

Testimony of Robert J. Meyers
Subcommittee on Energy and Power
House Energy and Commerce Committee

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I would like to thank the Chairman of the Subcommittee, Mr. Whitfield, for the opportunity to testify concerning The Jobs and Energy Permitting Act of 2011. This Subcommittee and the full Energy and Commerce Committee has a long history of conducting in-depth hearings into the Clean Air Act (“CAA”) and its implementation and I appreciate the opportunity to share information on the background of CAA provisions affecting drilling activity on the Outer Continental Shelf (“OCS”) and how the pending Discussion Draft would amend current CAA requirements.

As Members may know, my law firm, Crowell & Moring LLP represents affiliates of Shell Oil Company that are seeking CAA permits for exploration drilling projects to be conducted offshore Alaska in the Beaufort and Chukchi Seas where Shell holds offshore oil and gas leases. I want to emphasize, however, that the views I am expressing today are my own and not necessarily those of Shell and that I am testifying today on my own behalf and not as a Shell representative.

As with any matter of this nature, it is desirable to first outline the background and legislative history of the underlying CAA provision. Following this discussion, I will briefly outline the major CAA provisions involved: National Ambient Air Quality Standards

(“NAAQS”) and CAA permitting provisions. Finally, I will offer an assessment of the impact of the Discussion Draft on CAA section 328 and final permit decisions made under that authority.

I. Background on CAA Section 328

Section 328 of the CAA was enacted as part of the 1990 Clean Air Act Amendments (“1990 CAAA”).¹ It was located in Title III of the Clean Air Act, which contains general provisions related to the operation of EPA, definitions applicable throughout the CAA, citizen suit provisions, administrative proceedings, judicial review, air quality monitoring and modeling and other separate, mostly self-contained provisions.

While section 328 was somewhat “buried” in the 1990 CAAA, it was not a product of last-minute decisionmaking. Instead, the origins of the legislation go back several years prior to the time that Congress considered the House and Senate bills that eventually became the 1990 CAAA. While I have not conducted extensive research on this issue, legislation to address OCS air emissions through the CAA was introduced at least by 1987.² The former Health and Environment Subcommittee conducted several hearings on this matter. As part of the broad series of hearings conducted on reauthorization of the CAA, the subcommittee received testimony on the regulation of air emissions on the OCS in conjunction with its consideration of

¹ Pub. Law 101-549.

² H.R. 2521 was introduced by Representative Levine of California on May 27, 1987. This legislation amended the CAA to regulate both stationary OCS sources and vessels “engaged in activity regulated or authorized under the Outer Continental Shelf Lands Act or engaged in oil or gas exploration” among other provisions. The bill required the use of Lowest Achievable Emission Rate (LAER) technology and sought to address both new and existing sources.

other bills that had been introduced to revise CAA provisions affecting the implementation of national ambient air quality standards (“NAAQS”).³

This is, perhaps, not surprising. During the 1970s and 1980s, considerable public attention was paid to drilling activity off the coast of California and matters concerning the permitting of facilities were often contentious. While attention was focused on a range of issues, it is clear that the impact of OCS sources on air quality primarily focused on onshore air quality. At the time, California needed to address the requirements of the 1970 Clean Air Act and the 1977 Clean Air Act Amendments. The state was far from meeting the former 1-hour ozone NAAQS despite the imposition of multiple state regulations. Therefore, California was confronted with a range of issues with respect to developing an appropriate state implementation plan (“SIP”) to demonstrate how the state could come into compliance with NAAQS.

At this time, litigation also occurred with respect to what part of the federal government held authority to regulate air emissions on the OCS.⁴ Within the federal government, there were also several interagency exchanges between the Environmental Protection Agency (“EPA”) and the Department of Interior (“DOI”) on how regulation should occur and whether CAA provisions were applicable to this activity.⁵

In the context of the 1990 CAAA, legislative language to address OCS sources was offered in an amendment in the nature of a substitute offered by Senate Majority Leader George

³ See H.Rpts. 100-129 and 100-130 (September 23, 28, and 29, 1987).

⁴ *State of California v. Kleppe*, 604 F.2d 1187 (1979).

⁵ For example, EPA filed comments on a 1978 DOI Advance Notice of Proposed Rulemaking and the Agency took further actions to require California to include OCS emissions within its state implementation plan.

Mitchell on March 5, 1990 to S. 1630, the Senate’s version of the 1990 CAAA. This amendment specifically referenced “severe and unique air quality problems in California” and required the Secretary of the Interior to promulgate regulations under the [Outer Continental Shelf Lands Act, or OCSLA⁶] to limit “emissions of air pollutants from OCS activities in the area adjacent to California.” This general legislative direction, however, was conditioned by the amendment’s prohibition that any technology must be “feasible” and not “cause an unreasonable threat to health and safety.” Under the Mitchell legislation, EPA was to delineate OCS air districts on the basis of their location relative to adjacent onshore air districts. For areas outside of California, DOI was to consult with EPA to assure the coordination of air pollution control regulation and complete a study of such emissions, thereafter determining whether additional actions would be necessary.

In the House version of the 1990 CAAA (S. 1630 as passed by the House on May 25, 1990) section 712 required the EPA Administrator to establish regulations following consultation with the Secretary of the Interior and the U.S. Coast Guard “to control air pollution from Outer Continental Shelf sources located offshore of the States along the Pacific, Arctic and Atlantic Coasts and along the United States Gulf Coast off the State of Florida eastward of longitude 87 degrees and 30 minutes . . .” The House legislation was therefore much broader than the Mitchell amendment. In addition to conveying regulatory authority to EPA, the legislation included an exemption process and a process by which states could submit regulations to EPA for enforcement and delegation of authority to the States. Altogether, as reflected in the current

⁶ 67 Stat. 462.

text of CAA section 328, the House legislation prevailed in conference with the Senate and was largely adopted in the final 1990 CAAA.

Through enactment of CAA section 328, Congress conferred on EPA primary authority to address air emissions from sources located on the OCS for all but the offshore areas of four states – Texas, Louisiana, Mississippi and Alabama.⁷ Previously, DOI had acted under the authority conveyed to the department through OCSLA to address air emissions on the OCS and other environmental impacts. This law required DOI to promulgate regulations to protect NAAQS;⁸ DOI promulgated such regulations in 1980 and still has authority under OCSLA to regulate OCS sources engaged in oil and gas exploration and production with regard to onshore air quality impacts and the maintenance of NAAQS.⁹

In 1989, DOI had published a further notice of proposed regulations to address OCS activities off the coast of California.¹⁰ Enactment of the 1990 CAAA, however, effectively cut

⁷ The transfer of authority to EPA specifically exempted these States, requiring instead that the Secretary of the Department of Interior consult with EPA to assure coordination of air pollution control regulation for the OCS. *See* 42 U.S.C. § 7627 (b).

⁸ The OCSLA was originally enacted in 1953, but has been amended several times. Amendments enacted in 1978 (Public Law 93-627) clarified the authority of DOI regarding the regulation of OCS air emissions and contained requirements for the promulgation of rules to address NAAQS.

⁹ DOI regulations provide for evaluation of air quality impacts of oil and gas exploration activities as part of DOI review of plans for exploration and development of offshore oil and gas leases. However, DOI issued a “notice to lessees” in the fall of 2009 stating that “The MMS air quality regulations in 30 CFR 250.302, 303 and 304 . . . no longer apply to air emission sources in OCS areas where EPA has jurisdiction.” NTL 2009-11.

¹⁰ EPA’s proposed regulations to implement Section 328 contain a detailed history of DOI rulemaking activity under the OCSLA, including interaction between EPA and DOI during the 1980s regarding accounting for the impact of OCS emissions onshore. *See* 56 Fed. Reg. 63,774, 63,775-7 (December 5, 1991).

this effort short. While DOI regulations and primary regulatory authority remained in place in the Western Gulf of Mexico, where the large bulk of offshore drilling activity had historically taken place (and continue to give DOI a role in air quality regulation in all OCS areas) the 1990 CAAA granted EPA primary authority with respect to all other offshore areas of the United States. It is notable that, unlike other existing CAA programs that were amended or expanded within the context of the 1990 CAAA, EPA authority in this area was entirely new.

II. CAA Regulations Affecting OCS

In late 1991, acting under its new CAA authority, EPA proposed OCS regulations. The Agency finalized the regulations in 1992,¹¹ making the regulations one of the first actions that EPA took following enactment of the 1990 CAAA.¹² The regulations provide procedures for implementing and enforcing CAA standards, specifically NAAQS and the Prevention of Significant Deterioration (“PSD”) requirements.

In this regard, NAAQS currently exist for six ambient air pollutants – ozone, particulate matter, nitrogen dioxide, sulfur dioxide, carbon monoxide and lead. NAAQS are established

¹¹ 57 Fed. Reg. 40,794 (September 4, 1992).

¹² As noted in the 1995 report by the Congressional Research Service, “It has been estimated that the Clean Air Act Amendments of 1990 required EPA (sometimes in conjunction with other agencies) to issue some 175 new regulations, write more than 30 guidance documents, conduct some 50 research efforts, prepare 25 reports to Congress, and create 7 panels. This involves reviewing and revising many existing rules and guidelines as well as developing new programs for which notices, new rules, and guidelines will be needed. Despite increases in EPA's budget for CAA implementation, the adjustment period following passage of the 1990 amendments was slow. Many actions were delayed while the Agency hired new staff and adapted to the ambitious pace of the new rulemaking schedule. Early delays ultimately affected the Agency's ability to conduct its business according to statutory schedules.” Implementing the Clean Air Act Amendments of 1990: Where Are We Now? CRS Report 95-234 (January 30, 1995).

through a process provided for in CAA sections 108 and 109. “Primary” NAAQS are to set a level that is requisite to protect public health; “secondary” NAAQS are to be established at a level requisite to protect the public welfare.¹³ The CAA provides for review and assessment of NAAQS every 5 years; States are primarily responsible for their implementation and must develop detailed SIPs which can both demonstrate attainment of the standards by applicable deadlines and the state’s legal ability and plans on how it will reach attainment.

The PSD program requires that new and certain modified sources obtain preconstruction permits; a permit is required before the source can commence construction or a major modification of a facility. PSD also requires that certain analysis be conducted with respect to the air quality impact of a source and that a public hearing be held with the opportunity for comment. With respect to the control requirements that are applicable to a source that “triggers” PSD, CAA section 165(a)(4) provides that a proposed facility is subject to “best available control technology” (“BACT”). Under several Agency guidance documents, BACT has been applied on a case-by-case basis by various permitting agencies, based on a “top-down” assessment of available technology.

The task in front of EPA in 1991 and 1992 – and indeed today – is how such CAA NAAQS and PSD requirements, borne of a concern to address localized and regional air pollution, should be interpreted in the context of CAA section 328. Various OCS sources, including drilling ships and other vessels, may operate only sporadically off the U.S. coastline intermittently as stationary sources. Unlike stationary sources, drilling ships involved in

¹³ “Public welfare” is separately defined in the CAA under section 302(h) (42 U.S.C. § 7602(h)) and is to include effects on soils, water, crops, vegetation and many other parameters.

exploration activities may shift locations and operate in areas like the Arctic which seriously constrain the amount of time they may remain in one location.

To a certain extent, current EPA regulations recognize this difference. EPA's OCS regulations provide that, "In implementing, enforcing and revising [the OCS rule] and in delegating authority hereunder, the Administrator will ensure that there is a *rational relationship to the attainment and maintenance of Federal and State ambient air quality standards* and the requirements of [the PSD program], and *that the rule is not used for the purpose of preventing exploration and development of the OCS.*" (Emphasis added). Thus, at least with reference to its statutory authority and the scope of its regulatory authority, EPA has adopted the posture that CAA requirements need to be considered in the context of exploration and development of the OCS. In addition, it should be noted that the logical, natural and historic focus on NAAQS and PSD is with respect to land-based sources and ambient air quality. This supports the interpretation that the focus on OCS requirements is onshore, i.e., that onshore air quality represents a "rational relationship" between OCS sources and attaining and maintaining air quality standards.

Apart from the statement of scope and purpose, EPA's OCS regulations serve to "flesh out" the requirements established by enactment of CAA section 328. The regulations provide definitions for an "OCS source," contain requirements for the submittal of a "Notice of Intent" prior to the submittal of an application for a preconstruction permit, provide a process for defining relevant onshore areas, contain requirements relating to permit applications and the administrative procedures used to consider such applications, contain provisions for the delegation of authority from the Administrator to implement the OCS permitting requirements, include separate requirements for sources located within 25 miles of a State shoreline and those

outside of this distance, contain provisions for the exemptions of sources and address CAA offset requirements, monitoring and reporting requirements, enforcement provisions and fee requirements.¹⁴ The regulations also reference state requirements for application of requirements within 25 miles of a state's boundaries and list state and local requirements incorporated by reference.

III. EPA Mobile Source Regulations

When considering drilling activities on the OCS, it is also relevant to consider that EPA regulates emissions from mobile sources, using authority that Congress conveyed to the Agency in Title II of the CAA. Under the CAA, EPA has authority with respect to “nonroad” engines and vehicles. The CAA defines a “nonroad vehicle” quite simply as a vehicle powered by a nonroad engine that is not a motor vehicle (i.e., a vehicle that is self-propelled and designed for street or highway use).¹⁵ Thus, marine vessels, locomotives and other non-highway vehicles are considered to be “nonroad” vehicles subject to EPA’s authority to establish regulations under CAA section 213. Under this section, nonroad standards are to provide for the “greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available . . . giving appropriate consideration to the cost of apply such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.”

¹⁴ Outer Continental Shelf Regulations can be found at 40 C.F.R. § 55.1-15.

¹⁵ CAA section 216 (2) and (10)-(11).

Using this authority and other Title II authorities (most particularly those authorities related to fuel), EPA has developed several rounds of nonroad regulations focused on marine vessels since enactment of the 1990 CAAA. EPA established standards for large ocean-going vessels at or above 30 liters per cylinder displacement (called “Category 3” vessels) through final regulations in 2003 and 2010.¹⁶ These regulations will require an 80 percent reduction in emissions of nitrogen oxides (NO_x) in 2016 through the use of engine controls and requirements to utilize lower sulfur fuel in U.S. waters.¹⁷ The standards will apply to newly built engines in 2011 and contain more aggressive longer-term standards that require the use of selective catalytic reduction units in 2016.

Smaller vessels, known as “Category 1” and “Category 2” vessels were addressed in EPA regulations promulgated in 2008.¹⁸ These engines range in size from 800 to 11,000 horsepower and generally include vessels like tugboats, supply vessels, fishing vessels and commercial vessels in use in and around U.S. ports.¹⁹ The 2008 regulations apply to both newly manufactured engines and when engines are “remanufactured.” For larger marine engines of this type, EPA’s “pulled ahead” Tier 4 nitrogen dioxide (“NO_x”) standards by two years, making the regulations effective in 2014. The same vessels were previously subject to regulations EPA promulgated in 1999, standards which EPA described as “requiring substantial reduction in

¹⁶ 68 Fed. Reg. 9,745 (February 28, 2003) and 75 Fed. Reg. 22,896 (April 30, 2010).

¹⁷ The regulations impose requirements for the use of 1,000 part per million (“ppm”) sulfur diesel. This fuel requirement can represent over a 95% reduction in the sulfur content of fuel currently in use.

¹⁸ 73 Fed. Reg. 25,098 (May 6, 2008).

¹⁹ Recreational vessels were addressed in a separate rulemaking. *See* 67 Fed. Reg. 68,242 (November 8, 2002).

oxides of nitrogen and particulate matter emissions to correspond with the next round of emissions for comparable land-based engines.”²⁰

In general, EPA’s approach to mobile source regulation has been sequenced with respect to both emission control technology and the time necessary to change fuel specifications. EPA has generally focused on the cost-effectiveness and availability of engine control technologies within various classes of on-road highway and non-road vehicles and has tended to start with the largest categories of emissions first, implementing additional standards over time to address smaller categories. For example, the Agency established final heavy-duty diesel truck standards in 2001, followed by comparable standards for nonroad vehicles and equipment in 2004. The Agency has also linked fuel standards with the promulgation and phase-in of newer on-road and nonroad equipment, phasing out higher sulfur diesel fuel in a timeframe when newer equipment is entering the marketplace.

With respect to marine vessels, the Agency explained this focus in the 2010 Category 3 rulemaking stating that:

Our coordinated strategy for ocean-going vessels, including the emission standards finalized in this action under the Clean Air Act, continues EPA’s program to progressively apply advanced aftertreatment emission control standards to diesel engines and reflects the evolution of this technology from the largest inventory source (highway engines), to land-based nonroad engines, to locomotives and marine diesel engines up to 30 liters per cylinder. The

²⁰ 64 Fed. Reg. 73,300 (December 29, 1999).

results of these forerunner programs are dramatic reductions in NO_x and PM_{2.5} emissions on the order of 80 to 90 percent, which will lead to significant improvements in national air quality.²¹

In addition to regulatory controls on engines and fuels under the CAA, EPA has also pursued actions to create NO_x and fuel sulfur control areas off the coasts of the United States as part of the International Convention for the Prevention of Pollution from Ship (MARPOL Annex IV). Under this convention, the United States and Canada submitted a proposal to the International Maritime Organization (“IMO”) for the designation of an emission control area off the coastline of each country. The IMO amended the convention on March 26, 2010, to effectuate the designation.

Altogether then, it is clear that since Congress last acted to amend the CAA and include specific provisions addressing drill ship exploration and emissions from service vessels in CAA section 328, EPA has taken a number of substantial steps to reduce the emissions from vessels over which it has jurisdiction. With respect to vessels that may be flagged in other countries but operate in U.S. waters, the United States has also been an active participant in the MARPOL Annex IV process. Both actions create a substantially different regulatory environment for marine vessels and the fuel consumed by these vessels than the one Congress sought to address in 1990.

²¹ 75 Fed. Reg. at 22,898.

IV. Discussion Draft

The Discussion Draft that is the subject of today's hearing is essentially a "cut and bite" amendment of the existing CAA section 328 provisions. The legislation has three substantive sections affecting air quality measurement, the definition of an OCS source and finalization of Agency action with respect to OCS permit applications.

A. Air Quality Measurement

The Discussion Draft adds the specification that the air quality impact of an OCS source will be measured with respect to the corresponding onshore area. My interpretation is that this legislative language is consistent with the legislative history of the CAA cited above. In essence, the provision clarifies and makes more explicit the fact that Congress, in enacting CAA section 328, was primarily concerned with the impact of OCS sources on the ability of onshore areas to attain and maintain NAAQS standards.

In this regard, it should also be recognized that the CAA provides that primary NAAQS are to be designed to protect "public health." As EPA has noted, the NAAQS statutory framework does not require that a NAAQS be set at a level of zero risk, or be focused on the impact of an air pollutant on sensitive individuals. Instead, the CAA requires NAAQS to be set at a "level that reduces risk sufficient so as to protect public health with an adequate margin of safety."²² Consistent with the focus of the OCS requirements on NAAQS (and the protection of NAAQS attainment and maintenance through application of the PSD program) it seems not to be a stretch of logic to observe that the general public overwhelming lives and resides onshore.

²² See for example, 73 Fed. Reg. 66,965, 66,966 (November 12, 2008).

B. OCS Source

This section of the legislation contains two different elements. First, the section provides that although direct emissions of vessels servicing an OCS source and operating within 25 miles of the OCS source (“associated vessels”) shall be “counted” with respect to the assessment of the air quality impact of the OCS source, such vessels when engaged in such activity will not be regulated as stationary sources under the PSD program. Second, the section defines (for platform and drilling ship exploration) specifically when an OCS source is established and when it ceases to exist.

With regard to the first matter, it appears clear from the Congressional consideration of this measure and from EPA’s interpretation of section 328 that the focus of the section was to prevent OCS sources from “escaping” CAA regulation by virtue of their offshore location and thereby adversely affecting onshore air quality. This interpretation is supported by the context that led up to the enactment of the section. EPA specifically cited the experience in California in proposing its regulations. The agency stated that California’s consideration of OCS involved “a confrontational atmosphere in which the onshore community felt that OCS activity was encouraged at the expense of air quality or economic growth onshore.”²³ Thus, CAA section 328 attempted to provide for corresponding regulation of OCS sources based on their “status” as stationary sources (albeit in the case of exploration activities, temporary sources). To this end,

²³ 56 Fed. Reg. at 63,775. EPA also noted that it “intends that the proposed OCS rule will result in a more orderly, less burdensome system of air quality permitting for OCS sources. This certainty may speed up the permitting process, which may reduce costs in some instances, particularly offsetting the additional costs associated with the rule’s more stringent requirements for controls and offset. The proposed rule thus should result in a more stable regulatory atmosphere, allowing companies to plan with greater certainty the amount of time needed to obtain necessary permits to begin construction and operation of OCS sources.” *Id.*

CAA section 328 provides that for sources within 25 miles of a state boundary, the requirements on the OCS source are “the same as requirements that would be applicable if the source were located in the corresponding onshore area (“COA”).”²⁴ The Discussion Draft would serve to further codify this treatment and provide a bright line direction to EPA and state and local permitting authorities with regard to the scope of the BACT review for an OCS source.

The position taken by the legislation is straightforward. That is, just as a truck which drops off or picks up supplies from a factory onshore does not become stationary source by virtue of this activity, the Discussion Draft provides that neither should marine vessels be regulated as a stationary source by virtue of supplying or servicing an OCS source. Both the truck and the marine vessel do not escape regulation under the CAA – they are both subject to the provisions of Title II as outlined above – but the Discussion Draft makes it clear that they do not incur additional CAA regulation simply by the use to which they are put.

The second part of the OCS source provision is to create a test when an OCS source is established and how long it is deemed to exist for purposes of regulating its emissions as a stationary source rather than as a marine vessel. In this regard, the legislation addresses the unique circumstances that are attendant to offshore exploration activities. A drill ship or a platform may move from location to location. Effectively, under the legislation, CAA stationary source requirements would apply only during the time that the ship or platform is engaging in the type of activity which makes it “similar” to a stationary source, i.e., when it is conducting actual drilling activity.

²⁴ 56 Fed. Reg. at 63,774.

C. Permit Application

This provision of the legislation would add a new subsection to CAA section 328 to address when final agency action on an OCS permit application is required. The provision also provides that OCS permits will be treated on the same basis as nationally applicable regulations for purposes of judicial review. This would mean that petitions for judicial review of an OCS permit would be centralized for consistency in the United States Court of Appeals for the District of Columbia. The legislation further provides that additional administrative review or adjudication of an OCS permit is not allowed after such six-month period for final agency action unless an applicant files a petition for reconsideration, presumably on the basis that final agency action resulted in denial of a permit or other unfavorable action.

Under section 4 of the Discussion Draft, EPA is allowed 6 months to take action with respect to an OCS permit after the filing of a “completed application.” In effect, this allows the Agency less time than is required under the CAA for other PSD permits.²⁵ However, the provision applies solely to an “OCS source” as defined within section 328 of the CAA. Thus,

²⁵ CAA section 165(c) provides that a completed permit application “shall be granted or denied not later than one year after the date of filing of such completed application.” EPA has taken the position in litigation, however, that the one-year deadline in the CAA applies only with respect to the actions of the Administrator’s “delegate” to make a final permit decision (e.g. the decision of a Regional Administrator with respect to a completed permit application). Under current regulations, an entity cannot begin construction under such a decision until 30 days have passed during which time appeals may be made to the Environmental Appeals Board -- a part of EPA -- by any person who commented on a permit or participated in a public hearing on the permit. Under this process, EPA considers that a permit is not final agency action until the EAB process is complete. Specifically, EPA has stated that a permit decision “becomes final agency action for purposes of appeal to a federal court of appeals only after the administrative appeal process is exhausted.” Defendant’s Response to Plaintiff’s Supplemental Brief Regarding Remedy, *Avenal Power Center, LLC v. EPA*, United States District Court for the District of Columbia (filed 3/1/2011) at 14. This can result in substantial delays in receiving a “final” permit.

the provision reflects a policy decision that CAA permitting of OCS sources be streamlined and that Agency resources be devoted to ensuring that completed applications can be promptly acted on by EPA.

V. Conclusion

I appreciate the opportunity to testify before the Subcommittee on this important issue. On the whole, my assessment of the Discussion Draft is that it will serve the purposes that EPA originally outlined for its OCS regulations 20 years ago. That is, the legislation will apply CAA requirements to OCS sources in a clear fashion which recognizes the need for “a more orderly, less burdensome system of air quality permitting for OCS sources.” The legislation would also clarify that OCS activities that comply with CAA requirements are a national priority and that air quality impacts of OCS sources should be promptly assessed and addressed within enforceable permits. Additionally, the legislation would reflect the fact that EPA has acted over the last 20 years to aggressively regulate marine diesel emissions from all categories of vessels, thus addressing some of the concerns that prompted the original enactment of CAA section 328. Finally, the judicial review provisions of the legislation would help to ensure that interpretation of relevant CAA requirements is consistently applied across the country in offshore areas that are subject to EPA authority.