



NATURAL RESOURCES DEFENSE COUNCIL

April 11, 2013

Honorable Ed Whitfield, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
2368 Rayburn House Office Building
Washington, DC 20515

Honorable Bobby Rush, Ranking Member
Subcommittee on Energy and Power
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2268 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Whitfield and Ranking Member Rush:

On behalf of the Natural Resources Defense Council, I am writing to provide information that I hope will inform the Energy & Power Subcommittee's hearing on the discussion draft of the "Energy Consumers Relief Act of 2013."

This extraordinary and unprecedented bill would, in one fell swoop, effectively rewrite fundamental environmental statutes, grant the Department of Energy sweeping new powers, and eliminate federal responsibility to consider the public's health and safety. The one thing that would provide "relief" for the public would be for the Subcommittee to bury this bill quickly and permanently. In its first seven lines alone, the draft bill reverses virtually every presumption and practice of environmental law – law that for more than four decades has proven to improve health and safety while allowing for economic growth. The law transfers authority for environmental decision-making from environmental experts at the Environmental Protection Agency (EPA) to an agency with an entirely different mission, the Department of Energy (DOE); removes discretionary authority from both agencies; and overrides the law's focus on health and environment by allowing only estimates of costs to be taken into account when determining whether a safeguard should be promulgated. It is altogether fitting that the first substantive phrase of this bill is "Notwithstanding any other provision of law" because the bill runs roughshod over countless statutes and the people they were enacted to protect.

And the bill would apply to a far wider swath of EPA activities than may at first be apparent. Under the bill, for the Secretary of Energy to have veto power over an EPA standard, the standard must 1) “cost more than \$1 billion” and 2) be “energy-related.”

First, as to the cost requirement, the \$1 billion trigger described in section 2 of the bill is calculated by counting “direct” and “indirect” costs for the duration of the standard. Section 4(1) defines “‘direct costs’ and ‘indirect costs’ as having the meanings given such terms in chapter 8 of the Environmental Protection Agency’s ‘Guidelines for Preparing Economic Analyses’ dated December 17, 2010.” That document defines “direct costs” and “indirect costs” as follows:

Direct costs are those costs that fall directly on regulated entities as the result of the imposition of a regulation. These entities may include firms, households, and government agencies. Indirect costs are the costs incurred in related markets or experienced by consumers or government agencies not under the direct scope of the regulation. These indirect costs are usually transmitted through changes in the prices of the goods or services produced in the regulated sector. Changes in these prices then ripple through the rest of the economy, causing prices in other sectors to rise or fall and ultimately affecting the incomes of consumers. Government entities can also incur indirect costs. For example, if the tax base changes due to the exit of firms from an industry, revenues from taxes or fees may decline. In some cases, the indirect costs of a regulation may be considerably greater than the direct costs.¹

It is not hard to tally up a \$1 billion cost using that definition, especially when costs are calculated over many years.

The bill’s use of the term “energy-related” is at least as expansive. The term is defined in Section 4 (2)(a) in a way that would cover almost all standards issued by EPA’s Office of Air and Radiation because virtually any fuel combustion activity “uses” or “produces” energy, and virtually all fuel combustion produces air pollution. Many clean water regulations relating to the power sector would also come under the bill.

The appendix accompanying the majority’s background memorandum² seeks to minimize the bill’s reach by focusing on what in common parlance are thought of as energy industries, but the bill actually would apply to any part of the economy that combusts fuel and produces pollution.

But this bill would be pernicious even with a narrower scope. Congress has repeatedly vested EPA with authority over pollution for good reason, and it has garnered public support. EPA has the expertise, experience and focus to deal with pollution, health and the environment. It is hard to think of any other example of Congress taking the

1 U.S. EPA, *Guidelines for Preparing Economic Analyses*, Dec. 2010, §8.2.1.2 available at [http://yosemite.epa.gov/ee/epa/erm.nsf/vwAN/EE-0568-50.pdf/\\$file/EE-0568-50.pdf](http://yosemite.epa.gov/ee/epa/erm.nsf/vwAN/EE-0568-50.pdf/$file/EE-0568-50.pdf) (last visited April 11, 2013).

2 See <http://docs.house.gov/meetings/IF/IF03/20130412/100633/HHRG-113-IF03-20130412-SD003.pdf>.

approach of this bill – giving an agency a veto over another agency’s most basic duties. This is simply subterfuge – a way to repeal key aspects of environmental law and to dismantle EPA – while appearing to merely be extending authority to another agency.

It should be noted, though, that in one sense the bill removes discretionary authority from EPA without vesting any in DOE. Under the bill, the Secretary of Energy has no authority to thoughtfully consider environmental protection. Rather the bill mandates that proposed safeguards be discarded – no matter what – if they would have an impact on energy or the economy.

This is the most shocking and radical aspect of the bill. The bill would simply do away entirely with any and all health and other considerations. Costs would be all that mattered, no matter what the benefits. It would be hard to imagine a step more counter to the public interest, not to mention actual experience.

Studies have shown repeatedly that Clean Air Act standards have health and economic benefits that far outweigh their costs.³ The Clean Air Act has brought tremendous benefits to both the health of our citizens and to the economy. A recent report estimates that in 2020 alone, the Clean Air Act will prevent over 230,000 early deaths.⁴ The same report found that the benefits of the Act exceed the costs by a ratio of on average thirty to one, with a high-end estimate of benefits exceeding costs by a factor of ninety to one.⁵ The draft bill entirely ignores the overwhelming benefit to cost ratio of almost all Clean Air Act standards, evaluating costs in a vacuum blind to the benefits these standards have brought to our economy.

Yet this draft bill would eliminate all decisional criteria *other than costs* as the determinative factor in whether environmental statutes administered by EPA are allowed to be enforced. This would effectively repeal the 40-year-old Clean Air Act requirement to base national air quality standards on what is “requisite to protect the public health” “with an adequate margin of safety.” Clean Air Act § 109(b)(1).

It is ironic that the sponsors’ latest gambit to eviscerate the Clean Air Act uses DOE as a stalking horse. For decades, Republicans from Ronald Reagan to Newt Gingrich to candidates in the most recent presidential elections have called for the

3 *See, e.g.*, EPA’s recently finalized National Ambient Air Quality Standards (NAAQS) for fine particle pollution. EPA estimates that these standards would provide the American public with up to \$171 dollars in public health benefits for every \$1 spent on pollution controls. U.S. EPA, Fact Sheet: Overview of EPA’s Revisions to the Air Quality Standards for Particle Pollution (Particulate Matter), *available at* <http://www.epa.gov/pm/2012/decfsurveyoverview.pdf>; Similarly, EPA’s Final Toxic Air Pollution Standards for Industrial Boilers have a benefit to cost ratio of at least 29 to 1. U.S. EPA, Fact Sheet: Final Adjustments to the Air Toxics Standards for Industrial, Commercial, and Institutional Boilers and Process Heaters at Major Source Facilities, *available at* http://www.epa.gov/airquality/combustion/docs/20121221_boiler_major_recon_fs.pdf.

4 U.S. EPA, Second Prospective Study, 1990-2020, *available at* <http://www.epa.gov/cleanairactbenefits/prospective2.html> (last visited April 11, 2013).

5 *Id.* (The report estimated benefits of \$2 trillion, with costs over the same period of only \$65 billion)

outright *elimination* of DOE. But apparently the department has value as a cover for rewriting environmental laws.

If the sponsors were actually interested in merely ensuring DOE review of EPA rulemakings no legislative action would be needed. There already is an extensive interagency review process that EPA undertakes, soliciting comments from fellow agencies, including DOE, about standards EPA is developing. This review process is consultative and collaborative, but does not task DOE with the authority to usurp health protections entrusted by Congress and prior presidents to environmental laws enforced by EPA. The Regulatory Impact Analyses accompanying EPA standards consider impacts on the industrial sector at issue, job losses, increases in energy prices and other factors, consistent with executive orders dating to the Reagan administration. One of many examples of this collaboration is the recently finalized toxic air pollution standards for industrial boilers. When finalizing these standards, EPA in its technical fact sheet noted that DOE was, among other things, collaborating with EPA to “provide site-specific technical and cost information” to regulated entities subject to the standards.⁶

In sum, this draft bill is simply the latest – and perhaps the most far-reaching – effort by this Subcommittee to tear down the system of environmental protection that has cleaned our air, and saved lives and money for decades. The novelty of this latest approach should not be allowed to mask the destructive impact the bill would have.

Sincerely,

John Walke
Clean Air Director
Natural Resources Defense Council

⁶ U.S. EPA, Factsheet: EPA’s Air Toxics Standards Major and Area Source Boilers and Certain Incinerators Technical Overview Adjustments from March 2011 Final Standards *available at* http://www.epa.gov/airquality/combustion/docs/20121221_tech_overview_boiler_ciswi_fs.pdf (last visited April 11, 2013).