

# United States Senate

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COMMITTEE ON  
RULES AND ADMINISTRATION  
WASHINGTON, DC 20510-6325

June 10, 2025

The Honorable Lee Zeldin  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Zeldin:

I am writing to seek information on how the U.S. Environmental Protection Agency (EPA) changed its long-standing legal position, under administrations of both parties, regarding the eligibility of *Clean Air Act* (CAA) waivers issued to the State of California under the *Congressional Review Act* (CRA). This cynical and reckless EPA action will not only lead to more toxic air pollution in California, less progress on climate change, and reduced American innovation and deployment of clean car technology, but it will also lead to fundamental changes in how the U.S. Senate operates.

EPA's submission of the waivers as "rules" under the CRA represents a total reversal of the agency's long-standing approach, not only from the Biden Administration but also from the first Trump Administration, both Bush Administrations, and the Reagan Administration. The prior Trump Administration instead attempted to withdraw prior California waivers under an administrative process.

EPA's decision making on this issue is of unique importance for the Senate Rules and Administration Committee to understand. EPA's sudden reversal of its long-standing bipartisan legal position directly led to highly controversial floor proceedings in the U.S. Senate and permanent, significant changes in Senate rules and precedents. In fact, EPA's actions led to the first successful exercise of the Senate's "nuclear option" to avoid a legislative filibuster.

On January 8, 2025, the *Wall Street Journal* published an opinion piece from attorneys with the law firm Boyden Gray PLLC calling on the Trump Administration to submit CAA waivers granted by EPA to California to set its own state standards on auto emissions to Congress as "rules" under the CRA.<sup>1</sup> The authors were not disinterested policy experts or scholars – this firm represents oil and gas companies who are engaged in active litigation against California's clean air programs. These industry lawyers fired an opening salvo in a massive fossil fuel lobbying campaign to pressure EPA to ignore its long-standing position and decades of precedent that such waivers are not "rules" and therefore ineligible under the CRA.

A month later, the Trump Administration's EPA leadership sided with this industry pressure campaign and announced from the Oval Office that EPA would attempt to submit three of California's waivers as "rules."<sup>2</sup> EPA's press release made clear that this was done for the purpose of triggering the expedited Senate consideration mechanism of the CRA. One of the

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<sup>1</sup> Opinion Commentary, Wall Street Journal, Jan. 8, 2025, available at: <https://www.epa.gov/newsreleases/trump-epa-transmit-california-waivers-congress-accordance-statutory-reporting>.

waivers EPA submitted was issued over two years ago, and only some – but not all – CAA waivers were submitted as “rules” without any explanation for why only certain waivers were submitted if the new interpretation was that all such waivers were now “rules.” EPA then made repeated, initially unsuccessful, attempts to submit these waivers to Congress as “rules,” perhaps because it was unsure of how to actually submit a waiver as a “rule,” illustrating the dubious legality of its actions.<sup>3</sup> Overall, it appears that EPA knowingly and falsely submitted these waivers to Congress under the CRA even though EPA did not truly believe them to be “rules” with the explicit purpose of weaponizing the CRA, and thus causing serious impacts to future Senate procedure.

Out of the more than 100 prior uses of California’s CAA waiver authority, EPA had never previously submitted a stand-alone waiver decision to Congress as a “rule” under the CRA. The agency’s long-standing determination that these waivers are not “rules” for the purposes of the CRA was shared by the Comptroller General of the Government Accountability Office (GAO), which issued a formal opinion in 2023 and again in 2025,<sup>4</sup> as well as the Senate Parliamentarian.<sup>5</sup>

Nevertheless, the Senate Republican majority voted to violate the CRA’s statutory prohibition on Senate points of order during CRA consideration and, having set aside the rules once, then voted to do so again by overruling the Parliamentarian’s determination that the resolutions in question were not entitled to the CRA’s expedited consideration. The future impacts on Senate rules and procedure of these actions will be profound.

In addition, in order to consider the waivers EPA submitted under the CRA, the Senate Republican majority created a new precedent that any agency action that is submitted to Congress pursuant to the CRA now automatically qualifies for expedited consideration in the Senate, regardless of whether it is a rule.<sup>6</sup> If EPA and other agencies continue to abuse the CRA in this way, the Senate could be faced with a flood of new types of agency actions that then become entitled to expedited consideration in the Senate.

Given the serious and long-lasting impacts that EPA’s abuse of the CRA may have on the rules and procedures of the Senate, the Senate must receive answers to the following questions and any related documents and communications:

1. Did EPA develop a new legal opinion, policy position, and/or other guidance justifying its change in long-standing positions that CAA waivers were not rules under the CRA, including an opinion, position, or guidance that only progressed to draft form?

If so, please provide (a) the final legal version of any such materials; (b) any draft versions of such materials, regardless of if they were finalized; and (c) all internal agency communications regarding the decision to change EPA’s position that California waivers were not subject to the CRA.

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<sup>2</sup> Press Release, U.S. EPA, Feb. 14, 2025, available at: <https://www.epa.gov/newsreleases/trump-epa-transmit-california-waivers-congress-accordance-statutory-reporting>.

<sup>3</sup> See, e.g., Executive Communications (EC) 439, 440, and 441, submitted on Feb. 24, 2025, and ECs 660, 661, and 662, submitted on Mar. 26, 2025.

<sup>4</sup> U.S. Government Accountability Office, “Observations Regarding the Environmental Protection Agency’s Submission of Notices of Decision on Clean Air Act Preemption Waivers as Rules Under the Congressional Review Act,” B-337179, Mar. 6, 2025, available at: <https://www.gao.gov/products/b-337179>.

<sup>5</sup> 171 Cong. Rec. S3047 (daily ed. May 21, 2025) (parliamentary inquiry by Sen. Schumer)

<sup>6</sup> 171 Cong. Rec. S3051 (daily ed. May 21, 2025) (point of order by Sen. Thune)

2. Did Trump Administration EPA officials or EPA staff meet or communicate with any attorneys or employees of Boyden Gray PLLC before changing its long-standing prior position and submitting three California waivers to Congress pursuant to the CRA?

If so, please provide names of attendees and dates of all meetings and all records and communications regarding EPA's change in position.

3. Did Trump Administration EPA officials or EPA staff meet or communicate with any other representatives of the oil and gas industry who advocated for EPA changing its prior practice and submitting three California waivers to Congress pursuant to the CRA?

If so, please provide names of attendees and dates of all meetings and all records and communications regarding EPA's change in position.

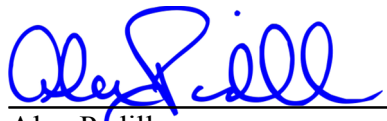
4. Did Trump Administration EPA officials or EPA staff meet to discuss changing EPA's long-standing position that California waivers were not rules under the CRA with White House officials, including but not limited to those within the Department of Government Efficiency, Council on Environmental Quality, or Office of Management and Budget?

If so, please provide all communications between EPA and White House officials regarding EPA's change in position.

Please submit all responsive materials in electronic format. For any questions regarding the requested materials and to coordinate transmission, please contact the Rules Committee Minority staff at [PadillaRulesDem@rules.senate.gov](mailto:PadillaRulesDem@rules.senate.gov).

Thank you for your prompt attention to this important inquiry, and I look forward to your response, no later than June 27, 2025.

Sincerely,



Alex Padilla  
Ranking Member  
U.S. Senate Committee on Rules and Administration

cc: Senator Mitch McConnell  
Chairman, U.S. Senate Committee on Rules and Administration