

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

RPTR HUMISTON

EDTR ZAMORA

MARKUP OF:

H.R. 4775, OZONE STANDARDS IMPLEMENTATION ACT OF 2016; AND

H.R. 4979, ADVANCED NUCLEAR TECHNOLOGY DEVELOPMENT ACT OF 2016

WEDNESDAY, MAY 11, 2016

House of Representatives,

Subcommittee on Energy and Power,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 5:01 p.m., in Room 2123, Rayburn House Office Building, Pete Olson [vice chairman of the subcommittee] presiding.

Present: Representatives Olson, Shimkus, Flores, Upton (ex officio), Rush, McNerney, and Pallone (ex officio).

Staff Present: Will Batson, Legislative Clerk, Energy and Power, Environment and the Economy; Mike Bloomquist, Deputy Staff Director; Karen Christian, General Counsel; Paige Decker, Executive

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

Assistant; Giulia Giannangeli, Legislative Clerk, Commerce, Manufacturing, and Trade; Tom Hassenboehler, Chief Counsel, Energy and Power; A.T. Johnston, Senior Policy Advisor; David McCarthy, Chief Counsel, Environment and the Economy; Brandon Mooney, Professional Staff Member, Energy and Power; Mary Neumayr, Senior Energy Counsel; Graham Pittman, Legislative Clerk; Chris Sarley, Policy Coordinator, Environment and Economy; Dan Schneider, Press Secretary; Andy Zach, Counsel, Environment and the Economy; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; John Marshall, Minority Policy Coordinator; Dan Miller, Minority Staff Assistant; Alexander Ratner, Minority Policy Analyst; Andrew Souvall, Minority Director of Communications, Outreach and Member Services; and Tuley Wright, Minority Energy and Environment Policy Advisor.

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

Mr. Olson. The subcommittee will come to order.

Today, we begin the markup of two bipartisan bills, H.R. 4775, the Ozone Standards Implementation Act, and H.R. 4979, the Applied Nuclear Technology Development Act of 2006.

Per normal practice, we will only hear opening statements this afternoon. Then we will recess until 10:00 a.m. tomorrow, when we will reconvene to complete the subcommittee markup.

H.R. 4775 is a bill that I introduced. I would like to thank my original cosponsors, bipartisan cosponsors, Chairmen Flores, Latta, Cuellar, Leader McCarthy, and Whip Scalise. We believe this bill creates a path to improve air quality without harming job creation and economic growth. It also provides long overdue reforms to the process by which the EPA sets and implements national air pollution standards.

The EPA's new ozone standards will impose major compliance costs on State and local governments, as well as threaten jobs in my home State and other areas that are not in attainment currently. The 2008 ozone standards are challenging enough, and now the EPA has made it worse by waiting 7 years to finalize the implementation rules. This means States have barely started moving forward with achieving the 2008 standards.

To make the situation more daunting, the EPA chose to finalize a brand-new ozone rule a few months ago and also require compliance with both standards at the same time. The ozone standard of 70 parts per billion is so low that in some regions it is close to background

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

levels, making compliance extremely difficult. Even the EPA admits that it can't identify the control technologies that would get all of America into compliance.

At the same time, the Agency also admits the new standard would not improve air quality much more than you get under the 2008 ozone standards. In other words, it is a lot of pain with little gain.

H.R. 4775 will allow States to fully implement the 2008 standards before imposing new paperwork and plan requirements for the new standard.

Ozone has already declined by about one-third since 1980, and the 2008 standards and other existing regulations are already in place. They will ensure continued improvements for the next 8 years until the new standard is implemented.

This bill also includes some overdue reforms to the 46-year-old process for National Ambient Air Quality Standards for ozone. EPA routinely misses the 5-year mandatory deadline review needed for new ozone standards. Let's give EPA the time they need. They clearly need this time. This bill changes that interval from 5 to 10 years. No more missed deadlines for the EPA, which means stable expectations in the market.

This bill also helps EPA by making them release the guidance to meet a new rule at the same time they put the new rule out. They were clearly overwhelmed by having to write the rules for the 2008 ozone standards while having to work on new standards looming 5 years later.

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

By tying new standards together with the rules to achieve those standards, we strengthen EPA and the Clean Water Act.

We will also consider H.R. 4979, the Advanced Nuclear Technology Development Act of 2016, sponsored by my colleagues Bob Latta and Mr. McNerney. This bill will provide certainty for innovators in nuclear technology by requiring the development of a regulatory framework for new technologies. Currently, NRC's outmoded regulatory approval process stands as a barrier to those promising technologies that would create jobs and increase our national security.

The Advanced Nuclear Technology Development Act also requires the DOE and the NRC to enter into a memorandum of understanding to maintain technical expertise, modeling and simulation capabilities, and scientific facilities to license advanced reactors. Federal agencies should collaborate where appropriate to reduce uncertainties for the bright future of nuclear science, nuclear scientists, and entrepreneurs.

Nuclear industry competes in a global market. H.R. 4979 will assure the United States will remain the leader in innovation and technology. I thank Congressman Latta for his leadership on this issue.

H.R. 4775 and 4979 seek a balanced approach to protect the public against risks and ensure Federal agencies do not impose unnecessary barriers to economic growth. Both these bills strike that balance. I urge members to support them.

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

[The prepared statement of Mr. Olson follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

Mr. Olson. And now I will yield 5 minutes and 6 minutes to the gentleman from New Jersey, the head of -- the ranking member of the full committee, Mr. Pallone.

Mr. Pallone. Thank you, Mr. Chairman.

Tomorrow, this subcommittee will be marking up two bills. The first bill is H.R. 4979, the Advanced Nuclear Technology Development Act of 2016, which was introduced by Representatives Latta and McNerney. The bill seeks to enhance coordination between the Nuclear Regulatory Commission and the Department of Energy through a memorandum of understanding on issues related to advanced nuclear reactor technology. This is a worthy goal.

While I believe there are few small issues with the bill that may need to be worked out before a full committee consideration, overall this is a commonsense way for the Federal Government to support the advanced nuclear power industry.

On the other hand, the second bill, H.R. 4775, the Ozone Standards Implementation Act, is an attack that strikes at the heart of the Clean Air Act and would undermine decades of progress on cleaning up pollution and protecting our public health. Weakening the protections of the Clean Air Act won't make air pollution go away. And the Ozone Standards Implementation Act won't do anything to actually help implement the EPA's ozone standards.

Instead, the bill is squarely focused on systematically weakening the fundamental protections that the Clean Air Act provides to the

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

American people.

The bill's sponsors say the goal of this legislation is to facilitate a more efficient implementation of EPA's National Ambient Air Quality Standards by States. However, States have decades of experience implementing air quality standards, and I have serious concerns with the premise and execution of many of the provisions in this bill.

First, the cornerstone of the Clean Air Act is a series of health-based air quality standards that the EPA must set based solely on the latest science and medical evidence. Essentially, the standard sets the level of pollution that is safe to breathe. With these health-based standards as the goalposts, States have developed plans to control pollution and meet these goals, but the cost and technological feasibility are front and center in this planning, and States can identify which pollution control measures are best suited to meeting the standards in the most cost-effective way.

The bill would change this effective approach. It would elevate cost and feasibility considerations in the standard setting process not just for ozone, but also for carbon monoxide, sulfur oxides, nitrogen oxides, particle pollution, and even lead. This would allow polluters to override scientists, leading to air quality standards based on profits rather than health,

Next, the bill would deny implementation of the new, more protective ozone standard by up to 8 years, essentially denying the

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

public the right to clean and healthy air that is long overdue.

And it gets worse. The bill also doubles the EPA's review period of air quality standards for all six criteria pollutants, meaning any new evidence or science would only be considered every 10 years. Delaying EPA's review of the best medical science won't make outdated air pollution levels safe, it will just lead to more Americans suffering from unhealthy air for a longer period of time. And this is a dramatic move in the wrong direction on science-based decisionmaking.

Now, my Republican colleagues like to say that we have made tremendous progress in reducing air pollution in this country, and that is true. However, it doesn't mean that we no longer need the tools that got us there or that the job is done. We have made progress because Congress enacted a strong and effective Clean Air Act. If we weaken the law by passing bills like the Ozone Standards Implementation Act, then air quality will suffer, public health will suffer, and we will throw away decades of progress. So that is why I oppose the bill.

And I yield back, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

Mr. Olson. The gentleman yields back.

The chair recognizes the gentleman from Illinois, Mr. Shimkus, for 3 minutes.

Mr. Shimkus. Thank you, Mr. Chairman.

I am making sure I speak on behalf of the author of 4979, Bob Latta, who is obviously back in Ohio dealing with family issues, to be supportive of his bill and talk about the advanced reactor technologies. The benefit is it is thought to increase safety margins with passive cooling systems, it will generate less spent nuclear fuel, and it will also be more economically competitive, and include additional utilization components, such as generating process heat, industrial applications, et cetera. So this bill is to address that.

And specifically, it will require the Nuclear Regulatory Commission and the DOE, Department of Energy, to enter into a memorandum of understanding to have Federal Government agencies collaborate. That is a good thing. It is going to require the NRC to develop a plan for the efficient risk-informed, technologically-neutral framework for advancing reactor licensing, and will authorize targeted funding for NRC to develop the regulatory infrastructure for advanced nuclear reactor technologies not recovered through NRC's fee-based system.

Again, we appreciate Bob's work on this. I want to give him credit for it, and actually my colleague and friend from the State of California, for this work, and I ask my colleagues to be supportive.

Also on your bill, Mr. Chairman, I am very supportive of it. You

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

know, the demand to change the ozone standards before the current standards even get implemented is just another example of an EPA out of control. You have got to at least be able to meet the initial standards before you ratchet them down and try to get everybody to jump through the hoops.

So I look forward to supporting both bills.

And I yield back the balance of my time.

[The prepared statement of Mr. Shimkus follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

Mr. Olson. The gentleman yields back.

The chair reminds members that pursuant to committee rules, all members' opening statements will be made part of the record.

I now recognize Mr. Rush for 5 minutes.

Mr. Rush. I want to thank you, Mr. Chairman, for holding this markup on both H.R. 4979, the Advanced Nuclear Technology Development Act of 2016, and H.R. 4775, the Ozone Standards Implementation Act of 2016.

Mr. Chairman, I want to commend my colleagues, Mr. Latta and Mr. McNerney, for sponsoring H.R. 4979.

Mr. Chairman, if the nuclear sector is to continue to provide safe and reliable energy, even as we move towards a reduced-carbon economy, it is imperative that Congress provides direction to the agencies responsible for licensing and regulating the new and emerging innovative nuclear designs.

This bipartisan legislation, when enacted, will go a long way in providing guidance and regulatory certainty for the nuclear industry in order to encourage investment in next-generation nuclear reactor technology, including advanced nonlight water reactors and light water small marginal reactors.

So while I support the goals of H.R. 4979, Mr. Chairman, unfortunately, I cannot support the objectives of H.R. 4775. The Ozone Standards Implementation Act would change both the intent and the desired outcomes of the National Ambient Air Quality Standards, or

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

NAAQS, as required by the Clean Air Act.

Mr. Chairman, my list of concerns with H.R. 4775 are many, but the main issue I have with this legislation is that it will permanently weaken the Clean Air Act as well as future pollution health standards for all criteria pollutants. Specifically, Mr. Chairman, H.R. 4775 would fundamentally change provisions of the Clean Air Act by imposing costs and technological feasibility considerations on the standard setting process.

This drastic alteration of the Clean Air Act will prohibit the EPA from relying on the most current health-based scientific data when determining air pollutant standards. Instead, this bill will require the Agency to primarily consider industry-friendly standards, regardless of their impacts on public health and the environment.

Additionally, Mr. Chairman, H.R. 4775 would delay the ozone standards recently introduced by the EPA for up to another 8 years while also doubling the amount of time that the Agency is required to review national health standards for ozone, soot, lead, and other dangerous pollutants.

Mr. Chairman, the new standard that the EPA recently issued tightening the ozone NAAQS from 75 parts per billion to 70 parts per billion already represents a measured approach that seems to balance both public health impacts as well as the rule's overall cost benefit, even though this is not a prerequisite of the Clean Air Act.

Unfortunately, Mr. Chairman, H.R. 4775 represents the exact

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

opposite of a measured approach as it unabashedly tips the scales in favor of industry over public health. This bill delays new standards for years on end. It changes the consideration of future standards from health-based to industry-friendly regulations; it creates loopholes for construction permitting; it exempts the most extreme nonattainment areas; and it expands the definition of, quote, "exceptional events," end of quote, to include conditions that are becoming more and more common.

Mr. Chairman, there is just not enough in this bill that benefits the overall public interest, and for that reason I must oppose this bill and urge my colleagues to do the same.

I want to thank you, and I yield back the balance of my time.

[The prepared statement of Mr. Rush follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

Mr. Olson. The gentleman yields back.

The chair recognizes the gentleman from Texas, Mr. Flores, for 3 minutes.

Mr. Flores. Okay. Thank you, Mr. Chairman, for holding today's markup on H.R. 4775 and H.R. 4979.

I would first like to say that I am a strong supporter of nuclear power, and I am encouraged by the efforts, particularly like Mr. Latta's and Mr. McNeerney's bill, H.R. 4979, that foster new and innovative technologies that will help our country maintain its leadership in the field of nuclear energy.

Moving to the next bill. H.R. 4775 brings relief to States and counties that currently face the burden of implementing two different standards for ozone simultaneously. Since 1980, our economy has more than tripled in growth, while the average ozone levels have gone down by 33 percent. The EPA predicts that ozone levels will continue to improve through the next decade under already existing requirements. Why should regulators hamper job creators with unnecessary red tape when these areas are already on track for compliance?

When I first came to Congress in 2011, the EPA was in the midst of reconsidering the 75 parts per billion ozone standard set in 2008. By the way, they were doing that 2 years earlier than the statute provided. I led my House freshmen colleagues in sending a letter to the EPA urging them to fully implement the existing standard of 75 parts per billion to ensure that all benefits from that standard were realized

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

before considering revised standards.

The administration later came to the correct decision and terminated reconsideration of the standard. Ultimately, though, this multiyear delay in the implementation occurred, and States did not receive full implementation guidance until October of last year.

States now face the challenge of spending already limited resources on implementing a new second standard of 70 parts per billion. And in setting this latest standard, the EPA predicts a vast majority of counties are on track to attainment of a 70 parts per billion standard by 2025 under existing regulations. So hence the question, why do you need a new set of regulations if we are already on track to achieve the standard?

The bill we are marking up today also includes a key process modernization by giving the EPA more time to review air quality standards. I think we can all agree that moving the goalposts before regulations are fully implemented and corresponding benefits are maximized is a shared commonsense goal.

To address many of these issues, I introduced H.R. 4000 last November, which harmonizes the two standards of 75 parts per billion and 70 parts per billion, and the related permitting processes through 2025. That bill also modernizes the statutory review process from every 5 years to a more realistic 10-year period.

I am very pleased that H.R. 4000 is included as a key part of H.R. 4775, and I thank my committee colleagues, Mr. Olson, Mr. Latta, and

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

Mr. Scalise for their efforts and work on this important issue.

Thank you, and I yield back the balance of my time.

[The prepared statement of Mr. Flores follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

Mr. Olson. The gentleman yields back.

The chair recognizes the gentleman from California, Mr. McNerney, for 3 minutes.

Mr. McNerney. Well, I want to thank the chairman.

First, I want to discuss H.R. 4979, the Advanced Nuclear Technology Development Act, which Mr. Latta and I introduced. I want to thank Mr. Latta and his staff and my staff for working on the bill.

As climate change advances, we will need alternatives to fossil fuels. Nuclear energy can be relied upon to produce a significant portion of our Nation's energy supply. However, nuclear energy takes time to implement and we need to take steps now to make sure that the regulatory tools, including safety and reliability, are in place to meet potential increases in nuclear power capability.

H.R. 4979 is a commonsense approach that ensures the Nuclear Regulatory Commission establishes the proper regulatory framework to facilitate, verify, and permit advanced reactor technologies, as well as coordinating with the Department of Energy.

The provisions in our bill are aligned with NRC's fiscal year 2017 budget. H.R. 4979 has support from nearly a dozen organizations, and I urge my colleagues to support the bill. I also urge my colleagues to work together to find solutions to the nuclear waste challenge.

I would like to comment next on H.R. 4775. My district in the San Joaquin Valley of California is heavily impacted by ozone and other forms of air pollutants and is struggling economically. So I am very

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

concerned about the health impacts of air pollution and how we can best implement effective rules that promote economic growth.

I need to point out that the bill's title, Ozone Standards Implementation Act, can be misleading. If implemented, it would actually delay implementation of ozone standards across the country.

For decades, the Clean Air Act has been an effective tool in improving air quality, improving public health, and helping to drive innovation. I have seen the air quality visibly improve over the last decade in my district. If anything, it is time to build upon the success of this important environmental law. In fact, we heard at our legislative hearing on this bill that there is room to improve the Clean Air Act, and I have discussed possible ways to do so with our regional air district.

Unfortunately, instead of building on the Clean Air Act, H.R. 4775 actually rolls back the protections in the act. H.R. 4775 needs substantial changes before I can support it. I plan to offer ways to do this as we move through the committee process, but barring substantial changes, I will oppose this legislation.

Mr. Chairman, I yield back.

[The prepared statement of Mr. McNerney follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

Mr. Olson. The gentleman yields back.

The chairman calls up H.R. 4979 and asks for the clerk to report.

The Clerk. H.R. 4979, to foster civilian research and development of advanced nuclear energy technologies and enhance licensing and commercial development of such technologies.

Mr. Olson. Without objection, the first reading of the bill is dispensed with, and the bill will be open for amendment at any point.

So ordered.

[The bill follows:]

\*\*\*\*\* INSERT 1-1 \*\*\*\*\*

**This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.**

Mr. Olson. We are now on H.R. 4979, and the subcommittee will reconvene tomorrow at 10:00 a.m.

I remind members that the chair will give priority recognition to bipartisan amendments. I look forward to seeing all of you tomorrow.

Without objection, the subcommittee stands in recess.

[Whereupon, at 5:25 p.m., the subcommittee recessed, to reconvene at 10:00 a.m., Thursday, May 12, 2016.]