

**June 9, 2021 EPA Public Hearing**  
***Rescinding the Rule on Increasing Consistency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process.***

**Oral Testimony of Rebecca Bratspies**

My name is Rebecca Bratspies, I am a professor of law at CUNY School of Law where I run the Center for Urban Environmental Reform

I want to talk to you today about how the rescinded Trump era Benefit-Cost rule would have undermined the basic human right to breathe clean air for far too many Americans, particularly in the Black and brown communities that bear an unequal and disproportionate share of pollution exposure in the United States.

Despite the sweeping changes this rule would have required, changes that clearly impact environmental justice communities first and most, EPA casually dismissed its duties under E.O 12,898 and intentionally avoided any consideration of the environmental justice impacts of this rule. EPA justified its failure on the pretext that this rule “does not establish an environmental health or safety standard.” As though that were the relevant test for when environmental injustices occur.

We all need to breathe. Adults take roughly 16 breaths per minute: infants can take up to 60. In polluted neighborhoods, each breath takes in not only much-needed oxygen, but also unsafe levels of particulates, nitrous oxides, sulfur oxides, and ozone.

These common pollutants, produced when fossil fuels are burned by everything from traffic to heavy industry, make asthma and other cardio-pulmonary diseases more likely and more severe. Indeed, COVID-19 has been a stark lesson in the role these pollutants play, both in spreading disease and in increasing vulnerability to disease.

None of these risks are equally distributed. Black and Brown Americans are disproportionately exposed to air pollution, and as a result bear an outsized environmental health burden. For example: Black Americans are 1.5 times more to live in a neighborhood with unsafe air pollution levels. Black children are more than twice as likely to suffer from asthma, and Black Americans have more than double the risk of dying from asthma-related complications.

These disproportionate health burdens come with equally large economic, social and emotional costs. Where in the Benefit Cost analysis do you capture the trauma that comes from watching your child struggle to breathe?

Section 101(b)(1) of the Clean Air Act sets an ambitious goal of protecting and enhancing the quality of the Nation’s air resources so as to promote the public health and welfare.” Section 109 gives content to this goal, directing EPA to set National Ambient Air Quality Standards at a level “requisite to protect the public health” with “an adequate margin of safety.” Yet, decades later far too many Americans routinely breathe air that does not meet this standard. We know this is true for far too many counties across the country. And, in county after county, it is low-income

and nonwhite communities that bear the brunt of this pollution while whiter, wealthier communities breathe cleaner air.

This rule would have made it more difficult for EPA to prioritize protecting these most vulnerable communities. It limited the agency's ability to examine the distribution of costs and benefits associated with regulatory choices. These distributional questions are of vital importance to the beneficiaries of such regulation—people who breathe air. By requiring the agency to ignore large swathes of health and environmental benefits, this rule was designed to stack the deck in favor of more pollution, regardless of how it harmed already overburdened communities.

The right of everyone to breathe air that does not kill or harm them must be the non-negotiable minimum under the Clean Air Act. Until the most vulnerable can breathe air that does not put their health and welfare in jeopardy, EPA has not completed the regulatory task Congress delegated to it. Any rule that places impediments to achieving that statutory task cannot possibly be justified as “necessary and reasonable” under Section 301(a)(1).

This rule would have interfered with EPA's ability to meet its statutory burden under the Clean Air Act. As such, it was a staggering display of governmental failure, even for an administration replete with such failures. The lesson from this disastrous foray into rulemaking is that “best practices” for environmental regulation can never exclude issues of environmental justice. But quite frankly, rescinding this ill-advised rule is only the first step. To truly realize equality under the law and environmental justice, EPA needs to promulgate a better benefit-cost rule, one that accurately accounts for cumulative and aggregate impacts of pollutants on overburdened communities and gives unquantifiable and/or non-monetary harms the attention they deserve.

Thank you.