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Opening Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
Markup of H.R. __, the Promoting New Manufacturing Act
Subcommittee on Energy and Power
May 28, 2014

Tomorrow we are marking up a bill titled the “Promoting New Manufacturing Act.” That sounds good – we all support new manufacturing. But legislating is about more than catchy titles. A law should have some positive real-world effect on the issue it aims to address. Unfortunately, as we heard at the hearing last week, the real-world effects of this bill would be more pollution, more uncertainty for businesses, and more burdens on states.

This bill is based on the idea that we must choose between clean air and new manufacturing. But that’s wrong. Forty years of cleaner air and a growing economy have proven that Americans can have both healthy air and a strong economy. We should be celebrating the Clean Air Act, not weakening it, as this bill does.

The Clean Air Act requires major new or expanding sources of air pollution to obtain permits with pollution limits before the facilities start construction. It’s a lot easier and less costly to minimize air pollution when you’re designing and building a facility, compared to cleaning up existing facilities. These preconstruction permits ensure that a new facility will not increase local air pollution above levels that are safe to breath.

This bill creates a loophole. When EPA issues a new, more protective air quality standard, new sources are supposed to get their permits under the new standard. But under this bill, new sources can get their permits based on the old out-of-date standard. The bill delays healthy air by saying that new standards don’t apply to new sources until EPA jumps through additional procedural hoops, such as issuing more regulations and guidance.

These provisions are harmful and counter-productive.

First, the new loophole could force states and EPA to issue permits for facilities that pollute more than they would under current law. In fact, this bill would allow new facilities to degrade air quality to levels that are not safe to breathe.

In areas where the air is already unhealthy, allowing new facilities to pollute more means that existing industrial facilities will have to pollute less. And those facilities are usually more expensive to clean up. This is neither fair nor economically wise.

The new loophole also creates uncertainty. The bill says that EPA must issue rules and guidance for implementing a new air quality standard at the same time as it issues the standard. But it's entirely unclear what rules and guidance would be sufficient. That's a recipe for litigation.

At the hearing, Rep. Dingell asked the Secretary of the Department of Natural Resources from the state of Delaware whether creating this new Clean Air Act loophole would do anything to expedite permitting at his agency. He responded with a categorical "no."

The bill also could actually slow the permitting process, worsening the problem it purports to solve.

The bill requires EPA to publish data and compile annual reports for Congress on permit timing and delays.

But EPA has told us that it doesn't have this information because states, not EPA, issue the vast majority of preconstruction permits. To comply with the bill, EPA would have to require states to give EPA more information. EPA would also have to get more involved in state and local permitting activities.

So this bill would require cash-strapped state and local officials to spend resources gathering information for Congress . . . instead of processing permits.

It would require EPA to spend time compiling that data . . . rather than drafting guidance and supporting state permit writers.

If we really want to expedite permits, we should give permit writers more resources. Instead, House Republicans have voted repeatedly to slash their budgets. And we certainly would not pass this bill.

This bill allows new facilities to release more harmful air pollution, disadvantages existing facilities, and increases burdens on state permit writers. I urge my colleagues to oppose this counter-productive bill.