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1 {York Stenographic Services, Inc.}

2 RPTS BROWN

3 HIF141.030

4 H.R. ____, THE PROMOTING NEW MANUFACTURING ACT

5 WEDNESDAY, MAY 21, 2014

6 House of Representatives,

7 Subcommittee on Energy and Power

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 10:01 a.m.,
11 in Room 2322 of the Rayburn House Office Building, Hon. Ed
12 Whitfield [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Whitfield, Scalise,
14 Shimkus, Terry, Latta, Cassidy, Olson, McKinley, Griffith,
15 Rush, McNerney, Tonko, Green, Barrow, Dingell, and Waxman (ex
16 officio).

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17 Staff present: Nick Abraham, Legislative Clerk; Leighton
18 Brown, Press Assistant; Allison Busbee, Policy Coordinator,
19 Energy and Power; Andy Duberstein, Deputy Press Secretary;
20 Tom Hassenboehler, Chief Counsel, Energy and Power; Mary
21 Neumayr, Senior Energy Counsel; Chris Sarley, Policy
22 Coordinator, Environment and Economy; Alison Cassady,
23 Democratic Senior Professional Staff Member; Caitlin
24 Haberman, Democratic Policy Analyst; Bruce Ho, Democratic
25 Counsel; and Alexandra Teitz, Democratic Senior Counsel,
26 Environment and Energy.

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|
27 Mr. {Whitfield.} I would like to call this hearing to
28 order. Today we are going to look at the regulatory
29 roadblocks to the Nation's manufacturing renaissance with a
30 discussion draft of a bill entitled ``The Promoting New
31 Manufacturing Act''. And I do want to thank all the
32 witnesses for being with us today. We look forward to your
33 testimony, and certainly I will be introducing each one of
34 you, and we will have questions for you a little bit later.
35 At this time I would like to recognize myself for a 5 minute
36 opening statement.

37 Polls have shown that the American people are of the
38 opinion that economic growth and job creation is the number
39 one issue facing the American people. And I think all of us
40 recognize the very slow economic growth over the last 6 years
41 has been pretty frustrating for all of us. Now, I know that
42 President Obama, and Vice President Biden, and people in his
43 Administration talk about this issue frequently as well. As
44 a matter of fact, the President frequently in public talks
45 about the importance of streamlining the permitting process.
46 And yet, as is so often the case, he frequently says one
47 thing, but then his administration takes actions that are

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48 contrary to that. And that has certainly been happening at
49 EPA, and many of the other regulatory bodies.

50 Now, the chemical industry estimated, as of this week,
51 that 177 projects, manufacturing projects, have been proposed
52 in the U.S., representing \$112 billion in investment, and
53 over 600,000 high paying manufacturing jobs. This is an
54 extremely positive development, obviously. And also, with
55 the great renaissance that we are having in the natural gas
56 arena, we have a unique opportunity in America to step out in
57 front and be one of the leading competitors in the world, and
58 competing in the world to grow this economy, and create jobs.

59 But this manufacturing renaissance is far from a done
60 deal, especially given the cumbersome permitting process that
61 these projects must go through. It would be a great
62 disservice to the American people if our Nation's natural gas
63 advantage is squandered through an unnecessarily lengthy
64 bureaucratic process that delays, or even prevents, these job
65 creating modern new facilities from being built.

66 Now, I might add that we invited EPA to testify today,
67 but the agency declined our invitation to permit. They did
68 talk to us yesterday, and said they look forward to working
69 with us on a technical basis as we explore this legislation.

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70 And obviously we welcome that, that is very important. And
71 even though EPA won't be here today, we do have other
72 witnesses who agree with EPA's position, and I am sure that
73 they will do a great job of explaining precisely the views of
74 their entities, as well as probably the way EPA feels about
75 some of these issues.

76 I believe this bill contains several common sense
77 measures to increase transparency, and reduce unnecessary
78 permitting delays. It increases the amount of public
79 information about the number of these permits being issued,
80 how long the process is taking, and also requires more
81 information on EPA's Environmental Appeals Board process. It
82 reduces permitting delays by requiring that the implementing
83 regulations and guidance be finalized concurrently with any
84 new or revised national ambient air quality standard, rather
85 than doing it months, or even years, later. And it also
86 directs EPA to report to Congress on steps being taken by the
87 agency to expedite the permitting process.

88 I might add that none of the substantive requirements
89 under the Clean Air Act would be altered in any way under
90 this bill. In fact, these new industrial facilities will be
91 considerably cleaner, more efficient than those currently in

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92 operation in the U.S., as well as those operating overseas.

93 So, in sum, the discussion draft includes reasonable
94 steps to streamline the permitting process, something that
95 the administration agrees, at least the President says, needs
96 to be addressed. So we are open to all suggestions improve
97 this vehicle as we move forward, and I look forward to the
98 hearing.

99 [The prepared statement of Mr. Whitfield follows:]

100 ***** COMMITTEE INSERT *****

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|

101 [H.R. ____ follows:]

102 ***** INSERT 1 *****

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|
103 Mr. {Whitfield.} At this time, I would like to
104 recognize the gentleman from Chicago, Mr. Rush, for a 5
105 minute opening statement.

106 Mr. {Rush.} I want to thank you, Mr. Chairman. Mr.
107 Chairman, the Promoting New Manufacturing Act is billed as
108 legislation that will require greater transparency and
109 timeliness in obtaining pre-construction permits for new
110 manufacturing facilities, as required under the Clean Air
111 Act. Mr. Chairman, while I am not opposed to the idea of
112 expediting the permitting process in a practical and
113 thoughtful way, I am not convinced that the bill before us
114 today as currently drafted is the way to go about, in terms
115 of reforming this process.

116 One of the main concerns I have, Mr. Chairman, with this
117 legislation is that it puts an additional burden, and
118 additional responsibility, on the U.S. EPA at a time when
119 Congress has been steadily slashing funding for the EPA,
120 making it much more difficult, if not impossible for it to
121 carry out all of its duties, these new duties, even some of
122 the new duties that this bill today requires.

123 Additionally, this bill today before us appears to

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124 exempt new facilities from complying with the revised
125 national ambient air quality standards if specific
126 unrealistic conditions are not met, without taking into
127 consideration the fact that much of the guidance, much of the
128 implementation regulations, are enacted on the state level.
129 Specifically, Mr. Chairman, Section 3 adds a new requirement
130 for the EPA that, when publishing any final new or revised
131 national ambient air quality standard, it must also
132 concurrently, and I quote, ``publish implementing regulations
133 and guidance.''

134 However, Mr. Chairman, in many cases state and regulated
135 entities already have the tools and the guidance necessary
136 for implementing the new national ambient air quality
137 standards, and in other cases, this guidance evolves
138 organically as issues and questions appear. I feel the
139 consequence of this provision in Section 3, either
140 intentionally or unintentionally, is that it may lead to an
141 emergence of new lawsuits by industry, claiming that the EPA
142 failed to meet this new requirement of concurrently issuing
143 all final regulations and guidance, which may subsequently
144 lead to detrimental delays in the issuance of new protected
145 air quality standards.

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146 I also have concerns with the provision stating that a
147 new or revised--shall not apply to the review and the
148 disposition of a pre-constructed permit application, unless
149 final regulations and guidance concerning the submittal and
150 consideration of permit applications have already been
151 published. If a new facility is allowed to be built in an
152 attainment area, but it does not have to comply with new or
153 revised national ambient air quality standards, it is unclear
154 how that new facility will impact existing facilities that
155 may want to expand. And, in fact, it may push the entire
156 area into a non-attainment area under this legislation, Mr.
157 Chairman.

158 Additionally, in areas of non-attainment, allowing new
159 facilities to be constructed that do not have to meet revised
160 national ambient air quality standards may force other
161 existing facilities to make even deeper cuts in their
162 pollution emissions in order to bring the area into
163 attainment.

164 Finally, Mr. Chairman, while I look forward to engaging
165 the distinguished panelists before us here today, I think
166 that it would serve the members of this subcommittee well, it
167 will serve all interested parties well, to hear from, and to

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168 question the EPA directly on how this legislation would
169 affect the permitting processing. Mr. Chairman, I hope that
170 we will have the opportunity to do so before we move this
171 bill to markup, and I yield back.

172 [The prepared statement of Mr. Rush follows:]

173 ***** COMMITTEE INSERT *****

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|
174 Mr. {Whitfield.} Thank you, Mr. Rush. Mr. Upton is not
175 here this morning. Mr. Shimkus, do you or Mr. Latta have any
176 comments? Okay. At this time we will recognize the
177 gentleman from California, Mr. McNerney, for his opening
178 statement.

179 Mr. {McNerney.} Thank you, Mr. Chairman. I wasn't
180 expecting to get up this early. I think today's hearing
181 focuses on the discussion draft of Promoting New
182 Manufacturing Act, and I thank the witnesses for coming here
183 this morning, taking time to testify about the proposed
184 legislation. I hope that we will have an opportunity to hear
185 from the EPA before we go to marking up this bill as well.

186 I strongly support promoting new manufacturing in the
187 United States, and, in fact, I spent a decade in the
188 manufacturing sector, so I sympathize. However, in my humble
189 opinion, Mr. Chairman, the bill looks like an attempt to
190 weaken the Clean Air Act, so we need some work on this
191 provision.

192 Under the current law, the EPA sets national ambient air
193 quality standards at levels sufficient to protect public
194 health, and with an adequate margin of safety. Essentially,

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195 these standards identify the level of air pollution that is
196 safe to breathe. When a company wants to build a new large
197 facility, or expand an existing one, it has to apply for a
198 pre-construction permit. States, not the EPA, issue most of
199 these permits. To get a permit, a company must commit to
200 install appropriate pollution controls, and show that the
201 emissions from the new expanded facility will not cause a
202 violation of the air quality standards. That is a
203 straightforward standard. We shouldn't allow new facilities
204 to worsen already dirty air, or make clean air unsafe to
205 breathe.

206 Periodically the EPA updates the air quality standards,
207 when the scientific evidence shows that it is necessary to
208 protect public health. Under the Clean Air Act, new
209 facilities need to meet whatever air quality standard is in
210 place, and that ensures that the air is healthy to breathe.
211 But this bill says that the EPA must issue regulations and
212 guidance for implementing a new air quality standard at the
213 same time that it issues the standard. If the EPA doesn't do
214 this, then, to get a permit, new facilities only have to show
215 that they meet the old, less protective standard.

216 I represented a part of California's San Joaquin Valley,

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217 which has some of the Nation's worst air pollution. These
218 conditions negatively affect the quality of life, including
219 health, safety, and missed days of school and work. In other
220 words, air quality isn't just a public health issue, but it
221 is an economic issue. In the valley, the district has up to
222 180 days to make a determination, but often these cases are
223 permitted in just a few hours. Our region has been
224 successful in addressing pre-construction permitting.

225 However, the bill introduces uncertainty into the
226 permitting process, requiring the EPA to issue regulations
227 and guidance, but it is not clear what regulations and
228 guidance will be sufficient. Also, when a facility gets a
229 permit under the old standard, it is unclear whether it would
230 be grandfathered in permanently, or whether it would have to
231 go back later and install additional pollution controls.
232 Adding uncertainty will delay the permitting process.

233 The bill also imposes a host of new reporting
234 requirements about permitting times, which impacts the
235 states, since the states, and not the EPA, actually issues
236 almost all of these permits. This reporting burden will be
237 carried by the same state and EPA personnel who process the
238 permits. The bill adds to their workload, and authorizes no

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239 new funding.

240 People in my district in the Valley deserve clean air,
241 and the Valley has made substantial progress in addressing
242 this goal. And, in fact, this year is the cleanest air on
243 record. We should continue to build on those efforts, not
244 increase the burdens on air pollution controlled districts.
245 We should be discussing how we can deliver more funding and
246 resources for those agencies, rather than weakening public
247 health protections.

248 Mr. Chairman, I yield back.

249 [The prepared statement of Mr. McNerney follows:]

250 ***** COMMITTEE INSERT *****

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|

251 Mr. {Whitfield.} Thank you very much, Mr. McNerney.

252 And, once again, I want to thank the six witnesses for being

253 with us this morning. All of you are quite knowledgeable,

254 and we look forward to your testimony.

255 Instead of introducing each one of you, and then going

256 back and introduce you again, I am just going to introduce

257 you one by one as I recognize you for your 5 minutes. So our

258 first witness this morning is Ms. Lorraine Gershman, who is

259 the Director of Regulatory and Technical Affairs at the

260 American Chemistry Council. And, Ms. Gershman, you are

261 recognized for 5 minutes.

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|

262 ^STATEMENTS OF LORRAINE KRUPA GERSHMAN, DIRECTOR, REGULATORY
263 AND TECHNICAL AFFAIRS, AMERICAN CHEMISTRY COUNCIL; KEN WEISS,
264 GLOBAL MANAGING PARTNER, AIR AND CLIMATE CHANGE,
265 ENVIRONMENTAL RESOURCES MANAGEMENT (ERM); COLIN O'MARA,
266 SECRETARY, DELAWARE DEPARTMENT OF NATURAL RESOURCES AND
267 ENVIRONMENTAL CONTROL; JOHN WALKE, SENIOR ATTORNEY AND
268 DIRECTOR, CLIMATE AND CLEAN AIR PROGRAM, NATURAL RESOURCES
269 DEFENSE COUNCIL; KAREN KERRIGAN, PRESIDENT AND CHIEF
270 EXECUTIVE OFFICER, SMALL BUSINESS AND ENTREPRENEURSHIP
271 COUNCIL; AND ROSS EISENBERG, VICE PRESIDENT, ENERGY AND
272 RESOURCES POLICY, NATIONAL ASSOCIATION OF MANUFACTURERS.

|

273 ^STATEMENT OF LORRAINE KRUPA GERSHMAN

274 } Ms. {Gershman.} Thank you. Chairman Whitfield, Ranking
275 Member Rush, members of the subcommittee, thank you for the
276 opportunity to testify on behalf of the American Chemistry
277 Council in support of the draft legislation Promoting New
278 Manufacturing Act. This legislation will improve the
279 regulatory permitting process for new and expanded factories,
280 and help ensure continued growth in shale related

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281 manufacturing in the United States.

282 ACC represents the leading companies engaged in the
283 business of chemistry. We apply the science of chemistry to
284 create innovative products and services that help make
285 peoples' lives better, healthier, and safer. The U.S.
286 chemical industry is a key element of the economy, providing
287 784,000 skilled, good paying jobs all across our country. We
288 are among the nation's largest exporters and investors in R
289 and D. Our advanced materials and technologies include many
290 that help save energy and reduce greenhouse gas emissions.
291 High performance building insulation and windows, solar
292 panels and wind turbines, and lightweight packaging and
293 vehicle parts all start with chemistry.

294 America's chemical industry is undergoing a historic
295 expansion made possible by abundant, affordable supplies of
296 natural gas and natural gas liquids from shale formations.
297 Due to our decisive competitive advantage in the cost and
298 availability of energy and feed stock, the United States is
299 currently the most attractive place in the world to invest in
300 chemical manufacturing. As of this week, 177 chemical
301 industry projects, valued at \$112 billion in potential new
302 U.S. investment, have been announced. Fully 62 percent of

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303 this is foreign direct investment. Within 10 years, the new
304 investments could generate tens of billions of dollars in new
305 chemical industry exports, and hundreds of thousands of
306 permanent new jobs.

307 All of these projects must undergo a lengthy and complex
308 environmental permitting process, filled with challenges that
309 could derail the investments. Problems include uncertainty
310 as to the schedule and process for obtaining a final pre-
311 construction permit, and a requirement that companies use
312 emission modeling programs that cannot adequately accommodate
313 site specific data. Once a project is significantly delayed,
314 the project can be scrapped, and companies make plans to
315 proceed elsewhere.

316 During his State of the Union address this past January,
317 President Obama highlighted the important role that domestic
318 natural gas is playing in the U.S. economy, and committed his
319 administration to facilitate the permitting process for
320 manufacturing projects. The President said, ``Businesses
321 plan to invest over \$100 billion in new factories that use
322 natural gas. I will cut red tape to help those states get
323 these factories built.'' The White House fact sheet stated,
324 ``The Administration will help states and localities

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325 coordinate review of proposed private sector projects to
326 invest in new energy intensive U.S. manufacturing plants
327 relying on natural gas.''

328 Manufacturing facilities must be able to obtain required
329 permits in a timely, transparent, and efficient manner. In
330 recent years, EPA has tightened a number of NAAQS, including
331 ozone in 2008, nitrogen dioxide and sulfur oxides in 2010,
332 and fine particulate matter in 2012. A proposed tighter
333 ozone NAAQS is expected later this year. Meanwhile, EPA is
334 still working to implement these standards, along with some
335 even older NAAQS. Lacking clear direction from EPA, state
336 permitting agencies and manufacturing facilities have, at
337 times, been left confused about the requirements to complete
338 the pre-construction permitting process.

339 Manufacturing facilities need certainty and transparency
340 in the permitting process. The steps required to obtain a
341 pre-construction air permit within the Clean Air Act's
342 required 12 month deadline must be clear to all. EPA must
343 issue implementation rules and guidance in tandem with any
344 final NAAQS rules. The Promoting New Manufacturing Act will
345 improve the permitting process by creating a dashboard
346 showing the total number of pre-construction permits issued

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347 during the fiscal year, the percentage issued within 1 year
348 of application, and the average length of the review process,
349 requiring EPA to issue guidance concurrent with any new rules
350 so that manufacturers fully understand how to comply, and
351 directing EPA to prepare an annual report to Congress on
352 actions the agency has taken to expedite the permitting
353 process.

354 The Promoting New Manufacturing Act represents a step
355 towards a timely, efficient, and transparent regulatory
356 process. We are hopeful that, with continued leadership from
357 this committee, and others in the House, that we can pass
358 this bill, and expedite the unprecedented chemical industry
359 investment planned for the United States. With that, I would
360 be happy to take any questions.

361 [The prepared statement of Ms. Gershman follows:]

362 ***** INSERT A *****

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363 Mr. {Whitfield.} Thank you very much, Ms. Gershman. At
364 this time I would like to recognize Mr. Ken Weiss, who is the
365 global managing partner for the Air and Climate Change
366 Environmental Resource Management Company. And you are
367 recognized for 5 minutes, Mr. Weiss.

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368 ^STATEMENT OF KEN WEISS

369 } Mr. {Weiss.} Thank you. Chairman Whitfield, Ranking
370 Member Rush, thank you for the opportunity to testify in
371 support of the draft legislation Promoting New Manufacturing
372 Act. The legislation will remove much uncertainty and
373 related schedule delays from the air emissions permitting
374 process for major capital projects, and help ensure continued
375 growth in manufacturing in the United States.

376 ERM is a leading global provider of environmental health
377 safety and sustainability related services. We have more
378 than 5,000 people operating in 40 countries, and about 150
379 offices around the world. Seventy of those offices are in
380 the United States. We have about 350 air quality staff in
381 the United States. We have worked for about 50 percent of
382 the global Fortune 500 in the past 5 years on air quality
383 related assignments, and each year we do about 800 air
384 quality related assignments.

385 Most of our work is in the oil and gas, power, mining,
386 chemicals, and manufacturing sectors, across a wide swath of
387 American industry, and a significant portion of my practice

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388 is advising these industries and my clients on the impacts of
389 their permitting regulations on major capital projects. My
390 experience almost unanimously is that air pre-construction
391 permits are typically on the critical path of the vast
392 majority of major capital projects, and that about 900
393 projects a year might require these types of permits that
394 would be facilitated by the Promoting New Manufacturing Act.

395 Companies seeking to execute capital projects need to be
396 able to develop realistic and predictable project timelines.
397 This would ensure that equipment can be designed, procured,
398 installed, and brought online when expected, and also support
399 investment decisions. The uncertainty in the permitting
400 process creates significant issues for such investment
401 decisions. Companies are forced to guess at the amount of
402 additional time to build into the permitting cycle for
403 planning, as EPA often fails to meet the 1 year time limit
404 allowed in the Clean Air Act for processing a permit. For
405 projects that have investment needs of billions of dollars,
406 the impact of these delays should not be underestimated.

407 The Promoting New Manufacturing Act removes much of this
408 uncertainty by ensure that the EPA has issued final guidance
409 to permit applicants on the exact manner in which to conduct

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410 the permitting analyses associated with capital projects.
411 Guidance is necessary, as many technical issues must be
412 addressed in determining how to conduct the analyses that can
413 show compliance with the ambient air quality standards. This
414 is particularly important, as EPA is constantly updating the
415 ambient air quality standards. EPA recently tightened the
416 NAAQS for nitrogen dioxide and sulfur oxides in 2010, and
417 fine particle matter in 2012, and is expected to issue a
418 tighter ozone standard later this year. At the same time,
419 the agency is working to implement these standards, along
420 with some older NAAQS, including the 1997 and 2008 ozone
421 NAAQS, and the 1997 and 2006 particulate matter NAAQS. This
422 disconnect results in state permitting agencies and the
423 regulated community in not having clear direction from the
424 EPA regarding what needs to be done to complete the air pre-
425 construction permitting process.

426 EPA's failure to provide final implementation rules and
427 guidance to the regulated community and state agencies is
428 easily documented. Using the fine particle matter standard
429 as an example, it was not until May 16, 2008 that EPA
430 promulgated its final rule for implementation of the new
431 source review program for fine particle matter, despite

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432 having promulgated the NAAQS in 1977 and 2006. Importantly,
433 the 2008 rule required certain gases to be considered
434 precursor emissions to fine particle formation.

435 Precursor emissions are emitted as gases, but react in
436 the atmosphere to foreign particulate matter, such as sulfate
437 and nitrates. Despite having adopted this rule in 2008, even
438 today there is no final guidance available from EPA on how to
439 conduct a fine particle matter ambient air quality analysis,
440 nor is there any approved computer model available to analyze
441 emissions surrounding the chemical transformation of
442 precursor emissions into particular matter, a major
443 contributor to fine particle concentrations in the ambient
444 air.

445 The most recent guidance from EPA on how to conduct this
446 analysis is labeled draft, and was issued in March of 2013.
447 It has not been finalized now, more than a year since its
448 release. Affected sources have no choice but to left with
449 uncertainty. We routinely advise clients that obtaining a
450 PSD permit can obtain anywhere from 1 to 3 years, and that a
451 minimum of 12 to 18 months need to be allowed in the project
452 schedule.

453 The types of issues we have seen have included a large

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454 shale gas fired combustion turbine that was being constructed
455 right in the middle of adoption of the PM2.5 NAAQS. The new,
456 more stringent, NAAQS could not be met in the area of the
457 project location, so there was no way to make the required
458 air quality demonstrations. EPA guidance was non-existent,
459 and the state did not know how to resolve this issue. This
460 caused unnecessary project delays for a major new gas
461 turbine.

462 We worked on a steel plant in Louisiana that was delayed
463 due to issues surrounding the NO2 ambient air quality
464 standard that was adopted during a review of the permit
465 application, and more than a year after the application was
466 filed. We currently estimate that the lack of guidance added
467 2 years to the project schedule.

468 The above examples are just a few of the obstacles we
469 have experienced firsthand. The list of obstacles will grow
470 as more facilities apply for pre-construction permits, and as
471 the NAAQS continue to get more stringent. Additionally, by
472 requiring the EPA to determine its track records to meeting
473 the permit processing timeline, the agency will have the
474 information necessary to act on and remove the underlying
475 causes of project delays created unintentionally by the

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476 permitting program.

477 Thanks for your time. I will be happy to answer any

478 questions you may have.

479 [The prepared statement of Mr. Weiss follows:]

480 ***** INSERT B *****

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|

481 Mr. {Whitfield.} Thank you. Our next witness is Mr.
482 Colin O'Mara, good to see you, who is Secretary of the
483 Delaware Department of Natural Resources and Environmental
484 Control. And we are glad you are with us, and you are
485 recognized for 5 minutes.

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|

486 ^STATEMENT OF COLIN O'MARA

487 } Mr. {O'Mara.} Thank you, Mr. Chairman, Ranking Member
488 Rush. I greatly appreciate you accommodating me, being a
489 last minute add to this panel, replacing my staff member. I
490 will actually be starting a new job in 2 months. This will
491 probably be the last time I will be before you in this
492 capacity. I am going to become the CEO of the National
493 Wildlife Federation, so you will be hearing me to bother you
494 about wildlife issues in the future, maybe a little less on
495 the Clean Air Act. But--

496 Mr. {Rush.} Mr. Chairman, I just want to extend
497 congratulations to him.

498 Mr. {O'Mara.} Thank you.

499 Mr. {Rush.} What a promotion.

500 Mr. {O'Mara.} I will be in Illinois soon, so--

501 Mr. {Whitfield.} Yeah, and we have a lot of issues we
502 want to talk to you about on wildlife.

503 Mr. {O'Mara.} Nothing is as sticky as this stuff.

504 Thank you very much for having me today. Delaware has a

505 long, proud history of manufacturing. You know, companies

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506 like DuPont, Gore, you know, we have a refinery, all kind,
507 you know, the chemical industry in many ways completely grew
508 out of Delaware. And we actually agree with the premise of
509 this effort, that more efficient permitting, more
510 predictable, more clear and certain permitting is obviously a
511 good thing for economic growth. We just kind of question the
512 unintended consequences of this particular approach, and have
513 maybe a few suggestions for a different way to look at it.

514 In Delaware, under the leadership of our governor, Jack
515 Markel, we have focused like a laser on trying to improve
516 permitting efficiency. You know, and my Air Director is
517 sitting behind me, Ali Mirzakhilili, one of the finest Air
518 Directors in the county, put his team through an incredible
519 process of value stream mapping, trying to reduce permit
520 times. He is gone, you know, our permits for kind of major
521 sources take about 4 months, where in many other states it is
522 more than a year. Our minor sources will take 2 months. We
523 are at about 72 days right now, compared to about 104 days,
524 about 3-1/2 months, about 3 or 4 years ago. And so we have
525 shown that, by having a better process, we can get through
526 the permits more quickly, providing the certainty.

527 And that is really the key to our approach in Delaware.

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528 The approach is fairly simple. We want to provide certainty
529 to industry by articulating clear standards. We want to
530 deliver permits in a timely and efficient manner, so they get
531 the decisions they need. And then we actually supplement our
532 strategy with one other piece. We actually provide some
533 incentives. If folks are willing to go above and beyond
534 permitting requirements, we provide, you know, small grants.
535 They want, you know, maybe adopting cleaner fuels, or helping
536 them get, you know, a gas pipeline to the site, or, you know,
537 things that can actually make the facility better long run.
538 And it is because we strongly believe in the underlying
539 belief in the Clean Air Act, and the tenet of the Clean Air
540 Act, that it is much cheaper to reduce emissions during the
541 design of a facility than it is to try to retrofit later.

542 Now, a lot of these facilities around the country that
543 have tried to, you know, add controls later, and you have
544 heard this in response to the Toxic Rule and others, the
545 expense and the time that folks need to try to do it after
546 the fact. If we can figure out ways to incorporate these
547 technologies earlier, it is cheaper, and it doesn't create
548 kind of unintended consequences in other facilities.

549 And I think that the challenge with this bill as

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550 proposed, and I really appreciate the opportunity to come at
551 the draft discussion level, before it is formally introduced,
552 before it is marked up, because the unintended consequence of
553 having folks go in and apply for permits under an old
554 standard, when a new standard has already been promulgated in
555 a meaningful way, even though the guidance may not have been
556 issued, puts both the state and the regulated entity in an
557 incredibly precarious position. The regulated entity is
558 basically knowingly not putting the controls that would be
559 necessary for the standard that is promulgated that is fully
560 in the Federal Code at that point, so there is a potential
561 legal liability there. The state, then, has to figure out
562 other places to make up the reductions that could have been
563 more cost effectively reduced through the controls being put
564 on at this new facility.

565 And so what ends up happening is it might help that
566 individual facility, if they have to do less on the control
567 side. The challenge is those reductions that could have been
568 achieved have to be made up somewhere else. And so, as we
569 are trying to put together our state implementation plans, we
570 might have to go back to an existing industry that has
571 already put on a lot of controls, trying to get that extra

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572 additional ton out of that facility, because this other
573 facility didn't kind of do their fair share.

574 The other kind of inequity that we could create
575 unintentionally is that a new facility that comes in after
576 the guidance. So you could have two facilities, same type of
577 operation, gas turbine generation, you know, one that comes
578 in before the guidance is promulgated, one that comes in
579 afterwards. The one that comes in afterwards is going to
580 have to meet a higher standard, creating another inequity
581 there, where they are doing more to go above and beyond the
582 requirements for exactly the same facility in the same state.
583 You know, we would much rather see ways to, you know, to
584 really kind of incentivize the folks that go above and beyond
585 the permit conditions, rather than having this inequity of
586 the types of standards that different folks meet.

587 And it really comes back to the underlying assumption
588 that I will challenge in the bill, that states aren't doing a
589 good job figuring this out. EPA has had slow guidance on
590 many of these rules. I mean, the 2008 is a good example.
591 But that doesn't paralyze the states in any meaningful way.
592 We are talking to each other all the time. We have moving
593 ahead. Frankly, a lot of times, the way that we issue

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594 permits in Delaware, and a lot of the East Coast states are
595 actually more efficient and more flexible than the way the
596 guidance actually comes out later. Like, actually not having
597 the guidance, and allowing us to implement under just the
598 rule allows us to be more nimble, and actually help industry
599 in a significant way.

600 And so, you know, I do respect the intent. I mean,
601 there is no one that supports manufacturing more than me, a
602 kid that grew up in Upstate New York, in Syracuse. That is,
603 you know, kind of the heart of the Rust Belt that needs these
604 kind of jobs. But we think we can actually achieve our
605 quality goals in a much more efficient way, not have adverse
606 public health impacts, because we will have additional
607 pollution if this does kind of go into effect, that is going
608 to be very difficult to pull out of the system later. And we
609 would love to work with you on a more efficient way to do it,
610 because we firmly believe that, you know, manufacturing is
611 absolutely critical, but we think we can do a little better
612 than this proposal.

613 [The prepared statement of Mr. O'Mara follows:]

614 ***** INSERT C *****

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615 Mr. {Whitfield.} Thanks very much, Mr. O'Mara. At this
616 time our next witness is Mr. John Walke, who is a Senior
617 Attorney and Director for the Climate and Clean Air Program
618 at the Natural Resources Defense Council. And, Mr. Walke,
619 welcome, and you are recognized for 5 minutes.

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620 ^STATEMENT OF JOHN WALKE

621 } Mr. {Walke.} Thank you, Chairman Whitfield, Ranking
622 Member Rush, and members of the subcommittee for the
623 opportunity to testify today. The draft legislation before
624 you, in our opinion, is a flawed bill that would authorize
625 amnesty from national clean air health standards, create red
626 tape, and impose unintended burdens on local businesses.
627 Instead of reducing permitting burdens, the bill would open
628 up facilities to new legal liabilities, higher costs, and
629 regulatory delays. I suspect many of these outcomes are
630 unintended consequences of the draft bill, but these
631 objectionable substantive elements of the draft legislation
632 are couple with a false premise, and lack of foundation for
633 its central approach. I would like to take a few minutes to
634 discuss the individual sections of the draft bill, and why
635 they are problematic.

636 Section 3 of the bill is the most problematic part of
637 the draft bill. It creates an unjustified amnesty from new
638 or revised national clean air health standards during pre-
639 construction permitting for individual facilities undertaking

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640 new construction or modifications. This would harm air
641 quality, the health of surrounding communities, and impose
642 unfair burdens and costs on other local businesses in the
643 same area as the facility receiving the amnesty. The bill
644 would create unintended consequences, and increase costs for
645 other businesses in that same area. This is because the
646 Clean Air Act still would require EPA state and local
647 officials to attain national health standards, and to avoid
648 interfering with clean air resources in areas that already
649 meet national health standards.

650 The only way for regulators to accomplish this would be
651 for government regulators to crack down on other businesses
652 in the area, or to require the newly permitted facility to
653 either stop operating, or undertake potentially costly
654 retrofits to install necessary pollution controls. Imposing
655 additional costs and control obligations on existing local
656 businesses in order to grant amnesty to a newly constructed
657 facility is inequitable, and even punitive, in our view.
658 There is no reason to impose these terrible choices on
659 facility owners or operators, nor on state and local
660 regulators, local businesses, and local communities, nor is
661 there any reason for doing damage to the Clean Air Act's

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662 health safeguards in the manner that we believe Section 3 of
663 the bill would.

664 None of the written testimony before you today has
665 concrete examples of air permits not being issued due to a
666 lack of EPA implementing rules or guidance. I am personally
667 unaware of situations in which EPA implementation rules or
668 guidance were deemed necessary to the issuance of pre-
669 construction permits following revisions to national health
670 standards. Pre-construction permits, as Mr. O'Mara has
671 indicated, continue to be issued while national air quality
672 standards are being revised and updated. Delays and
673 uncertainty are not welcome, to be sure, but uncertainty for
674 corporations should not come at the expense of subjecting
675 Americans to the certainty of unhealthy and illegal levels of
676 air pollution in the manner that the bill's amnesty provision
677 would.

678 Turning to Sections 2 and 4 of the draft bill, these
679 provisions represent red tape that consume limited agency
680 resources in order to compile information mostly in the
681 possession of state and local agencies, rather than EPA.
682 These sections require EPA to collect information on pre-
683 construction permitting, but overlook the fact that over 80

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684 percent of the states oversee their own pre-construction
685 permitting. EPA rarely permits individual facilities,
686 actually, and it makes little sense for Congress to require
687 this information from EPA, rather than from individual state
688 and local permitting authorities. In light of this
689 permitting landscape, the question then becomes whether it
690 makes sense to saddle resource constrained state and local
691 governments with red tape at the expense of carrying out and
692 enforcing health safeguards that protect Americans. We do
693 not think this makes much sense.

694 Lastly, the draft legislation manages to run afoul of
695 all five Congressional Declarations of Purposes behind the
696 Clean Air Act's pre-construction permitting program in clean
697 areas, or so-called attainment areas. The Act's pre-
698 construction permitting program was written into law by
699 Congress to ensure that newly constructed or modified
700 stationary sources do not violate national health standards,
701 do not interfere with a state's plan for meeting, and
702 continuing to meet those health standards, do not harm
703 national parks, and do not impose unfair burdens and
704 additional costs on other local businesses in an area when a
705 newly permitted facility wishes to construct and add higher

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706 pollution levels. The draft bill contravenes all of these
707 statutory objectives.

708 Today's bill, in our view, represents a sharp departure
709 from the Clean Air Act, and 37 years of permitting practices.
710 EPA updates national health standards when the science shows
711 that standards should be strengthened to protect Americans
712 with an adequate margin of safety. Providing facilities
713 amnesty from national health standards does a disservice to
714 permit holders, other local businesses, air quality, and
715 public health. I urge the subcommittee not to advance the
716 draft bill. Thank you.

717 [The prepared statement of Mr. Walke follows:]

718 ***** INSERT D *****

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719 Mr. {Whitfield.} Thank you, Mr. Walke. And our next
720 witness is Ms. Karen Kerrigan, who is the President and Chief
721 Executive Officer for the Small Business and Entrepreneurship
722 Council. And you are recognized for 5 minutes.

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723 ^STATEMENT OF KAREN KERRIGAN

724 } Ms. {Kerrigan.} Thank you, Chairman Whitfield, and
725 Ranking Member Rush, and members of the subcommittee, for the
726 opportunity to participate and provide the views of the Small
727 Business and Entrepreneurship Council this morning on
728 legislative efforts to promote new manufacturing and growth
729 in the United States. Again, I am Karen Kerrigan, President
730 and CEO of SBE Council. We are a non-profit advocacy,
731 research, and training organization dedicated to protecting
732 small business, and promoting entrepreneurship. And for 20
733 years, SBE Council and our members have worked to develop and
734 support policies that enable business startup and growth. We
735 are pleased to lend our support to the Promoting New
736 Manufacturing Act. This draft bill is a practical measure
737 that aligns with bipartisan goals to improve government and
738 transparency, and strengthen quality job growth and
739 investment in the United States.

740 The legislation contains reasonable accountability
741 features that will serve to provide businesses with the
742 timely information they need to make decisions and plan.

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743 Provisions that require the EPA to better monitor, make
744 public, and report on the timing of permits, and to provide
745 timely and concurrent guidance and rules about how to comply
746 with new or revised air quality standards, will establish
747 greater clarity and certainty for businesses and investors.
748 This is especially critical, given the potential for new
749 manufacturing in the U.S., a positive development that will
750 lead to quality job growth, and opportunities for small
751 businesses and entrepreneurs.

752 Now, the figures, as you noted Chairman, and also
753 provided by Ms. Gershman of the American Chemistry Council,
754 are indeed impressive, and there is a lot of small business
755 opportunity in those projects, opportunities for struggling
756 small businesses, and the potential for new business startup
757 and growth. And this is an area where our economy needs
758 help. That is, we need more entrepreneurship, and growing
759 small businesses that hire full time employees.

760 Unfortunately, ongoing reports find that we are flailing in
761 this critical area. However, there is one sector where we
762 are excelling, and that is in energy.

763 Beyond the benefits of transparency and clarity the
764 Promoting New Manufacturing Act would bring to the permitting

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765 process, small businesses in the energy sector would continue
766 to benefit from the growth in natural gas demand that new or
767 expanded facilities would generate. The tremendous increase
768 in domestic natural gas production has been a significant
769 development for small business. Entrepreneurship and
770 business formation in the energy sector in recent years has
771 been extraordinary. In a report released by our organization
772 in June of 2013, we found that at the same time that both
773 employment and employer firms declined between 2005 and 2010,
774 job growth and new business formation grew within the energy
775 sector, and continues to this day. I provided those detailed
776 numbers in my written testimony, but, again, the growth in
777 new businesses is particularly striking among small firms.

778 President Obama recognized the opportunities and
779 potential in shale gas development in his State of the Union
780 speech this past January. He pledged to cut red tape to help
781 states to get those factories built referenced in his speech,
782 and based on the ACC's numbers, the Promoting New
783 Manufacturing Act is an opportunity to advance an initiative
784 that appears aligned with the President's pledge. Bringing
785 greater transparency and accountability to the pre-
786 construction permit program is one way both parties can work

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787 together to help revitalize manufacturing and strengthen U.S.
788 competitiveness. More growth opportunities for small
789 business and new manufacturing projects, and the energy
790 sector, will produce a virtual cycle of increased investment,
791 enhanced GDP growth, rising incomes, and more jobs.

792 Thank you again, Chairman and Ranking Member Rush. I
793 look forward to questions and discussion.

794 [The prepared statement of Ms. Kerrigan follows:]

795 ***** INSERT E *****

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|

796 Mr. {Whitfield.} Thank you, Ms. Kerrigan. And our
797 final witness is Mr. Ross Eisenberg, who is the Vice
798 President for Energy and Resources Policy at the National
799 Manufacturers Association. And thanks for being with us, Mr.
800 Eisenberg. You are recognized for 5 minutes.

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801 ^STATEMENT OF ROSS EISENBERG

802 } Mr. {Eisenberg.} Of course. Thank you so much. Good
803 morning, Chairman Whitfield, Ranking Member Rush, members of
804 the subcommittee. As you have heard from the National
805 Association of Manufacturers, and our 12,000 members, for
806 many years now, the boom in domestic energy production is
807 driving major new investment in manufacturing, and
808 contributing to increased U.S. competitiveness around the
809 world. For us, for manufacturers, this could mean as many as
810 one million new jobs by 2025 as we build new iron, steel,
811 cement, fertilizer, chemicals, aluminum, plastics, and many
812 other manufacturing facilities, as well as the products that
813 are made from these materials, so the future is good.

814 We understand, as manufacturers, the risks inherent in
815 making investments of this magnitude in the United States.
816 We understand that, even with our built-in energy advantage,
817 we still have a significant disadvantage owing to other
818 policies, like taxes, and torts, and regulations. We
819 understand that new regulations will be issued while we wait
820 for our permit, moving the goalpost, and forcing us to change

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821 our entire plan mid-stream. We understand that often law
822 firms, masquerading as public interest groups, will exploit
823 every step of the approval process, and drive up project
824 costs, in the hopes that we will simply want to walk away.

825 We understand that all of this is going to happen, and
826 we still take these risks, but it doesn't mean that we don't
827 want to do something about it. So with manufacturing on the
828 verge of a major comeback, there is really no better time, in
829 our view, than now for the subcommittee to examine the
830 permitting process, and whether or not it can be improved,
831 and if so, how.

832 Manufacturers continue to struggle with the complex
833 requirements of the new source review program. When I was
834 preparing for today's hearing, I sent a note to our members,
835 and reached out to our members, asking for their feedback on
836 what is good and what is bad about the NSR process. What I
837 got back is listed in my written testimony. It is long.

838 The intention here was not to create a list of
839 horrors, and I do understand that that is probably what it
840 looks like, but rather to try to give members an honest
841 assessment of what the plant managers, the business owners,
842 the EH and S people at my members in the field are having to

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843 do when they try to build facilities, or modify existing
844 ones. Challenges they raised with me in the NSR process
845 include changed permit conditions that derail the project, a
846 mandatory stay on construction when a project is challenged
847 at the EAB level, modeling issues, of which they say they are
848 very many, barriers to installation of energy efficiency, and
849 combined heat and power that the NSR process provides,
850 threats of litigation on the back end, which then create
851 delays on the front end as you try to serve judgment, improve
852 the permit, uncertainty on how to address remands when
853 permits are sent back, and even delays they are finding for
854 simple minor source permits that don't even trigger the PSD
855 process. And the EPA, to its credit, has listened to
856 manufacturers' permit concerns, and it is aware of many of
857 these problems, and is actively trying to fix them, but we
858 believe Congress can and should be part of the solution as
859 well.

860 Now I would like to also talk about what appears to be a
861 real problem in the functioning of the PSD program for
862 greenhouse gases. For several years the NAM and other groups
863 in this town have warned the members of the subcommittee that
864 extending the PSD permitting program to greenhouse gases

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865 could act as a deterrent to construction. Based on the
866 numbers of permits completed to date, I am concerned that we
867 may have actually been correct in that respect.

868 When EPA issued the greenhouse gas tailoring rule 4
869 years ago, it estimated that even with tailoring, it would
870 have to issue about 900 permits per year, so by now about
871 1,800 permits. However, recent information from the agency
872 shows that in those 3 plus years since PSD was extended to
873 greenhouse gases, they have only done 166 permits total,
874 rather than 1,800, so that is a stunning drop-off, and one
875 for which the agency really doesn't seem to have an easy
876 answer. I think we should figure out why. We at NAM fear
877 that PSD for greenhouse gases may actually be acting as a
878 deterrent to new construction.

879 So we believe the pre-construction permitting process
880 can be improved, but we don't really believe this should be a
881 partisan, or even a contentious issue. Many of the problems
882 identified can be addressed through a collaborative process
883 involving EPA, Congress, and the regulated community in the
884 states. Frankly, I am a little surprised by the reaction to
885 this bill from some of my colleagues here on the panel. Let
886 us be clear about what we are arguing about here. We are

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887 talking about some additional reporting requirements, and
888 requiring that EPA issue a document in a timely fashion.
889 That is really it. That is what we are arguing about here.

890 So we believe the Promoting New Manufacturing Act takes
891 a pragmatic approach to this very complex issue. It
892 diagnoses a problem, if one exists, and provides the best
893 available information so that EPA and the Congress can then
894 decide if steps need to be taken to improve the process, and
895 it requires the agency to do its job issuing guidance in a
896 timely fashion. Given that a very, very large revision to
897 the Ozone Act, quite possibly the most expensive new
898 regulation that will ever be issued, and I say that in all
899 seriousness, is due by the end of next year, this is a
900 relatively small task to require from the agency. If the EPA
901 expects implementation of this major new reg to begin
902 immediately upon its issuance, then it must, at a minimum,
903 issue the tools and develop the tools manufacturers are going
904 to need to comply with it.

905 So we appreciate the time and attention that the
906 subcommittee is giving to the pre-construction permitting
907 process. We thank you. Manufacturers look forward to
908 working with you, and the entire subcommittee, on this bill,

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909 and on other measures that will enhance our manufacturing
910 comeback. Thank you.

911 [The prepared statement of Mr. Eisenberg follows:]

912 ***** INSERT F *****

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|
913 Mr. {Whitfield.} Thank you, and thank all of you for
914 your testimony. At this time I would like to recognize
915 myself for 5 minutes for questions, and then we will go to
916 the other members.

917 Ms. Gershman, you had mentioned in your testimony, and
918 other witnesses also, about the 177 projects, and that 62
919 percent of this would be foreign investment. Are you all
920 tracking these projects, and could you give us an update on
921 your analysis of that?

922 Ms. {Gershman.} Certainly. We have been tracking
923 publicly announced projects, so nothing in our--any of our
924 numbers are secret. It is all gathered from press releases
925 that companies themselves have made. The 177 new projects
926 that I reference include projects in the petrochemical,
927 resins, fertilizer, chlor-alkali, and organic chemical
928 sectors. There is an even larger of announced projects in
929 other industries resulting from the use of shale gas, which
930 includes iron, steel, tires, and many manufacturing plastic
931 processors and resins as well.

932 Mr. {Whitfield.} Now, you know, one of the frustrating
933 things, obviously, about Congress today is that there seems

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934 to be very little agreement on much of anything, but on
935 expediting the permitting process, even the President is
936 talking about the need for that. The states come to us
937 frequently and talk about the need for that. Mr. O'Mara
938 talks that in Delaware things seem to be going relatively
939 well. I mean, Mr. Walke may disagree and not think anything
940 really needs to be changed, but, Mr. Walke, would I be
941 accurate in saying that, in your view, really nothing does
942 need to be changed about this permitting process right now?

943 Mr. {Walke.} No. We would support the expedition of
944 permits, just not at the expense of granting amnesty from
945 health standards. That has been the focus of my testimony.

946 Mr. {Whitfield.} But there are some methods to expedite
947 that you all would be supportive of?

948 Mr. {Walke.} Sure. Certainly. We would be happy to
949 join that conversation.

950 Mr. {Whitfield.} And Mr. O'Mara, now, you said that you
951 had some ideas on this, because, like I said, the states have
952 complained to us about lack of direction. We have heard a
953 lot of witnesses talk about it, but evidently it is not an
954 issue in Delaware. What are some areas that you think we
955 should be looking at that maybe we are not looking at right

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956 now?

957 Mr. {O'Mara.} I think some of the conversations you
958 facilitated last year, actually, I think has some good kind
959 of bipartisan ideas around greater communication with EPA.
960 And, I mean, one of the hang-ups that happens in some other
961 regions, I am fairly blessed in Region Three that we are
962 talking to our regional administrator all the time, and--

963 Mr. {Whitfield.} Are you referring to the forums?

964 Mr. {O'Mara.} Yeah, the forums that you held.

965 Mr. {Whitfield.} Okay.

966 Mr. {O'Mara.} I mean, one area for, you know, greater
967 collaboration is working with the EPA prior to submittal. So
968 the states will send it back for the final review, and
969 sometimes they get sent back, get remanded. You know, that
970 process, if there is a greater coordination on the front end,
971 can avoid a lot of the misunderstanding. And so you have
972 seen some issues in some other states where there isn't that
973 coordination up front, and you end up with this kind of
974 torturous cycle. You know, if you can actually cut the back
975 end, that provides a lot more certainty.

976 I also think transparency could really help. You know,
977 we try to be very transparent with our applicants, you know,

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978 about, you know, this is the date the draft permit is going
979 to be issued, this is the date of the hearing, this is the
980 date the decision will be made, so they can build that into
981 their plan, because time is money. I mean, the cost of the
982 permit is a fraction of the opportunity cost of not getting
983 implemented. So, you know, more transparency there at the
984 state and local level though, as Mr. Walke was saying, rather
985 than at EPA's level, because really this is a local decision.

986 And then the last is actually around money. You know, a
987 lot of the cuts to the EPA have been in the air program in
988 the last few years, and those are resources that actually pay
989 for much of the staff that would be putting out the guidance
990 that we are complaining is being delayed. Some of that
991 trickles through to the states, because the state grants get
992 cut also, and so then we are trying to do more with less,
993 trying to get things out. And so having sufficient staff to
994 deliver permitting, more transparency, and then encouraging
995 additional investment I think would be a good package that
996 everyone could agree to.

997 Mr. {Whitfield.} Okay. Mr. Eisenberg, are you
998 personally aware of projects that have actually just been
999 abandoned because of the complications of this permitting

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1000 process?

1001 Mr. {Eisenberg.} Yes, I am. And the members themselves
1002 ask that I not reveal who they are, but yeah, I mean, without
1003 a doubt. And this is not, you know, these happen. Sometimes
1004 they don't happen. So I don't want to make generalizations
1005 here, but yeah, I have members that walked away from projects
1006 because the permitting process was taking too long, or the
1007 modeling got to a point where there was no way that they
1008 could build this facility to meet the standards that were
1009 being--

1010 Mr. {Whitfield.} You know, I am glad that you raised
1011 the greenhouse gas issue, because the endangerment finding,
1012 and even with the tailoring rule, I mean, I think EPA
1013 recognizes that they are going to have some significant
1014 issues, and those numbers that you gave about the 900 per
1015 year, and they have issued, like, 166, and I guess the
1016 endangerment finding was in 2009. So I think that is a very
1017 real issue, but I think all of us recognize the need to try
1018 to come up with a solution, and I hope that we have an
1019 opportunity, all working together, to do that.

1020 My time has expired, so at this time I recognize Mr.
1021 Rush for 5 minutes.

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1022 Mr. {Rush.} I want to thank you, Mr. Chairman.

1023 Secretary O'Mara, we often hear from regulated
1024 industries about the importance of regulatory certainty in
1025 making investment decisions. We even heard from some of the
1026 witnesses today that this bill would do nothing to enhance
1027 regulatory certainty. Has your state even been unable to
1028 issue pre-construction permits because EPA has not issued
1029 guidance for a new air quality standard, and is this a
1030 situation that states have the ability to handle?

1031 Mr. {O'Mara.} Thank you for the question. You know, we
1032 were the first state to sign the Constitution, so we have no
1033 problem kind of blazing ahead. And, frankly, in the case of
1034 times where there isn't guidance, we keep working hard, we
1035 don't wait. And so we will coordinate with the EPA, we will
1036 make sure they know what we are doing, but it is never held
1037 us up. And I have permitted, you know, hundreds of megawatts
1038 of combined gas plants. I have permitted big, you know, a
1039 restart of a refinery permitted, and big expansions of units,
1040 all kinds of energy projects in our state. And, you know, we
1041 are turning around permits very, very quickly, and it hasn't
1042 slowed us down at all, as long as we are communicating during
1043 the process.

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1044 Mr. {Rush.} Do you agree with the assertion that this
1045 bill will provide greater transparency and timeliness in
1046 obtaining pre-construction permits for new manufacturing
1047 facilities? And, secondly, how does the EPA's role
1048 differentiate from the state role in the process, and how
1049 would this bill impact that relationship?

1050 Mr. {O'Mara.} I think that the concept of transparency
1051 is a good one, because I do think that there is additional
1052 public pressure that can be applied to, you know, permits
1053 that are languishing if it is more clear about, you know,
1054 what timelines are, and kind of where things are stuck in the
1055 process. I think it is at the wrong level in the bill,
1056 frankly. I mean, you know, does EPA headquarters have to
1057 have a list on their website of projects in Delaware, or
1058 should Delaware have that list?

1059 And as many of you know, that have served on, you know,
1060 state and local legislative bodies, I mean, there is nothing
1061 more effective to expedite, you know, decision-making than
1062 having folks, and, you know, having those kind of timelines
1063 public, because folks are held accountable. And so I think,
1064 in terms of consistency, I think it actually creates more
1065 confusion, because you will have different standards, and

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1066 there will be lack of clarity for both the regulator and the
1067 industry, and I think the transparency should really be more
1068 focused on the state and local level, instead of the Federal
1069 level.

1070 Mr. {Rush.} This bill assumes that it is a huge problem
1071 if EPA does not issue rules and guidance at the same time as
1072 a new air quality standard, so the bill allows a facility to
1073 obtain a pre-construction permit pegged to an old air quality
1074 standard if the EPA hasn't issued rules and guidance. Does
1075 this facilitate permitting, or does it create new avenues for
1076 litigation and delay, in your opinion?

1077 Mr. {Walke.} Well, it is important to recognize that,
1078 you know, in the 37 years of this permitting program, it has
1079 been a requirement that new facilities meet revised health
1080 standards after they have been adopted. So the history of
1081 the 37 years, and I am not going to argue is an ideal
1082 history, but it shows that we can and do regularly, every
1083 year, every month, issue pre-construction permits at the same
1084 time that there are these standards changing.

1085 What puzzles me about the bill is, by granting amnesty
1086 to these newly constructed facilities, so for the first time
1087 ever in the Clean Air Act they don't have to meet updated

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1088 health standards, it poses a dilemma that Mr. O'Mara pointed
1089 out. These facilities would actually model violations of the
1090 new standards, and some of the witnesses have indicated that
1091 that has happened previously. But I don't believe the bill
1092 intends to grant perpetual amnesty from revised health
1093 standards. There is some vagueness about the bill that my
1094 written testimony addresses.

1095 But if that is the case, then a facility has to come
1096 back again, after the fact, with an after the fact permitting
1097 exercise, retrofit control exercise, and in the meantime
1098 other businesses are suffering the burden of additional
1099 pollution controls that I think are probably also unintended
1100 consequences of the bill. So I am not going to argue that
1101 this system that we have today is perfect, or could not stand
1102 improvement, but I think this actually takes us backwards.
1103 It certainly does on the health front. I think it does vis-
1104 à-vis permitting of the individual facility, and certainly
1105 for the other local businesses in that area.

1106 Mr. {Rush.} I would like to just ask one additional
1107 question of both you and Mr. O'Mara. When you speak about
1108 public health, what is the impact on public health if this
1109 bill will go forward?

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1110 Mr. {O'Mara.} Right now there are 30 million Americans,
1111 particularly on the East Coast, that are living with
1112 unhealthy air. And, you know, and I think, you know, in
1113 Delaware, where 90 percent of our pollution comes from out of
1114 state sources, you know, the idea of new facilities coming
1115 in, being allowed to pollute more than cost-effective
1116 technology would allow, to not capture those reductions that
1117 are much cheaper than going back to an existing facility,
1118 where it might cost, you know, 50 times as much to add
1119 pollution controls to an older facility. It is economically
1120 inefficient.

1121 But, I mean, this is what affects kids. I mean, I have
1122 a 2-year-old daughter. I mean, the idea that she is
1123 breathing air that is unhealthy on a lot of days is painful.
1124 Seniors, you know, another disadvantaged population. So, at
1125 the end of the day, it is about people, and I think there are
1126 ways to avoid some of those impacts.

1127 Mr. {Rush.} Thank you, Mr. Chairman.

1128 Mr. {Whitfield.} Gentleman's time has expired. There
1129 has been some comment about the burden on EPA of posting on
1130 its website. I might note that, in their budget documents,
1131 they already provide information on the percent of permits

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1132 that they are issuing, so they already have a lot of this
1133 information. But at this time I will recognize the gentleman
1134 from Louisiana, Mr. Scalise, for 5 minutes.

1135 Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate
1136 you having this hearing, and I thank all of the panelists for
1137 coming and providing the testimony, and for answering our
1138 questions. I know there are a lot of questions that we have.
1139 EPA is one of those agencies that we have a lot of questions
1140 for because, frankly, when you talk to people that are trying
1141 to create jobs out in the country, I know in South Louisiana,
1142 unfortunately, the biggest impediment that they tell me about
1143 when they are sharing their challenges at creating more jobs
1144 in America are the regulations, and the lack of guidance, the
1145 lack of obtainable type of standards that are coming out of
1146 Washington.

1147 And that is not the way that government should work.
1148 Government should not be the impediment to American job
1149 creation because, and I think a few of us have touched on
1150 this, I have seen it, many cases, when businesses are making
1151 decisions of where to make investment, they are not just
1152 saying, I am going to make it in Louisiana, or I am going to
1153 make it in Delaware, they are looking at other countries.

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1154 And we are losing some of these jobs to other countries
1155 because we are not getting clear guidance from Washington.
1156 And the EPA is one of the worst offenders.

1157 Now, let us be honest about this. When you look at some
1158 of the problems that we have seen from EPA, one of the
1159 reasons that this bill is necessary, and all it says, by the
1160 way, is that when they come out with some proposed rule, they
1161 have to concurrently publish regulations and guidance for
1162 implementing the rule. Just tell people how to implement it.
1163 Because a lot of times what we see is these rules have
1164 nothing to do with improving air quality. The rules are
1165 designed to literally try to inhibit people's ability to get
1166 a permit. That is not the government's role, to stop people
1167 from making investment in this country and creating jobs.

1168 And, by the way, when those jobs go to those other
1169 countries, Brazil, or India, or China, you name it, we have
1170 got a list. When they go to those other countries, they
1171 don't use the standards that we have today. They emit more
1172 carbon. They don't follow the same kind of environmental
1173 regulations we already have. And yet, when these new
1174 standards come out, so often they are not about improving
1175 health and safety, it is about denying an industry. The

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1176 President brags about the war on coal, saying he is going to
1177 bankrupt the coal industry. He doesn't want to see coal
1178 plants be more efficient. He wants to see them shut down,
1179 and he is doing it. That is not the role of the Federal
1180 Government.

1181 So when we talk about this, I want to at least get some
1182 questions answered about this investment that I hear about,
1183 that others hear about. We hear about over \$100 billion of
1184 investment that is waiting to happen, really good high paying
1185 jobs in America. Obviously Louisiana would be one of those
1186 states that would benefit, but so many other states across
1187 the country would. I want to ask Ms. Kerrigan and Mr.
1188 Eisenberg, because you all are there on the front lines, can
1189 you share with us some of the stories you know? I mean, are
1190 these numbers right? Are they low, maybe high? When we hear
1191 about \$100 billion of investment that is waiting, and we just
1192 want guidance, want clear guidelines so that people can play
1193 by the rules. If you can share first, Ms. Kerrigan?

1194 Ms. {Kerrigan.} One hundred billion dollars is a lot of
1195 money. Even if it was half of that, I mean, that is
1196 significant, you know, in terms of investment that could be
1197 made in this country. And when you, you know, when you look

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1198 at the uncertainty of this issue in general, I mean, it
1199 really does filter down to the small businesses. You know,
1200 the individual, you know, firms and small businesses that,
1201 you know, are planning to work on these projects, or are
1202 contracted to work on these projects, there is a lot of
1203 planning that they need to do, in terms of financing, in
1204 terms of human capital acquisition, in terms of investing in
1205 new assets, et cetera.

1206 So if there is delay, or any type of delay or
1207 derailment, I mean, this is very costly to business owners
1208 and entrepreneurs, and could be catastrophic for some, you
1209 know, if these projects--if they are planning to work on
1210 them, they have made the investment, and the project falls
1211 through. But--

1212 Mr. {Scalise.} And Mr. Eisenberg, because I know you
1213 talked about the, you know, the folks that you have heard
1214 directly, I have heard directly, of plants that have moved to
1215 other countries because of the inability to get any kind of
1216 guidance and direction, and get a permit to move forward and
1217 do something in a safe and effective manner in this country.
1218 I mean, can you give me a ballpark of what you think the
1219 number is that is out there of projects, manufacturing jobs,

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1220 that are ready to go.

1221 Mr. {Eisenberg.} Sure. So we have had a couple
1222 different economists look at this, using the information that
1223 is out there, publicly available information, and also doing
1224 some research within the sectors, and there are two that we
1225 have put out. One is the one that that PWC did a couple
1226 years ago that said if we actually fully develop the shale
1227 resource that we have, then, based on the direct sort of
1228 upstream, midstream, you know, drilling kind of jobs, and
1229 then the manufacturing facilities that will then build out
1230 from all the energy, we could be creating, just with the
1231 manufacturing, a million jobs by 2025.

1232 We supported as study, as did ACC and a few other
1233 groups, that IHS Global Insight did a couple years ago, about
1234 a year ago, that looked at the natural gas value chain and
1235 chemicals, so it didn't get as far as PWC, but it took a much
1236 deeper dive, and it forecasted for manufacturing about half a
1237 billion new jobs by 2025. The numbers have been pretty
1238 consistent.

1239 The amount of development down there is really
1240 staggering. I mean, anecdotally, I have members come in and
1241 say, look, we can't build fast enough because we literally

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1242 can't find the people to do it. You know, we have a
1243 pipefitter that shows up for work one day, and then the guy
1244 down the street outbids me for him the next day. So there is
1245 a lot waiting to happen down there if we can figure--

1246 Mr. {Scalise.} And I appreciate what you all do in
1247 trying to create jobs in America. A lot of people up here
1248 talk about helping small businesses. There are real things
1249 we can actually do. This bill is one of them. There is no
1250 amnesty in this bill. This bill just says, if you are going
1251 to put a new standard out, EPA--I mean, if one of your
1252 companies misses a deadline for filing the permit, they don't
1253 get the permit. EPA has missed deadlines over and over
1254 again. There just ought to be some transparency, and make
1255 the standard obtainable. Show how you can actually get it
1256 done. Don't put a standard out just to put somebody out of
1257 business and run those jobs to China. That is what we are
1258 trying to do here, and I thank you, Mr. Chairman--

1259 Mr. {Whitfield.} Gentleman--

1260 Mr. {Scalise.} --for the hearing. Yield back the
1261 balance of my time.

1262 Mr. {Rush.} Mr. Chairman?

1263 Mr. {Whitfield.} Yes?

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1264 Mr. {Rush.} Mr. Chairman, I want to clarify a statement
1265 that you made, and--

1266 Mr. {Whitfield.} That I made?

1267 Mr. {Rush.} Yeah, you made, that the EPA has the
1268 reporting data in its budget document. Mr. Chairman, we
1269 asked the EPA whether they had data on state permitting
1270 times, and EPA maintains that a database of the air pollution
1271 technology is required in major pre-construction permits.
1272 They do have a database, but it is voluntary. States are not
1273 required to report on that system, report to the system.
1274 Some states report voluntarily, other states report their
1275 most significant permits, and some may not do much reporting
1276 at all.

1277 The EPA estimates that perhaps only 50 percent of all
1278 pre-construction permits make it into that database. Only 50
1279 percent, Mr. Chairman. This means that to get the data
1280 required by this bill, the EPA is going to have to impose new
1281 mandatory reporting requirements on the states. And, Mr.
1282 Chairman, I don't see how that will speed up state
1283 permitting. And if we had made it possible for the EPA to
1284 testify today, we could have heard this from the agency
1285 firsthand. And I just wanted to clarify those comments that

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1286 you made a little earlier, Mr. Chairman. Thank you very
1287 much.

1288 Mr. {Whitfield.} Thank you so much for clarifying that.
1289 At this time I would like to recognize the gentleman from
1290 Michigan, Mr. Dingell, for 5 minutes.

1291 Mr. {Dingell.} Mr. Chairman, I thank you for your
1292 courtesy. I commend you for this hearing. My questions at
1293 first will be for Mr. Walke, Director of Climate and Clean
1294 Air Program.

1295 Sir, the Clean Air Act requires EPA to set protective
1296 air quality standards for pollutants, and states have the
1297 primary responsibility to meet these standards. The bill
1298 before us appears to ignore this division of responsibility
1299 and labor. Section 2 requires EPA to post information about
1300 permits issued by EPA, state, and local permitting
1301 authorities. Section 4 appears to require that EPA report on
1302 permit delays and actions EPA is taking to address delays for
1303 permits issued not only by EPA, but also by state and local
1304 permitting authorities.

1305 Now, Mr. Walke, you have testified that state and local
1306 permitting authorities, not EPA, issue most of the pre-
1307 construction permits in this country. Does any of the other,

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1308 or do any of the other panelists disagree with that
1309 statement? Okay, thank you, gentlemen and ladies. Now, this
1310 means, then, that Section 2 is requiring EPA to record an
1311 expenditure report on what scores of state and local
1312 permitting authorities are doing. To your knowledge, does
1313 EPA currently have the information that is required by
1314 Section 2, yes or no?

1315 Mr. {Walke.} No, sir, I do not believe they do.

1316 Mr. {Dingell.} Okay. Does anybody disagree with that
1317 statement?

1318 Ms. {Gershman.} I actually think that there might be a
1319 question as to what information EPA has versus does not have.
1320 In the appropriations language for Fiscal Year 2015, there is
1321 a performance metric in there for EPA that states that it is
1322 tracking the number of major permits that are being issued
1323 each year, and there is a percentage target of 78 percent
1324 that are issued within a year. But what we do not know is
1325 where that number comes from.

1326 Mr. {Dingell.} Thank you very much. It also appears
1327 that Section 4 would require EPA to go through public notice
1328 and comment to prepare an annual report on delays in pre-
1329 construction permits issued not only by EPA, but also by

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1330 state and local permitting authorities. Mr. Secretary, is
1331 that right?

1332 Mr. {O'Mara.} Yes.

1333 Mr. {Dingell.} Now, to your knowledge, does EPA have or
1334 regularly collect information from state and local permitting
1335 authorities on the specific reason for delays in issuing
1336 permits, yes or no?

1337 Mr. {O'Mara.} Not formally. There is a lot of
1338 conversation, but not--

1339 Mr. {Dingell.} Now, Mr. Secretary, if EPA doesn't
1340 publish implementation guidance, or is late in so doing, are
1341 state permitting agencies equipped to issue pre-construction
1342 permits in a timely manner, yes or no?

1343 Mr. {O'Mara.} Yes.

1344 Mr. {Dingell.} Now, Mr. Secretary, the bill creates a
1345 loophole that could allow a new facility to meet an old air
1346 quality standard. Will this do anything to help the State of
1347 Delaware process its permits faster, yes or no?

1348 Mr. {O'Mara.} No.

1349 Mr. {Dingell.} You would be finding yourself in the
1350 awkward position of approving permits to an old standard,
1351 rather than the new one, the current one, is that right?

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1352 Mr. {O'Mara.} Yes.

1353 Mr. {Dingell.} Now, the language of Section 3 is also
1354 ripe for litigation. Do you agree with that, and if so,
1355 could you please elaborate?

1356 Mr. {O'Mara.} Yes, I do believe that it is, because
1357 there is an open question about when the new standard is
1358 already in place, but when the guidance is then finalized,
1359 whether the facility that was permitted without the guidance
1360 under the old standard would then have to make immediate
1361 retrofit and upgrades to it, setting up citizen suits,
1362 setting up legal challenges, setting up inequity with other
1363 firms. So the legal uncertainty is significant, we believe.

1364 Mr. {Dingell.} So it sort of appears here that we may
1365 be imposing, by the legislation, additional burdens that are
1366 unproductive, rather than by reducing the burdens, is that
1367 correct?

1368 Mr. {O'Mara.} Yes.

1369 Mr. {Dingell.} Mr. Chairman, I thank you for your
1370 recognition. I commend our panel. I hope that we have been
1371 listening to my dear friend, Mr. Rush, who is very wise in
1372 these matters. And I thank you for your courtesy to me and
1373 the panel. Thank you for your--

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1374 Mr. {Whitfield.} Yeah, we always listen to him. Thank
1375 you, Mr. Dingell. At this time I would like to recognize the
1376 gentleman from Ohio, Mr. Latta, for 5 minutes.

1377 Mr. {Rush.} --Mr. Chairman.

1378 Mr. {Latta.} Well, thank you very much, Mr. Chairman,
1379 and thanks very much for our panelists for being here today.
1380 Just, again, I always like to just kind of preface what I am
1381 going to say with a little bit about my district, and the
1382 State of Ohio, and also what goes on, I think, in
1383 manufacturing. I have got 60,000 manufacturing jobs in my
1384 district. I not only have 60,000 manufacturing jobs, since
1385 my staff actually started keeping track, over the last 22
1386 months I have done about 500 visits in my district to
1387 manufacturing facilities, businesses, you name it, across it.
1388 The number one issue I hear from everybody out in my district
1389 are federal regulations.

1390 And when SBA came out with their statistics a couple
1391 years ago, showing that in 2011 we had \$1.7 trillion of
1392 regulations out there, that was a problem. But now, when we
1393 look at the update for this year, in 2014, we are looking at
1394 about 1.9 trillion. I have never had any of my businesses
1395 out there that I have ever gone through, small, medium, or

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1396 large, ever say that they were against clean air, against
1397 clean water. But what we are looking at is a problem with
1398 trying to comply, and also with the EPA always being the
1399 number one issue out there.

1400 Now, one of the things that--I was in one plant, and it
1401 was a very large manufacturer, and they probably had a table
1402 about the size of what we see across here, and it was full of
1403 all these books, and everything else, and they said one thing
1404 to me. You know, one of the problems we have is trying to
1405 comply with this, but the problem that they had was the EPA
1406 was trying to tell them to take a square peg, pound it
1407 through a round hole, because those regulations didn't even
1408 work for their plant. So it really comes down to we want to
1409 make sure that, you know, we have everybody on the same
1410 cylinders, because, as we have heard from our witnesses
1411 today, especially for the number of jobs that are out there
1412 that we have the in the potential in the future are very,
1413 very important.

1414 So, Mr. Eisenberg, if I could start with you, you note
1415 in your testimony that revisions to the national ambient air
1416 quality standards can affect the ability to obtain air
1417 permits, and you specifically referenced the potential

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1418 revisions to the ozone standards. And can you explain?

1419 Mr. {Eisenberg.} Yes, thank you. So we are now at a
1420 level that was put in place in 2008, was recently affirmed by
1421 the D.C. Circuit, of 75 parts per billion for national
1422 ambient air quality standards for ground level ozone. Those
1423 levels are subject to change every 5 years, subject to
1424 revision. We are in the middle of one of those cycles right
1425 now. EPA is on a deadline to put out new ozone NAAQS in
1426 December of this year, and finalize them by October of next
1427 year.

1428 The last go round, EPA's numbers were about \$90 billion
1429 a year. We are looking at it, and we are thinking that it
1430 could actually be a little bit higher than it. The reason,
1431 quite frankly, is that, you know, we have made a lot of
1432 progress here on ozone, and we are getting to a point where
1433 the gains are getting a lot more expensive because, quite
1434 frankly, a lot of the technologies that we are required to
1435 get down to some of these levels just don't actually exist,
1436 and you have to get very, very creative, and do things that
1437 may be a little unconventional, and a lot more expensive,
1438 than we would expect.

1439 If I could take a second, you know, one of the big

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1440 assumptions here that we are making on this bill, in terms
1441 of, you know, some of the slippery slope downstream problems
1442 that it could cause is that if you, the Congress, were to
1443 tell EPA that it has to do the guidance concurrently, then it
1444 wouldn't do it, and then all these bad things would happen.
1445 We hope that EPA would do it, and that these problems would
1446 be avoided. So, you know, again, if EPA just didn't do it,
1447 and ignored the statute, then yeah, you could be creating
1448 some unintended consequences, and you certainly would do that
1449 in the case of ozone. We would hope that, certainly for
1450 ozone, and for something that is going to cost that much,
1451 that we could get this guidance concurrently, so that we are
1452 not just stuck in limbo as the goalposts were moved.

1453 Mr. {Latta.} Thank you. Ms. Kerrigan, if I could ask,
1454 you refer in your testimony to the complex and tentative
1455 regulatory permitting process that businesses face in this
1456 country. Do you believe that it is important to look for
1457 ways to expedite the permitting process, and is that critical
1458 for job growth in this economy that we have?

1459 Ms. {Kerrigan.} Absolutely. Look, we have, you know,
1460 we have heard the other testimony, and the investment dollars
1461 that are out there, and that are going to be invested in

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1462 these projects. And, from a small business perspective, when
1463 I hear numbers like the ACC's numbers, in terms of \$100
1464 billion, I mean, I think small business. I think small
1465 business opportunity, new business formation, new jobs, all
1466 the things that our economy needs to get back to robust
1467 growth, and back to competitiveness again.

1468 So not only in permitting, but in other areas, if there
1469 is, you know, if government can improve, and it can work
1470 better, if it can work in collaboration with the business
1471 community, I mean, that is going to get these investment
1472 dollars flowing, and get our economy back to robust levels of
1473 growth again.

1474 Mr. {Latta.} Well, thank you very much. And, Mr.
1475 Chairman, I see my time has expired, and I yield back.

1476 Mr. {Whitfield.} At this time the Chair recognizes the
1477 gentleman from California, Mr. Waxman, for 5 minutes.

1478 Mr. {Waxman.} Thank you, Mr. Chairman. I have several
1479 concerns about this bill. It follows the House Republicans'
1480 mantra that the way to produce jobs is to weaken
1481 environmental protections. I don't believe that is the case.
1482 It assumes that EPA is the problem, even here, where states
1483 are issuing almost all of these permits. In fact, the bill

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1484 would likely slow permitting by diverting state and EPA
1485 resources, and adding legal uncertainty.

1486 But I want to focus on another problem. Section 3 of
1487 the bill undermines decades of Clean Air Act practice, and
1488 weakens air quality protections. The Clean Air Act requires
1489 a large new or expanding industrial facility to get an air
1490 pollution permit before starting construction. The facility
1491 must commit to install pollution controls. It must
1492 demonstrate that its emissions won't produce unhealthy levels
1493 of air pollution in the area. And if the facility's
1494 pollution would cause the area to violate an air pollution
1495 standard, then the facility must do more to reduce or offset
1496 its emissions.

1497 Well, this bill creates a loophole in the law. If EPA
1498 fails to meet new procedural requirements, the bill would
1499 allow a facility to get a permit by measuring its emissions
1500 against an outdated, less stringent air quality standard.
1501 Mr. Walke, you called this amnesty. What is the practical
1502 effect of allowing a new facility to be permitted under an
1503 outdated standard?

1504 Mr. {Walke.} Well, the practical effect is the facility
1505 will emit pollution at levels that we know to be unhealthy,

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1506 that previously, under 37 years of law, we had required them
1507 not to emit at in order to protect the public. And Mr.
1508 O'Mara, and his colleagues across the country, will be left
1509 explaining to concerned members of the public that Congress
1510 forced him, and his colleagues, to allow a facility to
1511 pollute at unhealthy levels that he cannot assure them are
1512 protective of air quality where they live.

1513 Mr. {Waxman.} So a permitting authority might have to
1514 issue a permit for a high air polluting facility? Mr. Walke,
1515 what are the public health implications of exempting new or
1516 modified facilities from more protective air quality
1517 standards?

1518 Mr. {Walke.} The Clean Air Act, since 1970, has
1519 required national health standards that are requisite to
1520 protect public health with an adequate margin of safety, the
1521 safety margin, primarily to protect children, seniors,
1522 asthmatics, and other vulnerable parts of the population.
1523 This bill wipes away those safeguards and says, we are going
1524 to allow this facility to pollute at levels that are not
1525 necessary to protect the public with that adequate margin of
1526 safety, and it will allow excessive and unhealthy levels of
1527 pollution that the law currently does not allow. We should

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1528 be very clear about that.

1529 Mr. {Waxman.} Secretary O'Mara, what impact could this
1530 have on states like Delaware, that are downwind from
1531 polluting sources?

1532 Mr. {O'Mara.} Right now we are working, using every
1533 vehicle in our disposal, to both reduce emissions in the
1534 state, and we have reduced emissions more than any other
1535 state in the country over the last 5 years, but also trying
1536 to get more reductions upwind. By having facilities that
1537 could cost-effectively have fewer emissions, and not
1538 capturing them at that point, you are either going to have to
1539 find ways to reduce it in other places, which would be more
1540 expensive, or we just have to suffer worse and worse health
1541 outcomes. Either outcome is bad for the economy, and bad for
1542 the environment.

1543 Mr. {Waxman.} So the bill shifts the burden of air
1544 quality improvements from new plants to existing ones,
1545 existing facilities. Doesn't that raise the cost, when you
1546 are trying to retrofit an existing? Isn't it more reasonable
1547 to say it would be less expensive of a new facility that is
1548 coming online, that is going to be around for a longer period
1549 of time, should bear the cost of producing the emission

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1550 reductions?

1551 Mr. {O'Mara.} Yeah. I mean, study after study shows
1552 that it is much more cost effective to integrate pollution
1553 controls and system designs to meet new standards as you are
1554 building a facility as compared to retrofitting it. And so
1555 the idea of going back to, you know, a paint shop to make up
1556 for, you know, emission reductions, because the big facility
1557 could have gotten 30 percent fewer emissions, but they didn't
1558 make the investments, is going to cost 50 times as much for
1559 the small guy, I would argue hurt manufacturing more than the
1560 avoided controls will help it.

1561 Mr. {Waxman.} So we raise the overall cost of pollution
1562 controls, and we harm public health at the same time. That
1563 doesn't sound like a very good deal to me. Existing
1564 industrial sources in your state, particularly if a new
1565 facility pushes an area into violation of the Clean Air Act,
1566 would be not just more expensive, but that would trigger a
1567 lot of other consequences as well. Would that be fair and
1568 cost effective?

1569 Mr. {O'Mara.} Neither fair nor cost effective.

1570 Mr. {Waxman.} And I think, Mr. Chairman, this goes
1571 against a key principle of the Clean Air Act, which requires

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1572 new sources to do more because they will be around longer, it
1573 is a lot more cost effective to put in pollution controls up
1574 front. And if we step back and recognize the Clean Air Act
1575 works, it protects public health, it holds polluters
1576 responsible, fosters a state/federal partnership, and
1577 produces cost effective pollution control, as far as I can
1578 tell, this bill would do none of those things. Thank you. I
1579 yield back my--

1580 Mr. {Whitfield.} The gentleman's time has expired. At
1581 this time recognize the gentleman from West Virginia, Mr.
1582 McKinley, for 5 minutes.

1583 Mr. {McKinley.} Thank you, Mr. Chairman. I guess I am
1584 working under the premise, from what I have read coming into
1585 this hearing, that some of these delays can be anywhere from
1586 a third to 40 percent of these pre-construction, or other EPA
1587 permits can be delayed for over a year. I know of one
1588 example, out on the West Coast, in Bellingham, Washington,
1589 they have been 4 years trying to get a permit to export coal,
1590 4 years. Four years.

1591 Mr. Walke, in your adult life, have you ever been
1592 unemployed?

1593 Mr. {Walke.} No, sir.

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1594 Mr. {McKinley.} I am afraid too many people in the
1595 Beltway don't understand what that must feel like, when you
1596 are married, your 2-year-old child, you lost your job, and
1597 you are told they are going to build this other plant, or
1598 there is a hope for something to happen, but it keeps getting
1599 delayed time and time and time again. When do we become more
1600 caring, as a Nation, to find out how we can move these
1601 projects forward?

1602 People want to build construction, or they want to build
1603 these manufacturing plants. The President has said he wants
1604 to do that. You say in your testimony that you would like to
1605 see that. But you seem to be putting perfect in front of
1606 just the good with this legislation. We are trying to make
1607 something happen, and we see government constantly standing
1608 in the way. It is a dangerous thing that I have noticed
1609 here. I have only been in Congress for 4 years, but I see
1610 well-meaning people come to these panels, and their true
1611 intent is to stop legislation. And they do it very clever,
1612 with their words, how they twist them around, but the bottom
1613 line is not to let something happen.

1614 And all the while there are people in West Virginia, in
1615 Illinois, in Indiana, and Iowa, that are looking for jobs.

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1616 They need manufacturing to come back to America. And people
1617 like you stand in the way because you want perfect to be the
1618 enemy of good. And let me ask you, what would you do to
1619 expedite these permits so that there is no reason--you and I
1620 both know it. I am an engineer. I have designed a lot of
1621 manufacturing plants. I have seen the delays on that. Why
1622 should they take over a year to get a pre-construction
1623 permit?

1624 Mr. {Walke.} Mr. McKinley, if I may, you have chosen to
1625 spend a lot of your time talking about me, and I do care. I
1626 am here giving my time as a citizen and a witness--

1627 Mr. {McKinley.} Would you please answer the question?
1628 Because--

1629 Mr. {Walke.} --because--

1630 Mr. {McKinley.} Okay, that is the way you come across
1631 to me.

1632 Mr. {Walke.} We have a--

1633 Mr. {McKinley.} That is my impression.

1634 Mr. {Walke.} --public policy--

1635 Mr. {McKinley.} Tell me how we are--

1636 Mr. {Walke.} --disagreement.

1637 Mr. {McKinley.} --going to get--

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1638 Mr. {Walke.} --that there is no need--

1639 Mr. {McKinley.} How are we going--

1640 Mr. {Walke.} --to make--

1641 Mr. {McKinley.} --to get this thing--

1642 Mr. {Walke.} ---personal.

1643 Mr. {McKinley.} --working across America again? That

1644 is my question. Just how are you going to help us do it?

1645 Mr. {Walke.} I think I have answered the question that

1646 I am willing to answer for you, Mr. McKinley, after your

1647 remarks. Thank you.

1648 Mr. {McKinley.} Well, apparently you don't choose to

1649 help us out, because we are trying to find a solution, and

1650 you seem to be putting up roadblocks.

1651 Mr. {Walke.} I am here to--

1652 Mr. {McKinley.} So--

1653 Mr. {Walke.} --help, Mr. McKinley--

1654 Mr. {McKinley.} --I am sorry that the--Mr. O'Mara,

1655 would you find ways that you might be--find that you could

1656 help us expedite some of these, and find some solutions?

1657 Mr. {O'Mara.} Yeah. I think we have done a lot of work

1658 with the value stream mapping, figuring out where the dead

1659 spots were in the timing of the permits. We issue our

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1660 permits in about 4 months, 4 to 6 months on average in
1661 Delaware, which is significantly less than the year minimum
1662 that is required in the law.

1663 You know, we have better communication, more
1664 transparency. We fund our programs probably a little better
1665 than some other states, and we have a lot more collaboration
1666 with industry. And so, you know, I mean, I think those are
1667 all things--and the other thing that we have worked on, a lot
1668 of the plants are looking for access to natural gas, and they
1669 can't figure out a way always to get access, because a lot of
1670 times they have to bear the entire burden of the cost of
1671 getting the gas pipeline to their facility. We have actually
1672 helped with the cost of that, in many cases, to make the
1673 economics better for some of these manufacturing plants. But
1674 we have a range of things in Delaware we would love to share.
1675 I mean, I know Randy pretty well in West Virginia, my
1676 counterpart, and they are doing some good things in West
1677 Virginia on the permitting side too.

1678 But, you know, there are a lot of these conversations
1679 going on among state regulators, and there are things that we
1680 can do to move things a lot faster.

1681 Mr. {McKinley.} And at this time, my concern here,

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1682 again, as you heard from my opening remarks, there are a lot
1683 of people unemployed that are struggling out there, and I
1684 wanted to find ways that we can show more caring and
1685 compassion to help them out. How can we move that along? We
1686 have the resources. It is a matter of prioritizing the time
1687 within the EPA, or wherever it is, to make those things
1688 happen. And when you, with your 2-year-old child, and
1689 someone else with a 2, or 4, or 6-year-old child, they just
1690 want a job. And when they hear someone holding up a permit
1691 because of a technicality, I find that offensive, and it is
1692 not good for the welfare of this country. So I yield back
1693 the balance of my time. Thank you.

1694 Mr. {Whitfield.} Gentleman yields back. At this time
1695 will recognize the gentleman from California, Mr. McNerney,
1696 for 5 minutes.

1697 Mr. {McNerney.} Thank you, Mr. Chairman, and I thank
1698 the witnesses for their testimony. There is a good spectrum
1699 of opinions that came across this morning. I do want to say
1700 that I disagree with some of my colleagues' statements that
1701 the EPA's total purpose is to prevent projects from going. I
1702 mean, that is not realistic. That is fairly biased, so we
1703 will move on from that.

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1704 But, you know, from our point of view, when you hear
1705 testimony, you hear fairly contradictory ideas regarding
1706 uncertainty. Does this bill, proposed bill, increase
1707 uncertainty, or does it increase certainty? Does it increase
1708 state agency burdens, or does it decrease state agency
1709 burdens? Does it improve air quality, or does it decrease
1710 air quality? Those are the things that I would like to
1711 understand about this bill. So I know that these have come
1712 up already in some of the questions, but I would like to
1713 start with the increasing of the certainty, or decreasing of
1714 the certainty, that this bill would provide.

1715 And I would like to start with Ms. Kerrigan. Would you
1716 give an opinion about whether this would increase or decrease
1717 uncertainty in the permitting process for manufacturers?

1718 Ms. {Kerrigan.} Sure. I think it would increase and
1719 improve certainty. The transparency aspect, you know, of the
1720 legislation, in terms of the posting of the information about
1721 the permits, the percentage of the permits, the timing of the
1722 permits, you know, public measurement of that, those type of
1723 things, tends to improve performance. So--

1724 Mr. {McNerney.} How about legal challenges? Would
1725 legal challenges be enhanced or diminished?

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1726 Ms. {Kerrigan.} You know, I am not quite sure. That
1727 assumes that the EPA, as I read this law, wouldn't do its job
1728 under this legislation, that it wouldn't be doing the
1729 concurrent guidance and the rules, along with an Act. So,
1730 you know, if they didn't do what they were supposed to do,
1731 then this stuff, you know, some of the unintended
1732 consequences, the legal challenges and things like that, may
1733 occur.

1734 Mr. {McNerney.} Mr. Walke?

1735 Mr. {Walke.} Well, as I have testified, I believe the
1736 bill probably unintentionally creates greater legal
1737 uncertainty and vulnerabilities for both the facility that is
1738 receiving the amnesty under Section 3(b), as well as other
1739 local businesses that, as Mr. O'Mara has testified, are now
1740 going to be facing greater and more costlier obligations to
1741 retrofit, and to make up for that shortfall. I don't think
1742 you meant misuse of the term uncertainty, but I think the
1743 bill does create the certainty that unhealthy emission levels
1744 will increase in the area, and the certainty that local
1745 communities will be subjected to unhealthy air pollution is
1746 just an inescapable result of the amnesty.

1747 Mr. {McNerney.} Which would increase legal problems for

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1748 the manufacturers?

1749 Mr. {Walke.} Well, I suspect that there may be some
1750 unhappy citizens and groups in those communities that do not
1751 wish unhealthy air pollution levels to increase, and the bill
1752 creates, you know, legal uncertainties and vulnerabilities
1753 for such lawsuits, not only created by the bill, but in the
1754 background law that allows citizens to hold government
1755 accountable when they don't uphold the law.

1756 Mr. {McNerney.} Well, thank you. Mr. O'Mara, would
1757 Promoting New Manufacturing Act place a large burden on
1758 states, or would it reduce the burden on states?

1759 Mr. {O'Mara.} It increases the burden. It increases it
1760 in two major ways. One is that the regulatory uncertainty of
1761 having to permit facilities under an old standard, knowing
1762 that you are going to need to ask existing facilities to make
1763 up for their shortfall to meet your state goals is a
1764 challenge. And then some of the report challenges folks--if
1765 they were, you know, feeding information to the EPA, rather
1766 than delivering permits, that could slow down the permits as
1767 well.

1768 Mr. {McNerney.} Does anyone on the panel believe that
1769 the bill would improve air quality?

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1770 Mr. {Eisenberg.} If I may, I don't believe that this
1771 bill's intention is to improve or degrade air quality, one or
1772 the other, it is just to make the permits happen faster. I
1773 mean, no manufacturer wants to pollute more, right? I mean,
1774 so--

1775 Mr. {McNerney.} Clearly.

1776 Mr. {Eisenberg.} --we just want to make--

1777 Mr. {McNerney.} If you live in a non-attainment region,
1778 you certainly don't want to see things get worse, and I have
1779 a fear that this would make things worse.

1780 Last question, Mr. O'Mara, do you have specific
1781 recommendations that would improve the permitting process
1782 that you would like to share, perhaps in written version
1783 later on?

1784 Mr. {O'Mara.} Absolutely. Would be happy to share an
1785 example.

1786 Mr. {McNerney.} All right. Mr. Chairman, I yield back.

1787 Mr. {Whitfield.} Gentleman yields back. At this time
1788 recognize the gentleman from Texas, Mr. Olson, for 5 minutes.

1789 Mr. {Olson.} I thank the Chair, and welcome all the
1790 witnesses. The people back home in Texas 22 want clean air
1791 and clean water, and they know that we have made great

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1792 strides in improving our environment. Of course, these
1793 protections have come at a cost. But if we go too far, if we
1794 allow regulations to become red tape with little benefits, we
1795 block economic opportunity. We kill jobs. Sometimes I think
1796 EPA forgets that poverty is a threat to public health too.
1797 Rules show that economic expansion hurts the most
1798 impoverished in Texas. Slow economic expansion hurts the
1799 most impoverished in Texas, and that is why bills like this
1800 one before us are so useful.

1801 As Mr. Eisenberg testified, we will see a new ozone
1802 rule. It will likely be among the most expensive regulation
1803 in our country's history. EPA's estimate of a 10 year, \$1
1804 trillion drag on our economy could be the low end. That
1805 doesn't make for a merry Christmas. Every state will see
1806 tough new permit requirements. Creating jobs will be harder.

1807 With that in mind, it is not unreasonable to demand
1808 transparency and fairness on new source review. We need to
1809 get this right, and strike the right balance before it gets
1810 worse. We have almost 10 million unemployed people in this
1811 country. I wonder what they would give to have a plant, or a
1812 job, in their hometown.

1813 My first questions are for Ms. Gershman and Mr.

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1814 Eisenberg. Recently EPA has failed to release updated
1815 guidance after it published new NAAQ standards. We are
1816 giving people a target, but leaving them in the dark as to
1817 how to get there. That is unfair. It brings uncertainty at
1818 a time when NAM and ACC members are making multibillion
1819 dollar investment decisions. How important is a good
1820 understanding of timing when a major project is on the line?
1821 How important is that? Ms. Gershman?

1822 Ms. {Gershman.} You are really hitting the nail on the
1823 head, and I want to emphasize that, you know, the facilities
1824 that we are building are state of the art. They have
1825 pollution controls. Nothing in this legislation is doing
1826 anything to undermine the NAAQS and the permitting process
1827 itself. These facilities will already have to install the
1828 best available control technology, or ensure that it has the
1829 lowest achievable emission rate. None of that is being
1830 changed. What we are simply here to ask is for EPA to make
1831 sure that it is thought through some of the implementation
1832 challenges that come about with these lower standards. That
1833 is what we are asking.

1834 EPA is still working to implement some of these
1835 standards that they have put in place, with the unintended

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1836 consequences of not having the models available, or not
1837 having monitoring available to make the designations. Areas
1838 that are in limbo between standards do not necessarily know
1839 how to proceed. This holds up permits. A lot of these
1840 projects come with a substantial amount of financing
1841 attached. This financing is not available indefinitely, and
1842 if these permits aren't issued, there are times where the
1843 financing will disappear, and the projects will therefore not
1844 go forward. And that is really what we are trying to do
1845 here.

1846 Mr. {Olson.} Yes, ma'am. Mr. Esienberg, you as well,
1847 sir.

1848 Mr. {Eisenberg.} Thank you. I think Ms. Gershman
1849 summed it up quite well. You know, we wouldn't be talking
1850 about this if it hadn't become a problem already, and it is a
1851 problem that we just want solved. You know, you saw in my
1852 written testimony the list of issues that my members have.
1853 There was very little editing on my part in that list. I
1854 mean, I just said, hey, guys, can you send me what you think,
1855 and I just put it in there, and they have a lot of problems.
1856 I don't think that they are under the illusion that this
1857 is ever going to be perfect. They just want it to not be

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1858 impossible, and it is at a point where it is impossible.

1859 Mr. {Eisenberg.} And one final question for all the
1860 panelists, if EPA releases new air quality standards, do you
1861 believe that the agency should always issue rules and
1862 guidance in a concurrent or timely fashion, yes or no? Ms.
1863 Gershman?

1864 Ms. {Gershman.} Yes.

1865 Mr. {Olson.} Mr. Weiss? Mr. O'Mara?

1866 Mr. {O'Mara.} Yes, but we shouldn't stop the permit if
1867 they don't.

1868 Mr. {Olson.} Mr. Walke?

1869 Mr. {Walke.} As warranted.

1870 Ms. {Kerrigan.} Yes.

1871 Mr. {Olson.} And finally, Mr. Eisenberg?

1872 Mr. {Eisenberg.} Yes.

1873 Mr. {Olson.} One final question, Mr. Eisenberg, about
1874 ozone. These new rules would put most of our country in non-
1875 attainment. Doesn't that make sense to make this step right,
1876 make it more important that this permitting process is
1877 correct?

1878 Mr. {Eisenberg.} So you raise a very interesting issue
1879 there. I put some graphics in my testimony where we

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1880 literally mapped out all of the projects that are now on the
1881 slate because of this new energy resource, and they all fall
1882 in areas that would presumably be non-attainment at 60, which
1883 is the low end of what EPA is considering. We are extremely
1884 concerned about this, and so, at a minimum, we need the
1885 permitting fixed on the backend, so that if we get hit hard
1886 on the front end, we at least have a way forward.

1887 Mr. {Olson.} I am out of time to get back. By the way,
1888 sir, five National parks and forests will be attainment with
1889 this .6 parts per billion standard. Five.

1890 Mr. {Whitfield.} Thanks for your enthusiasm, Mr. Olson.
1891 At this time I would like to recognize--

1892 Mr. {Olson.} Thanks.

1893 Mr. {Whitfield.} --the gentleman from New York, Mr.
1894 Tonko, for 5 minutes.

1895 Mr. {Tonko.} Thank you, Mr. Chair, and welcome,
1896 witnesses, and let me thank you all for sharing your thoughts
1897 with this committee. I do find it regrettable, though, if
1898 your personal integrity is challenged, or when your thoughts
1899 are offered, and we put you down for that.

1900 We all support efficient and effective permitting that
1901 protects public health and our environment without

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1902 unnecessary delays, but this bill won't accomplish that goal,
1903 in my opinion. Rather than helping state agencies process
1904 permits, or helping EPA support states, the bill actually
1905 distracts the very people tasked with writing the permits and
1906 implementing the law. The bill requires EPA to publish data
1907 on permit processing times, but EPA doesn't have this
1908 information because states, not EPA, issue almost all of the
1909 permits. My understanding is that states voluntarily provide
1910 some information, but to get all of the information required
1911 by the bill, EPA is going to have to put new reporting
1912 requirements upon states.

1913 Secretary O'Mara, do you think EPA publishing data on
1914 permitting times will help Delaware issue pre-construction
1915 permits more quickly?

1916 Mr. {O'Mara.} No, because I think, at the end of the
1917 day, having the local entity, whether it is a local quality
1918 management district or a state, in our case, having that
1919 information delivered at the local level, so it is more
1920 transparent, is actually a better use of time. There is more
1921 accountability locally than at the national level.

1922 Mr. {Tonko.} Thank you. And would it be a distraction
1923 for your permitting staff if they have to collect information

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1924 for EPA?

1925 Mr. {O'Mara.} Well, every minute they are spending on
1926 that is a minute they are not issuing a permit.

1927 Mr. {Tonko.} Thank you. The bill also requires EPA to
1928 report to Congress every year about the agency's efforts to
1929 expedite pre-construction permitting. Again, since states
1930 are the primary permit writers, it is unclear how EPA will be
1931 able to explain, or commit to resolve, any permitting delays.
1932 Secretary O'Mara, would this report to Congress help Delaware
1933 Expedite its pre-construction permitting?

1934 Mr. {O'Mara.} No.

1935 Mr. {Tonko.} While the core of this bill requires EPA
1936 to issue guidance and rules concurrently with any new or
1937 revised air quality standard, putting aside whether or not
1938 this is a workable or useful requirement, one thing is clear.
1939 It would require EPA to do still more work on a shorter
1940 timely.

1941 Mr. Walke, what do you think? Do you think this bill's
1942 reporting requirements will make it easier or harder for EPA
1943 to issue guidance and rules more quickly?

1944 Mr. {Walke.} I think it will make it harder.

1945 Mr. {Tonko.} Now, this committee wants EPA to do more,

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1946 more information collection and publication, more actions to
1947 expedite state permits, and more reports to Congress, more
1948 and faster rules of guidance for every revised air quality
1949 standard. Common sense dictates that this would require more
1950 people and more resources, but the bill fails to provide the
1951 agency with any new funding. In fact, my Republican
1952 colleagues have voted time and time again to slash the EPA's
1953 budget.

1954 Mr. Walke, how have budgeted cuts affected EPA's ability
1955 to implement clean air programs?

1956 Mr. {Walke.} We have actual evidence that EPA itself
1957 has told Federal courts, and has certainly told stakeholders
1958 that they lack the necessary budget resources today to fully
1959 carry out the law, and my written testimony has just an
1960 example of that that occurred in a court case, I think about
1961 2 weeks ago.

1962 Mr. {Tonko.} Unfortunately, EPA is not here today to
1963 tell us how this bill would affect the agency's ability to
1964 issue timely guidance and rules, while satisfying this bill's
1965 reporting requirements. I hope we will have a chance to hear
1966 from EPA before marking up this bill.

1967 Secretary O'Mara, I will ask you this, as the lone

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1968 government official on this panel. Would you rather have EPA
1969 focus its limited resources on implementing air quality
1970 standards, and providing technical assistance to states, or
1971 on collecting data and reporting to Congress?

1972 Mr. {O'Mara.} We will take any help we can get to have
1973 them help us issue permits more quickly.

1974 Mr. {Tonko.} Thank you. If my Republican colleagues
1975 are actually interested in making permitting faster and more
1976 efficient, then they should start by ensuring that EPA and
1977 state agencies have the resources they need to implement the
1978 law. And, with that, Mr. Chair, I yield back.

1979 Mr. {Whitfield.} The gentleman yields back. At this
1980 time I would like to recognize the gentleman from Mr.
1981 Louisiana, Mr. Cassidy, actually, he is not Mr. Louisiana, he
1982 is Mr. Cassidy from Louisiana, for 5 minutes. I was all set
1983 to call on Mr. Griffith, and then you--okay. Mr. Griffith,
1984 you are--

1985 Mr. {Griffith.} All right.

1986 Mr. {Whitfield.} --next, 5 minutes.

1987 Mr. {Griffith.} Thank you, Mr. Chairman, I appreciate
1988 that. Mr. Eisenberg, you were asked earlier if you thought
1989 that this bill improved air quality, and you said you weren't

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1990 sure that that was the purpose of the bill, but I would
1991 submit to you that it may be part of the purpose of the bill.
1992 It may not have been the primary purpose of the bill, and
1993 here is the reasoning.

1994 I think Mr. Scalise hit on it earlier, that I think that
1995 this does actually work to improve air quality. You
1996 indicated in your prior testimony that while nobody wanted to
1997 be named, that you had members of your organization who had
1998 not opened up facilities, or had stopped working on a project
1999 because of the length of time, and the fact that they weren't
2000 certain what was going to happen with the permitting process
2001 through the EPA because of the length of time, and the
2002 uncertainties caused by the current system.

2003 And what we know is, according to a NASA study, it takes
2004 10 days for the air to get from the middle of the Gobi Desert
2005 to the Eastern Shore of Virginia. When you are talking about
2006 air, we all share the same air. So either that company
2007 chooses, for regulatory purposes, to open up their facility
2008 in another country, which doesn't have the standards that we
2009 have, or they choose to let their competitors in another
2010 country produce the product that they could have produced in
2011 the United States, creating jobs for American citizens, and

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2012 at the same time those countries don't have the regulations
2013 that we have in existence in our country.

2014 And the delay in the regulatory process thus means that
2015 that product, whether it is a Styrofoam cup, or some big
2016 piece of equipment, is going to be made in some other
2017 country, as opposed to being made in the United States, thus
2018 we have damaged the air of the world, particularly the air in
2019 the Northern Hemisphere, if it goes in the Northern
2020 Hemisphere, which then directly impacts the air quality in
2021 the United States. With that reasoning in line, wouldn't you
2022 agree, then, that this bill, by making the process easier,
2023 and encouraging manufacturing in the United States, where we
2024 do care about our air quality, actually does improve air
2025 quality? Would you agree with me on that?

2026 Mr. {Eisenberg.} I would, and thank you for pointing
2027 that out. You know, and, frankly, if EPA does the job that
2028 Congress would be requiring in this bill, then the permits
2029 are issued quickly, and done at the levels that the statute
2030 would require. And so, yeah, it would absolutely improve air
2031 quality.

2032 Mr. {Griffith.} Yeah. And I think that everyone would
2033 agree, and, Ms. Gershman, if I understood your testimony

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2034 earlier, your folks are doing the best that they can with the
2035 state of the art technology. They don't want to be out here
2036 dumping things into the air. They are trying to do what is
2037 currently available, and they just need to know what the
2038 regulations are going to be, and it is that uncertainty which
2039 leads them to have frustration, and maybe even, as well, look
2040 at perhaps using another country, or allowing a competitor to
2041 produce the product. Is that also true?

2042 Ms. {Gershman.} Yes, that is correct. We are already
2043 doing the state of the art. We are taking the best available
2044 technologies and installing them on our new facilities.

2045 Mr. {Griffith.} And whenever there are delays, that can
2046 also create costs, which don't help us create new jobs. It
2047 creates a negative impact on jobs.

2048 Ms. {Gershman.} Absolutely.

2049 Mr. {Griffith.} So, and I don't know who might want to
2050 touch on this, maybe Mr. Eisenberg, because I was talking
2051 with some people this morning, and we went to my old boiler
2052 MACT bill that I had in a few years back, and they were
2053 lamenting particularly the timelines not having been passed
2054 because of the uncertainty. Just like this bill, that bill
2055 tried to deal with some of the uncertainties, and they were

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2056 talking about the fact that regulations came out in 2004, and
2057 a lot of companies started--because they had a short time
2058 period, they started implementing, and spent millions and
2059 millions of dollars complying with the 2004 regs.

2060 Then those got overturned in court, and the EPA had to
2061 come up with new regs, and now they are spending millions and
2062 millions of dollars to do things. And we heard testimony
2063 about even from universities. Not just always manufacturers
2064 that get hit by this, but the universities got hit by this.
2065 They spent the money to comply, then found out they weren't
2066 in compliance, and that creates a problem as well, does it
2067 not?

2068 Mr. {Eisenberg.} It absolutely does.

2069 Mr. {Griffith.} And so what we are trying to do here
2070 is--there is a balance, and I appreciate Mr. O'Mara working
2071 with us on that balance, and all of you all trying to find
2072 that balance. We all want clean air. We all want clean
2073 water. What we have to do is try to figure out a way that we
2074 can have some certainty for those people who are creating the
2075 jobs, and at the same time make sure that we are moving
2076 forward to make our country the best that it can be. But
2077 that does not mean that we have to destroy jobs in the

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2078 process. Wouldn't you agree with that, Mr. Weiss?

2079 Mr. {Weiss.} I do agree with that.

2080 Mr. {Griffith.} And I do appreciate it. Thank you all

2081 so much for being here today, and for your testimony today.

2082 And, with that, Mr. Chairman, I yield back.

2083 Mr. {Whitfield.} Gentleman yields back. Mr. Cassidy,

2084 you are up next, or would you prefer that I go to Mr. Terry?

2085 Dr. {Cassidy.} Go to Mr. Terry.

2086 Mr. {Whitfield.} Okay. I will recognize the gentleman

2087 from--

2088 Mr. {Terry.} I appreciate--

2089 Mr. {Whitfield.} --Nebraska, Mr. Terry, for 5 minutes.

2090 Mr. {Terry.} Thank you, Mr. Louisiana, I appreciate

2091 that. A little bit of a mild rant here first, just to kind

2092 of set the stage why I do think we need to be more specific

2093 in timelines, just some of my personal experiences with

2094 people in my district.

2095 For example, a family owned business, called Magnolia

2096 Steel, employs about 50 people just a few miles outside of

2097 Omaha, but the family lives in my district. They wanted to

2098 expand. They were adding about 20 people. But they had to

2099 extend the building, and since they pour molten steel into

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2100 parts that are being used in machinery, it took them 2 years
2101 and \$2 million. The addition to the building was a \$1
2102 million project. So they actually spent more in compliance
2103 costs than they did for the actual structure. So I hear
2104 stories about that, and the fact that it took 2 years, and I
2105 think, that is a broken process, especially on a small--we
2106 are not talking a Toyota facility. We are talking about a
2107 metal shed, basically.

2108 And then another Omaha business that has another one in
2109 Ohio, it is a metal fabrication business, spent a similar
2110 amount of time working with the Feds, the EPA again, on this
2111 one. Took a long time. Then, once they got all of the EPA
2112 and federal permitting, and spent all the money for that, the
2113 State of Ohio, this plant happened to be in Ohio, they have
2114 one in Omaha as well, and the state came in and said, yeah,
2115 but our rules are different, and you have to do things
2116 differently. So now we have this conflict between state and
2117 federal.

2118 And both of those owners told me of their extreme
2119 frustration, and that is the basis of trying to figure out a
2120 way to streamline this, to reduce the cost of permitting,
2121 because the guy that makes the steel parts, the first one I

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2122 talked about, literally said, I was on the verge of just
2123 shutting everything down and just moving the plant to Mexico.
2124 That doesn't benefit anybody. So I think it is in everyone's
2125 best interests that we figure out a better way to streamline
2126 this.

2127 Mr. Walke, some of us are very skeptical about the EPA.
2128 And I had a personal issue, they had a new copper level for
2129 the State of Nebraska that was actually proposed to be lower
2130 than the natural copper levels in our water. And when I
2131 asked them directly, where is the science behind it? They
2132 said, well, we are just making assumptions due to our
2133 modeling, but I will get you that, meaning they didn't have
2134 it. And then, lo and behold, about a year later, they came
2135 up with a study that said they were right. I love it when
2136 they make the numbers first, and then back it up with the
2137 science later. It leaves me a little skeptical.

2138 And then we can get into the modeling on health, and the
2139 fact that they say this coal fired plant reduces mercury
2140 emissions, but yet there hasn't been one instance of high
2141 blood level of mercury in the citizens that were around that
2142 plant for 30 years. So sometimes we have to question, and
2143 that is our role.

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2144 So, with that, one of the things that I hear from, and I
2145 am going to ask Mr. Weiss this, because no one has asked you
2146 a question since I have been here--

2147 Mr. {Weiss.} I was hoping just to stay here.

2148 Mr. {Terry.} --very little--you seemed lonely over
2149 there. So part of this is that time period that we
2150 discussed, where there is maybe a change in the air quality
2151 standard. That has changed. They adapt to the new
2152 technology, or try to, but the guidance from the EPA seems to
2153 be non-existent, or slow. And I think that is probably the
2154 issue Magnolia Steel was caught up in, and why it took 2
2155 years, is to get the guidance on how they actually comply.
2156 Do you see that as part of the problem here, as the guidance
2157 aspect of it, and what is the best way to reduce that?

2158 Mr. {Weiss.} I do. From a permitting engineer's
2159 viewpoint, which is what I do for a living, what I would like
2160 to know is what do you want me to do to make the
2161 demonstration? And right now, in a lot of cases, that
2162 guidance doesn't exist, and I use the fine particle standard
2163 as an example. I actually don't know how to make the
2164 demonstration that EPA wants often. And I issue more
2165 permits, or do a lot more permitting work than a lot of

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2166 people, and I don't know how to do it.

2167 And that causes delays on two levels. One, it causes
2168 delays prior to even filing the application, because we have
2169 to go meet with permitting authorities, and try and
2170 understand what they want, and not all state agencies are as
2171 good as Delaware. They don't really know what they need, and
2172 that is a big issue, because you go meet, say, how do you
2173 want to do this? We don't know. Even when the states issue
2174 the permits, they follow EPA guidance. So the states need
2175 EPA guidance as much as the regulated community, and it
2176 doesn't exist. And I am sure that has caused delays, because
2177 I have projects that I am working on where that has caused
2178 delays prior to filing the application. We then file an
2179 application, and the comment is, well, that analysis not good
2180 enough. Well, we don't know. We will know when we see it.
2181 Okay, and that is a problem, okay? And that is a real
2182 problem in the process.

2183 So the way I read the Act is, let us get the guidance
2184 out, what do you want us to do? And let us not weaken air
2185 quality standards. Let us get the guidance out so the
2186 permitting community knows what we need to get done. And
2187 that would improve the process.

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2188 Mr. {Whitfield.} Gentleman's time has expired. At this
2189 time recognize Mr. Cassidy from Louisiana for 5 minutes.

2190 Dr. {Cassidy.} Thank you, Chairman Whitfield. Ladies
2191 and gentlemen, I apologize, I have been running up and down,
2192 so if I am asking you redundant questions, it is just because
2193 I have been running up and down. And just to give a context,
2194 the context we all know, clearly we have a problem with job
2195 growth for working class, middle class America, and they have
2196 traditionally been employed in mining, manufacturing, and
2197 construction, which shale gas and upstream/downstream creates
2198 an incredible number of good jobs with good benefits in
2199 mining, manufacturing, and construction.

2200 But what I am hearing is that we have met the enemy, and
2201 he is the EPA. Now, I gather, Mr. O'Mara, you are not sure
2202 about the spill, but what did I read, as I was obviously
2203 quickly scanning, that the EPA, in 2011, when it said it was
2204 going to cover greenhouse gases, forecasted it would need to
2205 issue 900 new preconstruction permits per year, but in the 3
2206 plus, only 166 have been done in total. This is you, Mr.
2207 Eisenberg? How many jobs would--and we have all these plans
2208 that would be for new projected plants. Can you give an
2209 estimate of how many jobs would have been created, had there

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2210 been 900 issued?

2211 Mr. {Eisenberg.} Frankly, I don't know that I can. You
2212 know, the real issue there, and I really am just curious
2213 about why this is happening, I did have a member that said,
2214 well, we got our permit pretty quickly, I don't know where we
2215 fall into that, and we just permitted a facility. And he
2216 went back and he looked, and he said, well, we figured out a
2217 way not to trigger PSD.

2218 So what could be happening is that folks are building
2219 smaller projects that don't trigger things at that threshold.
2220 Is that a good thing? I honestly don't know the answer to
2221 that either. I mean, I don't think it is. I think, if we
2222 have laws that are stopping us from going big, and from
2223 building big things, that is a problem too.

2224 Dr. {Cassidy.} So assuming that there is economy of
2225 scale in some of these projects, and we are competing
2226 globally, and I regularly hear that China, with their lax
2227 environmental standards, are building just to build, to
2228 employ people, putting us at a competitive disadvantage,
2229 losing that economy of scale might hurt our workers, correct?

2230 Mr. {Eisenberg.} That is correct.

2231 Dr. {Cassidy.} That is remarkable. And, Ms. Gershman,

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2232 I gather that you, in turn, are aware of these projects.

2233 Again, do you have any estimate of how many jobs are on hold

2234 because of the lack of certainty and timeliness, as regards

2235 approval?

2236 Ms. {Gershman.} We have heard from some members that

2237 every day that the permit is not approved after that year

2238 timeline, they can cost up to \$5 million a day. And that is

2239 because a lot of these facilities have already gone out, and

2240 they secured all of the construction folks. And they have

2241 gone out and they have created job creation programs for

2242 folks in the community to be the operators, and the

2243 pipefitters, and the electricians, and all of the support

2244 staff that goes into running these huge, complex facilities.

2245 And all of that is on hold while permits continue to be

2246 hammered out. And that is something that, they want to move

2247 forward, they are committed to it, and yet they can't go

2248 ahead and hire those folks until they have work for these

2249 folks to do.

2250 Dr. {Cassidy.} Now, what I know intuitively is that if

2251 we want to improve wages for folks, and we create a lot of

2252 competition for construction workers, their wages are going

2253 up.

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2254 Ms. {Gershman.} That is correct.

2255 Dr. {Cassidy.} It is just because if you need a top
2256 flight welder--

2257 Ms. {Gershman.} That is right.

2258 Dr. {Cassidy.} --she is going to be able to bid her
2259 services, frankly.

2260 Ms. {Gershman.} Exactly. And if there are no projects
2261 going forward, she will be waiting to get those services bid
2262 on.

2263 Dr. {Cassidy.} Now, Ms. Kerrigan, I sponsored a bill
2264 called the Energy Consumers Relief Act, which was just
2265 focused upon--we had somebody from EPA the other day making a
2266 comment, and I am sure he regrets making it, that their
2267 economic projections are often flawed and unreliable. Well,
2268 thanks a lot, we have been banking on them for some time.
2269 And the whole point of my Consumer Relief Act was to bring
2270 transparency to these major rules.

2271 Let me just ask, knowing that others have asked it, if
2272 all you did was bring transparency, okay, this is what you
2273 have to go on what Mr. Weiss said. I say Weiss, not Weiss.
2274 I apologize if I--Weiss. Seymour Weiss assassinated Huey P.
2275 Long, which happens to be how I am so familiar with the name,

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2276 as long as I am Mr. Louisiana. So it looks as if there is
2277 transparency. That in itself would allow companies to plot
2278 out. Well, we know it is actually not going to take a year,
2279 it will take 18 months, and so therefore we can do all our
2280 permitting, in light of the expanded timeline, something like
2281 that. Would you agree with that?

2282 Ms. {Kerrigan.} Yeah, I do. I agree with that. And,
2283 again, if you have more transparency, and particularly the
2284 elements that are addressed in this bill, I think that will
2285 improve performance, in terms of expediting, you know, the
2286 permits, and then that creates certainty, you know, for
2287 businesses and investors.

2288 Dr. {Cassidy.} And jobs for working Americans.

2289 Ms. {Kerrigan.} Absolutely.

2290 Dr. {Cassidy.} Mr. Weiss, and I was just intrigued, you
2291 do all this work, and yet you sometimes don't really know how
2292 EPA's progressing?

2293 Mr. {Weiss.} Well, I don't know how EPA wants us to do
2294 the analysis.

2295 Dr. {Cassidy.} That blows my mind. I mean, because--

2296 Mr. {Weiss.} Mine too, so--

2297 Dr. {Cassidy.} Yeah. It seems fairly straightforward

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2298 that if you are going to say, okay, we are going to have
2299 these many shale, you know, related mining opportunities, or
2300 plants using natural gas as a feed stock, that you should be
2301 able to say in a spreadsheet, we give you this, we give you
2302 this, we give you this, and here are the variables we will
2303 define later. But I gather there is nothing such as that?

2304 Mr. {Weiss.} Right. Your amazement is the same as my
2305 clients'.

2306 Dr. {Cassidy.} So, again, when it comes to job creation
2307 for the working Americans, we are having the hardest time.
2308 We have met the enemy, and it sounds like the enemy could be
2309 the EPA. I yield back, and thank you.

2310 Mr. {Whitfield.} Well, you know, Mr. Cassidy has
2311 touched on this, Mr. Weiss touched on it, and the crux of the
2312 issue is that specific point. A new standard is decided on
2313 at EPA, and EPA has been very aggressive. And then the
2314 guidance does not come out for some time later, sometimes
2315 years later. And so you are sitting there, wondering about
2316 the modeling, wondering about the emissions. The guidance
2317 document is extremely technical, and so no one has the
2318 guidance that they need. And that is the crux of the issue.

2319 So, I mean, is it unreasonable to request EPA to come

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2320 forth with the guidance when they come forth with the new

2321 standard, or is that something that is impossible to do?

2322 Would you all make a brief comment on that for me? I mean,

2323 what is the big issue about trying to do that?

2324 Mr. {Eisenberg.} I mean, that is certainly how we look

2325 at it. I don't see this as being unreasonable at all. We

2326 would hope that EPA would put it out in a timely fashion, and

2327 we would hope that there is a way to--

2328 Mr. {Whitfield.} I mean, that they don't do it. Do you

2329 have an idea, Ms. Kerrigan?

2330 Ms. {Kerrigan.} I have no idea. I mean, we would love

2331 to hear, and I am sure you would, from the EPA on this. It

2332 seems like it is something that can be done. You know, they

2333 are good at regulating, and, you know, this is what they--

2334 Mr. {Whitfield.} But that is what Mr. Terry and others

2335 were talking about. These manufacturers, or people who want

2336 to invest, and even the states lack the guidance and--

2337 Ms. {Kerrigan.} Um-hum.

2338 Mr. {Whitfield.} --so the uncertainty is there, and you

2339 are worried about the lawsuits, you are worried about

2340 spending the money. And, Mr. O'Mara, do you have any

2341 thoughts, or Mr. Walke, or--

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2342 Mr. {Walke.} Well, it, unfortunately, takes a lot of
2343 time and resources to adopt these implementation rules and
2344 guidance, and you can look at the history of the program from
2345 the Reagan Administration, and Bush. It is not a partisan
2346 issue. It is a matter of just the amount of time it takes.

2347 One thing I want to mention that hasn't been mentioned
2348 yet today is, much of the implementation rules and guidance
2349 that eventually come out from EPA don't have anything to do
2350 with permitting at all, so there is a little bit of a
2351 disconnect in the bill. The bill is written kind of overly
2352 broadly to say, if EPA fails to issue all, or any,
2353 implementation rules or guidance, we are going to allow
2354 permitting to proceed in violation of a newly revised
2355 standard. So there is a disconnect that kind of augments
2356 these unintended consequences that we have been talking
2357 about.

2358 But I think the simple answer to your question, Mr.
2359 Chairman, is it takes a lot of time, and involves a lot of
2360 consultation. There is complexity. The question is, you
2361 know, who bears the burden of that? Should the public
2362 suffer, you know, heavier polluted air, or is there another
2363 solution to a valid problem?

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2364 Mr. {Whitfield.} Yeah. Mr. O'Mara?

2365 Mr. {O'Mara.} Thank you. I mean, there are two
2366 different ways to look at the lack of guidance in the
2367 beginning. I mean, there is the way that Delaware has
2368 approached it, where we are going to go full steam ahead. We
2369 are not going to wait for it. We are going to, you know, be
2370 very clear with industry. We are going to, you know, consult
2371 close with the EPA, but we are not going to wait for them.
2372 And there are other places that, you know, will ask for
2373 guidance all the time, and kind of have this paralysis where
2374 they won't issue permits until the guidance is issued, and I
2375 think you have heard some of those nightmare stories.

2376 I mean, I would like to actually see some additional
2377 either guidance, or, use a different word, some additional
2378 direction to the states to move ahead. There is no reason to
2379 wait for EPA guidance, and safe to do that in good faith,
2380 with some kind of reasonableness to the adherence to the NAAQ
2381 standard should have some kind of sovereignty, or some kind
2382 of deference in the decision-making process in the interim
2383 period. I mean, a process like that would actually achieve
2384 air quality goals, and give the manufacturers at this table
2385 more certainty, and the state regulators that have the

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2386 capacity can work with folks one on one, instead of decisions
2387 coming out of D.C.

2388 Mr. {Whitfield.} Yeah.

2389 Mr. {O'Mara.} And so maybe that is some area of
2390 potential commonality, because--

2391 Mr. {Whitfield.} Yeah.

2392 Mr. {O'Mara.} --but you don't want states to feel
2393 paralyzed, where they don't feel like they can go with a
2394 permit, and also these other adverse impacts.

2395 Mr. {Whitfield.} Right. Mr. Weiss, do you have any
2396 comment?

2397 Mr. {Weiss.} Thank you. The process of adopting a
2398 national ambient air quality standard was also a long, and
2399 consultative, and time consuming process, and I really don't
2400 understand why the guidance can't be worked on simultaneously
2401 during that process. They know the standard is coming. In
2402 the case of fine particles, they knew that precursor
2403 emissions were going to be a big issue in the fine particle
2404 standard. And, really, we should have a way of analyzing
2405 precursor emissions, because they are a major contributor,
2406 and that all could have been worked on during the adoption of
2407 the ambient air quality standard, and one shouldn't forget

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2408 that.

2409 Mr. {Whitfield.} Ms. Gershman, do you have a comment?

2410 Ms. {Gershman.} Yeah. I agree with Mr. Weiss. I think
2411 really what we are trying to get at here is to require EPA to
2412 give a little more thought through the entire NAAQ setting
2413 process as to what happens after that NAAQ number is put out
2414 there. And we are just looking for some certainty as to--

2415 Mr. {Whitfield.} Yeah.

2416 Ms. {Gershman.} --what happens at that point.

2417 Mr. {Whitfield.} Well, thank you. Mr. Rush, you
2418 probably--

2419 Mr. {Rush.} Mr. Chairman, the question I have is not to
2420 the panel, it is to you. Are you going to allow EPA to come
2421 before this subcommittee prior to a markup? I think that it
2422 is very important that the EPA be allowed to respond to some
2423 of the issues raised by members of this subcommittee, and
2424 some of the panelists. And so it is my opinion that, and the
2425 question is, whether or not it is unreasonable to allow the
2426 EPA to come before this subcommittee tomorrow, Thursday, next
2427 week, before we proceed to marking up this bill? The EPA
2428 needs to have an opportunity to respond. So is it your
2429 intention to allow the EPA an opportunity to come to testify

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2430 before this subcommittee on this matter?

2431 Mr. {Whitfield.} I don't know if we are going to have
2432 another hearing for EPA or not, but we are in discussions
2433 with EPA. They have indicated that they are willing to work
2434 with technical assistance. And I don't even know when we are
2435 looking at a markup, but, you know, I personally don't want
2436 to mark up a bill that is not going to have some genuine
2437 support. And some of these suggestions about additional
2438 sovereignty for states and so forth, so that they have more
2439 authority, is something that I think has some merit, because
2440 I think all we are looking for is a little certainty. But we
2441 look forward to working with you as we move forward on it.

2442 Mr. {Rush.} Thank you, Mr. Chairman.

2443 Mr. {Whitfield.} Thank you all, and that concludes
2444 today's hearing. I want to thank all of you for taking your
2445 time to come up and visit with us, and we appreciate your
2446 expertise, and your thoughts on this important subject. We
2447 will keep the record open for 10 days for any additional
2448 materials that might need to be administered. So that will
2449 conclude today's hearing. And, by the way, our staffs may be
2450 in touch with some of you over the next few days or weeks, as
2451 we try to see if there are ways we can improve this draft

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2452 bill. So thank you very much. Hearing is adjourned.

2453 [Whereupon, at 12:10 p.m., the Subcommittee was

2454 adjourned.]