

**Opening Statement of the Honorable Ed Whitfield**  
**Subcommittee on Energy and Power**  
**Hearing on “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”**  
**February 3, 2016**

*(As Prepared for Delivery)*

The Obama EPA has issued numerous regulations impacting manufacturers and energy producers, and many of us are concerned about their impact on the economy and jobs. In particular, a few of these rules are extremely troubling, such as the ones that may cause more environmental harm than good and those that may force small businesses to shut down. Today, we will discuss two bills making targeted changes to EPA rules in order to avoid these adverse consequences, 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.

The SENSE Act was introduced by Rep. Keith Rothfus of Pennsylvania who we welcome to this subcommittee. His bill addresses an issue of great concern in Western Pennsylvania and other coal-mining regions, and that is the recycling of massive piles of coal refuse that were generated many years ago and continue to be located in many of these communities. Coal refuse is the aboveground waste products of coal mining found near many abandoned mines. Left unaddressed, coal refuse contributes to a number of environmental challenges such as acid mine drainage that may impact rivers and streams. Coal refuse from these abandoned mines can also spontaneously combust, creating massive fires that are difficult to put out.

Fortunately, there is an economically viable solution that benefits the environment while reclaiming acres of land and disposing of the coal refuse. Specialized power plants have been developed that can use coal refuse to produce electricity. These coal refuse-to-energy facilities not only reduce the volumes of coal refuse, but the resultant ash is environmentally beneficial and can then be used for site remediation.

However, the continued operation of these plants is jeopardized by the EPA’s Cross State Air Pollution Rule (CSAPR) and the agency’s Mercury and Air Toxics Standards (MATS), also commonly referred to as Utility MACT. As written, these two EPA rules may cause the shutdown of coal refuse-to-energy plants and put a stop to the only economically proven means of addressing coal refuse. Members of this subcommittee have raised their concerns with EPA regulators about the potential impact of these rules and on the need to treat coal refuse-to-energy facilities as a separate sub-category, but these concerns were ignored.

The SENSE Act contains limited modifications to these rules as they apply to coal refuse-to-energy plants. Specifically, the bill provides less restrictive sulfur dioxide emissions allocations under the Cross State Air Pollution Rule, and creates an alternative means of compliance under the Mercury and Air Toxics Standards. In neither case would the bill repeal the provisions in these rules nor jeopardize the continued declines in the emissions regulated under them. But they would enable these coal refuse-to-energy facilities to continue operating and providing both electricity and environmental benefits to the communities they serve.

The BRICK Act, as the name implies, addresses a brick industry regulation, and I would like to thank Bill Johnson for his work on this draft bill. Last September, EPA finalized its National

Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing, commonly called Brick MACT. This rule contains ultra-stringent new emissions targets, and in fact it used as a baseline EPA's 2003 Brick MACT rule which already reduced industry emissions by 95 percent, according to a recent Chamber of Commerce report. It should be noted that those 2003 Brick MACT standards were vacated by a federal court in 2007, but by the time the decision was handed down the industry had already undertaken expensive compliance measures.

We want to make sure that this vulnerable industry does not face the same unfair situation for a second time. Compliance is especially challenging given that the brickmaking industry is dominated by small companies that lack the resources to install the costly new controls that are required. Many operators fear shutdowns and layoffs, and all to ratchet down already-low emissions by a very small amount.

That is why the BRICK Act extends the compliance dates for these rules until after all judicial review is completed. This reasonable provision will prevent EPA from again imposing costly requirements that may later be found to be outside the agency's authority.

Both the SENSE Act and the BRICK Act provide specific solutions to specific problems created by EPA rules that directly threaten the continued operation of businesses in these important sectors of our economy. These targeted provisions will be a net plus for the environment as well as the economy and jobs in many small communities. I urge all my colleagues to support these commonsense measures and I look forward to hearing the testimony from our witnesses today.

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