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Statement of Ranking Member Frank Pallone, Jr., as prepared for delivery
Committee on Energy and Commerce
Subcommittee on Energy and Power
Hearing on
"H.R. 3797, the Satisfying Energy Needs and Saving the Environment Act (SENSE) Act and H.R. __, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act"

Thank you Mr. Chairman. Today, we are considering two bills that undermine EPA air rules—rules that are instrumental in protecting public health and the environment by reducing mercury and other hazardous air pollutants from power plants and other industrial sources.

Let me start with H.R. 3797, the "Satisfying Energy Needs and Saving the Environment Act (or SENSE Act). This bill would revise the Mercury and Air Toxics or MATS rule and the Cross State Air Pollution Rule or CSAPR rule to allow power plants that burn coal refuse to emit higher levels of sulfur dioxide and hydrogen chloride. Sulfur Dioxide is known to cause adverse respiratory impacts; and hydrogen chloride is corrosive to eyes and skin and can irritate the respiratory tract.

Supporters of this bill will say that facilities that burn coal refuse are doing a good thing by cleaning up the environment and generating power. We're not here today to debate that. Instead we are here to consider whether facilities that burn coal refuse should be given a free pass on complying with EPA rules to reduce certain air pollutants. I believe that's a very bad idea – coal refuse plants are no different than other coal plants and, therefore should be held to the same emissions standards.

Supporters of this bill have also argued that coal refuse plants deserve special treatment when it comes to these air rules. In the context of the MATS rule, I would note that EPA, the courts, and the Senate – which considered a coal refuse-related amendment last January – have all reviewed and rejected the argument that they should be given special consideration.
In the context of the CSAPR rule, the SENSE Act is unnecessary and just bad policy. The current rule uses a phased-in approach to achieve emissions reductions – where facilities receive emissions allowances that decreases over time. The bill would shift a greater percentage of these emissions allowances to coal refuse plants. EPA has a plan for how those allowances should be allocated to individual plants, but states also have the ability to submit their own plan for

achieving the required emissions reductions. What this means is a state – if it chooses – already has the power to give extra allowances to coal refuse plants as this bill would mandate.

Beyond being unnecessary, this provision undermines the CSAPR trading system and creates inequities in the market. The SENSE Act picks winners and losers, tipping the scales in favor of coal refuse plants, at the expense of all other plants within a state.

Briefly turning to the other bill, the BRICK Act extends compliance deadlines until all legal challenges are resolved by the courts. If this sounds familiar, that's because it is: we saw a similar provision in H.R. 2042, the Ratepayer Protection Act.

We also had a similar discussion at our hearing on that bill, when a witness pointed out that the current judicial process for delaying a rule "has withstood the test of time, and ensures that courts will undertake a careful balancing of interests before granting a stay of agency action," and she further explained that the blanket extension in the discussion draft would "create powerful incentives for frivolous litigation in an effort to stall and avoid compliance…".

I do understand there are special circumstances related to this particular rule. The brick industry has made good faith efforts to work with EPA and to reduce their emissions. However, the litigation delay in the BRICK Act creates a very bad precedent. I believe this issue can and should be resolved by the courts.

The bills we are considering today would undermine protections and set bad legislative precedents going forward, and therefore I cannot support either of them.

Thank you.

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