, 993 F.3d at 92. This is because "disputes involving interstate air … pollution," such as climate-change litigation, "implicate two federal interests that are incompatible with the application of state law: (i) the 'overriding … need for a uniform rule of decision' on matters influencing national energy and environmental policy, and (ii) 'basic interests of federalism.'" *Id.* at 91-92. The other federal judges to consider that question have reached the same conclusion. *See City of Oakland*, 325 F. Supp. 3d at 1023; *see People of State of*

Ill. v. City of Milwaukee, 731 F.2d 403, 410 (7th Cir. 1984) ("*Milwaukee III*") ("the state claiming injury cannot apply its own state law to out-of-state discharges" because interstate pollution "is a problem of uniquely federal dimensions").

Here, the circuit courts correctly adopted the reasoning of the Second Circuit's *City of New York* decision, which involved materially indistinguishable claims. As there, Appellants allege that "Defendants deployed a sophisticated campaign of deception to misrepresent and conceal their products' risks," E.2, and claim that their complaints target only this misinformation campaign, not "manufacturing or burning fossils fuels" or "pollut[ing]," OB.16. The circuit courts saw through this misdirection, explaining that Appellants' assertions that they "only seek[] to address and hold Defendants accountable for a deceptive misinformation campaign" was "artful but not sustainable" because the "complaint[s] [are] entirely about addressing the injuries of global climate change and seeking damages for such alleged injuries." E.10-11. In turn, the circuit courts found these state-law claims nonviable because, "[u]nder the Constitution's structure, matters that involve interstate controversies cannot be handled in state court under state law." E.8.

Appellants try to distinguish *City of New York* on the ground that the plaintiff there sought to directly regulate emissions and to "hold defendants liable for impacts caused by their 'admittedly legal commercial conduct' producing and selling fossil fuels." *See* OB.18 (quoting 993 F.3d at 86). But *City of New York* involved the same artful-pleading strategy that Appellants employ—New York City argued that state law governed because the case "concern[ed] only 'the production, *promotion*, and sale of fossil fuels, not the regulation of emissions.'" 993 F.3d at 91 (emphasis added). The Second Circuit rejected that framing,

observing that "[i]t is precisely *because* fossil fuels emit greenhouse gases—which collectively 'exacerbate global warming'—that the City is seeking damages." *Id.* at 91. The plaintiff's attempt to "focus on" a particular "moment in the global warming lifecycle [was] merely artful pleading and [did] not change the substance of [the plaintiff's] claims." *Id.* at 97 (quotation marks omitted). The court concluded: "Stripped to its essence, … the question before us is whether a nuisance suit seeking to recover damages for the harms caused by global greenhouse gas emissions may proceed under New York law. Our answer is simple: no." *Id.* at 91.

In addition to the two Maryland circuit courts, other state courts across the country have followed the Second Circuit's decision in *City of New York* and dismissed state-law claims seeking to hold energy companies liable for damages caused by global greenhouse-gas emissions. For example, the New Jersey Superior Court dismissed virtually identical claims as preempted because, "regardless of Plaintiffs' characterizations" of their lawsuit, their claims sought "redress for harm allegedly caused by climate change and damages for such alleged injuries." *New Jersey*, 2025 WL 604846, at *3. The Court of Common Pleas for Bucks County, Pennsylvania likewise dismissed similar claims because "Bucks County [was] truly seeking redress for harm caused by climate change, a global phenomenon caused by the emission of greenhouse gases in every nation in the world," and such claims "are solely within the province of federal law." *Bucks County*, 2025 WL 1484203, at *7. And the Delaware Superior Court concluded that claims "seeking damages for injuries resulting from out-of-state or global greenhouse emissions … are pre-empted" and "beyond the limits of Delaware common law." *Delaware*, 2024 WL 98888, at *9.

Appellants cannot reasonably dispute that their claims similarly seek damages attributable to global greenhouse-gas emissions. As Baltimore conceded during argument in the circuit court, it seeks damages on the ground that Appellees caused "substantially more greenhouse gases to be emitted into the environment," resulting in "the city's problems." Apx 4, Transcript of Proceedings 85:18-23, *Mayor & City Council of Baltimore*, No. 24-C-18-004219 (Mar. 11, 2024). Given that Maryland accounts for *only 0.14% of global carbon-dioxide emissions*, Maryland emissions alone cannot possibly be responsible for causing Appellants' alleged injuries, meaning Appellants are necessarily seeking damages for harms attributable to all interstate and international emissions combined. *See* U.S. Energy Information Administration, *Energy-Related CO_2 Emission Data Tables*, Table 1 (Oct. 29, 2024), https://tinyurl.com/mrtu4mpw; *id.*, *International Emissions*, https://tinyurl.com/2vwayur9; B. Plummer & M. Rojanasakul, *A Big Climate Goal Is Getting Farther Out of Reach*, N.Y. Times (Nov. 14, 2024), https://tinyurl.com/3sh9spyw.

Appellants do not dispute that they are seeking damages for injuries allegedly caused by global greenhouse-gas emissions. To the contrary, Appellants allege that their injuries were "caused by anthropogenic greenhouse gas emissions" all over the world. E.70, ¶¶ 39-41. These interstate and international emissions are "[t]he mechanism" of their alleged injuries. E.70, ¶ 39. As a result, the alleged basis for each of Appellants' claims is that "Defendants' deceptive promotion inflated fossil-fuel consumption, increased greenhouse gas emissions, accelerated global warming, and thereby created hazardous conditions in [each Appellant's jurisdiction]—including sea-level rise, flooding, storm

surges, and heat waves." OB.36-37. Alleged misrepresentations matter to Appellants' theory of causation and requested relief only insofar as they purportedly increased transboundary emissions. But regardless of how Appellants label their claims, the fact remains that they impermissibly seek to use Maryland law to impose liability for injuries allegedly caused by *cumulative emissions* from billions of sources worldwide.

Appellants nevertheless contend that the circuit courts misread their complaints and violated Rule 2-322 by not viewing the allegations in the complaint in the light most favorable to Appellants. OB.17-18. This is not so. Appellants do not seriously dispute that they are seeking redress for injuries caused by global emissions, even as they ask this Court to disregard that key fact. As the Baltimore City Circuit Court correctly noted, Appellants' assertions that they "only see[k] to address and hold Defendants accountable for a deceptive misinformation campaign" is an "artful but not sustainable" strategy that seeks "to get in the back door what they cannot get in the front door"—*i.e.*, claims based directly on out-of-state emissions. E.10-11. Maryland courts regularly disregard "the artful pleading of skillful advocates" and focus instead on "the gravamen of the alleged harm." *Veydt v. Lincoln Nat'l Life Ins. Co.*, 94 Md. App. 1, 5 (1992). Thus, while the circuit courts were required to view the *allegations* in the light most favorable to Appellants (as they did), the courts were not required to defer to Appellants' *characterization of the nature of their claims*. To the contrary, the circuit courts correctly made their "determinations based on the substance of the allegations," including the theory of liability and the relief sought. *Piven v. Comcast Corp.*, 397 Md. 278, 290 (2007). And the substance of Appellants' claims is clear: Baltimore's complaint references "emission" or

"emissions" *114 times*, but "deception," "deceptions," "deceptive," "misrepresenting," "misrepresent," "misrepresentation," and "misrepresentations" *only 15 times combined.* E.36-172.

Appellants also make a misguided attempt to escape preemption by pointing to the Fourth Circuit's holding in the *removal* context (that the "production and use of Defendants' fossil-fuel products" are "not the source of [the alleged] tort liability") to support their argument that their claims do not implicate interstate and global emissions. OB.9-10 (quoting *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178, 233 (4th Cir. 2022)). But the Fourth Circuit acknowledged that Appellants' alleged deception mattered only insofar as it "drove consumption, and thus greenhouse gas pollution." *Baltimore*, 31 F.4th at 234. In any case, the Fourth Circuit was applying the "*heightened standard* unique to the removability inquiry" to determine whether Appellants' state-law actions arose under federal law. *Baltimore*, 31 F.4th at 203 (emphasis added). The Fourth Circuit thus addressed a distinct question from that raised here: whether the face of the plaintiff's complaint necessarily raised claims under federal common law. *Id.* at 200-07. In fact, the Fourth Circuit made clear that Appellees' merits-based, ordinary preemption defense was *reserved for the state court* on remand. *Id.* at 198-99. As the Fourth Circuit explained, an "ordinary preemption" defense—which is what Appellees argued bars Appellants' claims on the merits—"is not a jurisdictional doctrine … because it 'simply declares the primacy of federal law, regardless of the forum or the claim.' Ordinary preemption is a federal defense to a plaintiff's claims, and it cannot serve as a valid basis for removal." *Id.* (citation omitted). "Because [the federal courts were] only concerned

with removal jurisdiction," they did "not delve … into the[] defenses at Defendants' disposal," including ordinary preemption. *Id.* at 198 n.2.

Unlike the Fourth Circuit, the Maryland circuit courts *did* consider Appellees' ordinary preemption defense and concluded that, because Appellants' state-law claims seek to impose liability for interstate and foreign greenhouse-gas emissions, they are preempted by federal law. That was the correct conclusion. Indeed, the centrality of interstate and foreign emissions to Appellants' claims is apparent in the very first pages of their Opening Brief, where they assert that Appellees' alleged "deception 'drove consumption, and thus greenhouse gas pollution, and thus climate change,' significantly exacerbating [Appellants'] harms." OB.2. On Appellants' own theory, if global emissions had not increased past a particular level, they would not have suffered their alleged injuries and thus would have no claims. Appellants' attempt to characterize their claims as limited to alleged deception cannot conceal the reality that they seek damages for harms caused by emissions across the country and globe. OB.14-19.

Appellants assert that the U.S. Constitution cannot preclude state law absent a specific constitutional "provision" on point. OB.27-30. Appellants' argument fails on its own terms because numerous clauses of the U.S. Constitution—including the Due Process, Supremacy, Interstate and Foreign Commerce, and Full Faith and Credit Clauses—manifest "principles of state sovereignty and comity that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572 (1996); *see Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 (2023) (stating that constitutional principles,

including "the Constitution's structure" and "the Due Process Clause," constrain state authority to legislate and enforce law extraterritorially).

Moreover, Appellants' argument ignores a long line of Supreme Court cases explaining that the federal structure of the U.S. Constitution "implicitly" forbids States from applying their own law to certain matters when "the interstate nature of the controversy makes it inappropriate for state law to control." *Hyatt*, 587 U.S. at 246 (internal quotation marks and ellipsis omitted).[3] Even where "[t]here is no express provision in the constitution" preventing state law from applying, the Constitution may "by implication" preclude the application of state law. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 390-91 (1819). There are many areas of constitutional law—such as the Supreme Court's Dormant Commerce Clause and anticommandeering-doctrine jurisprudence—where "there is no constitutional text speaking to th[e] precise question" and the rule of constitutional law is grounded not on a specific provision but on "historical understanding and practice, *in the structure of the Constitution*, and in the jurisprudence of th[e Supreme] Court." *Printz v. United States*, 521 U.S. 898, 905 (1997) (emphasis added).

Here, allowing state law to impose liability for out-of-state and foreign greenhouse-gas emissions cannot be reconciled with the structure of the federal union created by the Constitution because it would impermissibly permit one State to "impose its own legislation on … the others," violating the "cardinal" principle that "[e]ach state stands on

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[3] The three-Justice plurality opinion in *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 767 (2019) (opinion of Gorsuch, J.), on which Appellants rely (OB.13) did not address—and certainly could not overrule—the principles reaffirmed in *Hyatt*, an opinion that each Justice in the *Virginia Uranium* plurality joined.

the same level with all the rest." *Kansas v. Colorado*, 206 U.S. 46, 97 (1907); *see Coyle v. Smith*, 221 U.S. 559, 580 (1911) ("[T]he constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized."). While "Congress has ample authority to enact [climate] policy for the entire Nation, it is clear that no single State could do so, or even impose its own policy choice on neighboring States." *BMW*, 517 U.S. at 571 (footnote omitted). The U.S. Supreme Court has thus repeatedly held that "air and water in their ambient or interstate aspects" are subject to national—not state—power because "the basic scheme of the Constitution so demands." *AEP*, 564 U.S. at 421 (citation omitted); *Milwaukee I*, 406 U.S. at 105 n.6 (when a "controversy touches basic interests of federalism" under the structure of the Constitution, that "demands … applying federal law").

Our federal constitutional structure does not permit Appellants' claims to proceed.

B. Appellees' Constitutional Structure Argument Does Not Rest On The Existence Of Federal Common Law.

1. Appellants devote nine pages of their brief to attacking a strawman, asserting that federal common law does not preempt state law because it has been displaced by the CAA. *See* OB.19-27. Appellants miss the point entirely. Appellees' argument is that the federal structure of the Constitution—not federal common law—preempts Appellants' claims. The only reason federal common law formerly governed interstate-pollution claims is because the *Constitution* itself precludes the application of state law to such claims, leaving a vacuum that only federal law can fill. Certain matters "are so committed by the Constitution and laws of the United States to federal control that state law is pre-

empted and replaced" by federal law. *Boyle*, 487 U.S. at 504. Federal common law arose in the interstate-emissions context only because the federal constitutional "system does not permit the controversy to be resolved under state law." *Tex. Indus.*, 451 U.S. at 641. Interstate emissions is a subject that requires a uniform federal standard, and "[t]he application of numerous States' laws ... would lead to a chaotic confrontation between sovereign states" that the federal Constitution's structure forbids. *Ouellette*, 479 U.S. at 496 (citation modified).

The reason federal courts ever had the power to make federal common law "is because," under the Constitution, "state law cannot be used" in that area. *City of Milwaukee v. Illinois*, 451 U.S. 304, 313 n.7 (1981) ("*Milwaukee II*"). "[W]here a federal statute displaces federal common law, it does so not in a field which the states have traditionally occupied, but one in which the states have traditionally *not* occupied." *City of New York*, 993 F.3d at 98 (citation modified). The decision by Congress to replace a federal common-law scheme with a statutory one (the CAA) does not mean that state law suddenly becomes competent to address matters that have always been governed by federal law.

Appellants incorrectly contend that the U.S. Supreme Court's decisions in *Ouellette* and *AEP* support them simply because the Court recognized that the CWA and CAA had displaced federal common law. OB.22-23. But those decisions support Appellees' arguments, not Appellants'. To begin, as discussed, it does not help Appellants that the CWA and CAA have displaced federal common law because Appellees have not argued that federal common law preempts Appellants' interstate claims. And *Ouellette* and *AEP* each reaffirm that state law cannot be applied to claims based on interstate emissions.

Ouellette explained that, because "control of interstate pollution is primarily a matter of federal law, it is clear that the only state suits that remain available are those *specifically preserved* by the" Act—that is, suits based on in-state emissions. 479 U.S. at 492 (emphasis added) (citation omitted). Similarly, *AEP* explained that interstate air pollution is a "a subject … for federal law," rather than state law, "governance." 564 U.S. at 422. The Court thus remanded, for further consideration, only those state-law claims challenging *in-state*—not interstate or global—emissions. *Id.* at 429.

Accordingly, Appellees' constitutional-structure argument is not affected in any way by Congress's displacement of federal common law in the area of interstate emissions. Regardless of whether the federal government may address the problem of interstate air pollution via judge-made federal common law or via congressionally-enacted statute, *the federal constitutional structure* precludes the application of state law to that subject—and whether Congress has displaced federal common law does "nothing to undermine that result." *Milwaukee III*, 731 F.2d at 410.

The few climate-change decisions that have allowed plaintiffs' claims to proceed beyond the pleadings all suffer from the same error that Appellants make: They misread the significance of the fact that the CAA has displaced the federal common law of interstate emissions. *See City & County of Honolulu v. Sunoco LP*, 537 P.3d 1173 (Haw. 2023); *Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy USA, Inc.*, 2025 WL 1363355 (Colo. May 12, 2025); *State of Minn. ex rel. Ellison v. Am. Petroleum Inst.*, No. 62-CV-20-3827 (Minn. Dist. Ct. Feb. 14, 2025). The Colorado Supreme Court, for example, held that the plaintiff's claims were not preempted by "federalism concerns arising from the United

States Constitution" because "federal legislation has since displaced the federal common law in this area." *Boulder*, 2025 WL 1363355, at *8. But the court failed to acknowledge, much less grapple with, the fact that the only reason federal common law existed "in the first place" is because the Constitution's federal structure renders "state law incompetent to govern" claims based on interstate emissions—and "[n]othing in the CAA" changed that. *Id.* at *13 (Samour, J., dissenting). And the Hawaii Supreme Court's decision in *Honolulu* "did not address[] any argument that the Constitution itself precludes" materially identical claims, and held only that federal common law did not preempt the plaintiffs' claims, a point that is irrelevant for purposes of Appellees' constitutional-structure argument. Brief for the United States as *Amicus Curiae* 10, *Sunoco LP v. City & County of Honolulu*, No. 23-947 (U.S. Dec. 10, 2024); Brief for Respondents 16, *Sunoco LP v. City & County of Honolulu*, No. 23-947 (U.S. May 1, 2024) ("Petitioners ask this Court to consider a new constitutional preemption theory.").

Many other courts have similarly rejected Appellants' position. For example, in *New Jersey*, the court explained that "federal common law applied in the first place only because state law was not fit to govern; Congress's decision to displace and replace federal common law with a statutory scheme (the [CAA]) did not somehow render state law competent to apply to this exclusively federal subject matter." *New Jersey*, 2025 WL 604846, at *4. This is a baseline principle of our constitutional system, and "state law does not suddenly become presumptively competent to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one." *City of New York*, 993 F.3d at 98. Indeed, "[s]uch an outcome is

too strange to seriously contemplate." *Id.* at 98-99. Cases like *Honolulu* and *Boulder* are "not persuasive … because [they] d[o] not address this critical point." *New Jersey*, 2025 WL 604846, at *5.

Appellants also assert that federal common law would not "encompass" their claims (even if federal common law had not been displaced by the CAA) because that field concerned only "duties not to release pollution," whereas Appellants' claims concern "deceptive[] marketing." OB.24-26. This argument merely repackages Appellants' erroneous contention that their claims concern only alleged deception, and not emissions. *See supra* at 14-19. Because Appellants' claims seek damages for alleged injuries "due to anthropogenic global warming," E.44, ¶ 8, Appellants' attempt to recharacterize their claims as only about allegedly deceptive statements should be rejected.

At root, the question is not whether Appellants' complaints involve *either* deception *or* interstate emissions. Rather, the question is whether (as Appellants implausibly insist) their complaints involve *only* deception, or whether (as cannot be denied) Appellants' claims *also* turn on interstate emissions. The answer is plain: Appellants' claims, theory of injury, and basis for relief all necessarily depend on interstate and international emissions.

2. Our federal constitutional structure also preempts Appellants' claims insofar as they rest on foreign emissions. Because our constitutional structure does not allow States to regulate foreign conduct and the CAA "does not regulate foreign emissions," federal common law is "still require[d]" to govern the international aspects of claims challenging global emissions; in that sense, "federal common law preempts [the] state law" claims

Appellants attempt to plead. *City of New York*, 993 F.3d at 95 n.7, 101. But at bottom, application of state law to foreign emissions is preempted and precluded because, under the Constitution, "[p]ower over external affairs is not shared by the States; it is vested in the national government exclusively." *United States v. Pink*, 315 U.S. 203, 233 (1942). States lack the power to regulate international activities or foreign affairs by imposing liability for the effects of greenhouse-gas emissions in, for example, Germany, Argentina, and India, and such matters "must be treated exclusively as an aspect of federal law." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425 (1964).

Appellants argue that Congress displaced federal common law pertaining to international emissions by enacting 42 U.S.C. § 7415, which is titled "International air pollution." OB.23-24. But Section 7415 does not regulate international emissions. As the Second Circuit noted in *City of New York*, "[i]t is a longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." 993 F.3d at 100. And Section 7415 displays no intent to legislate extraterritorially; it merely establishes procedures by which the EPA may notify States that pollution originating from within their borders may be "endanger[ing] public health or welfare in a foreign country." 42 U.S.C. § 7415(a). These provisions do not concern foreign emissions; they concern only *domestic* emissions that may affect foreign countries and thus do not displace federal common law concerning emissions from *foreign* sources that allegedly contributed to Appellants' injuries. *See City of New York*, 993 F.3d at 101 (considering Section 7415 and concluding the CAA "regulates only domestic emissions").

C. Appellants' State Law Claims Are Preempted By The Clean Air Act.

Appellants' claims also fail because, as the circuit courts recognized, the CAA preempts state-law causes of action such as Appellants' that would have the effect of regulating out-of-state greenhouse-gas emissions. *See* E.15-19.

Through the CAA, Congress evaluated and balanced the benefits and harms associated with extraction, production, processing, transportation, sale, and use of fossil fuels. And the CAA already comprehensively regulates fossil fuels and greenhouse-gas emissions through an "informed assessment of competing interests," including the "environmental benefit potentially achievable" and "our Nation's energy needs and the possibility of economic disruption." *AEP*, 564 U.S. at 427. Under the CAA, the EPA has the authority to determine, and has established, permissible levels of greenhouse-gas emissions for many applications of Appellees' combustible products. For example, Title II of the CAA governs greenhouse-gas emissions standards for vehicles, aircraft, locomotives, motorcycles, and nonroad engines and equipment. *See* 42 U.S.C. §§ 7521 (new motor vehicles and motorcycles), 7571 (aircraft), 7547 (locomotives and nonroad engines). Based on the authority delegated through the Act, the EPA has set vehicle-specific greenhouse-gas standards reflecting EPA's balancing of environmental and other national needs. *See, e.g.*, *AEP*, 564 U.S. at 416-17 (summarizing history of EPA's regulation of greenhouse-gas emissions from motor vehicles).

Because Appellants' claims seek remedies for harms allegedly caused by cumulative worldwide greenhouse-gas emissions over more than a century, those remedies would necessarily regulate out-of-state emissions. Granting such remedies would

"disrupt" the careful "balance of interests" Congress struck through the comprehensive CAA regime overseen by the EPA. *Ouellette*, 479 U.S. at 495. Relying on *Ouellette*—which concluded that "[t]he [Clean Water] Act pre-empts state law to the extent that the state law is applied to an out-of-state point source," *id.* at 500—courts have consistently held that the CAA preempts state law insofar as it purports to regulate emissions originating out of state. *See, e.g.*, *North Carolina ex rel. Cooper v. Tenn. Valley Auth.*, 615 F.3d 291, 303, 306 (4th Cir. 2010) ("[S]tate law is preempted 'if it interferes with the methods by which the federal statute was designed to reach [its] goal.'"); *Merrick v. Diageo Ams. Supply, Inc.*, 805 F.3d 685, 693 (6th Cir. 2015) ("[C]laims based on the common law of a non-source state … are preempted by the [CAA]."); *Bell v. Cheswick Generating Station*, 734 F.3d 188, 194-97 (3d Cir. 2013) ("*Ouellette* controls this case").

Under Appellants' theory, Appellees would be subject to ongoing future liability for producing and selling fossil-fuel products—both outside Maryland and internationally—unless they do so in the precise manner Appellants dictate. That result is the paradigm of using "damages" to "regulat[e]" an industry, *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012), by forcing Appellees to "change [their] methods of doing business … to avoid the threat of ongoing liability," *Ouellette*, 479 U.S. at 495. As the U.S. Supreme Court has explained, "a liability award 'can be, indeed is designed to be, a potent method of governing conduct and controlling policy.'" *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 324 (2008). Regulation of out-of-state greenhouse-gas emissions via tort law "cannot be reconciled with the decisionmaking scheme Congress enacted." *AEP*, 564 U.S. at 429. Under the CAA, "Congress designated an expert agency," the EPA, "as best suited to serve

as primary regulator of greenhouse gas emissions." *Id.* at 428. It is not for courts to second-guess or undermine those emissions limits, either directly or indirectly, because "[t]he expert agency is surely better equipped to do the job than individual … judges issuing ad hoc, case-by-case injunctions." *Id.* "[T]hough the City's lawsuit would regulate cross-border emissions in an indirect and roundabout manner, it would regulate them nonetheless." *City of New York*, 993 F.3d at 93; *see Ouellette*, 479 U.S. at 495.

Appellants' response boils down to the far-fetched contention that their lawsuits deal *only* with "'marketing regulations'" and do *not* involve out-of-state sources of pollution. OB.32-33 (quoting *Honolulu*, 537 P.3d at 1205); *see Boulder*, 2025 WL 1363355, at *8-10. As explained above, *see supra* at 14-19, this framing cannot be squared with Appellants' theories of causation, injury, and damages, all of which are necessarily premised on harms caused by out-of-state emissions. *Cf.* E.11 (finding that Baltimore's claims "seek[] to hold Defendants liable under Maryland law for … out-of-state emissions," and rejecting Baltimore's argument that "its claims will not result in the regulation of global emissions"). For example, Appellants attempt to hold certain Appellees responsible for the combustion by non-parties of Appellees' diesel and gasoline products in vehicles. E.49-52, E.54, E.56-58, E.60-63, ¶¶ 20(g), 21(c), 22(g), 23(g), 24(e), 25(e), 26(i), 27(h), 28(e). But greenhouse-gas emissions from motor vehicles are regulated comprehensively under the CAA: EPA sets national standards, and States may apply more stringent standards *only* for vehicles sold *in-state*, and only under carefully prescribed circumstances. *See* 42 U.S.C. § 7543 (authorizing California to set its own emissions standards upon certain showings); *id.* § 7507 (providing other States a process to opt into

California's more stringent standards). What States may not do is regulate emissions in *other* States. But that is what Appellants seek to do—impose liability under Maryland law for injuries allegedly caused by vehicle emissions originating outside the State. Moreover, Appellants seek to impose Maryland's liability regime regardless of whether out-of-state emissions sources have "complied fully with … state and federal … obligations" under the CAA. *Ouellette*, 479 U.S. at 495.

Appellants cannot cure this fatal flaw by arguing that their claims arise from Appellees' alleged statements to consumers or arise under Maryland law concerning product liability, failure to warn, and/or consumer deception. The essence of Appellants' causation theory is that these statements induced greater consumption of Appellees' fuel products, and that the resulting emissions combined with similar emissions in all other States (and Nations around the world) exacerbated climate change, thereby allegedly causing injury to Appellants in Maryland. Under Appellants' theory, liability for emissions in States from Alaska to Texas to Maine—or even in nations across the world, like China or India—would be assigned to Appellees under Maryland law, even if such emissions were within permissible levels established by the EPA and each source State.

Appellants assert that unlike in *Ouellette*, there is no concern that any Appellee would face liability under a non-source State's law even though it "had complied fully with its [source] state and federal permit obligations." OB.34-35 (quoting *Ouellette*, 479 U.S. at 495). To the contrary, Appellants' claims *directly* invoke such a concern: They seek to impose liability for emissions-based harms regardless of whether those emissions comply with all CAA requirements. In the CAA, Congress tasked an "expert administrative

agency"—the EPA—with the responsibility of conducting an "informed assessment of competing interests," such as "our Nation's energy needs and the possibility of economic disruption," and "establish[ing] emissions standards." *AEP*, 564 U.S. at 427. Because Congress designated the EPA as "best suited to serve as primary regulator of greenhouse gas emissions," *id.* at 428, the Circuit Court for Anne Arundel County correctly recognized that the Supreme Court's judgment in *AEP* "about untrained federal judges[']' comparative ability to master complex scientific, economic and technological issues and balance competing and complex interests certainly applies as well to state court judges." E.1386. "To say this regulatory and permitting regime [governing air pollution] is comprehensive would be an understatement" and "[t]o say it embodies carefully wrought compromises states the obvious." *Cooper*, 615 F.3d at 298.

Indeed, the CAA speaks directly to the issue of transboundary air emissions through its "Good Neighbor" provision that expressly requires upwind States to work with the EPA to control *their own in-state emissions sources* that "'contribute significantly' to downwind States' 'nonattainment ... , or interfere with [the] maintenance,' of any EPA-promulgated national air quality standard." *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 495 (2014) (quoting 42 U.S.C. § 7410(a)(2)(D)(i)). Thus, the CAA embodies the principle that interstate and international air emissions may be addressed by only EPA, or by a State applying its law to direct emissions sources located within the State. *See supra* at 27-28. Plainly, Appellants' attempt to impose damages based on Maryland law for harm from emissions originating outside Maryland would "interfere with the carefully devised regulatory system established by" the CAA. *Ouellette*, 479 U.S. at 485.

II. The Baltimore City Circuit Court Correctly Held That Maryland Law Requires Dismissal Of Appellants' Claims.

Both Maryland circuit courts held that Appellants' claims were preempted in their entirety. In addition, the Baltimore City Circuit Court explained why each of Baltimore's claims failed to state a claim under Maryland law.

On appeal, Appellants contest the circuit court's rulings as to nuisance, trespass, and failure to warn, while conceding the propriety of the dismissal of Baltimore's design defect and MCPA claims. OB.2 n.2, 35-53. The Baltimore City Circuit Court's careful rulings under Maryland law should be affirmed and applied to all Appellants' claims, because their claims go far beyond what is permitted by Maryland tort law.

A. Appellants Failed To Plead A Nuisance Claim.

Appellants allege that emissions resulting from Appellees' production, sale, marketing, and promotion of lawful fossil-fuel products constitute a public and private nuisance. E.147-55, ¶¶ 218-36; E.1160-68, ¶¶ 243-60; E.1346-54, ¶¶ 246-63. Appellants do not (and cannot) allege that Appellees' use of land or property in Maryland contributed to the alleged nuisance of increased emissions associated with climate change. Instead, Appellants' nuisance theory—like their claims generally—presumes that "emissions" from billions of "humans combusting fossil fuels" over more than a century "comingle[d] in the atmosphere" with emissions from other unrelated sources around the world, causing global warming and, ultimately, the climate-related impacts alleged by Appellants. E.41-42, E.70, E.147-50, E.154, ¶¶ 1, 3, 39-41, 219-24, 235; *see* E.1015-16, E.1059-64, E.1167-68, ¶¶ 1, 5, 49-50, 244-49, 259; E.1193-95, E.1239, E.1346-50, E.1353-54, ¶¶ 1, 5, 50-51, 247-52,

262. Indeed, Appellants admit in their brief that their nuisance claims rest on increased fossil-fuel "consumption" and "greenhouse gas emissions," which allegedly "accelerated global warming, and thereby created hazardous conditions in each Appellant's jurisdiction." OB.36-37.

The Baltimore City Circuit Court dismissed Baltimore's public and private nuisance claims, E.20-24, because it recognized that Maryland state courts have not "extend[ed] nuisance law to product liability cases"—*i.e.*, cases "concerning production, promotion, and sale of consumer products"—and "the lines between public nuisance law and product liability must be maintained." E.21, E.23. Appellants' nuisance claims violate these basic guardrails. Accordingly, the circuit court appropriately declined to "take th[e] leap" that Baltimore urged, and dismissed the nuisance claims. E.23. Appellants provide this Court no basis to make such a leap and ratify a breathtaking expansion of nuisance law, which would vastly expand nuisance-related liability for Maryland businesses—not only for harms allegedly caused by fossil-fuel products, but also for countless other lawful consumer products that allegedly cause societal harms. As noted by Donald G. Gifford, the Jacob A. France Professor of Torts and former dean of the University of Maryland Francis King Carey School of Law, "[f]or more than 900 years, the law of public nuisance did not sanction actions against product manufacturers," and "the basic principles of the public nuisance tort are inconsistent with any judicial expansion of liability to encompass such liability." Donald G. Gifford, *Public Nuisance as a Mass Products Liability Tort*, 71 U. Cin. L. Rev. 741, 835 (2003).

1. Maryland Law Does Not Recognize Appellants' Nuisance Claims.

Appellants' nuisance claims fail for the basic reason the Baltimore City Circuit Court identified: In Maryland, nuisance law "has only been applied to cases involving a defendant's *use of land*," not to the production, promotion, and sale of a lawful consumer product. E.23 (emphasis added). Advancing a sweeping view of nuisance law, Appellants suggest that Maryland law recognizes "product-based nuisance claims." OB.39; *see* OB.35-43. But the cases Appellants cite *confirm* that nuisance claims in Maryland must be linked to the use of land by the one creating the alleged nuisance. Indeed, Appellants cannot cite a *single* decision of Maryland appellate courts sustaining a similar claim. *Tadjer v. Montgomery County*, for example, involved an alleged nuisance based on a "landfill operation"; the Court nonetheless affirmed dismissal of the nuisance claim because the plaintiffs attempted "simply to frame an action in negligence using somewhat different terms." 300 Md. 539, 554 (1984). *Maenner v. Carroll* involved allegations that "owners of a certain open and unenclosed lot of ground … cut on such lot, in a dangerous and exposed portion thereof, a deep excavation, and left the same in a dangerous condition." 46 Md. 193, 212 (1877). And *Gorman v. Sabo* involved the blaring of a radio from "the home [defendants] owned and lived in" into a neighbor's home, and other "loud and offensive sounds … from [defendants'] *property*." 210 Md. 155, 159, 161 (1956) (emphasis added).

Other nuisance cases cited by Appellants similarly arise from property-based tortious conduct. *See Becker v. State*, 363 Md. 77, 80 (2001) ("real property … used in connection with illegal drug activity"); *Rosenblatt v. Exxon Co., U.S.A.*, 335 Md. 58, 63

(1994) (nuisance claim "against a former occupant whose activities during its occupancy" of plaintiff's property "allegedly caused the property to become contaminated"); *Meadowbrook Swimming Club v. Albert*, 173 Md. 641, 647 (1938) (injunction "forbid[ding] the use of the defendants' property" to emit loud noises); *Maxa v. Comm'rs of Harford Cnty.*, 158 Md. 229 (1930) (defendants occupying public landing "as if it were their private property"); *Gallagher v. H.V. Pierhomes, LLC*, 182 Md. App. 94, 98 (2008) ("pile driving operations conducted by the defendants" at their construction site).[4] And other Maryland cases confirm the same principle. *See, e.g.*, *Whitaker v. Prince George's Cnty.*, 307 Md. 368, 379 (1986) (holding that "the operation of a bawdyhouse constitutes a public nuisance"); *Bishop Processing Co. v. Davis*, 213 Md. 465, 468 (1957) (seeking to enjoin operation of a processing plant).

Appellants' inability to muster even a single Maryland appellate case applying nuisance law to analogous circumstances involving the sale of a lawful consumer product reveals the infirmity of their nuisance claims. Appellants instead rely on various non-binding authorities, including federal and out-of-state cases and treatises. *See* OB.38-42. In particular, Appellants cite two federal district court cases: *State v. Exxon Mobil Corp.*, 406 F. Supp. 3d 420 (D. Md. 2019) ("*Exxon*"), and *Mayor & City Council of Baltimore v.*

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[4] *400 East Baltimore Street, Inc. v. State*, which Appellants also cite, was not even a nuisance case—it was a challenge to Maryland's obscenity statute that mentioned nuisance law only once, in passing. 49 Md. App. 147, 154 (1981). Nor was *Raynor v. Maryland Department of Health and Mental Hygiene*, which stemmed from a regulatory proceeding brought by public-health authorities concerning a "biting, wild animal" suspected of having rabies. 110 Md. App. 165, 191 (1996). Finally, *Cochrane v. City of Frostburgh* connected the nuisance at hand to the use of land because it concerned the powers of a local government to regulate animals "using its streets." 81 Md. 54 (1895).

Monsanto Co., 2020 WL 1529014 (D. Md. Mar. 31, 2020). But as the Baltimore City Circuit Court correctly found, both "are clearly distinguishable from the present case." E.22. The discussion in both *Exxon* and *Monsanto* focused on whether Maryland law requires a defendant to exercise "exclusive control" over the nuisance-causing instrumentality, *not* on whether Maryland law recognizes nuisance claims unrelated to the use of land that sound in product liability. *Exxon*, 406 F. Supp. 3d at 468; *Monsanto*, 2020 WL 1529014, at *9. Indeed, *all* the Maryland state cases cited in *Exxon* and *Monsanto* involved challenged uses of land. *See Exxon*, 406 F. Supp. 3d at 467-68; *Monsanto*, 2020 WL 1529014, at *9.

Exxon and *Monsanto* are also factually distinct. As the circuit court explained, "[i]n both cases the dangerous products"—MTBE gasoline in *Exxon*, and PCBs in *Monsanto*—"were directly deposited into and directly entered the land and water of the plaintiff." E.22. These cases lack such a "tight nexus between the sale of a product and the contamination of local lands and waters" because Appellants contend that Appellees' purportedly deceptive conduct contributed to *global* emissions by third parties, contributing to changed weather patterns and, in turn, causing Appellants' alleged injuries. *Id.* But no Maryland appellate court has ever recognized a public-nuisance claim based on such sweeping allegations. To the contrary, Maryland courts require that defendants exercise control over the instrumentality of the nuisance; Appellees of course have no such control over fossil-fuel products used by individuals, businesses and governments. *See infra* at 39-41. Appellants fault the Baltimore City Circuit Court for "misconstru[ing] relevant case law" by supposedly "demand[ing]" a "tight nexus," OB.43, but this misapprehends the circuit

court's opinion. The circuit court's dismissal of Baltimore's nuisance claims ultimately was based on its straightforward recognition that "public nuisance claims in Maryland must relate to a defendant's use of land" and do not "extend ... to deceptive marketing complaints" and "product liability cases." E.23.

2. Courts Nationwide Have Held That Nuisance Law Applies To Land, Not Products.

Maryland is not alone in rejecting these types of nuisance claims. Although Appellants attempt to invoke out-of-state case law to support their far-reaching claims, there is a "clear national trend to limit public nuisance to land or property use." *State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719, 730 (Okla. 2021). Courts across the country have dismissed attempts to expand common-law public-nuisance claims to cover the production, sale, or promotion of consumer products like lead paint, asbestos, opioids, firearms, and tobacco. These courts have recognized that nuisance "has historically been linked to the use of land by the one creating the nuisance." *Id.* at 724. Any other result would vitiate the carefully maintained boundaries between products liability and nuisance and turn nuisance law into "a monster that would devour in one gulp the entire law of tort," *Tioga Pub. Sch. Dist. No. 15 v. U.S. Gypsum Co.*, 984 F.2d 915, 921 (8th Cir. 1993)—a danger that is made clear in the essentially unlimited view of nuisance articulated by Appellants, *see* OB.35-40.

For example, the New Jersey Supreme Court rejected attempts to expand nuisance law to cover the sale and promotion of lead paint, explaining that public nuisance "has historically been linked to the use of land by the one creating the nuisance," and that

expanding it (as Appellants urge) would "stretch the concept of public nuisance far beyond recognition." *In re Lead Paint Litig.*, 924 A.2d 484, 494-95 (N.J. 2007). The Rhode Island Supreme Court has done the same. *See State v. Lead Indus. Ass'n*, 951 A.2d 428, 456 (R.I. 2008) ("The law of public nuisance never before has been applied to products, however harmful. … Courts in other states consistently have rejected [such] product-based public nuisance suits." (citing cases)). And in *Hunter*, the Oklahoma Supreme Court overturned a public-nuisance judgment arising from a manufacturer's allegedly deceptive production, sale, and promotion of opioids, holding that "[p]ublic nuisance is fundamentally ill-suited to resolve claims against product manufacturers," and "[e]xtending public nuisance law to the manufacturing, marketing, and selling of products … would allow consumers to convert almost every products liability action into a public nuisance claim." 499 P.3d at 729-30 (citation modified); *see People ex rel. Spitzer v. Sturm, Ruger & Co.*, 309 A.D. 2d 91, 96 (N.Y. Sup. Ct. App. Div. 2003) (rejecting public-nuisance claim against product manufacturer because "giving a green light" would "open the courthouse doors to a flood of limitless, similar theories of public nuisance … against a wide and varied array of other commercial and manufacturing enterprises and activities").

Contrary to Appellants' argument, *see* OB.40-41, the expansion of nuisance claims from land to lawful consumer products and product-liability claims would be contrary to well-established case law. *See* Restatement (Third) of Torts: Liab. for Econ. Harm § 8 cmt.g (explaining that nuisance claims against the "makers of products" have "been rejected by most courts, and [are] excluded by this Section, because the common law of public nuisance is an inapt vehicle for addressing the conduct at issue"). To sanction such

an expansion would clash with Maryland courts' longstanding reluctance to "expand traditional tort concepts beyond manageable bounds." *Gourdine v. Crews*, 405 Md. 722, 750 (2008). Yet that is precisely what Appellants urge. Like the Baltimore City Circuit Court, this Court should reject Appellants' gambit.

3. Appellants Do Not Allege Control Over The Instrumentality That Caused The Nuisance.

Although the Baltimore City Circuit Court did not rule on this basis, Appellants' nuisance claims also fail because Appellants have not alleged that Appellees control the instrumentality that caused the nuisance: the worldwide combustion of fossil fuels by third parties that results in greenhouse-gas emissions. Appellants assert that Maryland nuisance law imposes no control requirement, but they (again) invoke only non-binding federal district court and out-of-state cases and treatises. *See* OB.44. This is unsurprising because binding Maryland appellate precedent clearly endorses a control requirement. In *Callahan v. Clemens*, this Court rejected a nuisance claim challenging a negligently constructed wall because, among other reasons, the defendants did not "exercise any control over the manner in which the work was performed, and there was no relation of principal and agent." 184 Md. 520, 525 (1945). And this Court in *East Coast Freight Lines* rejected a nuisance claim against a gas company that constructed a light pole on a highway median because "the absence of warning signs or lights [was] a matter entirely in the control of the City" of Baltimore. 187 Md. 385, 401 (1946).

Appellants fall back on the argument that "[t]he nuisance-causing instrumentality is Defendants' deceptive business practices," OB.45, rather than fossil-fuel combustion. That

argument cannot be squared with Appellants' complaints. Appellants unmistakably allege that the nuisance-causing instrumentality is the cumulative combustion of fossil fuels resulting from billions of individual decisions of people, businesses, and governments around the world, which then allegedly caused sea-level rise and more severe weather in Maryland—not Appellees' marketing practices. E.42, E.68-73, E.151, ¶¶ 3, 36-45, 227; E.1016-17, E.1059-62, E.1152-52, ¶¶ 5, 48-56, 237; E.1194-95, E.1249-42, E.1334-35, ¶¶ 5, 49-57, 237. As the Baltimore City Circuit Court explained, "[t]he damages alleged by Baltimore are the result of fossil fuel usage and gas emissions by third parties located all over the world." E.23. Indeed, Appellants themselves have conceded in their briefing that fossil-fuel consumption and resulting emissions are the cause of the alleged nuisance. OB.36 (alleged injuries caused by increased "fossil-fuel consumption" and "greenhouse gas emissions"); E.298 n.9 (stating that Baltimore does not allege purported "campaign of deception and disinformation or failures to warn are in and of themselves a public nuisance"). And Appellants do not—and cannot—allege that Appellees had control over fossil-fuel combustion by third parties or the resulting emissions.

At bottom, Appellants "cannot escape the true nature of the nuisance claim[s] [they] ha[ve] pleaded," which place the worldwide combustion of fossil fuels "directly at the heart of [their] nuisance claim[s], regardless of how [they] otherwise now tr[y] to characterize [their] claim[s]." *State ex rel. Stenehjem v. Purdue Pharma L.P.*, 2019 WL 2245743, at *12 (N.D. Dist. Ct. May 10, 2019) (non-precedential) (dismissing opioid-related nuisance claim and rejecting State's argument that instrumentality of nuisance was opioid

manufacturer's marketing rather than third-party opioid use). This Court should affirm the dismissal of Appellants' nuisance claims.

B. Appellants Failed To Plead A Trespass Claim.

Appellants' sweeping trespass theory, which the Baltimore City Circuit Court aptly described as "novel," E.31, likewise fails. Appellants assert that Appellees may be held liable in trespass because use of their products by billions of third parties around the world over nearly a century allegedly resulted in changes to the Earth's weather that, eventually, affected Appellants' property. E.167, ¶ 287; E.1173, ¶ 288; E.1359, ¶ 291 (faulting Appellees for "introduc[ing]" their products "into the stream of commerce"). The Baltimore City Circuit Court correctly recognized that Appellants' theory of trespass "has not been recognized by Maryland state courts," E.31, and declined to "make that leap and extend trespass liability beyond where the Maryland Supreme Court has previously allowed." E.33. The Baltimore City Circuit Court was right to do so, and this Court should affirm its ruling.

Under Maryland law, when property is allegedly "invaded by an inanimate or intangible object," "the defendant must have *some connection with or some control over* that object in order for an action in trespass to be successful." *Rockland Bleach & Dye Works Co. v. H. J. Williams Corp.*, 242 Md. 375, 387 (1966) (emphasis added). Appellants do not—and cannot credibly—allege that Appellees have control over the "flood waters, extreme precipitation, saltwater, and other materials" that allegedly invaded Appellants' property, nor over oceans or clouds. E.167, ¶ 286; E.1172-73, ¶ 287; E.1358-59, ¶ 290. Appellants' contention that the necessary "connection" is supplied by Appellees' purported

conduct far earlier in the alleged causal chain, OB.47, is not supported by any Maryland case law. To the contrary, "the link between [Appellees' alleged] activity and the harms of which [Appellants] complai[n] is far to[o] attenuated to constitute the control necessary to establish liability for trespass." E.32-33 (citation modified); *see JBG/Twinbrook Metro Ltd. P'Ship v. Wheeler*, 346 Md. 601, 626 (1997) (holding that a gas company contracting with a station owner to sell the company's gas was not liable in trespass for the subsurface percolation of gas onto adjacent property because the company had "insufficient control" over the gasoline); Restatement (Second) of Torts § 158 cmt.i (actor may commit trespass by "*throwing, propelling, or placing a thing* either on or beneath the surface of the land or in the air space above it" (emphasis added)).

The Maryland cases Appellants cite, *see* OB.47, support Appellees' position, not Appellants'. In *Rockland*, the defendant general contractor exercised "very significant amounts of control" over the fill material at issue, which was carried by rains into the plaintiff's adjacent property. 242 Md. at 387. In *Exxon v. Albright*—which *rejected* trespass—gasoline leaked into an adjacent underground aquifer. 433 Md. 303, 320, 408 (2013). Both cases featured the direct movement of material under the defendant's control to an adjacent property—a far cry from the highly attenuated connection alleged here. Nor do *Rosenblatt*, which rejected the proposition that contamination of one's own land could constitute trespass upon future owners, or *Bramble*, which concerned a "vicious dog," have any relevance to the claims here. *See Rosenblatt*, 335 Md. at 78-79; *Bramble v. Thompson*, 264 Md. 518, 522 (1972). And as described above, in both *Exxon* and *Monsanto*, "the dangerous products were directly deposited into and directly entered the land and water of

the plaintiff," evidencing far more control over the invading substance than Appellants can allege here. E.22; *see Exxon*, 406 F. Supp. 3d at 436, 469-71; *Monsanto*, 2020 WL 1529014, at *3, *11.

As with their nuisance claims, Appellants cannot muster a single analogous Maryland case. *See* OB.46-48. Under Maryland law, Appellants' trespass claims fail.

C. Appellants Failed To Plead A Failure-To-Warn Claim.

Appellants' failure-to-warn claims are just as unprecedented as their nuisance and trespass claims. Appellants allege that Appellees "should have made reasonable warnings to consumers, the public, and regulators" regarding the asserted dangers of fossil fuels, and that Appellees' failure to do so caused a marginal increase in cumulative greenhouse-gas emissions by third parties around the world, which worsened climate change and ultimately harmed Appellants. E.110, ¶ 142; *see* E.155, E.164, ¶¶ 238, 241, 271, 274; E.1088, E.1168, E.1170, ¶¶ 106, 262, 273; E.1270, E.1354, E.1356, ¶¶ 107, 265, 276. The Baltimore City Circuit Court properly recognized that Appellants' proposed "duty to warn would be extended to every single human being on the planet whose use of fossil fuel products may have contributed to global climate change, ultimately affecting [Appellants] and [their] residents," and dismissed Baltimore's claims. E.26. This Court should affirm.

The scope of the duty proposed by Appellants—a duty of care owed "to the world"—is precisely "what Maryland law warns against." E.26. "Duty … is an essential element of both negligence and strict liability causes of action for failure to warn," *Gourdine*, 405 Md. at 743, and "[t]he existence of a legal duty is a question of law, to be decided by the court," *Doe v. Pharmacia & Upjohn Co.*, 388 Md. 407, 414 (2005). Binding

Maryland precedent forecloses the broad "duty to the world" that Appellants propose. In *Gourdine*, for example, this Court held that a drug manufacturer owed no duty to warn a motorist killed by a woman taking the company's medication because imposing a duty to warn in such circumstances would create "a duty to [warn] the world, an indeterminate class of people," which this Court had "'resisted.'" 405 Md. at 750 (quoting *Doe*, 388 Md. at 407). As the Court explained, "[d]uty requires a close or direct effect of the tortfeasor's conduct on the injured party," and "[t]o impose the requested duty ... would expand traditional tort concepts beyond manageable bounds." *Id.* at 746, 750.

Appellants' claims fail the standard articulated in *Gourdine*. Appellants seek to impose a duty towards an essentially unlimited category of billions of third parties around the world, stretching product-liability law beyond recognition. And *Gourdine* is no outlier, as this Court has repeatedly refused to impose a duty in cases with a far narrower class or a much closer nexus between the defendant's conduct and the plaintiff's injury than alleged here. *See, e.g.*, *Warr v. JMGM Corp., LLC*, 433 Md. 170, 189 (2013) (holding that a dram shop did not owe "blanket duty" to third parties injured by intoxicated patrons).

Indeed, this principle that Maryland law does not support any "duty to warn the world" has been recognized in cases cited by Appellants. In *Valentine v. On Target, Inc.*, the Court rejected the plaintiff's attempt to "impose a duty based solely on an imprecise notion of a foreseeability of risk of harm to the *public in general*," encompassing "an indeterminate class of people, known and unknown" and creating a "duty to the world at large to protect it against the actions of third parties." 353 Md. 544, 551, 553 (1999) (emphasis added). Such an "indefinite duty to the general public" amounted to de facto

"regulation," which "is the realm of the legislature and is not appropriate as a judicial enactment." *Id.* at 556. And in *Walpert, Smullian & Blumenthal, P.A. v. Katz*, this Court noted that "the rationale underlying the requirement of privity or its equivalent as a condition of liability for negligent conduct … resulting in economic damages" was "to avoid 'liability in an indeterminate amount for an indeterminate time to an indeterminate class.'" 361 Md. 645, 671 (2000).

Appellants' other cases illustrate that Appellants' claims are far broader than anything previously recognized by Maryland courts. *Kennedy Krieger Institute, Inc. v. Partlow*, for example, recognized a narrow duty of care in "limited circumstances" involving research studies that had exposed non-participant children in the same home to lead-based paint. 460 Md. 607, 615 (2018). Equally inapposite are *Georgia Pacific, LLC v. Farrar*, 432 Md. 523, 525 (2013), *Georgia-Pacific Corp. v. Pransky*, 369 Md. 360, 364 (2002), and *ACandS, Inc. v. Godwin*, 340 Md. 334, 404 (1995), which each concerned the plaintiff's *direct* exposure to asbestos in some form, not the duty to warn the entire world posited here. Similarly, *Exxon*, 406 F. Supp. 3d at 436, 462-63, and *Monsanto*, 2020 WL 1529014, *3, *11, involved direct contamination by MTBE gasoline or PCBs. None of these cases is anything like Appellants' failure-to-warn claims.

Appellants emphasize the importance of "[f]oreseeability" in determining a duty. OB.51. But this Court has "stated consistently that foreseeability *alone* is not sufficient to establish duty." *Doe*, 388 Md. at 417 (emphasis added). Indeed, in *Gourdine* this Court made clear: "We have not, however, historically, embraced the belief that duty should be defined mainly with regard to foreseeability, *without regard to the size of the group to*

which the duty would be owed." 405 Md. at 752 (emphasis added). Here, the global and vast size of the group that Appellees supposedly had a duty to warn precludes Appellants' failure-to-warn claims.

Appellants also insist that they are not really proposing a duty to warn the world—just a duty to Appellants, or perhaps "communities on the U.S. East Coast," or perhaps Appellees' "own customers." OB.50. But this argument, raised for the first time on appeal, is belied by Appellants' own complaints, which explicitly allege that Appellees should have warned "the public, consumers, and public officials." E.155, E.164, ¶¶ 238, 271; E.1168, E.1170, ¶¶ 262, 273; E.1354, E.1356, ¶¶ 265, 276. This type of duty to warn the world is impermissible under Maryland law.

Appellants fault the Baltimore City Circuit Court for supposedly requiring too "close" a "connection" between Appellees' alleged conduct and Appellants' asserted injuries. OB.52 (citation modified). But *Gourdine* explicitly held that "[d]uty requires a *close or direct effect* of the tortfeasor's conduct on the injured party." 405 Md. at 746 (emphasis added). And Appellants' own authorities instruct courts to consider "the closeness of the connection between the defendant's conduct and the injury suffered" when evaluating duty. *See, e.g.*, *Partlow*, 460 Md. at 654. Appellants assert that no close connection is required because Appellees' "conduct created the risk of death and personal injury." OB.52 (citation modified). The case they cite, however, concerned a far more limited duty regarding a far more proximate risk of death or injury: a duty to third-party pedestrians in the vicinity not to provide alcohol to a minor knowing the minor will drive home. *See Kiriakos v. Phillips*, 448 Md. 440, 480, 492 (2016). Here, Appellants advance

a sweeping and indeterminate duty to warn the world about the possible future effects of climate change, a seemingly limitless duty with a far more removed (if any) connection between Appellees' alleged conduct and Appellants' alleged injuries. The Baltimore City Circuit Court rightly recognized that this duty far exceeds the bounds of a failure-to-warn claim under Maryland law.

Appellants' failure-to-warn claims also fail because there is no duty to warn of "clear and obvious" and "generally known" risks. *Mazda Motor of Am., Inc. v. Rogowski*, 105 Md. App. 318, 330-31 (1995). Appellants' own allegations make clear that the alleged potential effects of fossil-fuel use on the climate have been widely known for decades. *See* E.235-36 (quoting E.42, E.90, E.107-08, E.111-12, E.131-32, ¶¶ 2, 103, 136, 143, 181); *see* E.1065, E.1085-86, E.1088-90, E.1096, ¶¶ 67, 99, 107, 120; E.1245, E.1266-67, E.1270-72, E.1278, ¶¶ 68, 100, 108, 121. The Baltimore City Circuit Court did not resolve this issue. However, the court *did* dismiss Baltimore's MCPA claim because "[t]he statements and allegations made in the complaint make it clear that Baltimore was well aware of Defendants' alleged conduct … years before 2015," E.34—and Appellants are not challenging that dismissal on appeal. Appellants' acceptance of the Baltimore City Circuit Court's MCPA finding further confirms that Appellants' failure-to-warn claims should be dismissed because the alleged effects of fossil fuels have long been open and obvious.

CONCLUSION

The orders of the circuit courts dismissing Appellants' claims should be affirmed.

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 12,996 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the requirements stated in Rule 8-112.

/s/ Tonya Kelly Cronin
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STATEMENT OF REASONS FOR INCLUSION OF ADDITIONAL PAGES IN APPENDIX TO BRIEF OF APPELLEES

Pursuant to Rule 8-501(e), Appellees have included as an appendix, five pages of the transcript of argument below in the Circuit Court for Baltimore City, in which one of the Appellants (the Mayor and City Council of Baltimore) made a concession concerning the nature of its claims. That concession, as explained in the Brief of Appellees, supports Appellees' argument on federal preemption.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of July, 2025, a copy of the foregoing was filed and served on all counsel of record via the MDEC system, with copies mailed to counsel for Appellants in accordance with Maryland Rule 20-404(c).

/s/ Tonya Kelly Cronin
Tonya Kelly Cronin

VERBATIM TEXT OF PERTINENT STATUTES AND COURT RULES

(Inserted)

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7410

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

Currentness

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall--

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to--

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

(D) contain adequate provisions--

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will--

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator--

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in section 7603 of this title and adequate contingency plans to implement such authority;

(H) provide for revision of such plan--

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);

(J) meet the applicable requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for--

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover--

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(3)(A) Repealed. Pub.L. 101-549, Title I, § 101(d)(1), Nov. 15, 1990, 104 Stat. 2409

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c), shall be required to revise an applicable implementation plan because one or more exemptions under section 7418 of this title (relating to Federal facilities), enforcement orders under section 7413(d) of this title, suspensions under subsection (f) or (g) (relating to temporary energy or economic authority), orders under section 7419 of this title (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 7413(c) of this title (relating to iron- and steel-producing operations) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, or extensions had been granted.

(4) Repealed. Pub.L. 101-549, Title I, § 101(d)(2), Nov. 15, 1990, 104 Stat. 2409

(5)(A)(i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under this subsection to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under subsection (c) respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term "indirect source" means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of subsection (c)(2)(D)(ii)), including regulation of existing off-street parking but such term does not

include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term "indirect source review program" means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations--

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term "transportation control measure" does not include any measure which is an "indirect source review program".

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 7413(d) of this title or section 7419 of this title (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

(b) Extension of period for submission of plans

The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator--

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under subsection (k)(1)(A), or

(B) disapproves a State implementation plan submission in whole or in part,

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

(2)(A) Repealed. Pub.L. 101-549, Title I, § 101(d)(3)(A), Nov. 15, 1990, 104 Stat. 2409

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon June 22, 1974. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) Repealed. Pub.L. 101-549, Title I, § 101(d)(3)(B), Nov. 15, 1990, 104 Stat. 2409

(D) For purposes of this paragraph--

(i) The term "parking surcharge regulation" means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term "management of parking supply" shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term "preferential bus/carpool lane" shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after June 22, 1974, by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(3) Upon application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that such unit has adequate authority under State or local law, the Administrator may delegate to such unit the authority to implement and enforce within the jurisdiction of such unit any part of a plan promulgated under this subsection. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing any applicable provision of a plan promulgated under this subsection.

(4) Repealed. Pub.L. 101-549, Title I, § 101(d)(3)(C), Nov. 15, 1990, 104 Stat. 2409

(5)(A) Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan by the Administrator upon application

by the Governor of the State, which application shall include a certification by the Governor that he will revise such plan in accordance with subparagraph (B).

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after August 7, 1977, be revised to include comprehensive measures to:

(i) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(ii) implement transportation control measures necessary to attain and maintain national ambient air quality standards,

and such revised plan shall, for the purpose of implementing such comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing such grants and funds. Such measures shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emissions reductions equivalent to the reductions which may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(C) Any revision of an implementation plan for purposes of meeting the requirements of subparagraph (B) shall be submitted in coordination with any plan revision required under part D.

(d), (e) Repealed. Pub.L. 101-549, Title I, § 101(d)(4), (5), Nov. 15, 1990, 104 Stat. 2409

(f) National or regional energy emergencies; determination by President

(1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that--

(A) a temporary suspension of any part of the applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) may be necessary, and

(B) other means of responding to the energy emergency may be inadequate.

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in paragraph (2) and may take effect immediately.

(2) A temporary emergency suspension under this subsection shall be issued to a source only if the Governor of such State finds that--

(A) there exists in the vicinity of such source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(B) such unemployment or loss can be totally or partially alleviated by such emergency suspension.

Not more than one such suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(3) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator, if any. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of paragraph (2).

(4) This subsection shall not apply in the case of a plan provision or requirement promulgated by the Administrator under subsection (c) of this section, but in any such case the President may grant a temporary emergency suspension for a four month period of any such provision or requirement if he makes the determinations and findings specified in paragraphs (1) and (2).

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c-10 of this title, as in effect before August 7, 1977, or section 7413(d) of this title, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(g) Governor's authority to issue temporary emergency suspensions

(1) In the case of any State which has adopted and submitted to the Administrator a proposed plan revision which the State determines--

(A) meets the requirements of this section, and

(B) is necessary (i) to prevent the closing for one year or more of any source of air pollution, and (ii) to prevent substantial increases in unemployment which would result from such closing, and

which the Administrator has not approved or disapproved under this section within 12 months of submission of the proposed plan revision, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

(2) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of this subsection.

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c-10 of this title as in effect before August 7, 1977, or under section 7413(d) of this title upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(h) Publication of comprehensive document for each State setting forth requirements of applicable implementation plan

(1) Not later than 5 years after November 15, 1990, and every 3 years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(i) Modification of requirements prohibited

Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d) of this title (relating to compliance orders), a plan promulgation under subsection (c), or a plan revision under subsection (a)(3), no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards

As a condition for issuance of any permit required under this subchapter, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used at such source will enable it to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this chapter.

(k) Environmental Protection Agency action on plan submissions

(1) Completeness of plan submissions

(A) Completeness criteria

Within 9 months after November 15, 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this chapter.

(B) Completeness finding

Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

(C) Effect of finding of incompleteness

Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) Deadline for action

Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) Full and partial approval and disapproval

In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.

(4) Conditional approval

The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

(5) Calls for plan revisions

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 7506a of this title or section 7511c of this title, or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D, unless such date has elapsed).

(6) Corrections

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

(l) Plan revisions

Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.

(m) Sanctions

The Administrator may apply any of the sanctions listed in section 7509(b) of this title at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of section 7509(a) of this title in relation to any plan or plan item (as that term is defined by the Administrator) required under this chapter, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this chapter relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous sentence with respect to any deficiency referred to in section 7509(a) of this title to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in section 7509(a) of this title, such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

(n) Savings clauses

(1) Existing plan provisions

Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before November 15, 1990, shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this chapter.

(2) Attainment dates

For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State--

(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on November 15, 1990, or

(B) in response to a finding of substantial inadequacy under subsection (a)(2) (as in effect immediately before November 15, 1990),

shall provide for attainment of the national primary ambient air quality standards within 3 years of November 15, 1990, or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

(3) Retention of construction moratorium in certain areas

In the case of an area to which, immediately before November 15, 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) (as in effect immediately before November 15, 1990) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of section 7502(b)(6) of this title (relating to establishment of a permit program) (as in effect immediately before November 15, 1990) or 7502(a)(1) of this title (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before November 15, 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section 7502(c)(5) of this title (relating to permit programs) or subpart 5 of part D (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.

(o) Indian tribes

If an Indian tribe submits an implementation plan to the Administrator pursuant to section 7601(d) of this title, the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to section 7601(d)(2) of this title. When such plan becomes effective in accordance with the regulations promulgated under section 7601(d) of this title, the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the

exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(p) Reports

Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles traveled, congestion levels, and any other information the Administrator may deem necessary to assess the development [1] effectiveness, need for revision, or implementation of any plan or plan revision required under this chapter.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 110, as added Pub.L. 91-604, § 4(a), Dec. 31, 1970, 84 Stat. 1680; amended Pub.L. 93-319, § 4, June 22, 1974, 88 Stat. 256; S.Res. 4, Feb. 4, 1977; Pub.L. 95-95, Title I, §§ 107, 108, Aug. 7, 1977, 91 Stat. 691, 693; Pub.L. 95-190, § 14(a)(1) to (6), Nov. 16, 1977, 91 Stat. 1399; Pub.L. 97-23, § 3, July 17, 1981, 95 Stat. 142; Pub.L. 101-549, Title I, §§ 101(b) to (d), 102(h), 107(c), 108(d), Title IV, § 412, Nov. 15, 1990, 104 Stat. 2404 to 2408, 2422, 2464, 2466, 2634.)

U.S. SUPREME COURT OCTOBER TERM 2024

<U.S. Supreme Court, Oct. Term 2024, Oral Argument - Question Presented: >

<Whether a final action by EPA taken pursuant to its Clean Air Act authority with respect to a single state or region may be challenged only in the D.C. Circuit because EPA published the action in the same Federal Register notice as actions affecting other states or regions and claimed to use a consistent analysis for all states. Oklahoma by & through Drummond v. U.S. Env't Prot. Agency, 93 F.4th 1262 (10th Cir. 2024), cert. granted sub nom. OKLAHOMA, ET AL. v. EPA, ET AL., No. 23-1067, 2024 WL 4529798 (U.S. Oct. 21, 2024. Consolidated with PACIFICORP, ET AL. v. EPA, ET AL., No. 23-1068, 2024 WL 4529796 (U.S. Oct. 21, 2024); 2025 WL 919985 (U.S.) (U.S.Oral.Arg.,2025).>

Notes of Decisions (427)

Footnotes

1 So in original. Probably should be followed by a comma.

42 U.S.C.A. § 7410, 42 USCA § 7410
Current through P.L. 119-18. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7415

§ 7415. International air pollution

Currentness

(a) Endangerment of public health or welfare in foreign countries from pollution emitted in United States

Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate.

(b) Prevention or elimination of endangerment

The notice of the Administrator shall be deemed to be a finding under section 7410(a)(2)(H)(ii) of this title which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment referred to in subsection (a). Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

(c) Reciprocity

This section shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this section.

(d) Recommendations

Recommendations issued following any abatement conference conducted prior to August 7, 1977, shall remain in effect with respect to any pollutant for which no national ambient air quality standard has been established under section 7409 of this title unless the Administrator, after consultation with all agencies which were party to the conference, rescinds any such recommendation on grounds of obsolescence.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 115, formerly § 5, as added Pub.L. 88-206, § 1, Dec. 17, 1963, 77 Stat. 396; renumbered § 105 and amended Pub.L. 89-272, Title I, §§ 101(2), (3), 102, Oct. 20, 1965, 79 Stat. 992, 995, renumbered § 108 and amended Pub.L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 491, renumbered § 115 and amended Pub.L. 91-604, §§ 4(a), (b)(2) to (10), 15(c)(2), Dec. 31, 1970, 84 Stat. 1678, 1688, 1689, 1713; Pub.L. 95-95, Title I, § 114, Aug. 7, 1977, 91 Stat. 710.)

Notes of Decisions (7)

42 U.S.C.A. § 7415, 42 USCA § 7415
Current through P.L. 119-18. Some statute sections may be more current, see credits for details.

End of Document

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Proposed Legislation

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part D. Plan Requirements for Nonattainment Areas
Subpart 1. Nonattainment Areas in General (Refs & Annos)

42 U.S.C.A. § 7507

§ 7507. New motor vehicle emission standards in nonattainment areas

Currentness

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if--

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle".

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 177, as added Pub.L. 95-95, Title I, § 129(b), Aug. 7, 1977, 91 Stat. 750; amended Pub.L. 101-549, Title II, § 232, Nov. 15, 1990, 104 Stat. 2529.)

Notes of Decisions (14)

42 U.S.C.A. § 7507, 42 USCA § 7507
Current through P.L. 119-18. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag
Proposed Legislation

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter II. Emission Standards for Moving Sources
Part A. Motor Vehicle Emission and Fuel Standards (Refs & Annos)

42 U.S.C.A. § 7521

§ 7521. Emission standards for new motor vehicles or new motor vehicle engines

Currentness

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b)--

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d), relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A) In general

(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) Revised standards for heavy duty trucks

(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this subsection applicable to emissions of oxides of nitrogen (NO_x) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh).

(C) Lead time and stability

Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

(D) Rebuilding practices

The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

(E) Motorcycles

For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1) of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with requirements prescribed under this subchapter if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to requirements prescribed under this subchapter without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term "fill pipe" shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) Onboard vapor recovery

Within 1 year after November 15, 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based ("onboard") systems for the control of vehicle refueling emissions, promulgate standards under this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems. The standards required under this paragraph shall apply to a percentage

of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

IMPLEMENTATION SCHEDULE FOR ONBOARD VAPOR RECOVERY REQUIREMENTS

Model year commencing after standards promulgated	Percentage*
Fourth	40
Fifth	80
After Fifth	100

*Percentages in the table refer to a percentage of the manufacturer's sales volume.

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of section 7511a(b)(3) of this title (relating to stage II gasoline vapor recovery) for areas classified under section 7511 of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 7511a(b)(3) of this title for areas classified under section 7511 of this title as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

(1)(A) The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5), regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured

during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that--

(i) the ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by other manufacturers and purchased from such manufacturers; and

(ii) such manufacturer lacks the financial resources and technological ability to develop such technology.

(C) The Administrator may promulgate regulations under subsection (a)(1) revising any standard prescribed or previously revised under this subsection, as needed to protect public health or welfare, taking costs, energy, and safety into account. Any revised standard shall require a reduction of emissions from the standard that was previously applicable. Any such revision under this subchapter may provide for a phase-in of the standard. It is the intent of Congress that the numerical emission standards specified in subsections (a)(3)(B)(ii), (g), (h), and (i) shall not be modified by the Administrator after November 15, 1990, for any model year before the model year 2004.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to November 15, 1990), shall be promulgated by regulation within 180 days after November 15, 1990.

(3) For purposes of this part--

(A)(i) The term "model year" with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b), the Administrator may prescribe regulations defining "model year" otherwise than as provided in clause (i).

(B) Repealed. Pub.L. 101-549, Title II, § 230(1), Nov. 15, 1990, 104 Stat. 2529.

(C) The term "heavy duty vehicle" means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.

(3) [1] Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles or engines manufactured by such manufacturer during any period of up to four model years beginning after the model year 1980 if the manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in such class or category of vehicles or engines and that such technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year. Such waiver may be granted only if the Administrator determines--

(A) that such waiver would not endanger public health,

(B) that there is a substantial likelihood that the vehicles or engines will be able to comply with the applicable standard under this section at the expiration of the waiver, and

(C) that the technology or system has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act upon the expiration of the waiver.

No waiver under this subparagraph [2] granted to any manufacturer shall apply to more than 5 percent of such manufacturer's production or more than fifty thousand vehicles or engines, whichever is greater.

(c) Feasibility study and investigation by National Academy of Sciences; reports to Administrator and Congress; availability of information

(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this chapter (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

(d) Useful life of vehicles

The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a)(1) of this section and section 7541 of this title. Such regulations shall provide that except where a different useful life period is specified in this subchapter useful life shall--

(1) in the case of light duty vehicles and light duty vehicle engines and light-duty trucks up to 3,750 lbs. LVW and up to 6,000 lbs. GVWR, be a period of use of five years or fifty thousand miles (or the equivalent), whichever first occurs, except that in the case of any requirement of this section which first becomes applicable after November 15, 1990, where the useful life period is not otherwise specified for such vehicles and engines, the period shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs, with testing for purposes of in-use compliance under section 7541 of this title up to (but not beyond) 7 years or 75,000 miles (or the equivalent), whichever first occurs;

(2) in the case of any other motor vehicle or motor vehicle engine (other than motorcycles or motorcycle engines), be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate; and

(3) in the case of any motorcycle or motorcycle engine, be a period of use the Administrator shall determine.

(e) New power sources or propulsion systems

In the event of a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 7525(a) of this title, the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger the public health or welfare but for which standards have not been prescribed under subsection (a).

(f)[3] High altitude regulations

(1) The high altitude regulation in effect with respect to model year 1977 motor vehicles shall not apply to the manufacture, distribution, or sale of 1978 and later model year motor vehicles. Any future regulation affecting the sale or distribution of motor vehicles or engines manufactured before the model year 1984 in high altitude areas of the country shall take effect no earlier than model year 1981.

(2) Any such future regulation applicable to high altitude vehicles or engines shall not require a percentage of reduction in the emissions of such vehicles which is greater than the required percentage of reduction in emissions from motor vehicles as set forth in subsection (b). This percentage reduction shall be determined by comparing any proposed high altitude emission standards to high altitude emissions from vehicles manufactured during model year 1970. In no event shall regulations applicable to high altitude vehicles manufactured before the model year 1984 establish a numerical standard which is more stringent than that applicable to vehicles certified under non-high altitude conditions.

(3) Section 7607(d) of this title shall apply to any high altitude regulation referred to in paragraph (2) and before promulgating any such regulation, the Administrator shall consider and make a finding with respect to--

(A) the economic impact upon consumers, individual high altitude dealers, and the automobile industry of any such regulation, including the economic impact which was experienced as a result of the regulation imposed during model year 1977 with respect to high altitude certification requirements;

(B) the present and future availability of emission control technology capable of meeting the applicable vehicle and engine emission requirements without reducing model availability; and

(C) the likelihood that the adoption of such a high altitude regulation will result in any significant improvement in air quality in any area to which it shall apply.

(g) Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles; standards for model years after 1993

(1) NMHC, CO, and NO_x

Effective with respect to the model year 1994 and thereafter, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), and oxides of nitrogen (NO_x) from light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles (LDVs) shall contain standards which provide that emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall comply with the levels specified in table G. The percentage shall be as specified in the implementation schedule below:

TABLE G--EMISSION STANDARDS FOR NMHC, CO, AND NO_x FROM LIGHT-DUTY TRUCKS OF UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	Column A (5 yrs/50,000 mi)			Column B (10 yrs/100,000 mi)		
	NMHC	CO	NO_x	NMHC	CO	NO_x
LDTs (0-3,750 lbs. LVW) and light-duty vehicles	0.25	3.4	0.4*	0.31	4.2	0.6*
LDTs (3,751-5,750 lbs. LVW)	0.32	4.4	0.7**	0.40	5.5	0.97

Standards are expressed in grams per mile (gpm).

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.

For standards under column B, for purposes of certification under section 7525 of this title, the

applicable useful life shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs.

* In the case of diesel-fueled LDTs (0-3,750 lvw) and light-duty vehicles, before the model year 2004, in lieu of the 0.4 and 0.6 standards for NO_x, the applicable standards for NO_x shall be 1.0 gpm for a useful life of 5 years or 50,000 miles (or the equivalent), whichever first occurs, and 1.25 gpm for a useful life of 10 years or 100,000 miles (or the equivalent), whichever first occurs.

** This standard does not apply to diesel-fueled LDTs (3,751-5,750 lbs. LVW).

IMPLEMENTATION SCHEDULE FOR TABLE G STANDARDS

Model year	Percentage *
1994	40
1995	80
after 1995	100

* Percentages in the table refer to a percentage of each manufacturer's sales volume.

(2) PM Standard

Effective with respect to model year 1994 and thereafter in the case of light-duty vehicles, and effective with respect to the model year 1995 and thereafter in the case of light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR), the regulations under subsection (a) applicable to emissions of particulate matter (PM) from such vehicles and trucks shall contain standards which provide that such emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall not exceed the levels specified in the table below. The percentage shall be as specified in the Implementation Schedule below.

PM STANDARD FOR LDTS OF UP TO 6,000 LBS. GVWR

Useful life period	Standard
5/50,000	0.80 gpm
10/100,000	0.10 gpm

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of the 5/50,000 standard.

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of the 10/100,000 standard.

IMPLEMENTATION SCHEDULE FOR PM STANDARDS

Model year	Light-duty vehicles	LDTs
1994	40%*	.....
1995	80%*	40%*
1996	100%*	80%*
after 1996	100%*	100%*

* Percentages in the table refer to a percentage of each manufacturer's sales volume.

(h) Light-duty trucks of more than 6,000 lbs. GVWR; standards for model years after 1995

Effective with respect to the model year 1996 and thereafter, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), oxides of nitrogen (NO_x), and particulate matter (PM) from light-duty trucks (LDTs) of more than 6,000 lbs. gross vehicle weight rating (GVWR) shall contain standards which provide that emissions from a specified percentage of each manufacturer's sales volume of such trucks shall comply with the levels specified in table H. The specified percentage shall be 50 percent in model year 1996 and 100 percent thereafter.

TABLE H--EMISSION STANDARDS FOR NMHC AND CO FROM GASOLINE AND DIESEL FUELED LIGHT-DUTY TRUCKS OF MORE THAN 6,000 LBS. GVWR

LDT Test weight	Column A (5 yrs/50,000 mi)			Column B (11 yrs/120,000 mi)			
	NMHC	CO	NO_x	NMHC	CO	NO_x	PM
3,751-5,750 lbs. TW	0.32	4.4	0.7*	0.46	6.4	0.98	0.10
Over 5,750 lbs. TW	0.39	5.0	1.1*	0.56	7.3	1.53	0.12

Standards are expressed in grams per mile (GPM).

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent) whichever first occurs.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 11 years or 120,000 miles (or the equivalent), whichever first occurs.

* Not applicable to diesel-fueled LDTs.

(i) Phase II study for certain light-duty vehicles and light-duty trucks

(1) The Administrator, with the participation of the Office of Technology Assessment, shall study whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required pursuant to this subchapter. The study shall consider whether to establish with respect to model years commencing after January 1, 2003, the standards and useful life period for gasoline and diesel-fueled light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less specified in the following table:

TABLE 3--PENDING EMISSION STANDARDS FOR GASOLINE AND DIESEL FUELED LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS 3,750 LBS. LVW OR LESS

Pollutant	Emission level *
NMHC	0.125 GPM
NO_x	0.2 GPM
CO	1.7 GPM

* Emission levels are expressed in grams per mile (GPM). For vehicles and engines subject to this subsection for purposes of subsection (d) of this section and any reference thereto, the useful life of such vehicles and engines shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs.

Such study shall also consider other standards and useful life periods which are more stringent or less stringent than those set forth in table 3 (but more stringent than those referred to in subsections (g) and (h)).

(2)(A) As part of the study under paragraph (1), the Administrator shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards, taking into consideration the waiver provisions of section 7543(b) of this title. As part of such study, the Administrator shall also examine--

(i) the availability of technology (including the costs thereof), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for meeting more stringent emission standards than those provided in subsections (g) and (h) for model years commencing not earlier than after January 1,

2003, and not later than model year 2006, including the lead time and safety and energy impacts of meeting more stringent emission standards; and

(ii) the need for, and cost effectiveness of, obtaining further reductions in emissions from such light-duty vehicles and light-duty trucks, taking into consideration alternative means of attaining or maintaining the national primary ambient air quality standards pursuant to State implementation plans and other requirements of this chapter, including their feasibility and cost effectiveness.

(B) The Administrator shall submit a report to Congress no later than June 1, 1997, containing the results of the study under this subsection, including the results of the examination conducted under subparagraph (A). Before submittal of such report the Administrator shall provide a reasonable opportunity for public comment and shall include a summary of such comments in the report to Congress.

(3)(A) Based on the study under paragraph (1) the Administrator shall determine, by rule, within 3 calendar years after the report is submitted to Congress, but not later than December 31, 1999, whether--

(i) there is a need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii).

The rulemaking under this paragraph shall commence within 3 months after submission of the report to Congress under paragraph (2)(B).

(B) If the Administrator determines under subparagraph (A) that--

(i) there is no need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will not be available as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); or

(iii) obtaining further reductions in emissions from such vehicles will not be needed or cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall not promulgate more stringent standards than those in effect pursuant to subsections (g) and (h). Nothing in this paragraph shall prohibit the Administrator from exercising the Administrator's authority under subsection (a) to promulgate more stringent standards for light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less at any other time thereafter in accordance with subsection (a).

(C) If the Administrator determines under subparagraph (A) that--

(i) there is a need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall either promulgate the standards (and useful life periods) set forth in Table 3 in paragraph (1) or promulgate alternative standards (and useful life periods) which are more stringent than those referred to in subsections (g) and (h). Any such standards (or useful life periods) promulgated by the Administrator shall take effect with respect to any such vehicles or engines no earlier than the model year 2003 but not later than model year 2006, as determined by the Administrator in the rule.

(D) Nothing in this paragraph shall be construed by the Administrator or by a court as a presumption that any standards (or useful life period) set forth in Table 3 shall be promulgated in the rulemaking required under this paragraph. The action required of the Administrator in accordance with this paragraph shall be treated as a nondiscretionary duty for purposes of section 7604(a)(2) of this title (relating to citizen suits).

(E) Unless the Administrator determines not to promulgate more stringent standards as provided in subparagraph (B) or to postpone the effective date of standards referred to in Table 3 in paragraph (1) or to establish alternative standards as provided in subparagraph (C), effective with respect to model years commencing after January 1, 2003, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), oxides of nitrogen (NO_x), and carbon monoxide (CO) from motor vehicles and motor vehicle engines in the classes specified in Table 3 in paragraph (1) above shall contain standards which provide that emissions may not exceed the pending emission levels specified in Table 3 in paragraph (1).

(j) Cold CO standard

(1) Phase I

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) of this section applicable to emissions of carbon monoxide from 1994 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit. The regulations shall contain

standards which provide that emissions of carbon monoxide from a manufacturer's vehicles when operated at 20 degrees Fahrenheit may not exceed, in the case of light-duty vehicles, 10.0 grams per mile, and in the case of light-duty trucks, a level comparable in stringency to the standard applicable to light-duty vehicles. The standards shall take effect after model year 1993 according to a phase-in schedule which requires a percentage of each manufacturer's sales volume of light-duty vehicles and light-duty trucks to comply with applicable standards after model year 1993. The percentage shall be as specified in the following table:

PHASE-IN SCHEDULE FOR COLD START STANDARDS

Model Year	Percentage
1994	40
1995	80
1996 and after	100

(2) Phase II

(A) Not later than June 1, 1997, the Administrator shall complete a study assessing the need for further reductions in emissions of carbon monoxide and the maximum reductions in such emissions achievable from model year 2001 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit.

(B)(i) If as of June 1, 1997, 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the regulations under subsection (a)(1) of this section applicable to emissions of carbon monoxide from model year 2002 and later model year light-duty vehicles and light-duty trucks shall contain standards which provide that emissions of carbon monoxide from such vehicles and trucks when operated at 20 degrees Fahrenheit may not exceed 3.4 grams per mile (gpm) in the case of light-duty vehicles and 4.4 grams per mile (gpm) in the case of light-duty trucks up to 6,000 GVWR and a level comparable in stringency in the case of light-duty trucks 6,000 GVWR and above.

(ii) In determining for purposes of this subparagraph whether 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the Administrator shall exclude the areas of Steubenville, Ohio, and Oshkosh, Wisconsin.

(3) Useful-life for phase I and phase II standards

In the case of the standards referred to in paragraphs (1) and (2), for purposes of certification under section 7525 of this title and in-use compliance under section 7541 of this title, the applicable useful life period shall be 5 years or 50,000 miles, whichever first occurs, except that the Administrator may extend such useful life period (for purposes of section 7525 of this title, or section 7541 of this title, or both) if he determines that it is feasible for vehicles and engines subject to such standards to meet such standards for a longer useful life. If the Administrator extends such useful life period, the Administrator may make an appropriate adjustment of

applicable standards for such extended useful life. No such extended useful life shall extend beyond the useful life period provided in regulations under subsection (d).

(4) Heavy-duty vehicles and engines

The Administrator may also promulgate regulations under subsection (a)(1) applicable to emissions of carbon monoxide from heavy-duty vehicles and engines when operated at cold temperatures.

(k) Control of evaporative emissions

The Administrator shall promulgate (and from time to time revise) regulations applicable to evaporative emissions of hydrocarbons from all gasoline-fueled motor vehicles--

(1) during operation; and

(2) over 2 or more days of nonuse;

under ozone-prone summertime conditions (as determined by regulations of the Administrator). The regulations shall take effect as expeditiously as possible and shall require the greatest degree of emission reduction achievable by means reasonably expected to be available for production during any model year to which the regulations apply, giving appropriate consideration to fuel volatility, and to cost, energy, and safety factors associated with the application of the appropriate technology. The Administrator shall commence a rulemaking under this subsection within 12 months after November 15, 1990. If final regulations are not promulgated under this subsection within 18 months after November 15, 1990, the Administrator shall submit a statement to the Congress containing an explanation of the reasons for the delay and a date certain for promulgation of such final regulations in accordance with this chapter. Such date certain shall not be later than 15 months after the expiration of such 18 month deadline.

(l) Mobile source-related air toxics

(1) Study

Not later than 18 months after November 15, 1990, the Administrator shall complete a study of the need for, and feasibility of, controlling emissions of toxic air pollutants which are unregulated under this chapter and associated with motor vehicles and motor vehicle fuels, and the need for, and feasibility of, controlling such emissions and the means and measures for such controls. The study shall focus on those categories of emissions that pose the greatest risk to human health or about which significant uncertainties remain, including emissions of benzene, formaldehyde, and 1, 3 butadiene. The proposed report shall be available for public review and comment and shall include a summary of all comments.

(2) Standards

Within 54 months after November 15, 1990, the Administrator shall, based on the study under paragraph (1), promulgate (and from time to time revise) regulations under subsection (a)(1) or section 7545(c)(1) of this title containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor

vehicle fuels. The regulations shall contain standards for such fuels or vehicles, or both, which the Administrator determines reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the standards established under subsection (a), the availability and costs of the technology, and noise, energy, and safety factors, and lead time. Such regulations shall not be inconsistent with standards under subsection (a). The regulations shall, at a minimum, apply to emissions of benzene and formaldehyde.

(m) Emissions control diagnostics

(1) Regulations

Within 18 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) requiring manufacturers to install on all new light duty vehicles and light duty trucks diagnostics systems capable of--

(A) accurately identifying for the vehicle's useful life as established under this section, emission-related systems deterioration or malfunction, including, at a minimum, the catalytic converter and oxygen sensor, which could cause or result in failure of the vehicles to comply with emission standards established under this section,

(B) alerting the vehicle's owner or operator to the likely need for emission-related components or systems maintenance or repair,

(C) storing and retrieving fault codes specified by the Administrator, and

(D) providing access to stored information in a manner specified by the Administrator.

The Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines.

(2) Effective date

The regulations required under paragraph (1) of this subsection shall take effect in model year 1994, except that the Administrator may waive the application of such regulations for model year 1994 or 1995 (or both) with respect to any class or category of motor vehicles if the Administrator determines that it would be infeasible to apply the regulations to that class or category in such model year or years, consistent with corresponding regulations or policies adopted by the California Air Resources Board for such systems.

(3) State inspection

The Administrator shall by regulation require States that have implementation plans containing motor vehicle inspection and maintenance programs to amend their plans within 2 years after promulgation of such regulations to provide for inspection of onboard diagnostics systems (as prescribed by regulations under paragraph (1)

of this subsection) and for the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems. Such regulations shall not be inconsistent with the provisions for warranties promulgated under section 7541(a) and (b) of this title.

(4) Specific requirements

In promulgating regulations under this subsection, the Administrator shall require--

(A) that any connectors through which the emission control diagnostics system is accessed for inspection, diagnosis, service, or repair shall be standard and uniform on all motor vehicles and motor vehicle engines;

(B) that access to the emission control diagnostics system through such connectors shall be unrestricted and shall not require any access code or any device which is only available from a vehicle manufacturer; and

(C) that the output of the data from the emission control diagnostics system through such connectors shall be usable without the need for any unique decoding information or device.

(5) Information availability

The Administrator, by regulation, shall require (subject to the provisions of section 7542(c) of this title regarding the protection of methods or processes entitled to protection as trade secrets) manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, with any and all information needed to make use of the emission control diagnostics system prescribed under this subsection and such other information including instructions for making emission related diagnosis and repairs. No such information may be withheld under section 7542(c) of this title if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Such information shall also be available to the Administrator, subject to section 7542(c) of this title, in carrying out the Administrator's responsibilities under this section.

(f)[4] Model years after 1990

For model years prior to model year 1994, the regulations under subsection (a) applicable to buses other than those subject to standards under section 7554 of this title shall contain a standard which provides that emissions of particulate matter (PM) from such buses may not exceed the standards set forth in the following table:

PM STANDARD FOR BUSES

Model year	Standard *
1991	0.25
1992	0.25

1993 and thereafter	0.10

* Standards are expressed in grams per brake horsepower hour (g/bhp/hr).

CREDIT(S)

(July 14, 1955, c. 360, Title II, § 202, as added Pub.L. 89-272, Title I, § 101(8), Oct. 20, 1965, 79 Stat. 992; amended Pub.L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 499; Pub.L. 91-604, § 6(a), Dec. 31, 1970, 84 Stat. 1690; Pub.L. 93-319, § 5, June 22, 1974, 88 Stat. 258; Pub.L. 95-95, Title II, §§ 201, 202(b), 213(b), 214(a), 215 to 217, 224(a), (b), (g), Title IV, § 401(d), Aug. 7, 1977, 91 Stat. 751 to 753, 758 to 761, 765, 767, 769, 791; Pub.L. 95-190, § 14(a)(60) to (65), (b)(5), Nov. 16, 1977, 91 Stat. 1403, 1405; Pub.L. 101-549, Title II, §§ 201 to 207, 227(b), 230(1) to (5), Nov. 15, 1990, 104 Stat. 2472 to 2481, 2507, 2529.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 13432

<May 14, 2007, 72 F.R. 27717, as amended by Ex. Ord. No. 13693, § 16(e), March 19, 2015, 80 F.R. 15871>

Cooperation Among Agencies in Protecting the Environment with Respect to Greenhouse Gas Emissions from Motor Vehicles, Nonroad Vehicles, and Nonroad Engines

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the United States to ensure the coordinated and effective exercise of the authorities of the President and the heads of the Department of Transportation, the Department of Energy, and the Environmental Protection Agency to protect the environment with respect to greenhouse gas emissions from motor vehicles, nonroad vehicles, and nonroad engines, in a manner consistent with sound science, analysis of benefits and costs, public safety, and economic growth.

Sec. 2. Definitions. As used in this order:

(a) "agencies" refers to the Department of Transportation, the Department of Energy, and the Environmental Protection Agency, and all units thereof, and "agency" refers to any of them;

(b) "alternative fuels" has the meaning specified for that term in section 301(2) of the Energy Policy Act of 1992 (42 U.S.C. 13211(2));

(c) "authorities" include the Clean Air Act (42 U.S.C. 7401-7671q), the Energy Policy Act of 1992 (Public Law 102-486), the Energy Policy Act of 2005 (Public Law 109-58), the Energy Policy and Conservation Act (Public Law 94-163), and any other current or future laws or regulations that may authorize or require any of the agencies to take regulatory action that directly or indirectly affects emissions of greenhouse gases from motor vehicles;

(d) "greenhouse gases" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen triflouride [sic], and sulfur hexafluoride;

(e) "motor vehicle" has the meaning specified for that term in section 216(2) of the Clean Air Act (42 U.S.C. 7550(2));

(f) "nonroad engine" has the meaning specified for that term in section 216(10) of the Clean Air Act (42 U.S.C. 7550(10));

(g) "nonroad vehicle" has the meaning specified for that term in section 216(11) of the Clean Air Act (42 U.S.C. 7550(11));

(h) "regulation" has the meaning specified for that term in section 3(d) of Executive Order 12866 of September 30, 1993, as amended (Executive Order 12866); and

(i) "regulatory action" has the meaning specified for that term in section 3(e) of Executive Order 12866.

Sec. 3. Coordination Among the Agencies. In carrying out the policy set forth in section 1 of this order, the head of an agency undertaking a regulatory action that can reasonably be expected to directly regulate emissions, or to substantially and predictably affect emissions, of greenhouse gases from motor vehicles, nonroad vehicles, nonroad engines, or the use of motor vehicle fuels, including alternative fuels, shall:

(a) undertake such a regulatory action, to the maximum extent permitted by law and determined by the head of the agency to be practicable, jointly with the other agencies;

(b) in undertaking such a regulatory action, consider, in accordance with applicable law, information and recommendations provided by the other agencies;

(c) in undertaking such a regulatory action, exercise authority vested by law in the head of such agency effectively, in a manner consistent with the effective exercise by the heads of the other agencies of the authority vested in them by law; and

(d) obtain, to the extent permitted by law, concurrence or other views from the heads of the other agencies during the development and preparation of the regulatory action and prior to any key decision points during that development and preparation process, and in no event later than 30 days prior to publication of such action.

Sec. 4. Duties of the Heads of Agencies. (a) To implement this order, the head of each agency shall:

(1) designate appropriate personnel within the agency to (i) direct the agency's implementation of this order, (ii) ensure that the agency keeps the other agencies and the Office of Management and Budget informed of the agency regulatory actions to which section 3 refers, and (iii) coordinate such actions with the agencies;

(2) in coordination as appropriate with the Committee on Climate Change Science and Technology, continue to conduct and share research designed to advance technologies to further the policy set forth in section 1 of this order;

(3) facilitate the sharing of personnel and the sharing of information among the agencies to further the policy set forth in section 1 of this order;

(4) coordinate with the other agencies to avoid duplication of requests to the public for information from the public in the course of undertaking such regulatory action, consistent with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.); and

(5) consult with the Secretary of Agriculture whenever a regulatory action will have a significant effect on agriculture related to the production or use of ethanol, biodiesel, or other renewable fuels, including actions

undertaken in whole or in part based on authority or requirements in title XV of the Energy Policy Act of 2005, or the amendments made by such title, or when otherwise appropriate or required by law.

(b) To implement this order, the heads of the agencies acting jointly may allocate as appropriate among the agencies administrative responsibilities relating to regulatory actions to which section 3 refers, such as publication of notices in the **Federal Register** and receipt of comments in response to notices.

Sec. 5. Duties of the Director of the Office of Management and Budget and the Chairman of the Council on Environmental Quality. (a) The Director of the Office of Management and Budget, with such assistance from the Chairman of the Council on Environmental Quality as the Director may require, shall monitor the implementation of this order by the heads of the agencies and shall report thereon to the President from time to time, and not less often than semiannually, with any recommendations of the Director for strengthening the implementation of this order.

(b) To implement this order and further the policy set forth in section 1, the Director of the Office of Management and Budget may require the heads of the agencies to submit reports to, and coordinate with, such Office on matters related to this order.

Sec. 6. General Provisions. (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) This order shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(c) This order is not intended to, and does not, create any right, benefit or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH

EXECUTIVE ORDER NO. 14037

<August 5, 2021, 86 F.R. 43583>

Strengthening American Leadership in Clean Cars and Trucks

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote the interests of American workers, businesses, consumers, and communities, it is hereby ordered as follows:

Section 1. Policy. America must lead the world on clean and efficient cars and trucks. That means bolstering our domestic market by setting a goal that 50 percent of all new passenger cars and light trucks sold in 2030 be zero-emission vehicles, including battery electric, plug-in hybrid electric, or fuel cell electric vehicles. My Administration will prioritize setting clear standards, expanding key infrastructure, spurring critical innovation, and investing in the American autoworker. This will allow us to boost jobs-with good pay and benefits-across the United States along the full supply chain for the automotive sector, from parts and equipment manufacturing to final assembly.

It is the policy of my Administration to advance these objectives in order to improve our economy and public health, boost energy security, secure consumer savings, advance environmental justice, and address the climate crisis.

Sec. 2. Light-, Medium-, and Certain Heavy-Duty Vehicles Multi-Pollutant and Fuel Economy Standards for 2027 and Later.

(a) The Administrator of the Environmental Protection Agency (EPA) shall, as appropriate and consistent with applicable law, consider beginning work on a rulemaking under the Clean Air Act (42 U.S.C. 7401-7671q) to establish new multi-pollutant emissions standards, including for greenhouse gas emissions, for light-and medium-duty vehicles beginning with model year 2027 and extending through and including at least model year 2030.

(b) The Secretary of Transportation shall, as appropriate and consistent with applicable law, consider beginning work on a rulemaking under the Energy Independence and Security Act of 2007 (Public Law 110-140, 121 Stat. 1492) (EISA) to establish new fuel economy standards for passenger cars and light-duty trucks beginning with model year 2027 and extending through and including at least model year 2030.

(c) The Secretary of Transportation shall, as appropriate and consistent with applicable law, consider beginning work on a rulemaking under EISA to establish new fuel efficiency standards for heavy-duty pickup trucks and vans beginning with model year 2028 and extending through and including at least model year 2030.

Sec. 3. Heavy-Duty Engines and Vehicles Multi-Pollutant Standards for 2027 and Later. (a) The Administrator of the EPA shall, as appropriate and consistent with applicable law, consider beginning work on a rulemaking under the Clean Air Act to establish new oxides of nitrogen standards for heavy-duty engines and vehicles beginning with model year 2027 and extending through and including at least model year 2030.

(b) The Administrator of the EPA shall, as appropriate and consistent with applicable law, and in consideration of the role that zero-emission heavy-duty vehicles might have in reducing emissions from certain market segments, consider updating the existing greenhouse gas emissions standards for heavy-duty engines and vehicles beginning with model year 2027 and extending through and including at least model year 2029.

Sec. 4. Medium-and Heavy-Duty Engines and Vehicles Greenhouse Gas and Fuel Efficiency Standards as Soon as 2030 and Later. (a) The Administrator of the EPA shall, as appropriate and consistent with applicable law, consider beginning work on a rulemaking under the Clean Air Act to establish new greenhouse gas emissions standards for heavy-duty engines and vehicles to begin as soon as model year 2030.

(b) The Secretary of Transportation shall, as appropriate and consistent with applicable law, consider beginning work on a rulemaking under EISA to establish new fuel efficiency standards for medium-and heavy-duty engines and vehicles to begin as soon as model year 2030.

Sec. 5. Rulemaking Targets. (a) With respect to the rulemaking described in section 3(a) of this order, the Administrator of the EPA shall, as appropriate and consistent with applicable law, consider issuing a notice of proposed rulemaking by January 2022 and any final rulemaking by December 2022.

(b) With respect to the other rulemakings described in section 2 and section 4 of this order, the Secretary of Transportation and the Administrator of the EPA shall, as appropriate and consistent with applicable law, consider issuing any final rulemakings no later than July 2024.

Sec. 6. Coordination and Engagement. (a) The Secretary of Transportation and the Administrator of the EPA shall coordinate, as appropriate and consistent with applicable law, during the consideration of any rulemakings pursuant to this order.

(b) The Secretary of Transportation and the Administrator of the EPA shall consult with the Secretaries of Commerce, Labor, and Energy on ways to achieve the goals laid out in section 1 of this order, to accelerate innovation and manufacturing in the automotive sector, to strengthen the domestic supply chain for that sector, and to grow jobs that provide good pay and benefits.

(c) Given the significant expertise and historical leadership demonstrated by the State of California with respect to establishing emissions standards for light-, medium-, and heavy-duty vehicles, the Administrator of the EPA shall coordinate the agency's activities pursuant to sections 2 through 4 of this order, as appropriate and consistent with applicable law, with the State of California as well as other States that are leading the way in reducing vehicle emissions, including by adopting California's standards.

(d) In carrying out any of the actions described in this order, the Secretary of Transportation and the Administrator of the EPA shall seek input from a diverse range of stakeholders, including representatives from labor unions, States, industry, environmental justice organizations, and public health experts.

Sec. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN JR.

Notes of Decisions (52)

Footnotes

1 So in original. Probably should be "(4)".

2 So in original. Probably should be "paragraph".

3 Another subsec. (f) is set out following subsec. (m).

4 So in original. Probably should be (n).

42 U.S.C.A. § 7521, 42 USCA § 7521
Current through P.L. 119-18. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag
Proposed Legislation

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter II. Emission Standards for Moving Sources
Part A. Motor Vehicle Emission and Fuel Standards (Refs & Annos)

42 U.S.C.A. § 7543

§ 7543. State standards

Currentness

(a) Prohibition

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) Waiver

(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that--

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.

(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

(3) In the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this subchapter.

(c) Certification of vehicle parts or engine parts

Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 7541(a)(2) of this title, no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b).

(d) Control, regulation, or restrictions on registered or licensed motor vehicles

Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

(e) Nonroad engines or vehicles

(1) Prohibition on certain State standards

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this chapter--

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives.

Subsection (b) shall not apply for purposes of this paragraph.

(2) Other nonroad engines or vehicles

(A) In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that--

(i) the determination of California is arbitrary and capricious,

(ii) California does not need such California standards to meet compelling and extraordinary conditions, or

(iii) California standards and accompanying enforcement procedures are not consistent with this section.

(B) Any State other than California which has plan provisions approved under part D of subchapter I may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines (other than those referred to in subparagraph (A) or (B) of paragraph (1)) and take such other actions as are referred to in subparagraph (A) of this paragraph respecting such vehicles or engines if--

(i) such standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the Administrator under subparagraph (A), and

(ii) California and such State adopt such standards at least 2 years before commencement of the period for which the standards take effect.

The Administrator shall issue regulations to implement this subsection.

CREDIT(S)

(July 14, 1955, c. 360, Title II, § 209, formerly § 208, as added Pub.L. 90-148, § 2, Nov. 21, 1967, 81 Stat. 501; renumbered and amended Pub.L. 91-604, §§ 8(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1694, 1705, 1713; Pub.L. 95-95, Title II, §§ 207, 221, Aug. 7, 1977, 91 Stat. 755, 762; Pub.L. 101-549, Title II, § 222(b), Nov. 15, 1990, 104 Stat. 2502.)

U.S. SUPREME COURT OCTOBER TERM 2024

<U.S. Supreme Court, Oct. Term 2024, Oral Argument - Question Presented: >

<Whether a party may establish the redressability component of Article III standing by relying on the coercive and predictable effects of regulation on third parties. Ohio v. Env't Prot. Agency, 98 F.4th 288 (D.C. Cir. 2024), cert. granted in part sub nom. Diamond Alternative Energy, LLC v. EPA, No. 24-7, 2024 WL 5100664 (U.S. Dec. 13, 2024), and cert. denied sub nom. Ohio v. EPA, No. 24-13, 2024 WL 5112340 (U.S. Dec. 16, 2024).>

Notes of Decisions (68)

42 U.S.C.A. § 7543, 42 USCA § 7543
Current through P.L. 119-18. Some statute sections may be more current, see credits for details.

End of Document

KeyCite Yellow Flag
Proposed Legislation

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter II. Emission Standards for Moving Sources
Part A. Motor Vehicle Emission and Fuel Standards (Refs & Annos)

42 U.S.C.A. § 7547

§ 7547. Nonroad engines and vehicles

Currentness

(a) Emissions standards

(1) The Administrator shall conduct a study of emissions from nonroad engines and nonroad vehicles (other than locomotives or engines used in locomotives) to determine if such emissions cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such study shall be completed within 12 months of November 15, 1990.

(2) After notice and opportunity for public hearing, the Administrator shall determine within 12 months after completion of the study under paragraph (1), based upon the results of such study, whether emissions of carbon monoxide, oxides of nitrogen, and volatile organic compounds from new and existing nonroad engines or nonroad vehicles (other than locomotives or engines used in locomotives) are significant contributors to ozone or carbon monoxide concentrations in more than 1 area which has failed to attain the national ambient air quality standards for ozone or carbon monoxide. Such determination shall be included in the regulations under paragraph (3).

(3) If the Administrator makes an affirmative determination under paragraph (2) the Administrator shall, within 12 months after completion of the study under paragraph (1), promulgate (and from time to time revise) regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 7521 of this title, taking into account the technological feasibility, costs, safety, noise, and energy factors associated with achieving, as appropriate, standards of such stringency and lead time. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(4) If the Administrator determines that any emissions not referred to in paragraph (2) from new nonroad engines or vehicles significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, the Administrator may promulgate (and from time to time revise) such regulations as the Administrator deems appropriate containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution, taking into account costs, noise, safety, and energy factors associated with the application of technology which the Administrator determines will be available for the engines and vehicles to which such standards apply. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(5) Within 5 years after November 15, 1990, the Administrator shall promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the locomotives or engines to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

(b) Effective date

Standards under this section shall take effect at the earliest possible date considering the lead time necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period and energy and safety.

(c) Safe controls

Effective with respect to new engines or vehicles to which standards under this section apply, no emission control device, system, or element of design shall be used in such a new nonroad engine or new nonroad vehicle for purposes of complying with such standards if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function. In determining whether an unreasonable risk exists, the Administrator shall consider factors including those described in section 7521(a)(4)(B) of this title.

(d) Enforcement

The standards under this section shall be subject to sections 7525, 7541, 7542, and 7543 of this title, with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section 7521 of this title. The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section.

CREDIT(S)

(July 14, 1955, c. 360, Title II, § 213, as added Pub.L. 93-319, § 10, June 22, 1974, 88 Stat. 261; amended Pub.L. 101-549, Title II, § 222(a), Nov. 15, 1990, 104 Stat. 2500.)

Notes of Decisions (11)

42 U.S.C.A. § 7547, 42 USCA § 7547
Current through P.L. 119-18. Some statute sections may be more current, see credits for details.

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KeyCite Yellow Flag
Proposed Legislation

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter II. Emission Standards for Moving Sources
Part B. Aircraft Emission Standards

42 U.S.C.A. § 7571

§ 7571. Establishment of standards

Currentness

(a) Study; proposed standards; hearings; issuance of regulations

(1) Within 90 days after December 31, 1970, the Administrator shall commence a study and investigation of emissions of air pollutants from aircraft in order to determine--

(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

(B) the technological feasibility of controlling such emissions.

(2)(A) The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B)(i) The Administrator shall consult with the Administrator of the Federal Aviation Administration on aircraft engine emission standards.

(ii) The Administrator shall not change the aircraft engine emission standards if such change would significantly increase noise and adversely affect safety.

(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

(b) Effective date of regulations

Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(c) Regulations which create hazards to aircraft safety

Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety. Any such finding shall include a reasonably specific statement of the basis upon which the finding was made.

CREDIT(S)

(July 14, 1955, c. 360, Title II, § 231, as added Pub.L. 91-604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1703; amended Pub.L. 95-95, Title II, § 225, Title IV, § 401(f), Aug. 7, 1977, 91 Stat. 769, 791; Pub.L. 104-264, Title IV, § 406(b), Oct. 9, 1996, 110 Stat. 3257.)

Notes of Decisions (8)

42 U.S.C.A. § 7571, 42 USCA § 7571
Current through P.L. 119-18. Some statute sections may be more current, see credits for details.

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West's Annotated Code of Maryland
Maryland Rules
Title 2. Civil Procedure--Circuit Court
Chapter 300. Pleadings and Motions

MD Rules, Rule 2-322

RULE 2-322. PRELIMINARY MOTIONS

Currentness

(a) Mandatory. The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.

(b) Permissive. The following defenses may be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the subject matter, (2) failure to state a claim upon which relief can be granted, (3) failure to join a party under Rule 2-211, (4) discharge in bankruptcy, and (5) governmental immunity. If not so made, these defenses and objections may be made in the answer, or in any other appropriate manner after answer is filed.

(c) Disposition. A motion under sections (a) and (b) of this Rule shall be determined before trial, except that a court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial. In disposing of the motion, the court may dismiss the action or grant such lesser or different relief as may be appropriate. If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend. The amended complaint shall be filed within 30 days after entry of the order or within such other time as the court may fix. If leave to amend is granted and the plaintiff fails to file an amended complaint within the time prescribed, the court, on motion, may enter an order dismissing the action. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

(d) Motion for More Definite Statement. If a pleading to which an answer is permitted is so vague or ambiguous that a party cannot reasonably frame an answer, the party may move for a more definite statement before answering. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 15 days after entry of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(e) Motion to Strike. On motion made by a party before responding to a pleading or, if no responsive pleading is required by these rules, on motion made by a party within 15 days after the service of the pleading or on the court's own initiative at any time, the court may order any insufficient defense or any improper, immaterial, impertinent, or scandalous matter stricken from any pleading or may order any pleading that is late or otherwise not in compliance with these rules stricken in its entirety.

(f) Consolidation of Defenses in Motion. A party who makes a motion under this Rule may join with it any other motions then available to the party. No defense or objection raised pursuant to this Rule is waived by being joined with one or more other such defenses or objections in a motion under this Rule. If a party makes a motion under this Rule but omits any defense or objection then available to the party that this Rule permits to be raised by motion, the party shall not thereafter make a motion based on the defenses or objections so omitted except as provided in Rule 2-324.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 323 (a)(1), (2), (3) and (4), and the last sentence of (b).

Section (b) is new and is derived in part from the 1966 version of Fed. R. Civ. P. 12 (b). Subsection (b)(2) replaces former Rules 345 (Demurrer) and 371 b (Demurrer).

Section (c) is new.

Section (d) is new and is derived from the 1966 version of Fed. R. Civ. P. 12 (e). It replaces former Rule 346 (Bill of Particulars).

Section (e) is derived from the 1966 version of Fed. R. Civ. P. 12 (f), and in part from former Rules 301 j and 322.

Section (f) is new and is derived from the 1966 version of Fed. R. Civ. P. 12 (g).

Credits

[Adopted April 6, 1984, eff. July 1, 1984. Amended April 7, 1986, eff. July 1, 1986; March 5, 2001, eff. July 1, 2001; Nov. 12, 2003, eff. Jan. 1, 2004.]

Notes of Decisions (172)

MD Rules, Rule 2-322, MD R RCP CIR CT Rule 2-322
Current with amendments received through February 1, 2025. Some sections may be more current, see credits for details.

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APPENDIX OF BRIEF OF APPELLEES

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

MAYOR & CITY COUNCIL OF BALTIMORE,

Plaintiff,

vs.

Case Number:
24-C-18-004219

BP P.L.C., et al.,

Defendants.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Motions Hearing)

Baltimore, Maryland

Monday, March 11, 2024

BEFORE:

HONORABLE VIDETTA A. BROWN, Associate Judge

APPEARANCES:

For the Plaintiff:

VICTOR SHER, ESQUIRE

KATIE JONES, ESQUIRE

MARTIN QUINONES, ESQUIRE

For the Defendants Chevron Corp., and Chevron U.S.A., Inc.:

THEODORE BOUTROUS, ESQUIRE

* Proceedings Digitally Recorded *

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T A B L E O F C O N T E N T S

currently seeking to appeal in their climate change case. And there, the Delaware Supreme Court cited to Maryland's Baltimore v. Monsanto case as an example of one of the long line of cases recognizing viable public nuisance claims against Monsanto for PCB contamination.

So these three cases I just went through are indistinguishable from the claims pleaded here and they show that Maryland law easily accommodates these types of claims against manufacturers who tortiously promote dangerous products consistent with the national trend of tort law.

And of course, these are common law claims. The Maryland Supreme Court has recognized time and again that "the common law is not static. It's life and it's heart is in its dynamism, it's ability to keep pace with the world while constantly searching for just and fair solutions to pressing societal problems." That is Kelly v. RG Industries, 304 Maryland 124, from 1985.

So while the facts are new, the law here is not. Here, the harms from climate change that the City is experiencing and that they've alleged in the complaint are unprecedented. But there is very real precedent for the traditional common law causes of actions that it pleads. Courts recognize that wrongful promotion, marketing and sale of dangerous goods can create

actionable claims under nuisance, trespass, and products liability. This Court should hold that liability can arise from the deceptive promotion of dangerous products as pleaded here consistent with the historical development of these claims in this State and elsewhere.

Mr. Boutrous complained during his argument that the City of Baltimore is still using fossil fuels, that fossil fuels are important to modern society. That's something that we don't dispute in the complaint. But I'm not clear what the relevance to this motion is. If Defendant's argument is that the City is contributory in being negligent, that's a fact issue outside the pleadings, one that's not ripe at this stage. If it goes to remedies or whether Defendant's making an adequate warning would have made a difference, also, a defense and a fact issue that's not ripe at this stage. If it goes to intervening or superceding cause, same problem.

Here, the City alleges that the Defendants successfully deceived consumers, unduly inflating the market for their fossil fuel products, delaying the transition to lower carbon energy sources, and causing the substantially more greenhouse gases to be emitted into the environment and causing the city's problems.

Through that, the Defendants inflicted the harm on the City of Baltimore, and the City is transitioning

away from fossil fuels now, but it's transition is -- has been delayed because of Defendant's conduct as alleged in the complaint. You can see Paragraph 180 in the complaint which alleges that the consequences of delayed action on climate change were exacerbated by Defendant's actions and have already dramatically increased the cost of further mitigating harm.

So with that kind of background, I just want to discuss the elements of nuisance, failure to warn, trespass, design defect, and remind the court and show how we meet them.

A public nuisance, as you know, and as all the cases say, is an unreasonable interference with a right common to the public. And anyone who substantially participates in the creation of a public nuisance may be liable for infringing those rights by disturbing the public health and safety, the public peace, the public comfort, or the public convenience. That's cited in our brief, Tadjer v. Montgomery County is one of the cases that cites that, and it's quoting the restatement second of courts 821 B.

And a private nuisance is a non-trespassory invasion of another's interest and the private use of enjoyment planned. So just to lay it out, the complaint alleges that Defendants have worked for decades to