



U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

February 1, 2016

TO: Members, Subcommittee on Energy and Power

FROM: Committee Majority Staff

RE: Hearing entitled “H.R. 3797, the Satisfying Energy Needs and Saving the Environment (SENSE) Act and H.R. _____, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act”

I. INTRODUCTION

On February 3, 2016, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Energy and Power will hold a hearing entitled “H.R. 3797, the Satisfying Energy Needs and Saving the Environment (SENSE) Act and H.R. _____, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act.”

II. WITNESSES

Panel I

- **The Honorable Keith J. Rothfus**, U.S. House of Representatives, Pennsylvania.

Panel II

- **Davis Henry**, President and CEO, Henry Brick;
- **Creighton “Butch” McAvoy**, President, McAvoy Brick Company;
- **Vincent Brisini**, Director of Environmental Affairs for Olympus Power;
- **Dennis Beck**, Chairman of the Western Pennsylvania Coalition for Abandoned Mine Reclamation; and,
- **John Walke**, Senior Attorney and Clean Air Director, Natural Resources Defense Council.

III. BACKGROUND AND SUMMARY OF LEGISLATION

The Subcommittee on Energy and Power will review two bills: (1) H.R. 3797, the SENSE Act, which modifies the Cross-State Air Pollution Rule (CSAPR) and Mercury and Air Toxics Standards for Power Plants (MATS) as they apply to coal refuse-to-energy facilities, and (2) a discussion draft entitled, H.R. _____, the BRICK Act, allowing judicial review

of any final rule of national emissions standards for hazardous air pollutants (NESHAP) for the brick and structural clay products manufacturing industry before requiring compliance with the rule.

A. H.R. 3797, Satisfying Energy Needs and Saving the Environment (SENSE) Act

On July 6, 2011, the Environmental Protection Agency (EPA) finalized CSAPR. This rule was promulgated pursuant to section 110 of the Clean Air Act (CAA) and requires reductions in sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions from electric generating units located in the 28 States covered by the rule.¹ On February 16, 2012, EPA finalized the MATS rule. This rule was promulgated pursuant to section 112 of the Clean Air Act and requires reductions in emissions of mercury and other air toxics, as well as certain acid gases from power plants.² On June 29, 2015, the U.S. Supreme Court ruled that EPA erred when the agency concluded that costs did not need to be considered in the MATS rule.³ EPA is still in the process of responding to this decision, most recently with a November 20, 2015 proposed supplemental finding concluding that consideration of costs would not have altered EPA's original rule.⁴

The applicability of both CSAPR and MATS extends to circulating fluidized bed (cfb) electric generating units designed to utilize coal refuse, the aboveground waste products of coal mining located near many abandoned coal mines. Coal refuse-to-energy facilities create electricity with this waste product while also facilitating remediation of the lands on which they are found. Many operators of these plants have expressed concerns that some of the requirements in CSAPR and MATS may force them to cease operations.

On October 22, 2015, Rep. Keith Rothfus (R-PA) introduced H.R. 3797, the "Satisfying Energy Needs and Saving the Environment Act" or the "SENSE Act." This bill makes targeted modifications to CSPAR and MATS as they apply to coal refuse-to-energy facilities.

The legislation includes the following provisions:

Section. 1:

This section provides the short title of "Satisfying Energy Needs and Saving the Environment Act" or the "SENSE Act".

Section. 2:

This section would modify the standards as they apply to coal refuse power plants.

¹ See EPA CSPAR [Fact Sheet](#). "The Cross-State Air Pollution Rule: Reducing the Interstate Transport of Fine Particulate Matter and Ozone."

² See EPA MATS [Fact Sheet](#). "Consideration of Cost in the Appropriate and Necessary Finding for the Mercury and Air toxics Standards for Power Plants."

³ See Supreme Court [decision](#), *Michigan v. EPA*, 576 U.S. ____ (2015).

⁴ See EPA MATS [Fact Sheet](#). "Consideration of Cost in the Appropriate and Necessary Finding for the Mercury and Air toxics Standards for Power Plants."

Section 2(a) provides definitions for the following terms: administrator, boiler operating day, coal refuse, coal refuse electric utility steam generating unit, coal refuse-fired facility, cross-state air pollution rule, electric utility steam generating unit, and phase of CSAPR.

Section 2(b) provides less restrictive sulfur dioxide emissions allocations under CSAPR as they apply to coal refuse electric utility steam generating units.

Section 2(c) provides an alternative compliance means for HCl and SO₂ under MATS.

B. H.R.____, Blocking Regulatory Interference from Closing Kilns (BRICK) Act

On September 24, 2015, EPA finalized its NESHAP for Brick and Structural Clay Products Manufacturing and NESHAP for Clay Ceramics Manufacturing. This rule was promulgated pursuant to section 112 of the CAA.⁵

Under this rule, all major sources in the brickmaking industry must meet maximum achievable control technology (MACT) standards for mercury, non-mercury hazardous air pollutants (HAP), and health-based standards for acid gas HAP, among other requirements. Regulated entities have three years to comply with the rule. These entities, many of which are small businesses, have expressed serious concerns about their ability to meet the emissions reduction targets in the timelines imposed.⁶

On January 19, 2016, the Committee released a discussion draft of H.R. ____, the “Blocking Regulatory Interference from Closing Kilns (BRICK) Act.” The legislation would allow for judicial review of any final rule addressing NESHAP for brick and structural clay products or for clay ceramics manufacturing before requiring compliance with the rule.

The legislation includes the following provisions:

Section 1:

This section provides the short title of “Blocking Regulatory Interference from Closing Kilns (BRICK) Act of 2016.”

Section 2:

This section extends compliance dates of any final rule addressing NESHAP for brick and structural clay products manufacturing or clay ceramics manufacturing issued under section 112 of the CAA.

⁵ See [Final Rule](#), 80 FR 65469

⁶ *Id.*

Section 2(a) provides that the term “compliance date” means the date by which any State, local, or tribal government or other person is first required to comply with the rule.

Section 2(b) provides that the final rules subject to the Act include any final rule that addresses NESHAP for brick and structural clay products or for clay ceramics manufacturing under section 112 of the CAA, including any final rule that succeeds or amends the EPA’s final rule published at 80 Fed. Reg. 65469 (October 26, 2015) and 80 Fed. Reg. 75817 (December 4, 2015).

Section 2(c) provides that the time period by which the compliance dates would be extended would be the period of time that begins 60 days after the final rule appears in the Federal Register, and ends on the date on which judgment becomes final, and no longer subject to further appeal or review, in all actions filed during the initial 60 days after the rule appears in the Federal Register seeking review of the rule, including actions pursuant to CAA section 307.

IV. ISSUES

The following issues may be examined at the hearing:

- EPA’s CSAPR and MATS rules as they apply to coal refuse electric utility steam generating units.
- EPA’s NESHAP for brick and structural clay products manufacturing and NESHAP for clay ceramics manufacturing.
- H.R. 3797, the “SENSE Act”.
- H.R.____, the “BRICK Act”.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Tom Hassenboehler or Ben Lieberman of the Committee staff at (202) 225-2927.