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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

WEDNESDAY, FEBRUARY 3, 2016

House of Representatives,

Subcommittee on Energy and Power,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 10:04 a.m., in
Room 2123 Rayburn House Office Building, Hon. Ed Whitfield
[chairman of the subcommittee] presiding.

Members present: Representatives Whitfield, Shimkus, Latta,
Harper, McKinley, Johnson, Long, Elmers, Flores, Mullin,
McNerney, Engel, Green, Doyle, Welch, Loeb sack, and Pallone (ex

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officio).

Staff present: Will Batson, Legislative Clerk, E&P, E&E; Allison Busbee, Policy Coordinator, Energy and Power; Rebecca Card, Assistant Press Secretary; A.T. Johnston, Senior Policy Advisor; Ben Lieberman, Counsel, Energy & Power; Mary Neumayr, Senior Energy Counsel; Annelise Rickert; Legislative Associate; Dan Schneider, Press Secretary; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; Jean Fruci, Minority Energy and Environment Policy Advisor; Caitlin Haberman, Minority Professional Staff Member; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; Josh Lewis, Minority EPA Detailee; and Alexander Ratner, Minority Policy Analyst.

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1 Mr. Whitfield. I would like to call the hearing to order
2 this morning and I would like to recognize myself for five minutes
3 for an opening statement.

4 The Obama EPA has been particularly aggressive in issuing
5 regulations and, of course, many of those regulations are
6 beneficial. But at the same time, many of those regulations
7 create job loss and obstacles to economic growth.

8 And today we are going to be discussing two bills making
9 targeted changes to EPA rules in order to avoid what we consider
10 are adverse consequences -- H.R. 3797, the Satisfying Energy Needs
11 and Saving the Environment Act, referred to as the SENSE Act, and
12 H.R., which I guess we don't have a number for this yet, the
13 Blocking Regulatory Interference from Closing Kilns, or BRICK
14 Act.

15 Now, the SENSE Act was introduced by Rep. Keith Rothfus of
16 Pennsylvania, who is with us today, and his bill addresses an issue
17 of great concern in western Pennsylvania and other coal-mining
18 regions around the country and that is the recycling of massive
19 piles of coal refuse that were generated many years ago and
20 continue to be located in many of these communities.

21 Coal refuse is the above-ground waste product of coal mining
22 found near many abandoned mine sites. Left unaddressed, coal
23 refuse contributes to a number of environmental challenges such

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24 as acid mine drainage that may impact rivers and streams.

25 Coal refuse from these abandoned mines can also
26 spontaneously combust, creating fires that are difficult
27 sometimes to put out.

28 Fortunately, there is an economically viable solution that
29 benefits the environment while reclaiming acres of land and
30 disposing of the coal refuse.

31 Specialized power plants have been developed that can use
32 coal refuse to produce electricity, and they are doing that today.
33 These coal refuse-to-energy facilities not only reduce the
34 volumes of coal refuse, but the resultant ash is environmentally
35 beneficial and can then be used for site remediation.

36 However, the continued operation of these plants is in
37 jeopardy by the EPA's Cross-State Air Pollution Rule and the
38 agency's Mercury and Air Toxics Standard, also commonly referred
39 to as Utility MACT.

40 As written, these two EPA rules may cause the shutdown of
41 coal refuse-to-energy plants and put a stop to the only
42 economically proven means of addressing this issue.

43 Members of this subcommittee have raised concerns with EPA
44 regulators about the potential impact of the rules. I know that
45 Congressman Rothfus has spent a great deal of time on it.

46 And so we have been talking to EPA, asking for their

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47 assistance and, unfortunately, to this point they have simply
48 ignored everything that we said.

49 Now, the BRICK Act, as the name implies, addresses a BRICK
50 industry regulation and I would like to thank Bill Johnson for
51 his work on this draft bill.

52 Last September, EPA finalized its national emission
53 standards for hazardous air pollutants for brick and structural
54 clay products manufacturing, commonly called Brick MACT.

55 This rule contains ultra stringent new emission targets, and
56 in fact it used as a baseline EPA's 2003 Brick MACT rule which
57 already reduced industry emissions by 95 percent, according to
58 a recent report.

59 It should be noted that those 2003 Brick MACT standards were
60 vacated by a federal court in 2007. But as in so many EPA
61 regulations where suits are filed and the complainants win, the
62 money is already spent.

63 The effort to comply has already been taken and so it is too
64 late for a practical relief for these people, and that's precisely
65 where the brick industry is finding itself today.

66 So I look forward to additional discussion. We have two
67 panels of witnesses today about these practical common sense bills
68 and hopefully we can provide some relief to these industries as
69 they try to protect jobs, help economic growth and to expand their

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70 industries.

71 [The Bill H.R. 3797 follows:]

72

73 *****INSERT 1*****

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74 [The Bill Blocking Regulatory Interference from Closing
75 Kilns (Brick) Act follows:]

76

77 *****INSERT 2*****

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78 Mr. Whitfield. With that, at this time I would like to
79 recognize the gentleman from California, Mr. McNerney, for his
80 five-minute opening statement.

81 Mr. McNerney. Well, I thank the chairman and I thank the
82 witness colleague. Today's hearing focuses on a couple of bills,
83 the BRICK Act and the SENSE Act, that are a familiar effort to
84 weaken the Clean Air Act.

85 Mr. Chairman, well thought out regulations make businesses
86 more competitive and protect American people. These bills echo
87 what we saw, for example, with the Ratepayer Protection Act, a
88 partisan effort to weaken the Clean Air Act.

89 Addressing air quality is a health and economic issue. Poor
90 air quality can disrupt businesses, individuals and families who
91 have to live with its consequences.

92 It is irresponsible and morally bankrupt to needlessly delay
93 a rule from taking effect that will improve air quality,
94 especially if the intent is to delay it indefinitely.

95 The bills under consideration seeks -- simply seek to
96 maintain the status quo. Well, the status quo isn't good enough.
97 Our country can do better than that.

98 I represent part of the San Joaquin Valley, which is also
99 called the famed Central Valley of California. But,
100 unfortunately, it has some of the worst air quality in the nation.

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101 Employees miss work, children miss school days and the
102 elderly are often encouraged to stay inside on certain days. We
103 have seen the air quality improve over the last decade, which I
104 am happy to say I have experienced.

105 But we are still living in poor air. I have seen firsthand
106 the effect of pollution on our communities. Valley air quality
107 is affected from a variety of sources -- from China, from in-state
108 and out-of-state vehicles, from drought, as well as from
109 pollutions drifting in from other parts of the state and from other
110 states.

111 That is not to mention unforeseen incidents like the methane
112 leak that has been releasing millions of pounds of methane per
113 day in southern California.

114 Our region has worked hard and taken steps to help address
115 one of the biggest issues facing the valley. Recent improvements
116 have produced significant economic and health benefits. But
117 there is still an enormous amount of work to be done.

118 Having worked in the private sector and an emerging field,
119 I understand the difficulties that come with raising capital and
120 business targets that are always moving around.

121 But these advancements take time and investments. Sticking
122 with the status quo is not and will never be a solution.

123 Fossil fuels will remain an important bridge of energy source

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124 as our country moves forward to cleaner energy sources.

125 But as we move forward, we should maintain focus on making
126 carbon energy production as clean as possible through technology
127 and effective use of regulation.

128 The EPA has used the Clean Air Act to improve the lives of
129 millions of Americans and reduce harmful emissions. The Clean
130 Air Act has worked and we should continue building on this landmark
131 legislation, not slowly dismantle it.

132 And by the way, I suggest that my colleagues embrace carbon
133 sequestration. With that, I would like to recognize my colleague
134 from Pennsylvania, Mr. Doyle.

135 Mr. Doyle. I want to thank my friend for yielding time. I
136 also want to thank Congressman Rothfus from my home state for
137 appearing before our committee today and for his work on this
138 important issue.

139 I have seen these coal refuse piles first hand and I have
140 witnessed significant benefit processing waste coal can provide
141 to these sites.

142 Our state, Pennsylvania, is home to nearly three-quarters
143 of the active coal refuse power plants in the country. There are
144 more than 5,000 coal refuse sites that cover approximately 184,000
145 acres throughout our state and pose a significant threat to local
146 habitats and communities.

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147 As many of you on this committee know, I'm an
148 all-of-the-above guy when it comes to our energy portfolio and
149 coal refuse power plants provide an additional benefit in that
150 they improve the local environment.

151 I think they are an important part of Pennsylvania's power
152 system and help ensure we are good stewards of our land and water.

153 This bill would certainly help ensure their continued use
154 in years to come. I would note to my colleagues that this bill
155 is also significantly improved from previous versions.

156 Cleaning up these waste coal piles is a major priority for
157 our state and we need to figure this difficult problem out.

158 However, I also want to ensure that we are protecting our
159 air, not playing favorites when it comes to picking power sources
160 and preserving important regulations in the regulatory process.

161 I still have some remaining concerns on aspects of these
162 bills. But I want to thank Congressman Rothfus for highlighting
163 the importance of this pressing issue for Pennsylvania that is
164 before our committee today, and I yield back.

165 Mr. Whitfield. The gentleman yields back.

166 At this time, Mr. Upton is not here so I would like to
167 recognize the gentleman from Ohio, the author of the BRICK Act,
168 Mr. Johnson, for five minutes.

169 Mr. Johnson. Well, thank you, Mr. Chairman, for holding

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170 this very important hearing today to examine both the legislation
171 that my colleague, Mr. Rothfus, has introduced and the BRICK Act,
172 a discussion draft that addresses the EPA's national emissions
173 standards for the brick and structural clay products
174 manufacturing industry, which was finalized last September 24th
175 of 2015.

176 Simply put, the BRICK Act would allow for the consideration
177 and completion of any judicial review regarding the EPA's emission
178 standards for the brick industry before requiring compliance.

179 Mr. Chairman, I want to take just a moment to illustrate how
180 the EPA's new regulation will affect the industry and why the BRICK
181 Act is so desperately needed.

182 The majority of U.S. brick plants are small family-owned
183 operations. They are often located in small communities that
184 depend on the plant for good-paying jobs.

185 Whitacre Greer Brick, located in Alliance, Ohio, is just such
186 a company that fits that description. Whitacre Greer employs 75
187 people, offers education and training benefits and health
188 insurance to its employees.

189 To comply with the EPA's requirements, Whitacre Greer will
190 be forced to borrow millions of dollars to pay for the required
191 control equipment.

192 Many brick companies are already struggling to find the

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193 capital for plant modernization projects. I can't imagine how
194 difficult it will be for these companies like Whitacre Greer to
195 secure the needed investments to pay for new control equipment
196 -- equipment that provides zero return on investment.

197 Additionally, and this is an important point, the EPA, as
198 you mentioned, Mr. Chairman, finalized a similar rule in 2003 that
199 already required brick companies to spend millions of dollars on
200 control equipment and the industry did that when that rule was
201 implemented.

202 A few years later, a federal court vacated that rule, making
203 that investment useless. Unfortunately, the brick industry
204 couldn't roll back the clock and recover the investment they had
205 made and, worse yet, the EPA's new emission rules used reductions
206 achieved by the vacated rule as the baseline for further emission
207 reduction requirements.

208 Now, I don't think anybody here would disagree. I see the
209 need to protect public health and the environment. But it is
210 unfair that the agency's new rule does not give the industry credit
211 for the emission reductions that it has already achieved.

212 This lack of consideration in addition to other EPA rule
213 requirements places the industry's very survival in jeopardy.
214 The brick industry is a part of the American fabric. It is a part
215 of American culture.

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216 It has built some of the most iconic buildings and towns in
217 existence today. We must make certain our regulations and laws
218 preserve this industry, not end it. The BRICK Act will help keep
219 this important industry alive.

220 Unless we want to start constructing buildings out of sticks
221 and straw, we better wise up. We, collectively, all across this
222 country, here in the House, in the Senate, in the federal agencies
223 like the EPA, need to act responsibly on this issue.

224 And with that, Mr. Chairman, I will look forward to
225 discussing the issue.

226 Mr. Shimkus. Would the gentleman yield? Would the
227 gentleman yield?

228 Mr. Johnson. Yes, I certainly will yield.

229 Mr. Shimkus. Thank you. I just want to take this time to
230 welcome Congressman Rothfus from Pennsylvania and especially on
231 this piece of legislation.

232 Congressman Doyle mentioned it. I also have a lot of sites
233 that could be recycled. I think Keith proves to be a sound
234 political mind and does due diligence and we are glad you finally
235 get a chance to air this bill before the subcommittee and we want
236 to welcome you.

237 Likewise to my colleague and friend, Bill Johnson. He's
238 right. The brick industry is really mom and pop businesses that

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239 have operated and survived for many years. I would just remind
240 my friends that the biggest damage to the health of our individual
241 citizens is unemployment and no jobs.

242 And so our fight is to make sure that we can continue to
243 provide good-paying jobs with health care benefits to our citizens
244 before it is too late. With that, I yield back my time.

245 Mr. Whitfield. Gentleman yields back.

246 At this time, the chair recognizes the gentleman from New
247 Jersey, Mr. Pallone, for five minutes.

248 Mr. Pallone. Thank you, Mr. Chairman.

249 Today, we are considering two bills that undermine EPA air
250 rules -- rules that are instrumental in protecting public health
251 and the environment by reducing mercury and other hazardous air
252 pollutants from power plants and other industrial sources.

253 Let me start with H.R. 3797, the Satisfying Energy Needs and
254 Saving the Environment Act, or SENSE Act. This bill would revise
255 the mercury and air toxics, or MATS rule, and the cross-state air
256 pollution rule, or CSAPR rule, to allow power plants that burn
257 coal refuse to emit higher levels of sulfur dioxide and hydrogen
258 chloride.

259 Sulfur dioxide is known to cause adverse respiratory impacts
260 and hydrogen chloride is corrosive to eyes and skin and can
261 irritate the respiratory tract.

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262 Supporters of this bill will say that facilities that burn
263 coal refuse are doing a good thing by cleaning up the environment
264 and generating power. But I don't think we are here today to
265 debate that.

266 Instead, we are here to consider whether the facilities that
267 burn coal refuse should be given a free pass on complying with
268 EPA rules to reduce certain air pollutants and I believe that is
269 a very bad idea.

270 Coal refuse plants are no different than other coal plants
271 and therefore should be held to the same emission standards.
272 Supporters of this bill have also argued that coal refuse plants
273 deserve special treatment when it comes to these air rules.

274 In the context of the MATS rule I would note that the EPA,
275 the courts and the Senate, which considered a coal refuse-related
276 amendment last January, have all reviewed and rejected the
277 argument that they should be given special consideration.

278 In the context of the CSAPR rule, the SENSE Act is unnecessary
279 and I just think bad policy. The current rule uses a phased-in
280 approach to achieve emission reductions where facilities receive
281 emission allowances that decrease over time.

282 The bill would shift a greater percentage of these emission
283 allowances to coal refuse plants. EPA has a plan for how these
284 allowances should be allocated to individual plants. But states

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285 also have the ability to submit their own plan for achieving the
286 required emission reductions.

287 What this means is the state, if it chooses, already has the
288 power to give extra allowances to coal refuse plants as this bill
289 would mandate.

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

295 Now, briefly turning to the other bill, the BRICK Act extends
296 compliance deadlines until all legal challenges are resolved by
297 the courts.

298 If this sounds familiar, that is because it is. We saw a
299 similar provision in H.R. 2042, the Ratepayer Protection Act.

300 We also had a similar discussion at our hearing on that bill
301 when the witness pointed out that the current judicial process
302 for delaying a rule has, and I quote, "withstood the test of time
303 and ensures the courts will undertake a careful balancing of
304 interests before granting a stay of agency action."

305 And she further explained that the blanket extension in the
306 discussion draft would, quote, "create powerful incentives for
307 frivolous litigation in an effort to stall and avoid compliance."

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308 I do understand there are special circumstances related to
309 this particular rule. The brick industry has made good faith
310 efforts to work with EPA and to reduce their emissions.

311 However, the litigation delay in the BRICK Act creates a very
312 bad precedent, in my opinion. The bills we are considering today
313 would undermine protections and set bad legislative precedence
314 going forward and therefore I cannot support either of them, and
315 I yield back.

316 Thank you, Mr. Chairman.

317 Mr. Whitfield. Gentleman yields back and that concludes the
318 opening statements. Like our friend from Illinois, I also want
319 to welcome Keith Rothfus, a member of Congress from the state of
320 Pennsylvania, with us today.

321 He is the author of the SENSE Act and has been -- I know we
322 have had many discussions about it. I know he has been talking
323 to EPA about it and had discussions with other groups as well.

324 So welcome, Congressman Rothfus, and you are recognized for
325 a five-minute opening statement.

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326 STATEMENT OF HON. KEITH J. ROTHFUS, A REPRESENTATIVE IN CONGRESS
327 FROM THE STATE OF PENNSYLVANIA

328

329 Mr. Rothfus. Thank you, Mr. Chairman, and thank you for --

330 Mr. Whitfield. And be sure to turn the microphone on.

331 Mr. Rothfus. Are we on? There. Does that work? Very
332 good.

333 Thank you, Mr. Chairman, and thank you for holding this
334 hearing today on two vitally important pieces of legislation, the
335 SENSE Act and the BRICK Act.

336 I also want to thank Vincent Brisini, director of
337 environmental affairs at Olympus Power, and Dennis Beck, the
338 chairman of the Western Pennsylvania Coalition for Abandoned Mine
339 Reclamation, for coming to Washington today to provide additional
340 insight on my legislation.

341 The SENSE Act, which stands for Satisfying Energy Needs and
342 Saving the Environment Act, is a common sense solution that allows
343 innovative coal refuse-to-energy facilities to generate
344 affordable reliable energy and continue their essential
345 environmental remediation work in a responsible manner.

346 As many of you know, the coal industry has been a central
347 power to Pennsylvania's economy for many years. Unfortunately,
348 historic mining activity littered Pennsylvania and a few other

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349 states with large piles of coal refuse, sometimes called waste
350 coal, which is essentially a mix of lower quality coal, rocks and
351 dirt that remain after the mining and processing of coal.

352 Before technology was invented to make use of this material,
353 it accumulated in open spaces alongside cities and towns close
354 to schools and neighborhoods and in fields across coal country.

355 This led to a number of environmental problems that still
356 plague affected communities. These include air pollution,
357 damage to vegetation and wildlife and water pollution from acid
358 mine drainage.

359 I have been to several of these sites and seen firsthand the
360 environmental danger they pose. Coal refuse piles can catch fire
361 and burn for unacceptably long periods of time, polluting nearby
362 neighborhoods.

363 Runoff from these sites can turn rivers orange and leave them
364 devoid of life. According to Pennsylvania's environmental
365 regulator, it would cost roughly \$2 billion to clean up this hazard
366 in my state alone.

367 This is a significant challenge but is one that
368 Pennsylvanians and others in coal country are prepared to meet.
369 The coal refuse-to-energy industry has been a leader in solving
370 this problem.

371 With advanced technology, this industry has been able to use

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372 this previously worthless material to generate affordable and
373 reliable energy.

374 In the process, they have removed over 200 million tons of
375 coal refuse in Pennsylvania alone and remediated many formerly
376 polluted sites.

377 Thanks to the hard work of the dedicated people in this
378 industry, landscapes have been restored. Rivers and streams have
379 been brought back to life and towns across coal country have been
380 relieved of unsafe and unsightly waste coal piles.

381 It is important to note that private sector leadership on
382 this issue has saved taxpayers millions of dollars in cleanup
383 costs. It has also created hundreds of family-sustaining jobs
384 in areas that have been economically distressed for many years.

385 These jobs and the communities they support are at risk today
386 unless we stand to defend them. The work that the coal
387 refuse-to-energy industry has done is remarkable and it
388 represents an environmental success story that should transcend
389 partisan lines.

390 Despite my best efforts to advocate for a compromise, the
391 Environmental Protection Agency has refused to adjust the
392 regulations that threaten to shut down much of the coal
393 refuse-to-energy industry and thus imperil its vital remediation
394 efforts.

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22

395 The intensification of two existing rules -- the Mercury and
396 Air Toxic Standards, or MATS rule, and the Cross-State Air
397 Pollution Rule, or CSAPR -- is especially concerning.

398 Though all coal refuse fire-powered generators can meet the
399 mercury standard under MATS -- let me reemphasize that -- the coal
400 refuse fire-powered generators can meet the mercury standards
401 under MATS, many facilities will be unable to meet the rule's new
402 hydrogen chloride or sulfide dioxide standards.

403 The SENSE Act provides operators with alternative compliance
404 standards that are strict but achievable.

405 Similarly, although coal refuse fire-powered generators were
406 provided sufficient sulfur dioxide allocations in phase one of
407 the CSAPR's implementation, these facilities were allocated
408 insufficient credits in phase two, which is set to begin in 2017.

409 The SENSE Act seeks to provide coal refuse fire-powered
410 plants with the same allocation levels in phase two as in phase
411 one.

412 My bill also contains provisions to ensure that this change
413 does not simply create a profit center for the industry.

414 Credits allocated as a result of the SENSE Act's
415 implementation must go to covered plants, specifically those that
416 use bituminous coal refuse and they cannot be sold off to other
417 operators.

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418 The SENSE Act represents a common sense compromise between
419 the legitimate goals of controlling pollutants emitted from coal
420 refuse-to-energy facilities and ensuring that regulations
421 imposed on the industry are fair and allow vital remediation at
422 work to continue.

423 The people who live near coal refuse piles and all the
424 communities downstream of these hazards expect us to find a
425 solution.

426 The industrious men and women at the power plants, on the
427 coal refuse piles and throughout the supply chain are counting
428 on us to protect their livelihoods.

429 We owe it to all of them to pass the SENSE Act. Again, I
430 thank the committee for holding this important hearing and I
431 welcome any questions that you may have.

432 [The prepared statement of Mr. Rothfus follows:]

433

434 *****INSERT 3*****

435

436

437

438

439

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440 Mr. Whitfield. Well, Congressman Rothfus, thank you very
441 much for being with us today, and as much as we would like to ask
442 you questions we are going to dismiss you because we have another
443 panel and we are going to be asking them a lot of questions.

444 But I want to thank you again for your leadership and bringing
445 this to our attention and we all look forward to working with you
446 to try to move this legislation to provide some assistance. I
447 thank you very much.

448 Mr. Rothfus. Thank you, Chairman.

449 Mr. Whitfield. Thank you.

450 Now, at this time I would like to call up the witnesses on
451 the second panel.

452 We have five of them. We have Mr. Davis Henry, who is the
453 president and CEO of Henry Brick. We have Mr. Creighton McAvoy,
454 who is president of McAvoy Brick Company.

455 We have Mr. Vincent Brisini, who is the director of
456 environment affairs for Olympus Power and we have Mr. Dennis Beck,
457 chairman of the Western Pennsylvania Coalition for Abandoned Mine
458 Reclamation, and we have Mr. John Walke, who is senior attorney
459 and clean air director at the Natural Resources Defense Council.

460 So if you all would come forward and have a seat. I want
461 to thank all of you for joining us this morning to discuss these
462 two pieces of legislation.

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463 We know that all of you have your expertise and we, as a
464 committee, look forward to learning more about both of these bills
465 and the impacts that they might have.

466 So, Mr. Brisini, you will be first and so everyone make sure
467 their microphones are on when you do speak so that our transcriber
468 here can get everything down.

469 But, Mr. Brisini, you are now recognized for five minutes
470 for your opening statement.

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26

471 STATEMENTS OF VINCENT BRISINI, DIRECTOR, ENVIRONMENTAL AFFAIRS
472 FOR OLYMPUS POWER; DENNIS BECK, CHAIRMAN, WESTERN PENNSYLVANIA
473 COALITION FOR ABANDONED MINE RECLAMATION; JOHN WALKE, SENIOR
474 ATTORNEY AND CLEAN AIR DIRECTOR, NATURAL RESOURCES DEFENSE
475 COUNCIL; DAVIS HENRY, PRESIDENT AND CEO, HENRY BRICK; CREIGHTON
476 "BUTCH" MCAVOY, PRESIDENT, MCAVOY BRICK COMPANY

477

478 STATEMENT OF VINCENT BRISINI

479 Mr. Brisini. Good morning. I would like to thank the chair
480 and the committee for holding this hearing on the SENSE Act.

481 My name is Vince Brisini and I am the director of
482 environmental affairs for Olympus Power. Today, I am testifying
483 on behalf of ARIPPA, the trade association of the coal
484 refuse-to-energy industry.

485 ARIPPA members' facilities remove and convert coal refuse
486 from historic mining activities into environmentally beneficial
487 electricity.

488 In fact, our electricity is recognized in the Pennsylvania
489 Alternative Energy Portfolio Standards Act. Coal refuse is a
490 material that has been left behind by historic coal mining
491 activities.

492 This includes the mining and the processes which separated
493 the coal from rock and other carbonaceous material. The picture

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494 on the screen shows a coal refuse pile on the left and on the right
495 the mine acid drainage that can emanate from these piles.

496 If you look at the coal refuse pile picture you can see the
497 mine acid drainage-polluted stream on the right and at the bottom
498 of the coal refuse pile.

499 The pink areas on the pile are evidence that this pile has
500 previously burned. Where I come from, that material is called
501 red dog.

502 The next likely question is how much coal refuse is out there.
503 No one really knows. But it is estimated to be about 2 billion
504 cubic yards in Pennsylvania alone and that is split about evenly
505 between the bituminous region in the western part of the state
506 and the anthracite region in the eastern part of the state.

507 This map shows the abandoned mine lands and the location of
508 the coal refuse-to-energy plants in Pennsylvania. It also shows
509 the watersheds impacted by mining-affected lands including coal
510 refuse piles.

511 Everyone downstream of mining-affected lands is impacted by
512 the surface water pollution from these areas. The coal
513 refuse-to-energy process consists of three basic steps.

514 The coal refuse is screened and removed from the site and
515 then hauled to the coal refuse-to-energy plant. The coal refuse
516 is then burned with limestone in a fluidized bed combustor boiler

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517 to make steam to produce electricity and that results in ash that
518 meets the criteria for beneficial use in Pennsylvania and that
519 ash is returned to the mining-affected lands and used to remediate
520 and reclaim those areas.

521 The coal refuse-to-energy process is the only process that
522 permanently addresses the problems associated with coal refuse.

523 Some key industry metrics in Pennsylvania are 1,500
524 megawatts of electric generating capacity, 11 million tons of coal
525 refuse removed annually for fuel, over 205 million tons of coal
526 refuse used so far for fuel, thousands of acres of land remediated
527 and reclaimed, hundreds of miles of streams improved by
528 elimination of acid mine drainage, 1,200 indirect jobs -- 1,200
529 direct jobs with a payroll in excess of \$84 million per year, 4,000
530 indirect jobs for project management, engineering, operations,
531 transportation, logistics and skilled trades, property tax
532 revenues to support local schools and communities and over \$10
533 million per year of business per facility into their local economy
534 -- collectively, \$150 million per year into Pennsylvania's
535 economy.

536 The regulatory issues being addressed by the SENSE Act are
537 the cross-state air pollution rule and the mercury and air toxic
538 standards.

539 While ARIPPA has engaged in both verbal and written

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540 communications with EPA regarding the issues associated with coal
541 refuse-fired boilers, EPA has failed to recognize the technical
542 differences between coal-fired and coal-fired refuse boilers and
543 the unique multimedia benefits the coal refuse-fired boilers
544 provide to Pennsylvania.

545 The SENSE Act, on the other hand, provides for very targeted
546 appropriate achievable emission control requirements for certain
547 of these units.

548 Specifically, under the cross-state air pollution rule the
549 SENSE Act continues phase one sulfur dioxide allowance
550 allocations to existing bituminous coal refuse-fired units only.

551 But it preserves EPA's sulfur dioxide emissions budget by
552 reallocating a percentage of allowances from retired units in two
553 plants that were converted from coal to natural gas.

554 However, it does not allow the transfer of these sulfur
555 dioxide allowances to other units and upon retirement any banked
556 sulfur dioxide allowances allocated under the SENSE Act must be
557 surrendered.

558 These caveats prevent an economic windfall to these
559 bituminous coal refuse-fired units and most likely they result
560 in less sulfur dioxide being emitted into the environment.

561 In the case of the mercury and air toxic standards, the SENSE
562 Act adds an additional performance-based standard of 93 percent

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563 sulfur dioxide removal to the current acid gas standards for
564 demonstration of compliance.

565 This again provides for the necessary relief for the
566 continued operation of the bituminous coal refuse-fired plants.

567 The SENSE Act is a reasonable and targeted effort to address
568 the errors that EPA has made in CSAPR and MATS and is very important
569 to ensuring that these coal refuse-fired facilities remain able
570 to conduct their business of reclaiming and recovering these
571 mining-affected lands and providing high quality
572 family-sustaining jobs in the communities in which these
573 facilities are located.

574 ARIPPA would like to thank Rep. Rothfus and we urge you to
575 support the SENSE Act and its passage in this session of the U.S.
576 House of Representatives.

577 [The prepared statement of Mr. Brisini follows:]

578

579 *****INSERT 4*****

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580

Mr. Whitfield. Thank you very much, Mr. Brisini.

581

And, Mr. Beck, you are now recognized for five minutes.

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582 STATEMENT OF DENNIS BECK

583

584 Mr. Beck. Usually I don't need a microphone but I'll tone
585 myself down today.

586 Good morning, Mr. Chairman, and the rest of the committee
587 members. My name is Dennis Beck. I am president or chairman of
588 the Western Pennsylvania Coalition for Abandoned Mine
589 Reclamation, otherwise known as WPCAMR. We have a sister
590 organization called EPCAMR, which is the eastern Pennsylvania
591 coalition.

592 The coalition appreciates the opportunity to appear today
593 and share our views and concerns on the effects of the waste
594 coal-to-energy plants in restoring the degraded environment in
595 coal-producing areas, especially in Pennsylvania.

596 I am expressing support for House bill 3797, the SENSE Act,
597 which will help establish the standards for EPA to regulate waste
598 coal-to-energy plants.

599 Our efforts focus on returning abandoned mine lands and waste
600 coal piles to productive use, improving water quality and reducing
601 hazards to health and safety, thus improving the local economy
602 and enhancing the quality of life.

603 Today, the runoff from these waste coal piles is polluting
604 our surface and ground water supplies for several miles around

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605 the piles with other numerous impacts on our environment.

606 Chemicals such as mercury, selenium, chromium, lead,
607 aluminum, iron and manganese are seeped out of these coal piles
608 into our water systems -- into our water supplies.

609 Where I live in Cambria County we are at the head waters of
610 the Ohio River and Pennsylvania is also part of the head waters
611 for the Chesapeake Bay. So any pollution that rolls off these
612 coal piles affects everyone downstream.

613 Changes in the PH in these streams destroys aquatic life from
614 the macro invertebrates to fish. None survive in it, from some
615 of the pictures that Vince had shown.

616 Here is an important part. If left alone, many of these
617 piles will self-ignite. We have got 40 piles in the state of
618 Pennsylvania that are burning at this time.

619 In Lackawanna County, in 2014 Pennsylvania's DEP had to
620 extinguish that pile. It cost them over \$2 million to extinguish
621 the one pile that was burning.

622 The three coal generation plants in my county have
623 significantly improved and impacted our county. They have burned
624 over 25 million tons of waste coal while supplying electricity
625 to the 280,000 residences.

626 The three plants employ 200 people directly, and indirectly
627 300 more. They have reclaimed over 525 acres of abandoned mine

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628 lands, contributed over \$25 million to the local community since
629 they have been put in place and have won numerous state and
630 environmental and safety awards since 1992.

631 I just want to talk a little bit about two of the reclamation
632 sites in Cambria County. In Revloc, the Blacklick Creek was a
633 dead stream for several decades. That has been restored.

634 Over 100 acres of land have been restored. The south branch
635 of the Blacklick is now designated as a cold water fishery by the
636 Pennsylvania Fish and Boat Commission and it is eligible for fish
637 stocking for the local fishermen.

638 In Washington township, there has been 3.5 million tons of
639 waste coal removed. In its place, there are four ball fields,
640 two and a half miles of walking trails, a community hall, a coal
641 miners monument and a bell tower.

642 It is now a gathering place for the entire community both
643 young and old, improving the vitality of a once dying community.
644 A contractor has also subdivided numerous acres for housing growth
645 in that area.

646 Another one of these big projects that was undertaken is
647 called the Big Gorilla project in northeast Pennsylvania. It
648 cost DEP \$4.5 million to reclaim those acres, and they estimated
649 if the waste coal plants had not come in to take the waste coal
650 out of there that reclamation cost would have been \$80 million

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651 and it cost \$4.5 million to get it cleaned up and restored.

652 I want to look at net benefits. Several people have talked
653 about reducing -- the benefits of cleaning these sites up and stuff
654 that we have put on it. I have mentioned a couple of them.

655 Let me just mention what would happen if they are not cleaned
656 up. There is over 5,000 piles of waste coal left in Pennsylvania.
657 There is 40 of them burning at this time.

658 If they are left alone, numerous more are going to
659 self-ignite and what comes off of those piles in the smoke and
660 the steam that come off of there are, again, your mercury, your
661 sulfates, your chlorides, hydrogen sulfide.

662 You got polycyclic organics, which are phenols, coming off
663 of there in that smoke. Furthermore, let me mention this one
664 also.

665 EPA has indicated from past statements that because of the
666 unique environmental benefits that coal refuse-fired electric
667 generating units provide, these units warrant special
668 consideration so as to prevent the amended NSPS, the new source
669 performance standards, from discouraging the construction of
670 future coal refuse-fired plants in the U.S. and that is in the
671 ARIPPA report that was updated. It is a white paper updated on
672 October 5th of 2015.

673 We feel it is not equitable and one regulation does not fit

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674 all the plants the same. It's an over burdening and unfair
675 regulation and we support Rep. Rothfus' House bill that will
676 examine the EPA regulation on emissions of these waste coal
677 plants.

678 We feel that waste coal plants provide a greater benefit to
679 the environment, communities and residents of the unregulated
680 coal mining regions of the past.

681 The amount of pollution removed and streams restored to new
682 life must be considered as greatly beneficial to the people of
683 the United States.

684 Mr. Whitfield. Mr. Beck, excuse me. I have let you go over
685 about a minute and a half so --

686 Mr. Beck. Three lines. Three lines.

687 Mr. Whitfield. Okay.

688 Mr. Beck. These waste plants are a great example of
689 ingenuity, cutting-edge technology and concern for the
690 environment.

691 The positive impact of the waste coal burning plants include
692 enhancements on land, water, air, living organisms as well as
693 social, cultural and economic environments.

694 And thank you, Mr. Chairman.

695 [The prepared statement of Mr. Beck follows:]

696

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697

*****INSERT 5*****

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698 Mr. Whitfield. Thank you so much.

699 Mr. Walke, welcome back. We appreciate your being here this
700 morning. You're recognized for five minutes.

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701 STATEMENT OF JOHN WALKE

702

703 Mr. Walke. Thank you, Chairman Whitfield and members of the
704 committee. It is good to be back.

705 My name is John Walke and I am clean air director and senior
706 attorney for the Natural Resources Defense Council, a nonprofit
707 organization of scientists, lawyers and environmental
708 specialists dedicated to protecting public health and the
709 environment.

710 H.R. 3797, the Satisfying Energy Needs and Satisfying the
711 Environment Act, is a flawed bill that would weaken air pollution
712 standards for waste coal plants and increase dangerous and deadly
713 pollution under two of the most important clean air rules ever
714 adopted for coal-burning power plants.

715 I am not here to dispute or to debate beneficial uses of waste
716 coal to energy production, as Congressman Pallone noted.

717 H.R. 3797 will, however, increase emissions of harmful
718 sulfur dioxide and particulate matter pollution as well as
719 hazardous air pollution in states with coal plants. This will
720 impose additional avoidable health hazards on Americans. My oral
721 testimony will make four basic points.

722 First, H.R. 3797 picks winners and losers under EPA's
723 signature interstate air pollution program, the cross-state rule.

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724 It does so by favoring waste coal power burning -- waste coal power
725 burning plants at the expense of all the other in-state power
726 plants that generate electricity with other types of coal or oil.

727 H.R. 3797 even deprives some of these other coal plant
728 operators of valuable economic assets to which they are entitled
729 under current law. This political favoritism up ends the neutral
730 performance-based legal system that Congress has maintained for
731 interstate air pollution for 39 years.

732 H.R. 3797 deprives valuable allowances from non waste coal
733 plant operators that make cleaner decisions. This deters cleaner
734 generation and penalizes other in-state coal burning power plant
735 operators.

736 H.R. 3797 penalizes the coal plant operators that do not burn
737 waste coal by reducing valuable sulfur dioxide allowances that
738 the operator is entitled to hold or trade or sell under current
739 law.

740 This especially harmful element of the bill has the
741 unjustified effect of rewarding dirtier operation by waste coal
742 plants and penalizing less polluting decisions by coal plant
743 operators to switch to natural gas or cease operation.

744 Indeed, were this legislation to become law the bill would
745 create immediate disincentives to repowering coal units to
746 natural gas or shutting down older inefficient units. This is

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747 not good public policy.

748 Second, the bill attacks state rights under the Clean Air
749 Act. The legislation deprives state officials of the flexibility
750 and prerogative to determine from which in-state sources sulfur
751 dioxide reductions are best secured to comply with the cross-state
752 rule and how to achieve those reductions most effectively,
753 equitably and cost effectively.

754 The legislation would take control away from states to make
755 these basic decisions for the first time in the 39-year history
756 of the Clean Air's program. Remarkably, the bill even goes on
757 to place the U.S. EPA administrator in charge of decisions that
758 the Clean Air Act today reserves to states.

759 If state officials in Pennsylvania or West Virginia, for
760 example, wish to incentivize the waste coal energy industry, they
761 may do so today under current law.

762 State officials may grant more sulfur dioxide allowances to
763 waste coal plant operators from the state's total emission budget
764 under the cross-state rule. There is no need to pass legislation
765 like this to accomplish that.

766 Indeed, the bill would paradoxically deny state officials
767 the flexibility and authority that they enjoy under today's law.

768 Third, the bill allows unhealthy levels of sulfur dioxide
769 pollution to increase above a state's total budget level,

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770 worsening air quality in upwind and downwind states.

771 Due to a fatal flaw in the bill discussed in my written
772 testimony, there is no constraint in the real world on the sulfur
773 dioxide emissions exceeding a state's overall pollution budget.
774 The result would be more pollution in upwind and downwind states.

775 Fourth and finally, the bill harms Americans' health and air
776 quality by letting waste coal plants emit excessive levels of
777 dangerous hazardous air pollution.

778 It adds an alternative more lax emission standard for sulfur
779 dioxide emissions to the two more protective standards in the rule
780 already.

781 The EPA has noted that some waste coal plants already are
782 meeting either the rule sulfur dioxide standard or hydrogen
783 chloride standard or both.

784 Others will do so by April of this year after seeking
785 compliance extensions and installing available pollution
786 controls to meet the standards.

787 When waste coal plants owners filed lawsuits challenging the
788 mercury rule, claiming it was, quote, "virtually impossible to
789 meet the acid gas and sulfur dioxide limits," the court had little
790 trouble rejecting these arguments unanimously.

791 The judges pointed to evidence showing that eight out of 19
792 waste coal units with data already could meet the rule's acid gas

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43

793 standard or alternative sulfur dioxide standard.

794 Indeed, the court noted that some of these already compliant
795 plants are among the best performers -- let me repeat that -- among
796 the best performers in achieving hydrogen chloride reductions
797 among all coal-burning power plants around the country.

798 Finally, H.R. 3797 would allow higher levels of sulfur
799 dioxide emissions and hazardous air pollution. This outcome is
800 harmful for Americans living in states with these coal plants and
801 harmful to Americans living downwind from these plants.

802 This too is bad public policy and I urge members of the
803 committee not to approve the bill. Thank you.

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

805

806 *****INSERT 6*****

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44

807 Mr. Whitfield. Mr. Walke, thank you very much.

808 And, Mr. Henry, you are now recognized for five minutes.

809 STATEMENT OF DAVIS HENRY

810

811 Mr. Henry. Chairman Whitfield, distinguished members of
812 the subcommittee, good morning and thank you for inviting me to
813 testify.

814 Mr. Whitfield. Have you turned your mic on?

815 Mr. Henry. Sorry about that. Chairman Whitfield and
816 distinguished members of the subcommittee, good morning and thank
817 you for inviting me to testify on this important issue.

818 My name is Davis Henry and I am the president of Henry Brick,
819 which has manufactured clay brick in Selma, Alabama for over 70
820 years.

821 I represent the third generation of Henrys to operate this
822 plant. I also currently serve as the vice chairman of the board
823 for the Brick Industry Association, the national trade
824 association that represents manufacturers and distributors of
825 clay brick and pavers.

826 I am here today to speak on behalf of both my company and
827 my industry. Henry Brick currently employs 58 people including
828 our manufacturing, sales and support staff. That number
829 hopefully will grow this year to about 95 when we bring plant two
830 back online.

831 It has been idle since June of 2008 due to the economy. As

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46

832 you can imagine, the last eight years have been a very trying time
833 for our company as well as the rest of the brick industry.

834 We are committed to doing our share to protect our
835 environment, but with a finite amount of resources we need to be
836 sure that we know what is required of us and that the expectations
837 will not change once the resources are committed.

838 I am here today because we were directly impacted by a
839 previous change in regulation and I want to ensure that my company
840 and all remaining brick companies do not fall victim to this again.

841 In 2003, the first maximum achievable control technology,
842 or MACT, standard was promulgated for our industry.

843 This rule applied only to major sources of hazardous air
844 pollutants, or HAP, and only to the larger kilns in our industry.

845 For our industry with only two pollutants emitted in any
846 large amount, the only definition of major source that really
847 applies is a facility that has the potential to admit ten tons
848 or more of any single HAP.

849 Henry Brick was a major source of HAP in 2003 and had two
850 kilns considered to be large by the EPA. We had until 2006 to
851 install and begin operating control devices to meet the limits,
852 which we did.

853 We installed limestone-based systems called DLAs, or dry
854 lime absorbers, on both our kilns at a total capital cost of about

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855 \$1.5 million.

856 In 2007, almost a full year after our industry achieved
857 compliance with the 2003 MACT, it was vacated by the courts for
858 deficiencies.

859 Unfortunately, most of us, including Henry Brick, were
860 unable to turn off our control devices because our existing air
861 permits would not allow us to stop operating the controls.

862 The cost to operate the control devices over the last eight
863 plus years has been significant as well. During the compliance
864 time for the 2003 Brick MACT, the number of controlled kilns in
865 our industry soared from just over 20 to more than 100 kilns.

866 In 2008, the EPA began developing the replacement MACT that
867 eventually became the 2015 Brick MACT. To develop the standard,
868 the EPA looked at the best performing kilns including those brand
869 new controls that would not have been in place except for the 2003
870 Brick MACT to establish the limits.

871 Unfortunately, like many who installed DLAs, our kilns could
872 not meet these new more stringent limits. We recently conducted
873 a stacked test at our facilities that confirmed our inability to
874 meet the limits for two of the three HAP categories.

875 We cannot meet the mercury limit nor the PN nonmercury metals
876 limit. To comply with the 2015 Brick MACT, we believe we would
877 need to take out the DLAs we installed in 2006 and install a new

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878 system called a dry injection fabric filter. The EPA estimates
879 this would cost us about \$3.8 million per kiln, almost \$8 million
880 to our company.

881 There is an alternate solution that may be as little as \$1.65
882 million but it has not been proved and we don't know how that will
883 pan out.

884 The EPA's estimated emission reduction for an average kiln
885 for mercury metals is less than 400 pounds per year for an
886 uncontrolled source. So our incremental reduction from our
887 control kilns would be even less.

888 There is a way to avoid MACT compliance. In fact, the EPA's
889 first listed option for complying with the rule is to avoid the
890 rule by becoming a synthetic matter or synthetic area source.

891 To become a synthetic area source a facility accepts
892 federally enforceable limits that ensures they never emit more
893 than the ten tons per year that makes you a major source.

894 If you are like Henry Brick and have both of your kilns
895 controlled with air pollution control devices, the EPA assumes
896 that you can become a synthetic area source at little or no cost.

897 If you follow EPA's approach to assigning cost, you would
898 assign an annual cost of less than \$20,000 per year.

899 Unfortunately, our most recent tests also demonstrate that
900 we cannot become a synthetic area source as we currently operate.

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901 We have some issues with raw materials and other things but
902 it is going to cost money to solve these issues and it will be
903 a lot more than \$20,000.

904 While compliance with this regulation alone threatens small
905 businesses like Henry Brick, if you consider that this is the only
906 regulation we face correctly identifying the appropriate place
907 to spend our finite sources is critical to our survival.

908 For example, the Occupational Safety and Health
909 Administration is about to finalize a new permissible exposure
910 limit for silica dust that, if promulgated as it was proposed,
911 will add almost another million dollars in equipment that my
912 company may need to finance and install to remedy a nonexistent
913 silicosis threat in brick plants.

914 Regulations like these threaten the continued existence of
915 many small companies in our industry including mine. In fact,
916 compliance with both of these rules at the same time could
917 devastate much of our already threatened industry where 75 percent
918 of the companies are small businesses.

919 Henry Brick simply cannot afford to try and hit another
920 potentially moving target of Brick MACT compliance. We acted in
921 good faith to comply with the 2003 Brick MACT and now face some
922 of the steepest costs in the industry because we may need to take
923 out our DLAs and replace them with this.

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924 We need the BRICK Act to ensure that we are not required to
925 invest again until we know that the standard is not going to
926 change. This is not a hypothetical issue for Henry Brick. It
927 is real. It has happened to us. Please do not let it happen
928 again.

929 Thank you for introducing this bill and for taking the time
930 to listen to me today. I am happy answering any additional
931 questions you may have.

932 [The prepared statement of Mr. Henry follows:]

933

934 *****INSERT 7*****

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935

Mr. Whitfield. Thank you very much.

936

Mr. McAvoy, you are recognized for five minutes.

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937 STATEMENT OF CREIGHTON MCAVOY

938

939 Mr. McAvoy. Thank you.

940 Chairman Whitfield and distinguished members of the
941 subcommittee, good morning and thank you for inviting me to
942 testify on this issue that could have potentially devastating
943 consequences to my company and to my industry.

944 My name is Creighton McAvoy. I am president of the McAvoy
945 Brick Company, which has manufactured clay brick and pavers in
946 Phoenixville, Pennsylvania for over 120 years.

947 However, my family history with brick making goes back five
948 generations to 1866 when my grandfather started a brick plant in
949 Philadelphia with his brother-in-law.

950 He eventually started two more brick yards in south
951 Philadelphia with his sons and in 1895 he and his sons started
952 a new corporation to make vitrified street pavers in Phoenixville.
953 We are still making brick on that site today.

954 In 2006, McAvoy Brick employed 26 hourly union employees and
955 six salaried employees working year round and had sales of over
956 \$5.5 million.

957 In 2012, due to the effects of the Great Recession on our
958 industry, McAvoy Brick sales bottomed out at just under \$2.5
959 million and we employed four salaried employees and 20 hourlies,

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960 most of which were laid off five to six months of that year.

961 Last year, business slightly improved to just under \$2.8
962 million in sales and employment increased to five salaried
963 employees and 21 hourly employees, most of which were employed
964 over eight months.

965 Throughout all this downturn, McAvoy Brick has been able to
966 pay all its bills and for the most part stay in the black. As
967 you can see, we are a very small business, even for the brick
968 industry.

969 I am here today because while we were not required to put
970 on controls in the last round of this regulation, it appears we
971 will need to under this new rule.

972 We are concerned that this regulation could become the moving
973 target that the last Brick MACT did and that regulatory
974 uncertainty could cripple my ability to remain in business.

975 We are here to ask your help to ensure that what happens --
976 happened to companies like Henry Brick does not happen again. We
977 believe the BRICK Act can give us this certainty we need.

978 I am not only here on behalf of my company. I am here on
979 behalf of my industry, as I serve on the board of directors of
980 the Brick Industry Association.

981 Approximately 75 percent of the companies in the brick
982 industry are small businesses like McAvoy Brick. They have been

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983 making brick for a hundred years or more and have been good
984 employers and neighbors in their local communities.

985 Our industry is committed to do our share and doing the right
986 thing for our employees, our vendors, our customers and our
987 community.

988 However, as our industry continues to struggle to come out
989 of the Great Recession, we, like all industries, have limited
990 resources. It is imperative that these limited resources be used
991 judiciously and on the most important issues.

992 It is important that there is some benefit to every dollar
993 spent and that the money not be spent needlessly or prematurely.

994 We were actually one of the fortunate companies when it came
995 to the 2003 Brick MACT. As we were able to take a production limit
996 from 12 tons of brick per hour through our kiln down to just below
997 ten tons per hour, making our kiln a small kiln and not subject
998 to those regulations.

999 That did not come without a cost, as we could have sold some
1000 of the product from that surrendered capacity in the few years
1001 before the recession.

1002 However, we were still better off than what compliance did
1003 to our fellow brick manufacturers with large kilns. In 2015, the
1004 2015 Brick MACT does not include some of the -- it does include
1005 some of the innovative requirements including health-based

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1006 standards for over 99 percent of the hazardous air pollutants
1007 emissions from our industry's kilns.

1008 Unfortunately, the requirement for the remaining 1 percent
1009 emissions, mercury and nonmercury metals, will require the same
1010 multimillion dollar controls that would have been required before
1011 the health-based standard was conceived.

1012 Under the 2015 Brick MACT, we will likely be required to
1013 install controls on our kiln. We will be conducting tests to
1014 determine our specific situation. According to EPA's cost
1015 estimates, they expect that we will install and operate a control
1016 device that will cost approximately \$1.5 million and become a
1017 synthetic miner source thus avoiding the Brick MACT requirements.

1018 This control device is the same one Henry Brick installed
1019 on their kilns. If that control is incapable of helping us get
1020 out of this rule, as it was incapable for Henry Brick, we believe
1021 we will have to install a control system that EPA estimates at
1022 costing \$2.7 million to control three to five pounds of mercury
1023 and 100 to 200 pounds of metals each year.

1024 We are simply not sure anyone will loan us the money to
1025 purchase these controls or that we will be able to pay this money
1026 back, particularly if it is for these more expensive system that
1027 has never been demonstrated to work on a brick kiln emission.

1028 While we did not have experience complying with control

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1029 limits for the 2003 Brick MACT, another small company similar to
1030 ours does have experience trying to borrow money from a financial
1031 institution.

1032 In their case, the money was for renovations at one of their
1033 kilns, an investment that would make them more efficient and more
1034 productive. They spent the last two years trying to obtain
1035 financing for a renovation of one of their kilns.

1036 This renovation would reduce their energy cost by
1037 approximately \$500,000 per year and it took two years to find a
1038 financial institution willing to lend them the money. That
1039 company is one of the few brick companies to have had steady profit
1040 since 2007.

1041 Their financial status was very good for all those loan
1042 applications with plenty of collateral. However, it still took
1043 two years to find an institution willing to lend them the funds.

1044 Mr. Whitfield. Mr. McAvoy, I let you go over about two
1045 minutes. If you would summarize your testimony.

1046 Mr. McAvoy. You may think that the loss of one small brick
1047 company will not make any difference in our overall economy.
1048 However, if McAvoy Brick is required to close their doors, more
1049 than \$2.8 million will be lost from our local economy.

1050 We pay over \$1 million in wages for 26 families. Many of
1051 these employees will have difficulty finding other employment.

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1052 Basically, we are really happy that this legislation has been
1053 introduced and we hope that it will be able to be passed. I thank
1054 the committee for allowing me the time to speak and I will be more
1055 than happy to answer any question at this time.

1056 [The prepared statement of Mr. McAvoy follows:]

1057

1058 *****INSERT 8*****

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1059 Mr. Whitfield. Well, thank you and I thank all of you for
1060 your testimony and at this time I recognize myself for five minutes
1061 for questions.

1062 Mr. Henry, how many employees do you have in your company?

1063 Mr. Henry. Currently, 58.

1064 Mr. Whitfield. Fifty-eight. And you have 26 families, Mr.
1065 McAvoy?

1066 Mr. McAvoy. Yes.

1067 Mr. Whitfield. You know, recently I was reading an article
1068 about -- and this article happened to be talking about some
1069 environmental groups who basically were saying that the end
1070 justifies the means.

1071 And that struck a chord with me because you look at the Brick
1072 MACT of 2003, that regulation which was vacated by a federal court.
1073 You look at the utility MACT.

1074 The Supreme Court recently found that rule to be legally
1075 flawed and remanded it back to EPA, and the day after the Supreme
1076 Court's decision EPA said in a blog that the Supreme Court ruling
1077 was of no practical impact, stating that the majority of power
1078 plants are already in compliance with our regulation or well on
1079 their way to compliance.

1080 It is disturbing to me personally that EPA seems to be
1081 developing a pattern and they are doing the same thing with the

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1082 Clean Air Act -- I mean, the clean energy plan in which they --
1083 even Larry Tribe says it looks like you are burning up the
1084 Constitution what you're doing here and now it is at the Supreme
1085 Court on whether or not there is going to be a stay to the
1086 implementation of this act or not.

1087 But they seem to be developing a pattern of they come forth
1088 with these regulations knowing full well the only avenue open to
1089 a company is to file a lawsuit or an association or groups to file
1090 lawsuits, knowing full well that that's going to take a period
1091 of time and the deadline for meeting the regulation is going to
1092 expire before that can be decided in the courts.

1093 And so that is a disturbing trend and it seems to me that
1094 both of you in the brick industry are concerned about that with
1095 this 2015 act that you are going to have to comply, you are going
1096 to spend the money and the lawsuits are going to be filed and you
1097 may end up winning but in effect it is a hollow victory. Would
1098 you agree with that comment or not?

1099 Mr. Henry. Certainly. You know, when we came into
1100 compliance in 2006 with the original MACT, as I have stated, we
1101 spent a million and a half dollars.

1102 A year later it was vacated. We have had to operate those
1103 control devices since 2007 regardless of whether there was a MACT
1104 in place or not. So we have spent no telling how much money over

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1105 that time operating them.

1106 Mr. Whitfield. Yes.

1107 Mr. Henry. And now to be faced with having to replace those
1108 with new control devices that are exponentially higher in cost
1109 for only a 4 percent gain or reduction in emissions seems
1110 outrageous.

1111 Mr. Whitfield. You know, we all recognize the Clean Air Act
1112 is a very important piece of legislation and I don't think America
1113 has to take a back seat to anyone on clean environment and we can
1114 credit the Clean Air Act for it.

1115 But I do think we have to be concerned when a pattern is
1116 developing where they are going so extreme on some of these
1117 regulations they cannot withstand legal challenge and yet the
1118 practical impact is it makes no difference because there is no
1119 avenue available.

1120 So I think that's something we are all concerned about. Let
1121 me just ask you on the coal refuse issue and the BRICK, have you
1122 all had a lot of discussions with EPA about your particular
1123 problem?

1124 Mr. Brisini. Yes. In fact, those discussions occurred.
1125 There were meetings on February 29th, 2012, May 30th, 2012, March
1126 19th, 2013, May 7th, 2013, November 5th, 2013 and --

1127 Mr. Whitfield. And do you feel like you are making any

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1128 progress in working on a solution with EPA on this?

1129 Mr. Brisini. Not at this point, no. We don't believe --

1130 Mr. Whitfield. Okay. What about the brick industry? Have
1131 you all been meeting with them as well?

1132 Mr. McAvoy. Oh, yes, we have. We worked with them and we
1133 were also able to get a health-based rule which is somewhat ground
1134 breaking.

1135 Mr. Whitfield. So they have been -- it has been productive
1136 for you?

1137 Mr. McAvoy. Oh, yeah. It has been productive. However,
1138 other things -- other issues come up, the mercury and the metals
1139 and it just also seems like, you know, outside sources suing, you
1140 know, caused these problems.

1141 Mr. Whitfield. Suing to making them to comply?

1142 Mr. McAvoy. Well, making the change -- to vacate the rule.

1143 Mr. Whitfield. Yes, right. To make -- yeah, right.

1144 Right. Well, yes, it is a -- it is really frustrating and my time
1145 is expired. So Mr. McNerney, you are recognized for five minutes.

1146 Mr. McNerney. I want to thank the chairman.

1147 Today's hearing focuses on a couple of bills -- oh, sorry.
1148 That was my opening statement.

1149 We have heard today that the coal refuse facilities are
1150 unable to meet the EPA mercury and air toxic standards. But this

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1151 isn't the first time we have heard that kind of claim that they
1152 can't meet the EPA standards only later to find out that the
1153 innovation made the standards achievable at minimal cost.

1154 Mr. Walke, it is my understanding that the EPA used their
1155 maximum achievable control technology program in setting up the
1156 mercury and air toxic standards. Could you briefly describe how
1157 that program works?

1158 Mr. Walke. Sure. The Clean Air Act's air toxic program
1159 requires the EPA to look at the best performers in reducing toxic
1160 air pollution.

1161 EPA did so for coal electric plants and found that waste coal
1162 plants were among the very best in the country among all coal
1163 plants including those that burned bituminous, lignite and
1164 otherwise and reducing the HCL emissions that are the subject of
1165 this bill and this hearing.

1166 The executive branch has found those emissions can be
1167 controlled. The judicial branch has found the same thing. State
1168 officials have found the same thing and plant operators are
1169 meeting the standards with equipment that is running today.

1170 Mr. McNerney. Very good. So Congress, in setting up this
1171 program, did not want to merely maintain the status quo. Congress
1172 wanted all facilities with an industrial sector to make up the
1173 necessary upgrades to reduce their emissions in line with the best

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1174 performing units. Is that right?

1175 Mr. Walke. That's correct, sir. And if I just may add some
1176 important context to a discussion that just occurred, the federal
1177 court in 2003 that struck down the BRICK standard found that the
1178 Bush administration had adopted illegally weak rules that did not
1179 reflect what the best performers can do.

1180 The rule was overturned following urgings by the Brick
1181 Industry Association, the trade group, to adopt those illegal
1182 elements in the rule and that's why the courts overturned it.

1183 I agree it is an unfortunate situation but if anything the
1184 Bush administration induced these companies to install illegal
1185 and inadequate controls and that was overturned in court which
1186 is, unfortunately, where we are today.

1187 Mr. McNerney. Well, the advocates for this bill claim that
1188 the coal refuse facility should be treated differently from other
1189 coal fuel generation facilities, that the technology and that the
1190 fuel used would prevent these facilities from meeting MATS
1191 standards.

1192 Did the EPA look at the coal refuse facilities while
1193 establishing the MATS standards? You sort of already answered
1194 that. Go ahead.

1195 Mr. Walke. They absolutely did and found them to be among
1196 the best performers, a conclusion that was validated by the court

1197 and rejecting the same arguments that you are now hearing from
1198 the waste coal industry when they were advanced unsuccessfully
1199 in a lawsuit.

1200 Mr. McNerney. Well, has the EPA considered treating these
1201 facilities differently from the other coal burning facilities?

1202 Mr. Walke. They already do. They allow these plants alone
1203 to meet alternative limits of HCL or sulfur dioxide in the air
1204 toxics rule and --

1205 Mr. McNerney. Is that appropriate?

1206 Mr. Walke. And I think that's perfectly appropriate as long
1207 as they are strict. What this bill does is relax the sulfur
1208 dioxide limit.

1209 Another point is really critical. State officials today
1210 have the authority to treat these plants differently.

1211 They have the authority to exempt the plants from the
1212 cross-state rule. They have chosen not to do so. They have also
1213 chosen to give them their fair share of allowances. But that is
1214 a decision that can be changed by state officials tomorrow.

1215 Mr. McNerney. Well, in your testimony you mentioned that
1216 the courts have also considered challenges to the mercury and air
1217 toxic rule based on assertions that the waste coal plants should
1218 regulate differently.

1219 Were these challenges successful?

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1220 Mr. Walke. They were not because the assertions were found
1221 to be unfounded.

1222 Mr. McNerney. Well, based on your response then there
1223 appears to be no justification for allowing these facilities to
1224 emit more pollution than other similar facilities.

1225 Mr. Walke. We certainly do not believe so, especially
1226 because we are talking about hazardous toxic air pollution and
1227 we are talking about pollution control devices that are both
1228 available and in use today.

1229 Mr. McNerney. Quickly, if you would -- the results of this
1230 legislation would be, in my opinion, that other power plants in
1231 a given state covered by the CSAPR would have to drastically cut
1232 their emissions to make up the differences. Is that -- is that
1233 appropriate?

1234 Mr. Walke. That is a strange paradox of the bill. They
1235 favor waste coal plants by requiring all other coal-burning plants
1236 in a state with waste coal plants to give up quite valuable assets,
1237 these sulfur dioxide allowances that can be traded or sold or used
1238 at a later time.

1239 So it's a zero sum game and the bill takes it out of the hide
1240 of remaining coal plant operators.

1241 Mr. McNerney. Very good. Thank you, Mr. Chairman.

1242 Mr. Whitfield. The gentleman's time has expired. At this

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1243 time the chair recognizes the gentleman from Illinois, Mr.
1244 Shimkus, for five minutes.

1245 Mr. Shimkus. Thank you, Mr. Chairman. It's a great hearing
1246 to have and it's unfortunate we have two different -- same but
1247 two different because I would like to get in depth on both of them
1248 and I want to try to.

1249 First, I want to -- to Mr. Henry and Mr. McAvoy, thank you
1250 for creating jobs and livelihood. Mr. McAvoy, what's your
1251 payroll approximately? I know you probably don't have those
1252 numbers in front of you.

1253 Mr. McAvoy. About a million dollars.

1254 Mr. Shimkus. How much taxes do you pay?

1255 Mr. McAvoy. You mean federal or whatever?

1256 Mr. Shimkus. Federal, state. Illinois has property taxes.

1257 Mr. McAvoy. Well, property tax I think to the school
1258 district I think we're, like, \$60,000 a year. We're a subchapter
1259 S corporation so I don't have a federal number.

1260 Mr. Shimkus. And how about health care benefits that you
1261 provide?

1262 Mr. McAvoy. About \$20,000 a month or more.

1263 Mr. Shimkus. Right. And these are bargain -- you got --
1264 your hourly folks are bargained, correct?

1265 Mr. McAvoy. Yeah.

1266 Mr. Shimkus. What's the union?

1267 Mr. McAvoy. Steelworkers.

1268 Mr. Shimkus. Okay.

1269 Mr. McAvoy. Steelworkers.

1270 Mr. Shimkus. So, again, those are always important aspects
1271 to debate because in my opening statement the greatest driver of
1272 health concerns to our population is poverty.

1273 So it's not -- it's an important debate to have to how much
1274 you push on emissions for the sake of health when you drive people
1275 into poverty or you cause them to lose their jobs or you put them
1276 on the welfare state. So I want to continue. Thank you for
1277 fighting for that aspect.

1278 Let me go -- Mr. Walke, and I appreciate you being here and
1279 I know the organization and association and you laid out a
1280 compelling case on technology in the SENSE Act.

1281 But you made no comment on -- you didn't make another credible
1282 defense of technology in respect to the BRICK Act. In fact, you
1283 said nothing about the BRICK Act. Can you tell me why?

1284 Mr. Walke. Sure. I was invited to testify about the SENSE
1285 Act. I have some familiarity with the Brick rule and I related
1286 some of that.

1287 Mr. Shimkus, I will try my best to answer your questions but
1288 I didn't prepare a written testimony.

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1289 Mr. Shimkus. Okay. Because obviously the brick industry
1290 -- the debate is also rules, regulations we tried to meet. Now
1291 they're changing the rules. Now we may not be able to meet it.

1292 So that would be -- if you would, that would be helpful to
1293 me if you would come because it's just important in this debate,
1294 the cost benefit analysis.

1295 Let me go to the -- kind of segueing now to the SENSE Act.
1296 Back to you, Mr. Walke. I mean, those photos that was put up by
1297 I think Mr. Brisini are fairly compelling on reclamation and
1298 reuse.

1299 But in your opening statement you also said I am not going
1300 to dispute or discuss -- you didn't want to talk about those
1301 benefits. Why not?

1302 Mr. Walke. I wasn't disagreeing with those benefits is what
1303 I meant to say.

1304 Mr. Shimkus. So that is part of this debate. If there are
1305 benefits and you all accept that premise, can't we get to how do
1306 we incentivize this that's beneficial to the health and the
1307 environment of our citizens based upon those very compelling
1308 photos?

1309 Isn't there a -- I think part of the SENSE Act is let's help
1310 each other. Let's help clean up the environment but let's give
1311 a benefit for the reuse so that this can happen in an affordable

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1312 -- I think the other compelling thing Mr. Beck had mentioned was
1313 the reclamation of this site the cost could have been \$60 million
1314 and ended up being \$4 million. From a taxpayer's perspective,
1315 that's hard to argue -- the benefits.

1316 Mr. Walke. And I am not. I have three specific ideas. I
1317 am going to use Pennsylvania as an example. The state officials
1318 can do today without needing to resort to a lot of the --

1319 Mr. Shimkus. But they have to take from emissions of current
1320 operating facilities. I mean, so if there's a set standard and
1321 then you penalize -- you know, we don't incentivize this and they
1322 give them the credits that then the proposals will take away from
1323 other operating facilities.

1324 I need to go to, and I apologize because we really don't have
1325 much time, I want to give Mr. Brisini a chance to respond to some
1326 of the claims Mr. Walke made as far as the litigation -- Bush
1327 administration and a response. Could you do that for me?

1328 Mr. Brisini. I would love to, thank you.

1329 Let's talk about MACT. What MACT did in that regulation EPA
1330 lumped two groups. They said you're coal or you're lignite.
1331 There was no differentiation between coal refuse and I believe
1332 they kept coal refuse because of the exact reason Mr. Walke
1333 mentioned.

1334 We are extremely low emitters of mercury. So they need to

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1335 lump them in to the larger group so they can force the lowest
1336 mercury limit on the coal-fired plants. Also, we are extremely
1337 low emitters of particulate matter.

1338 They use a nonmetal mercury particulate alternative
1339 standard. Again, we helped set the bar lower for the other
1340 plants. But once we got drug in to allow that to happen, at that
1341 point we have HCL.

1342 I do not agree with what he said around these plants being
1343 able to meet hydrochloric acid. There are actually two
1344 bituminous plants that can meet the hydrochloric acid. No other
1345 plants, whether they are bituminous coal refuse or anthracite coal
1346 refuse, they don't do it.

1347 One is the last plant built in 2004 and there is a
1348 particularly unique sulfur dioxide control system which as a
1349 co-benefit happens to control hydrochloric acid.

1350 The other unit happens to burn coal refuse that doesn't have
1351 chlorine. In fact, to control mercury at that plant you need a
1352 halogen, be it chlorine.

1353 They use bromine and that is how they are able to capture
1354 the mercury because you can't capture mercury unless it's
1355 oxidized. You can't oxidize the mercury unless there's a halogen
1356 present.

1357 Now, as far as the authority to exempt or I can do a surgical

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1358 reallocation tomorrow, no, they can't. This is a FIP. This is
1359 a federal implementation plan, and to change that federal
1360 implementation plan you need a new state implementation plan.

1361 EPA has up to 18 months to respond to a federal implementation
1362 plan change. So the idea that I can come in there and fix this
1363 tomorrow is not true and I will say it that bluntly.

1364 Now, as far as increasing emissions and having emissions
1365 increased, no. We preserve the budget but we don't take anything
1366 away from an operating unit.

1367 There are a considerable number of units that have been
1368 retired in both Pennsylvania and in West Virginia that these are
1369 the source of the allowances. We do not increase the cap
1370 developed by EPA for Pennsylvania for SO2.

1371 We simply say let's reallocate from the retired units. So
1372 units that are sitting there with this stuff that no longer provide
1373 jobs, no longer provide tax base, no longer provide the things
1374 that they previously provided. But we don't say take them all
1375 away.

1376 In Pennsylvania, the reallocation split would be 65 to 35.
1377 In West Virginia, it would be -- they would retain 86 percent of
1378 the allowances and the bituminous refuse plants would get 14
1379 percent of the allowances. So there's a fundamental issue.

1380 Now, as far as the -- there are some plants that are meeting

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1381 the alternative sulfur dioxide standard. Yes, that is true.

1382 They are the anthracite plants. They have low sulfur coal refuse.

1383 Mr. Whitfield. Thank you, Mr. Brisini. We -- you know, we
1384 get into this issue when -- I always like to give people an
1385 opportunity to answer, particularly when they're asked the
1386 question with about four seconds left in the -- it's an art.

1387 So thank you for your comments and particularly that part
1388 about states being able to immediately give you an exemption.

1389 Mr. Doyle, you are recognized for five minutes.

1390 Mr. Doyle. Thank you, Mr. Chairman.

1391 I just want to maybe just go a little further with that, Mr.
1392 Brisini.

1393 You acknowledged that some of these coal refuse plants that
1394 burn bituminous coal -- even some that burn bituminous coal are
1395 able to meet MATS and CSAPR and they have not asked for an extension
1396 to comply with the regs.

1397 You imply in your testimony that is so because they are
1398 burning low sulfur bituminous coal refuse.

1399 Are there any other distinguishing features at these plants
1400 that are able to comply? Are there any technologies that other
1401 plants could adopt to mitigate the release of these pollutants
1402 and comply with the standards?

1403 Mr. Brisini. The circumstance you have is that there is one

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1404 bituminous plant that meets the HCL. They cannot meet -- because
1405 they are a bituminous plant they can meet the HCL but they cannot
1406 meet the current alternate SO2 limit.

1407 The other plants that can meet the alternate SO2 limit are
1408 anthracite refuse plants in the eastern part of the state but they
1409 don't meet the hydrochloric acid limit either.

1410 Only one other plant does and there is not chlorine in the
1411 coal refuse that they burn.

1412 Mr. Doyle. So there is -- you are saying that there is no
1413 new technologies that are available that would allow them to
1414 comply?

1415 Mr. Brisini. I suppose that there would be a way. But we
1416 looked at a number of things to try to do that including the
1417 ejection of additional limestone. But it ultimately ends up in
1418 increasing of mass emissions.

1419 And something else that happens is that there is varied
1420 sulfur content in the coal refuse piles in the bituminous region
1421 that can get even higher.

1422 To simply pick a number and not look at a performance-based
1423 standard for removal would eliminate the opportunity to pursue
1424 the highest sulfur coal piles -- coal refuse piles to reclaim them
1425 and they probably have the highest level of acidic discharge with
1426 the greatest negative effect on a waterway.

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1427 Mr. Doyle. I mean, couldn't some of these plants add another
1428 type of fuel or make the waste coal their secondary fuel source
1429 so that it reduces the sulfur or HCL and helps them comply with
1430 the standards?

1431 Is there an alternative way to deal with this?

1432 Mr. Brisini. Not really, no. Not from the standpoint of
1433 entering a different fuel. You can't start burning -- number one,
1434 there is limitations by virtue of financing and other issues that
1435 these coal plants are obligated to burn at least 75 percent, you
1436 know, coal refuse.

1437 There is also -- as you go through there is chlorine in the
1438 coal that's also burned. But there is -- you can't dilute it.
1439 Plus, you are also limited into the calorific value that can go
1440 into a fluidized bed combuster.

1441 For example, the most recent one built, and as they build
1442 them they build them to be able to burn lower and lower quality
1443 coal refuse, the older ones that were built require -- they burned
1444 or designed to burn about 6,800 BTUs per pound for their heat input
1445 for their fuel. The most recent one built is at 5,500 and coal
1446 is generally 12,000 to 13,000 BTUs.

1447 Mr. Doyle. Okay. Thank you. I want to ask Mr. Walke, too.

1448 Mr. Walke, I understand and appreciate your concern that
1449 states maintain their rights under the Clean Air Act.

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1450 But you know, in my state, particularly in Pennsylvania, many
1451 elected officials in my state strongly value these coal refuse
1452 plants on both sides of the aisle, I might add, and our own DEP,
1453 Pennsylvania's Department of DEP, submitted official comments to
1454 the EPA urging special consideration of the coal refuse-fired
1455 facilities under CSAPR.

1456 In their comments they explain the importance of these
1457 facilities to restoring the environment and preventing acid mine
1458 drainage. They ultimately concluded that constructing a rule
1459 that results in the closure of these facilities will have
1460 significant impacts on my state's ability to restore these
1461 mine-affected areas to benefit our state and our downstream
1462 neighbors.

1463 What do you recommend the Pennsylvania DEP should do, going
1464 forward?

1465 Mr. Walke. Congressman Doyle, thank you for your thoughtful
1466 question and I did read those very thoughtful comments by the
1467 Pennsylvania DEP.

1468 Several things that can be done and some of them are actually
1469 mentioned in the letter. States today have the authority to
1470 differently allocate allowances within the emitters in their
1471 state.

1472 They can do it to other coal-burning electric utilities.

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1473 They can do it to non-electric sector. They have the full array
1474 of choice about how best to achieve those reductions cost
1475 effectively.

1476 So if Pennsylvania wants to incentivize a waste coal energy
1477 production, they can do so by reallocating sulfur dioxide
1478 allowances within the electric sector. They can do a mix within
1479 the electric sector -- -

1480 Mr. Doyle. So they would have to submit a new SIP. Is that
1481 what you are saying?

1482 Mr. Walke. I did not mean to suggest and maybe I did by using
1483 tomorrow that this could be accomplished by midnight tomorrow.
1484 Clearly, not. But there are --

1485 Mr. Doyle. It sounded that way when you said it.

1486 Mr. Walke. Yes. Well, I apologize for that impression.

1487 The state has the authority to design their own plan to
1488 allocate things differently than the federal model. They have
1489 the option not to do that.

1490 Mr. Doyle. So that gets them though CSAPR but how does that
1491 get them to comply with MATS?

1492 Mr. Walke. That's an excellent question. So you actually
1493 hit upon some of it yourself. There are plants in West Virginia,
1494 for example, that are using waste coal as a secondary fuel that
1495 are installing scrubbers and meeting the standard. They will do

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1496 so by April.

1497 There are Pennsylvania plants who have told the state that
1498 they will undertake limestone injection in order to satisfy the
1499 standard. EPA found that there are scrubbers that can reduce
1500 emissions by 96 percent of sulfur dioxide.

1501 The bill, of course, weakens that standard. So there are
1502 waste coal plants across the country complying with the standard
1503 or that will be complying with the standard with off-the-shelf
1504 technology that is available and EPA and the courts have both found
1505 that to be the case.

1506 Mr. Doyle. Mr. Chairman, thank you for your indulgence.

1507 Mr. Whitfield. Yes, sir. And at this time the chair
1508 recognizes the gentleman from Ohio, Mr. Latta, for five minutes.

1509 Mr. Latta. Well, thank you, Mr. Chairman, and thanks for
1510 conducting today's hearing, and to our panel thanks very much for
1511 your testimony today. It's very enlightening.

1512 If I could just start maybe between Mr. Henry and Mr. McAvoy
1513 to ask you some questions about the brick industry in general.

1514 Are bricks made all over the country? Are they
1515 regionalized? Where are most bricks being made at today?

1516 Mr. Henry. I am sorry. What was the --

1517 Mr. Latta. Where are the bricks being made at today? Is
1518 it regional or all over?

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1519 Mr. Henry. Predominantly in the southeast and up through
1520 the Atlantic east coast but there is brick plants located all over
1521 the country.

1522 Mr. Latta. Because the question -- the next question I have
1523 is because bricks aren't -- bricks aren't light. They are pretty
1524 heavy. So I was just thinking on the transportation costs, you
1525 know, we are looking on the transportation, how far you have to
1526 get, you know, to transport those bricks.

1527 And the question on the transportation costs, of course, when
1528 you look at the weight and the costs there, you know, when you
1529 are having these costs being associated with the EPA coming down
1530 on you, you are going to have to pass those costs on. I would
1531 assume you are doing that.

1532 So Mr. McAvoy, you are shaking your head. If you would like
1533 to comment on that. If you would like to comment on that.

1534 Mr. McAvoy. Yeah, it is another burden cost that is going
1535 to have to be either absorbed by us or our customers or a
1536 combination of the two.

1537 Mr. Latta. Well, again, when you are looking at, you know,
1538 absorbing by you because, you know, with the -- I am not sure
1539 exactly what your margins are.

1540 But you are going to have to somehow get that cost down to
1541 the -- on the construction industry but then that is going to be

1542 cost -- you know, passed on to the owner, then.

1543 It's going to be that homeowner out there that wants to build
1544 a new house that's going to have to, you know, pay more cost for
1545 the brick.

1546 Or if you are a hardworking American out there that wants
1547 to build a new factory or plant or some type of business that they
1548 are going to be using some type of brick product that is going
1549 to have to be added into that cost, I would assume.

1550 So just in general if you could give me an idea of maybe over
1551 like the last since these regulations have come on which you have
1552 seen that you might see an average cost of a brick going up that
1553 would be passed on then to the ultimate consumer of that brick.

1554

1555 Mr. McAvoy. Do you want a specific number?

1556 Mr. Latta. Or just an approximate, if you can do that.

1557 Mr. McAvoy. It would all depend on what kind of scrubber
1558 or whatever we put in. I mean, there are different options.

1559 Davis might be able to answer that since you have been running
1560 one. How much more did that add to your cost?

1561 Mr. Henry. Well, you would like to think you could pass on
1562 all these costs to your customers and we certainly try. A lot
1563 of it does end up with us and it reduces your margins, makes it
1564 harder to reinvest and continue your business.

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1565 But those you can't pass on it is probably in the dollars
1566 -- dollar or two per thousand range. It's not a -- you can't pass
1567 on all of it. How about that?

1568 Mr. Latta. Right. Let me ask this, Mr. Henry, if I could.
1569 The EPA estimates that this rule would have an annual cost in the
1570 neighborhood of \$25 million while the Chamber of Commerce report
1571 cites industry estimates as high as \$100 million.

1572 You know, would you like to comment on that difference
1573 between -- if you have any knowledge on that from the EPA estimate
1574 of \$25 million to the Chamber estimating at \$100 million, how --
1575 you know, we are talking \$75 million. That's quite a bit of
1576 difference there.

1577 Mr. Henry. Well, based on Henry Brick itself, for us to
1578 comply with the new MACT is going to cost one company \$8 million
1579 and there's a lot more than one brick company around. So I would
1580 say it's probably in the -- closer to \$100 million versus the \$25
1581 million.

1582 Mr. Latta. Mr. McAvoy?

1583 Mr. McAvoy. The EPA's numbers have a lot of assumptions that
1584 we have problems with. You know, they are just doing a guess.
1585 They don't have the exact data. We feel that we have better data
1586 and that the cost will be higher than what they project.

1587 Mr. Latta. Where does the EPA get their data from that they

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1588 are coming up with that estimate of \$25 million?

1589 Mr. Henry. I don't know. I don't know.

1590 Mr. Latta. Okay. Mr. Brisini, if I could ask you a quick
1591 question with my last 35 seconds. I'll try to be better than the
1592 gentleman from Illinois with only four seconds.

1593 Are coal refuse-to-energy facilities typically located in
1594 smaller communities? Are these coal refuse-to-energy facilities
1595 typically located in a smaller community or a larger community?

1596 Mr. Brisini. The coal refuse plants are located in small
1597 communities. They are extremely important to the small
1598 communities. In the case of the three bituminous coal refuse
1599 plants that are near where I live in Edensburg, it is the county
1600 seat of Cambria County. It is less than 4,000 people population.

1601 Mr. Latta. Thank you very much.

1602 Mr. Chairman, I see my time has expired and I yield back.

1603 Mr. Whitfield. Thank you, Mr. Latta.

1604 At this time I will recognize the gentleman from Texas, Mr.
1605 Green, for five minutes.

1606 Mr. Green. Thank you, Mr. Chairman and ranking member, for
1607 holding the hearing today. I want to thank our witnesses for
1608 coming and testifying.

1609 Mr. Beck, in 2014 the Pennsylvania Department of
1610 Environmental Protection submitted comments to the Environmental

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1611 Protection Agency.

1612 In these comments, the Pennsylvania DEP requested an
1613 exemption for coal waste facilities. DEP further recommended EPA
1614 establish a subcategory for waste coal technology.

1615 Can you offer your thoughts on why your state agency
1616 submitted these comments? Oh, Mr. Beck, you're chair of the
1617 coalition of abandoned mines. Why did your state environmental
1618 agency submit those comments?

1619 Mr. Beck. Why did they what?

1620 Mr. Green. Why did they submit those comments about
1621 recommending the EPA establish a subcategory for waste coal
1622 technology? Your state environmental agency submitted comments
1623 to EPA and was there any reason for it or did they do studies --
1624 research?

1625 Mr. Beck. Mr. Brisini worked for DEP too so I think he --

1626 Mr. Brisini. I can explain. I can explain, and it gets back
1627 to the point I made about how they did MACT. When EPA did MACT
1628 they did not --

1629 Mr. Green. Could you pull the mic a little closer?

1630 Mr. Brisini. Yes, sure. They did not establish separate
1631 categories for coal refuse or different types of coal, anthracite
1632 coal or bituminous coal. They lumped it -- it turned into two
1633 categories -- lignite, everybody else.

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1634 So the point that was being made is to appropriately address
1635 and prepare appropriate standards for the coal refuse plants you
1636 should look at the emissions that are achieved by the coal refuse
1637 plants.

1638 That's how you do a MACT regulation. You look at the top
1639 12 performing -- top 12 percent of the performing existing
1640 facilities and you pick from those numbers.

1641 That's exactly why they put them together though because they
1642 wanted the mercury number to be as low as possible.

1643 Mr. Green. Most of the testimony offered today highlights
1644 the environmental benefits of the coal waste technology.

1645 In 2011, however, the Clean Air Council submitted comments
1646 to the EPA stating the more environmentally friendly way of
1647 dealing with waste coal would be more cost effective as well.

1648 Can any of the panel comment on the Clean Air Council's
1649 proposal to plant, for example, beach grass and if there is --
1650 if their comment holds true?

1651 Mr. Brisini. Well, we have tried to investigate the beach
1652 grass claim and what they did, and I have only ever been able to
1653 find an overview of the study -- I have never found the study,
1654 I have never found background information on the particular pile
1655 they wanted to introduce the beach grass to.

1656 The fundamental premise of that study is they want to

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1657 introduce beach grass and it will grow for a period of time and
1658 then they will start to repopulate and then other native species
1659 will overtake the refuse pile.

1660 We don't believe that that addresses the issue because it
1661 doesn't address percolation, surface runoff and it doesn't
1662 prevent future fires from occurring within the piles because a
1663 coal refuse fire does not start on the top by somebody throwing
1664 a match on it.

1665 It starts from the inside. In my written testimony, I
1666 provided a coal refuse white paper that discusses refuse fires
1667 and those sorts of things. But no, we do not believe beach grass
1668 is any solution.

1669 I kind of look at it as, you know, if somebody's coming and
1670 you want to clean up the house so you throw the stuff in the closet.

1671 Mr. Green. Okay. Mr. Walke, in your testimony you cite
1672 White Stallion and in that case the D.C. court states, among other
1673 things, that EPA notes that CFBs were among the worst -- best and
1674 worst performers of various pollutants.

1675 Is the technology and retrofitting the difference between
1676 the best and the worst in the categories discussed by the D.C.
1677 court?

1678 Mr. Walke. Well, the D.C. court upheld EPA's standard in
1679 all respects and that finding wasn't challenged by the Supreme

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1680 Court with respect to the standards themselves and the
1681 achievability of the standards and the propriety of the emission
1682 limits.

1683 The EPA did create a separate subcategory for the lignite
1684 coal in your state, Congressman Green, and there are technologies
1685 that are more appropriate to lignite.

1686 But the court specifically rejected a challenge by the trade
1687 association for the waste coal industry and said EPA was correct
1688 not to have established a subcategory for waste coal, and then
1689 Pennsylvania DEP asked EPA to reconsider that after the failed
1690 court challenge.

1691 Mr. Green. Mr. Chairman, in our district you heard over the
1692 years I have five refineries that generate tons of petroleum coke
1693 that we can't burn and we're lucky enough to have a ship channel
1694 where we load it onto a ship and send it to Africa, India, wherever
1695 else.

1696 That is not possible in Pennsylvania because the rail cost
1697 of the transportation to somewhere would be, I guess, huge and
1698 so economically disadvantaged. Is that correct?

1699 Mr. Walke. I think that's correct and it is important to
1700 note where there is agreement here. I am not arguing that we
1701 shouldn't be able to combust this and they are not arguing that
1702 they shouldn't have to control emissions.

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1703 What we are arguing about is whether the standards that have
1704 been issued by EPA and upheld by the courts and that are being
1705 achieved today and that will be achieved with available technology
1706 should be weakened by this bill or allowed to continue.

1707 Mr. Green. Thank you, Mr. Chairman.

1708 Mr. Whitfield. At this time, the chair will recognize the
1709 gentleman from West Virginia, Mr. McKinley, for five minutes.

1710 Mr. McKinley. Thank you, Mr. Chairman.

1711 I suppose I probably want to -- and I really want to just
1712 address the SENSE Act over the coal refuse legislation. I am
1713 trying to take it from a little bit different perspective, maybe
1714 from 30,000 feet and that is all these new standards.

1715 Just imagine the less -- there will be so much less acrimony,
1716 differences of opinion, particularly back to you, Walke -- if
1717 these were applicable only to new construction.

1718 If a new coal refuse facility had to be constructed it has
1719 to follow these new standards. What I find offensive here in
1720 Washington is these new standards are put together and then they
1721 are applied retroactively back to existing facilities.

1722 I come from the construction industry and I can just assure
1723 you right now that the Cannon Office Building doesn't comply with
1724 all the proper air quality -- indoor air quality standards.

1725 It is laden with asbestos but yet we don't go back and make

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1726 them retroactively address that unless we are going to do a major
1727 renovation. This room in and of itself also doesn't comply with
1728 indoor air quality standards of air turnovers. Neither does the
1729 Cannon Office Building.

1730 The Capitol building doesn't comply. But yet you -- we are
1731 allowed to continue to use it. We walk across floor tile that's
1732 laden with asbestos. We have got asbestos in our plaster walls
1733 and it is okay.

1734 But yet you go after coal refuse -- a coal refuse energy
1735 facility and say these new standards, you have to go back and
1736 retroactively do that.

1737 I just think there is -- it is disingenuous the way we
1738 approach some of these things and I think it's a disservice to
1739 the taxpayers and anyone else when we apply -- in your words,
1740 picking winners and losers.

1741 In schools and office buildings, we don't make them go back
1742 and retroactively do that but yet we are doing it to industry.

1743 We are doing it to the coal industry and I am troubled with
1744 that and I just know that we'd have a lot less acrimony -- I think
1745 we could get along with a lot of our regulations if we imposed
1746 a new reg only applicable to new construction -- a new power plant
1747 -- not to go back and shut them down.

1748 And I am a little concerned because I'm hearing from

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1749 testimony from the -- and reading the document that when we have
1750 two facilities in my district in West Virginia, they are going
1751 to shut down under these standards and we are treating as though
1752 as they are not being truthful.

1753 They can do it. I guess they can if they can get the money
1754 to do it and people are willing to pay the additional cost of energy
1755 that they are going to create as a result of that, and apparently
1756 what they have found out that there is no -- there is no interest
1757 in that.

1758 The people that are consuming don't want to pay that so they
1759 are going to close down and we are talking about in these two over
1760 \$3 million in taxes that will be lost as a result. Those -- 60
1761 percent of that in West Virginia goes for schools.

1762 We just cut out another \$1.8 million, almost \$2 million from
1763 our schools in West Virginia to accomplish something that should
1764 go forward, not retroactive. What are we thinking about when it
1765 comes to that?

1766 I go to you, Walke. Is it more responsible to say go ahead
1767 into the future? Wouldn't you find we would have more common
1768 interests if we used common sense to apply these regs, whether
1769 it's new source performance standards?

1770 All of this and this, wouldn't it be better if we just applied
1771 it to new construction rather than old construction?

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1772 Mr. Walke. Congressman, thank you.

1773 I don't think so and when the 1990 law was passed --

1774 Mr. McKinley. So do you think we should shut down the Cannon
1775 Office Building then and make sure everyone leaves here because
1776 we're not in conformity with the standards that have been adopted
1777 across this country.

1778 Mr. Walke. So this clean air program was promoted for --

1779 Mr. McKinley. But this is indoor air quality, though,
1780 Walke. That's what I'm talking about. You're subjecting all
1781 these people to have indoor air quality that is detrimental to
1782 their health. Indoor -- we spend 90 percent of our time indoors
1783 and we are not complying with the indoor air quality standards.

1784 But we allow that to continue because we understand the
1785 problems there would be if we tried to make retroactively address
1786 old buildings.

1787 Why aren't we looking at it into the future? Don't you think
1788 -- my time is over -- I am going to submit that if we made it
1789 effective to new construction, new brick plants, new coal to
1790 refuse, coal energy, that we would not have this problem right
1791 now -- that they would be designed accordingly and they would be
1792 built into the cost.

1793 But to do this retroactively is not common sense, and I yield
1794 back my time. Thank you.

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1795 Mr. Whitfield. At this time, the chair will recognize the
1796 gentleman from New York, Mr. Engel, for five minutes.

1797 Mr. Engel. Thank you very much, Mr. Chairman.

1798 Mr. Walke, I have a series of questions I would like to ask
1799 you. One of them was touched on when you had an exchange with
1800 Mr. Doyle so I would like to ask you to emphasize certain things.

1801 We have heard testimony today that all waste coal plants can
1802 meet the mercury standard under MATS but many cannot meet the
1803 hydrogen standard or the sulfur dioxide standards.

1804 Firstly, do you agree with that assessment and in your answer
1805 if possible could you discuss the D.C. circuit court's decision
1806 in White Stallion Energy Center versus EPA?

1807 Mr. Walke. Certainly. Thank you, Congressman.

1808 Let me take those one by one. One thing that hasn't come
1809 out yet at this hearing is that one of the reasons waste coal plants
1810 are meeting the mercury standard and the particulate matter
1811 standard is they qualified for an exemption -- a low-emitter
1812 exemption where they are not actually -- I mean, I guess you could
1813 call that meeting the standard but they qualify for a low-emitter
1814 exemption, which I think is appropriate.

1815 Other plants have coal profiles -- coal waste profiles or
1816 controls in place to achieve compliance. It is simply incorrect
1817 to suggest that coal waste plants burning any type of coal waste

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1818 are incapable of achieving either the HCL or the SO2 standard in
1819 the existing MATS rule.

1820 The court rejected that claim. EPA has rejected that claim.
1821 What you have here is a case of, you know, if I can say so, special
1822 pleading to Congress to try to overturn those findings. We have
1823 applications submitted from coal waste operators announcing the
1824 controls they are going to install.

1825 We have controls that are going to go into a place by April
1826 of this year. We have controls on plants already that are being
1827 operated.

1828 So when the D.C. Circuit in its decision heard the full legal
1829 arguments from the trade association for waste coal operators and
1830 looked at all the evidence they presented and the evidence in the
1831 administrative record that EPA had compiled, they squarely
1832 rejected those claims in a three to nothing decision and that
1833 decision was left untouched by the Supreme Court in that relevant
1834 respect.

1835 Mr. Engel. Thank you.

1836 Janet McCabe, the acting assistant administrator for the
1837 Office of Air and Radiation of the EPA, submitted a written
1838 statement for today's hearing.

1839 She says that the bill we are discussing today would remove
1840 the economic incentives to reduce emissions at waste coal plants

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1841 because emissions allocations for those plants could not be traded
1842 under the cross-state air pollution rule, or CSAPR.

1843 She argues that the result would be less efficient and more
1844 costly compliance with CSAPR. Do you agree with her assessment?

1845 Mr. Walke. Absolutely. It is just -- she is just
1846 describing the mechanics of the program.

1847 The units that retired that were referred to by one of my
1848 fellow witnesses generated valuable allowances that are held by
1849 those coal operators and that can be used by those plants or that
1850 can be traded.

1851 And yet this bill would take them away. It would do the same
1852 for plants that converted to natural gas. There is a very robust
1853 market in tradeable allowances that was created by the 1990 law
1854 and then continued in other forms and it is just inescapable that
1855 the design of this bill would take away those valuable assets from
1856 coal plant operators in Pennsylvania, West Virginia and elsewhere
1857 and simply transfer them to waste coal operators who want to
1858 pollute at higher levels than the law today allows.

1859 Mr. Engel. You mentioned that Section 2(b) of this bill
1860 would interfere with a state's rights to determine how to best
1861 comply with the requirements of EPA's cross-state air pollution
1862 rule and favors waste coal burning plants over other in-state
1863 power plants.

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1864 So this bill takes long-standing state authority, transfers
1865 it to the federal government and then uses that authority to pick
1866 winners and losers. Is that right and can you explain?

1867 Mr. Walke. That is right and I find it a particular paradox
1868 for sponsors whose voting records in the past have suggested such
1869 strong support for states' rights.

1870 The law today is even handed with respect to the decisions
1871 that state officials may make about how to allocate those
1872 allowances and states make their own decision.

1873 This disrupts that and for the first time in any interstate
1874 legislation I have ever seen takes it away from the states and
1875 paradoxically transfers it up to Washington to override the
1876 ability of those states to make different allocation decisions.
1877 It is just puzzling.

1878 Mr. Engel. All right. Thank you. Thank you very much, Mr.
1879 Walke. Thank you, Mr. Chairman.

1880 Mr. Whitfield. Mr. Brisini, you want to make a comment?

1881 Mr. Brisini. I sure do. Thank you very much.

1882 I find it really interesting that we keep hearing this --
1883 well, this SENSE Act picks winners and losers when in fact the
1884 federal implementation plan picked the winners and losers and they
1885 happened to pick in CSAPR the bituminous coal-fired refuse plants
1886 to be the losers in the CSAPR phase two allocation.

1887 And they also picked the bituminous coal-fired refuse plants
1888 to be the loser in MATS because, as I have said all along, the
1889 anthracite refuse plants can meet the alternative 0.2 standard.

1890 That is because the sulfur content of the coal refuse in the
1891 anthracite region is lower. It is not because the technology is
1892 different or they have anything special and it is part of the
1893 problem when you lump all of these things together not recognizing
1894 the technical and the differences in these kinds of fuels.

1895 Mr. Engel. Okay.

1896 Mr. Brisini. Now, as far as the idea that they are usurping
1897 states' rights I find that interesting because the federal
1898 government just did that in the FIP.

1899 If you go on to read the Pennsylvania DEP comments, you will
1900 often find in the comments what happened to cooperative federalism
1901 and that is really one of the arguments you have then.

1902 Mr. Whitfield. Mr. Brisini, I am going to -- I gave you a
1903 chance to respond there but I need to recognize Mr. --

1904 Mr. Engel. I was going to ask, Mr. Chairman, if perhaps Mr.
1905 Walke could respond to something that Mr. Brisini --

1906 Mr. Whitfield. I will tell you what. Let me finish with
1907 these two and then what we will do we will let Mr. Walke and Mr.
1908 Brisini sit next to each other and then we will go at it some more.

1909 At this time, I will recognize Mr. Johnson of Ohio for five

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1910 minutes.

1911 Mr. Johnson. Thank you, Mr. Chairman, and I appreciate so
1912 much the panel being here today. Very important issues we are
1913 talking about -- the health of an industry, jobs, our economy.
1914 Very important.

1915 Mr. Henry or Mr. McAvoy, can one of you talk more about the
1916 ability to get a loan for a control device to comply with the EPA's
1917 MACT? I mean, if you had to get one of these loans how would it
1918 affect your employment level at your facility?

1919 Mr. McAvoy. It would greatly affect it because we probably
1920 couldn't obtain the loan and even if we were able to structure
1921 it in such a way that we could make payments, the cyclical nature
1922 of our industry and so forth, you know, would probably cause us
1923 to default at some point in time.

1924 Mr. Johnson. Okay. Mr. Henry?

1925 Mr. Henry. The one thing that makes it really hard at this
1926 current juncture is that we have been through a very rough eight
1927 years. I don't think anybody in the brick industry would say they
1928 have enjoyed the last eight years.

1929 And so our balance sheets reflect that and so to go and try
1930 to secure a loan now and look a banker in the face and go, well,
1931 here are my financials --

1932 Mr. Johnson. Sure.

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1933 Mr. Henry. -- I need \$7 million or \$8 million, there is
1934 not a bank out there that would look at ours and feel very good
1935 about being paid back.

1936 Mr. Johnson. Right. Well, you know, there's this status
1937 of a synthetic miner. You know, you are able to get underneath
1938 the caps and that you would be then given some relief from some
1939 of this.

1940 But how would that affect -- let us say you were to be
1941 identified as a synthetic miner. How would that affect the
1942 company's ability to grow?

1943 Mr. Henry. That is a very good question. We have two plants
1944 that are side by side in Selma and if we became a synthetic miner
1945 we would no longer have the ability to grow in our local community.
1946 We would have to -- if we grew we would have to grow outside of
1947 that area.

1948 Mr. Johnson. So basically that limits your ability to
1949 create jobs and provide economic growth in your community. For
1950 both of you again, Mr. Henry and Mr. McAvoy, how would this
1951 particular legislation that we are talking about, the draft --
1952 the BRICK Act -- be helpful?

1953 I mean, considering that the industry has already spent
1954 hundreds of millions to comply with a similar EPA rule in the past
1955 only to have the courts vacate the rule a few years later, how

1956 would the BRICK Act be helpful?

1957 Mr. Henry. I would say first we all want to do our part in
1958 the industry to be good to the environment. We want to do that.

1959 But there is only finite resources we have to spend on that
1960 and what we don't want to have happen is have another rule vacated
1961 or the baseline change and we have spent a lot of money
1962 unnecessarily to comply with a rule that may not take effect or
1963 be changed down the road and it is just -- it is a lot of money
1964 to spend not knowing that it is necessary.

1965 Mr. Johnson. So letting the judicial reviews and letting
1966 the process play out before you have to comply would be --
1967 certainly would be financially more acceptable to your industry?

1968 Mr. Henry. Certainly. We would know exactly what we had
1969 to do. We would have three years to comply with the final, final
1970 rule and, you know, and make sure that we don't waste resources.

1971 Mr. Johnson. Okay. Mr. Henry, continuing with you, the
1972 study that you attached to your testimony states that foreign
1973 competition in the brick industry has not been a factor in the
1974 past. Is that correct?

1975 Mr. Henry. Foreign competition as far as importing brick
1976 from other countries, no.

1977 Mr. Johnson. And can you explain why that is not a factor?

1978 Mr. Henry. Brick weigh a lot. They cost a lot to ship.

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1979 Mr. Johnson. Sure. I knew that but I wanted the rest of
1980 the committee to understand that.

1981 How might this unique situation -- that is, the relative
1982 absence of foreign competition coupled with the EPA's rules which
1983 threaten the very survival of many of the family-owned brick
1984 plants across America, how would this affect the future
1985 availability of U.S. brick?

1986 I mean, we don't have any coming in imported. If you guys
1987 go out of business and can't produce brick, are we back to building
1988 buildings with sticks and straw?

1989 Mr. Henry. Or vinyl or something, yeah. The brick industry
1990 is very expensive to get into not only because of the control
1991 devices but just the process itself is. And so there would not
1992 be a lot of newcomers to our industry, if I had to guess.

1993 Mr. Johnson. All right. All right.

1994 Mr. McAvoy, my time has expired but if we could -- go ahead.

1995 Mr. McAvoy. My guess what would happen is the few
1996 multinational brick companies that have access to capital and so
1997 forth would be there --

1998 Mr. Johnson. To fill that void. Yeah.

1999 Mr. McAvoy. -- in the market and the small --

2000 Mr. Johnson. So it would be other countries that would
2001 benefit from --

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2002 Mr. McAvoy. Yeah. They wouldn't be made overseas but they
2003 would be -- definitely the profits would be going there.

2004 Mr. Johnson. All right. Another example of policies that
2005 enable our competitors overseas, Mr. Chairman. I yield back.

2006 Mr. Whitfield. Thank you. Thank you.

2007 At this time the chair recognizes the gentleman from New
2008 Jersey, Mr. Pallone, for five minutes.

2009 Mr. Pallone. Thank you, Mr. Chairman. I wanted to ask Mr.
2010 Walke a series of questions.

2011 The SENSE Act would give coal refuse facilities special
2012 consideration under the cross-state air pollution rule, or CSAPR,
2013 and EPA issued this rule to protect the health of millions of
2014 Americans by reducing air pollution and requiring states to reduce
2015 power plant emissions that cross state lines and contribute to
2016 air quality problems in other states.

2017 CSAPR ensures that downwind states don't have to impose more
2018 stringent controls on local businesses to make up for the effects
2019 of increased out-of-state pollution and the rule achieves all this
2020 by creating economic incentives to reduce pollution from power
2021 plants.

2022 So Mr. Walke, if enacted how would the SENSE Act impact the
2023 operation of the CSAPR program? Would pollution reductions still
2024 be incentivized?

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2025 Mr. Walke. No, certainly not. The --

2026 Mr. Pallone. Is your mic on there? You want to press that?

2027 Mr. Walke. It is.

2028 Mr. Pallone. Okay.

2029 Mr. Walke. Can you not hear me okay? Is that better?

2030 Mr. Pallone. Yeah. That's good.

2031 Mr. Walke. Well, what the SENSE Act does is it establishes
2032 these, you know, static permanent higher pollution levels for
2033 sulfur dioxide available just to waste coal plants and everyone
2034 else has to make the accommodating reductions whether that is in
2035 your downwind state of New Jersey, Congressman Pallone, or within
2036 the state of Pennsylvania itself.

2037 And there is available technology in the form of scrubbers
2038 to meet the lower sulfur dioxide limits in the cross-state rule
2039 and in the mercury and air toxics rule and you have plants that
2040 are either operating that equipment today or installing it.

2041 And so this is just -- it is just kind of a raw political
2042 transfer from one sector to another after that sector suffered
2043 losses in courts when its arguments on the merits were not -- were
2044 not successful.

2045 Mr. Pallone. Okay. Now, some of today's testimony
2046 characterizes the CSAPR provisions in the SENSE Act as merely
2047 correcting errors in how the EPA set up the CSAPR rule.

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2048 But I wanted to ask you are coal refuse facilities different
2049 than traditional coal facilities? Should EPA have treated them
2050 differently under the CSAPR rule?

2051 Mr. Walke. Well, certainly they are different in the fuel
2052 they burn but just as lignite and bituminous and anthracite and
2053 other types of facilities are.

2054 What Congress said in 1990 in a law that was actually voted
2055 on by Congressman Barton -- what they said is that you are supposed
2056 to look at the best performers and the best performance and EPA
2057 found that waste coal plants met that criteria with respect to
2058 the HCL emissions that we are talking about here today.

2059 I don't disagree with my colleague about mercury and PM --
2060 particulate matter -- but that is not what this bill is about.
2061 It is about HCL and sulfur dioxide relaxations under the
2062 cross-state rule and the mercury rule.

2063 There is available technology to meet those standards and
2064 that is really not disputed in the rule making record or the
2065 judicial record and I haven't seen any testimony today that
2066 actually overrides EPA's conclusion that scrubbers can meet 96
2067 percent control reductions that will satisfy these standards and
2068 that there are plants today that are meeting those standards
2069 sometimes with lime injection being used as well.

2070 But the coal sector has been reducing these forms of

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2071 pollution for 40 years in this country and that is no different
2072 than a boiler that is using what we call waste coal.

2073 Mr. Pallone. All right. Well, if a state wanted to treat
2074 coal refuse facilities differently, do they have that ability to
2075 do so under the EPA rule?

2076 Mr. Walke. They absolutely do. That has been the hallmark
2077 of the interstate program since its inception in 1977 that they
2078 have the first crack and in fact the final crack if they want to
2079 take it.

2080 What is really instructive after all this talk that we have
2081 been hearing of how a burden it is to states that want to -- to
2082 coal waste plants that should be incentivized, there is not a
2083 single state in the country covered by the cross-state rule that
2084 departed from the formula that EPA adopted for allocating
2085 allowances.

2086 Why is that? Because EPA used a formula that was based upon
2087 highly cost effective reductions. And so the power generators
2088 in all of those states including states with waste coal plants
2089 didn't want that formula disrupted.

2090 Now, the waste coal plant operators did but they did not
2091 prevail in Pennsylvania or West Virginia. Their state officials
2092 made different decisions. They could change that decision and
2093 EPA would approve that change.

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2094 Mr. Pallone. So, I mean, are the CSAPR provisions in the
2095 SENSE Act even necessary?

2096 Mr. Walke. No, they are not necessary and I read EPA
2097 Administrator McCabe's statement and I believe she uses that
2098 exactly word. They are -- that exact word -- they are
2099 unnecessary.

2100 If the state of Pennsylvania wants to reallocate allowances
2101 along the lines in the SENSE Act and to take them away from in-state
2102 coal generators or take them away from manufacturers or whomever
2103 they choose they may do so under today's law without any need for
2104 this legislation.

2105 Mr. Pallone. All right. Thank you very much. Thank you,
2106 Mr. Chairman.

2107 Mr. Whitfield. At this time the chair recognizes the
2108 gentleman from Missouri, Mr. Long, for five minutes.

2109 Mr. Long. Thank you, Mr. Chairman, and Mr. Beck, you state
2110 in your testimony that the EPA wants the small coal waste plants
2111 to reduce mercury emissions, 70 percent of just eight ounces.

2112 How does this compare to large coal plants? Turn your mic
2113 on. Pull it real close there. People listen on the Internet and
2114 they can't hear unless you get your mic up close.

2115 Mr. Beck. On the mercury -- the 70 percent on the mercury,
2116 did you say?

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2117 Mr. Long. Right. In your testimony you say EPA wants small
2118 coal waste plants to reduce the mercury emissions.

2119 Mr. Beck. That was my understanding of the rule that they
2120 were going to put a blanket over it and require all the coal-fired
2121 power plants to reduce mercury 70 percent.

2122 Mr. Long. So it is the same as the large coal?

2123 Mr. Beck. Yes.

2124 Mr. Long. There is no difference in the small coal plants?

2125 Mr. Beck. I am not sure what their -- what the amounts are
2126 or the concentrations are on the anthracite coal that they have
2127 out there. But I know about the waste coal -- waste bituminous
2128 coal and the regular bituminous coal plants.

2129 Mr. Long. Are you in a position where you could discuss the
2130 financial impact of this rule on small coal waste plants?

2131 Mr. Beck. The problem is 70 percent of eight ounces. The
2132 one waste coal plant did a stack emission test --

2133 Mr. Long. Can you pull your mic a little closer for me?

2134 Mr. Beck. -- on eight ounces --

2135 Mr. Long. Can you pull your microphone closer to you?

2136 Mr. Beck. -- and found eight ounces per year coming out
2137 of the stack on an actual emissions test and the larger normal
2138 coal plants which burned the deep coal or the strip mined coal
2139 the one was producing 1,600 pounds of mercury here.

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2140 So, you know, 70 percent of 1,600 pounds is -- that is a lot
2141 of emissions coming out. But how do you reduce eight ounces by
2142 70 percent? That is probably not detectable.

2143 Mr. Long. What is the impact of this for the industry as
2144 a whole, then?

2145 Mr. Beck. They would have to spend a lot of money to try
2146 to get it down that low.

2147 Mr. Long. Or go out of business maybe?

2148 Mr. Beck. And it would probably put them out of business.
2149 And my issue with that is if the small waste coal burning plants
2150 go out of business there are going to be more piles that ignite
2151 and throw many times more mercury into the atmosphere than the
2152 waste coal plants ever did.

2153 Mr. Long. Okay. And Mr. Brisini, could you discuss the
2154 alternative compliance options and the SENSE Act for coal refuse
2155 facilities burning high sulfur coal?

2156 Mr. Brisini. The alternative option is to identify a
2157 performance standard 93 percent sulfur dioxide removal and add
2158 that as an option to provide for a compliance demonstration.

2159 That would only be used by the bituminous coal refuse fired
2160 plants. People keep talking as though we are talking about all
2161 of the coal refuse plants.

2162 The SENSE Act really provides relief for bituminous coal

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2163 refuse plants. Because of the fuel makeup, the anthracite, they
2164 can meet the current alternative SO2 standard. As far as the
2165 statement that was made that everybody meets HCL that is not in
2166 fact true at all.

2167 In Pennsylvania, there is one coal refuse plant of either
2168 type, bituminous or anthracite, that meets the HCL. The
2169 circumstance is that that plant is a low emitter and that one plant
2170 was used in the development of the MACT floor.

2171 But that's one plant. That's an outlier. It was the last
2172 plant built, came online in 2004. There is vast differences
2173 between coal and coal refuse plants. It's not only the fuel. It
2174 is the technology used to burn the fuel to make the material.

2175 Large coal-fired power plants or pulverized coal-fired power
2176 plants, they can be equipped with selective catalytic reduction
2177 for nitrogen oxides. They can be equipped with wet flue gas
2178 scrubbers in a cost effective fashion.

2179 That is, by the way, how the large coal-fired plants will
2180 control mercury. They will not be doing it with any
2181 mercury-specific control technology. The mercury will be
2182 removed as a co-benefit of the sulfur dioxide controlled in the
2183 coal-fired power plants.

2184 But as far as another statement that the state gets a first
2185 crack, that is not the case in CSAPR. It's been a FIP from day

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2186 one, and in fact if you go back and you look at other Department
2187 of Environmental Protection letters from Pennsylvania DEP there
2188 was great consternation raised over the FIP first because the
2189 states were not given the opportunity in CSAPR to do anything.

2190 They were not -- it was not similar to CARE where a budget
2191 was established and the states had the opportunity to develop
2192 their own allocation methodologies, which is what we did in
2193 Pennsylvania and other states did the same thing.

2194 Mr. Long. What would -- I am a little confused on my time.
2195 I have gone from eight -- the chairman was very generous, gave
2196 me eight minutes and 20 seconds for a while and it stopped and
2197 then a minute and now 38 seconds. I'm not sure --

2198 Mr. Whitfield. You've actually been over five minutes but
2199 we'll give you --

2200 Mr. Long. As a courtesy -- well, with that I will yield back.
2201 I have been trying to watch the clock and fit in my questions but
2202 that didn't work too well. So I think the regulators have taken
2203 a hold of our clocks.

2204 Mr. Brisini. The regulated, not the regulators. The
2205 regulated.

2206 Mr. Whitfield. Okay. Thank you. At this time I will
2207 recognize the gentleman from Oklahoma, Mr. Mullin, for five
2208 minutes.

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2209 Mr. Mullin. Thank you, Mr. Chairman, and thank you to the
2210 panel for being here.

2211 Mr. Walke, where are you from?

2212 Mr. Walke. I am from South Carolina.

2213 Mr. Mullin. South Carolina. What is your interest in
2214 Pennsylvania?

2215 Mr. Walke. My interest is in air pollution and this bill
2216 concerns coal plants that are --

2217 Mr. Mullin. Do you believe in states' rights? But do you
2218 believe in states' rights?

2219 Mr. Walke. Sure. There is a whole --

2220 Mr. Mullin. So what you are opposing is going to affect --

2221 Mr. Walke. South Carolina is going to award it without that.

2222 Mr. Mullin. Yes, but what you are opposing is going to
2223 affect the people that really live in Pennsylvania and I have a
2224 big problem with people that are injecting their opinion in a
2225 community they don't live in.

2226 You don't understand how important it is, the way of life
2227 it is, for those that live in Pennsylvania but yet you want to
2228 inject your opinion in it. That is why -- that is why we set up
2229 states' rights to begin with and you said you believe in it.

2230 You say there's a way that states can go around it and they
2231 have the final say in it. Well, you and I both know that is

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2232 absolutely not true because what happens is the EPA sets the
2233 standards and then they hold the entire state hostage for it and
2234 that is how we are putting an entire industry out of business.

2235 And then you say that there are scrubbers that is available.
2236 Well, how much do those scrubbers cost? How much do those
2237 scrubbers cost that you are talking about to install?

2238 What do they cost an individual or the industry to install
2239 per scrubber?

2240 Mr. Walke. Congressman, there are different sizes
2241 according to the size of the plant.

2242 Mr. Mullin. Give me an average.

2243 Mr. Walke. I don't think an average is possible. I don't
2244 know --

2245 Mr. Mullin. So you're saying that this technology is
2246 available but you don't even know what it costs and then again
2247 you are not even going to pay it because you don't even live in
2248 the state. But yet you want to put your opinion in there. I have
2249 a big problem with this.

2250 Mr. Walke. Congressman, I was invited to testify at this
2251 committee.

2252 Mr. Mullin. I understand you were invited.

2253 Mr. Walke. I've only lived in two states my whole life but
2254 I am testifying about a field that applies across the country.

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2255 Mr. Mullin. I understand that you were invited. You can
2256 listen because I'm talking right now. So I understand that you
2257 were invited and I get that and I appreciate your being here.

2258 But you start acting like all this technology is available
2259 and it is just as simple as installing it like it would be hooking
2260 up a garden hose. But you don't even know what it costs and I
2261 don't even actually know if the technology is actually there.

2262 And Mr. Brisini, is that right? Does the technology really
2263 exist that Mr. Walke is talking about?

2264 Mr. Brisini. Well, this is very, very important. You can
2265 look at this and say what is -- technically if you had all the
2266 money you wanted and all the money you needed and you had all the
2267 opportunity for design engineering could you design a technology
2268 to take out the difference.

2269 Yeah, you probably could but nobody would be in business
2270 anymore, especially in Pennsylvania where we operate as
2271 competitive wholesale generators. We are not rate based.

2272 We are competitive companies no different than any other
2273 competitive company. We have to recover our costs from the PJM
2274 wholesale electric market.

2275 If you were to attempt to build a scrubber, and I do know
2276 what scrubbers cost because I have put them on coal-fired power
2277 plants and I have put them on big plants and I know that they don't

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2278 go on little plants because the plants I used to take care of in
2279 many cases are now retired because they can't afford to put it
2280 and they are considerably larger than these plants.

2281 In the case of a large coal-fired facility that I used to
2282 take care of as the environmental air quality manager it was a
2283 1,700 megawatt facility. The scrubbers cost \$675 million.

2284 You go to these small plants -- and that was to remove --
2285 and if you look at a dollar per ton you were starting with no
2286 control essentially of sulfur dioxide.

2287 Now you look at these plants. These plants are actually
2288 controlled and they are controlled to 93 percent. The scrubber
2289 gets to 98 percent. So you are looking at this little difference
2290 of 5 percent.

2291 So if you look on a dollar per ton basis, all of a sudden
2292 you stick a \$100 billion dollar scrubber to get 5 percent more
2293 when in fact you have allowances going to retired units which are
2294 only going to sell them in the market so somebody can emit them,
2295 this is a net wash.

2296 All of this upwind downwind discussion is not an accurate
2297 reflection. This is about preserving the budget established by
2298 EPA. It is about having a pragmatic solution that works.

2299 It is about making it so everybody can be okay. But somebody
2300 can't be okay because they want it -- everything the way they want

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2301 and there is a way to get to the right solution.

2302 Mr. Mullin. Right. And just to sum it up, this isn't as
2303 easy, Mr. Walke, as just putting a muffler on a car and that is
2304 how you make it sound. And I don't mean to come across, you know,
2305 confrontational to you but you are here to testify. But yet you
2306 don't have all your facts.

2307 I yield back.

2308 Mr. Whitfield. The gentleman yields back and that concludes
2309 the questions and concludes today's hearing on these two pieces
2310 of legislation.

2311 Once again, I want to thank all of the witnesses for being
2312 here and for giving us your perspective on both of these pieces
2313 of legislation.

2314 We will keep the record open for ten days and I look forward
2315 -- we look forward to working with all of you as we make an effort
2316 to bring these bills to the floor.

2317 And do you have anything else, Jerry? Okay. So that
2318 concludes the hearing. Thank you all once again.

2319 [Whereupon, at 12:15 p.m., the subcommittee was adjourned.]