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6 NEW SOURCE REVIEW PERMITTING CHALLENGES FOR

7 MANUFACTURING AND INFRASTRUCTURE

8 WEDNESDAY, FEBRUARY 14, 2018

9 House of Representatives

10 Subcommittee on Environment

11 Committee on Energy and Commerce

12 Washington, D.C.

13

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16 The subcommittee met, pursuant to call, at 2:00 p.m., in

17 Room 2123 Rayburn House Office Building, Hon. John Shimkus

18 [chairman of the subcommittee] presiding.

19 Members present: Representatives Shimkus, McKinley,

20 Olson, Johnson, Flores, Hudson, Cramer, Walberg, Carter,

21 Walden (ex officio), Tonko, Ruiz, Peters, Green, McNerney,

22 Dingell, Matsui, and Pallone (ex officio).

23 Staff present: Mike Bloomquist, Deputy Staff Director;

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24 Allie Bury, Legislative Clerk, Energy/Environment; Kelly  
25 Collins, Staff Assistant; Wyatt Ellertson, Research  
26 Associate, Energy/Environment; Margaret Tucker Fogarty, Staff  
27 Assistant; Jordan Haverly, Policy Coordinator, Environment;  
28 A.T. Johnston, Senior Policy Advisor, Energy; Ben Lieberman,  
29 Senior Counsel, Energy; Mary Martin, Deputy Chief Counsel,  
30 Energy & Environment; Dan Schneider, Press Secretary; Austin  
31 Stonebraker, Press Assistant; Hamlin Wade, Special Advisor,  
32 External Affairs; Jean Fruci, Minority Energy and Environment  
33 Policy Advisor; Caitlin Haberman, Minority Professional Staff  
34 Member; Rick Kessler, Minority Senior Advisor and Staff  
35 Director, Energy and Environment; Alexander Ratner, Minority  
36 Policy Analyst; Andrew Souvall, Minority Director of  
37 Communications, Outreach and Member Services; C.J. Young,  
38 Minority Press Secretary; and Catherine Zander, Minority  
39 Environment Fellow.

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40 Mr. Shimkus. The Subcommittee on the Environment will  
41 now come to order. The chair recognizes himself for five  
42 minutes for an opening statement.

43 Today's hearing examines the impact of the EPA's new  
44 source review air permitting program, commonly referred to as  
45 NSR.

46 Congress created this preconstruction permitting program  
47 with the goal of protecting air quality by ensuring that the  
48 use of appropriate pollution control devices on new and  
49 modified source of emissions such as power plants, factories,  
50 and industrial facilities.

51 As you can imagine, the NSR permitting program reaches  
52 across several industry sectors and has far-reaching impacts  
53 on America's economy and global competitiveness. For these  
54 reasons, it is incredibly important for us to ensure that the  
55 preconstruction permitting program is working effectively and  
56 efficiently.

57 Unfortunately, history shows that there are too many  
58 instances where New Source Review Program is anything but  
59 effective and efficient.

60 As we will hear from many of our witnesses today, over  
61 time the NSR program has become more costly and time  
62 consuming which not only slows economic growth but also

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63 hinders the nation=s ability to modernize infrastructure.

64 Under the existing NSR program, it can take multiple  
65 years and millions of dollars to obtain the preconstruction  
66 air permits required to begin construction on a new facility.  
67 This significant time delay and cost burden makes it more  
68 difficult and less likely for owners to invest in new  
69 projects and facilities.

70 Not only is the NSR process costly and time consuming,  
71 it is also complex and uncertain. Right now, on the EPA=s  
72 website there are nearly 700 posted guidance documents that  
73 an applicant may need to be aware of when seeking a  
74 preconstruction permit.

75 Companies must hire teams of lawyers just understand the  
76 requirements and processes established under the NSR program.  
77 The end result of this complexity is that companies are  
78 afraid of incorrectly interpreting NSR requirements and  
79 violating the rules that they are hesitant to pursue projects  
80 that require an NSR preconstruction permit.

81 In other words, the NSR program is holding back needed  
82 investment in the nation=s infrastructure, industrial  
83 capacity, and manufacturing capabilities.

84 One particularly frustrating effect of the NSR program  
85 is that it discourages owners from carrying out projects that

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86 would improve the environmental performance of their  
87 facilities.

88 For example, if a company wants to perform efficiency  
89 upgrades to install new pollution control technology, they  
90 typically have to obtain a preconstruction permit through the  
91 NSR program.

92 However, because the NSR program is so burdensome, many  
93 owners are choosing to avoid the NSR process and facility  
94 upgrades altogether and are instead continuing to operate  
95 older, less efficient, and dirtier facilities.

96 Clearly, there are significant problems and shortcomings  
97 with how the NSR program is being carried out today. The  
98 goal of this hearing is to identify and understand the  
99 challenges connected to the NSR program so that we can begin  
100 considering potential reforms to improve the program.

101 To assist our work, we will hear today from witnesses  
102 who can explain the challenges faced by manufacturers and  
103 industry seeking to expand operations.

104 We will hear from a state regulator who can explain the  
105 role NSR program plays in protecting local air quality and we  
106 will also hear from NSR policy experts who can discuss  
107 options for how to reduce unnecessary NSR permitting burdens.

108 I am confident that through targeted changes to the NSR

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109 program we can not only reduce the unnecessary burden imposed  
110 upon industry but also maintain and enhance the NSR program=s  
111 important protections for the environment and public health.

112 [The prepared statement of Mr. Shimkus follows:]

113

114 \*\*\*\*\*INSERT 1\*\*\*\*\*

115 And with that, I=d like to yield -- so I will turn to  
116 the minority -- are you ready to go? I would like to  
117 recognize the ranking member of the subcommittee, Mr. Tonko,  
118 for five minutes.

119 Mr. Tonko. Thank you, Mr. Chair, and thank you to our  
120 witnesses for being here today.

121 Today=s hearing will examine EPA=s new source review  
122 permitting program. As we have discussed on many occasions  
123 in this subcommittee, under the Clean Air Act, EPA is  
124 required to set health-based national ambient air quality  
125 standards, or NAAQS, for six criteria pollutants.

126 As more medical and scientific evidence has come to  
127 light, NAAQS have been adjusted accordingly to ensure they  
128 continue to be protective of our health.

129 Since the passage of the Clean Air Act, our nation has  
130 experienced the drastic reduction in these air pollutants,  
131 all while our economy has grown tremendously.

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132           It is beyond dispute that air pollution has serious  
133 health and economic consequences. When people are sick,  
134 hospitalized, and miss school and work we are a less  
135 productive society.

136           The new source review program plays an important role to  
137 ensure that new and modified major sources use the  
138 appropriate pollution controls to limit emissions of criteria  
139 pollutants.

140           This includes the best available controlled technology  
141 and locations with relatively clean air known as prevention  
142 of significant deterioration to ensure these areas continue  
143 to maintain healthy levels of air quality.

144           For areas in nonattainment of a NAAQS this includes the  
145 lowest achievement emissions rate along with appropriate  
146 offsets from other existing sources. This is known as  
147 nonattainment new source review.

148           The Clean Air Act has been successful because it is  
149 premised on making progress over time. We have made major  
150 strides in reducing pollution as our understanding of the  
151 health risks posed by dirty air has become more  
152 sophisticated.

153           That is why I was pleased to see EPA's website  
154 recognized February as American Heart Month. EPA has some

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155 useful heart health statistics such as heart disease and  
156 stroke are the first and fourth leading causes of death in  
157 the United States.

158 Air pollution can affect heart health and can trigger  
159 heart attacks and strokes that cause disability and death.  
160 One in three American adults has heart or blood vessel  
161 disease and is at higher risk from air pollution.

162 It is critical that we acknowledge and educate people on  
163 the role air pollution plays in exacerbating heart disease,  
164 asthma, and other respiratory illnesses.

165 So while EPA's website has taken steps to connect the  
166 dots between air pollution and threats to Americans' health,  
167 the actions by Administrator Pruitt and Assistant  
168 Administrator Wehrum have been troubling.

169 On December 7th, Administrator Pruitt issued a  
170 memorandum with a new approach to implementation and  
171 enforcement of the new source review program.

172 EPA will no longer review the permanent applicant's  
173 emissions projections nor will the agency enforce against an  
174 applicant that provides invalid estimates.

175 In some cases, this lax attitude on enforcement will  
176 have consequences in downwind states, far away from the  
177 original permitting authority.



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178           And while not the subject of today=s hearing, another  
179 data point from January 25th, Assistant Administrator Wehrum  
180 reversed EPA=s longstanding once in always in policy for  
181 major source MACT requirements.

182           Both decisions will review -- will result, rather, in  
183 greater air pollution, and the new source review task force  
184 seems to be little more than a brainstorming session on how  
185 to evade air pollution controls rather than actually building  
186 a public record on how the program might be improved.

187           Progress over time means ensuring we don=t backslide  
188 and, sadly, I believe the direction of this EPA will cause us  
189 to do just that.

190           My district and many great towns and cities across this  
191 country were built by manufacturers. But when many of those  
192 facilities were built, we didn=t fully understand the  
193 consequences of dirty air. We didn=t know that one in three  
194 American adults has heart or blood vessel disease and is at  
195 higher risk from air pollution.

196           We know better today. Our health and environmental  
197 safeguards should reflect that. We shouldn=t have to ask our  
198 constituents to bear all the costs of air pollution,  
199 especially not when they are -- when there are effective and  
200 well understood pollution controls.

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201 I would urge EPA=s leadership to stop going down this  
202 path and consider how the -- how to best improve and preserve  
203 air quality.

204 So again, I thank you. I thank the witnesses for being  
205 here and helping us better understand some of the potential  
206 changes to the new source review program.

207 And with that, Mr. Chair, I yield back.

208 Mr. Shimkus. Gentleman yields back his time.

209 The chair now recognizes the chairman of the full  
210 committee, Mr. Walden for Oregon, for five minutes.

211 The Chairman. I thank the gentleman and appreciate the  
212 witnesses being here today. We look forward to your  
213 testimony.

214 As we all know, the purpose of the Clean Air Act is, and  
215 I quote, to protect and enhance the quality of the nation=s  
216 air resources, to promote the public health and welfare and  
217 the productive capacity of its population, closed quote.

218 So in today=s hearing, we will highlight the necessity  
219 to ensure the rules to protect and improve air quality,  
220 promote both of these core objectives.

221 Effective clean air regulations should allow the nation  
222 to continue to expand its manufacturing and industrial  
223 capacity. But these goals are undermined when regulatory

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224 requirements no longer reflect practical reality.

225 As a result, American communities are deprived of both  
226 continued environmental improvements and economic prosperity.  
227 The new source review permitting process serves as a case in  
228 point.

229 Permitting requirements under EPA=s NSR program have  
230 evolved in complexity and confusions as the program began in  
231 the 1970s and as a result complex preconstruction planning  
232 requirements present unnecessary delays and impediments to  
233 the expansion of manufacturing and industrial facilities.

234 As we will hear in the testimony today, the complexity  
235 of the NSR process permitting time delays and regulatory  
236 uncertainty create powerful incentives to forego needed  
237 project upgrades even in areas that meet current air quality  
238 standards.

239 And for other communities NSR complexity raises costs  
240 and otherwise harms the prospects for economic expansion and  
241 increased environmental benefits.

242 In fact, the burdens associated with NSR can lead to  
243 communities losing the emissions benefits offered by more  
244 efficient modern technologies.

245 Prineville, Oregon -- that=s in my district. Home to  
246 data centers for Facebook and Apple. Recently, a proposed

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247 data center expansion ran headlong into a permitting issue  
248 because of potential backup generator emissions.

249 A single air sampling location, just one, and  
250 restrictive air quality rules made it unclear whether or not  
251 the expansion could go forward. It was only after the city  
252 persuaded the EPA to add an additional sampling location that  
253 they were then able to resolve the issue.

254 That instance involved hundreds of millions of dollars  
255 in investments and hundreds of construction jobs. Multiply  
256 that by the thousands of projects waiting to take off around  
257 the nation -- around the nation in response to our reformed  
258 tax structure and the urgency of addressing NSR problems  
259 becomes apparent.

260 I would also say that when you're dealing with companies  
261 the capital and intellectual capacity of Facebook and Apple  
262 they are probably better positioned to challenge some of  
263 these issues.

264 The witnesses today, you all bring a range of  
265 perspectives on the NSR permitting process. We appreciate  
266 your willingness to help us understand the challenges of the  
267 current process and what we can do to improve upon it.

268 Our goal is to develop responsible targeted reforms that  
269 will provide for economic growth while maintaining the

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270 environmental protections we all agree are important. Doing  
271 this will ultimately benefit all American workers and  
272 consumers.

273 [The prepared statement of Mr. Walden follows:]

274

275 \*\*\*\*\*INSERT 2\*\*\*\*\*

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276 I know Mrs. Blackburn is hoping to have a little time  
277 but she is not here. So with that, I will yield back.

278 Mr. Shimkus. The gentleman yields back his time.

279 The chair now recognizes the ranking member of the full  
280 committee, the chairman -- the gentleman from New Jersey for  
281 five minutes.

282 Mr. Pallone. Thank you, Mr. Chairman.

283 We are here today to discuss one of the Clean Air Act=s  
284 oldest and most debated programs, the New Source Review  
285 program. It=s based on a simple principle -- any new  
286 facility that emits pollutants should not increase local air  
287 pollution above levels that are safe to breathe.

288 The NSR program ensures that we have growth in the  
289 economy and not in pollution. In December, Administrator  
290 Pruitt issued a memorandum altering longstanding NSR policy  
291 using an active case as justification for the change.

292 The case was U.S. vs. DTF Energy Company, or DTE Energy  
293 Company, and the December memo actually reads as if it were  
294 prepared by DTE=s legal team. I can=t say that comes as a  
295 complete shock to me since Bill Wehrum, the man Administrator  
296 Pruitt put in charge of the office that drafted the memo, was  
297 previously part of DTE=s legal team.

298 The new policy is as suspect as the process used to

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299 initiate it. It will gut enforcement of the NSR program to  
300 the benefit of certain companies at the expense of the public  
301 health and companies that have cleaned up their act. The  
302 eight-page memo lays out a policy that invites polluters to  
303 skirt the law and dump tons of harmful pollution on our  
304 communities.

305 Essentially, it's a recipe instructing polluters how to  
306 cook the books and get out from under the need for a permit  
307 under the NSR program.

308 And this is certainly not a perfect program, but it has  
309 helped reduce harmful air pollution and improve public  
310 health, especially for people living in the communities close  
311 to these facilities. All of these gains will erode rapidly  
312 if we stay on the course this administration is following.

313 Too many old facilities have already used loopholes to  
314 game the system and avoid cleaning up the pollution.  
315 Certainly there are challenges to those existing facilities.  
316 But the Clean Air Act never intended for them to be exempt  
317 from the NSR program forever.

318 Also, it's important to remember that pollution control  
319 is zero sum game. Therefore, under Administrator Pruitt's  
320 NSR scheme, states and localities will have to make those  
321 that have played by the rules achieve greater pollution

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322 reduction in order to offset the excess pollution created by  
323 businesses that EPA is essentially allowing to go  
324 unregulated.

325 And that=s particularly outrageous to those of us who  
326 represent downwind states. We are tired of having to  
327 compensate for the lack of pollution control in neighboring  
328 states.

329 The EPA should not be making life easier for polluters.  
330 The agency should do its job and ensure that lax  
331 implementation and enforcement in one state doesn=t burden  
332 others.

333 Now, Republicans argue that we need to ease the NSR  
334 program to expand manufacturing and infrastructure. But new  
335 manufacturing facilities aren=t being held back by clean air  
336 requirements.

337 Weakening the Clean Air Act is not going to create jobs.  
338 The fact is that the so-called NSR program improvements being  
339 suggested today by my Republican friends are not new ideas.  
340 They are just a bunch of toxic old policies bundled up in a  
341 heart-shaped box as a Valentine=s Day present to polluters.

342 Industry has been trying to get out from under this  
343 program for a long time and it looks like Scott Pruitt and  
344 the Republicans are working hard to try to grant their wish.

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345 But make no mistake, the Valentine=s Day gift from  
346 Pruitt and Republicans gives polluters all the roses and  
347 sticks the public with the thorns. We would reject these  
348 policies that will harm the public health.

349 Unless someone else wants my time on my side, I=ll yield  
350 back, Mr. Chairman.

351 Mr. Shimkus. The gentleman yields back the balance of  
352 his time.

353 Do you have a new writer?

354 Mr. Pallone. I don=t know. I --

355 Mr. Shimkus. That was pretty good.

356 [Laughter.]

357 Mr. Pallone. -- I thought it was pretty good, myself.

358 We now conclude with members= opening statements. The  
359 chair would like to remind members that pursuant to committee  
360 rules, all members= opening statements will be made part of  
361 the record.

362 We want to thank all our witnesses for being here today  
363 and taking the time to testify before the subcommittee.  
364 Today=s witnesses will have the opportunity to give opening  
365 statements followed by a round of questions from the members.

366 Our witnesses -- panelists for today=s hearing will  
367 include, from my left to right, Mr. Stuart Spencer, who is

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368 associate director, Office of Air Quality, Arkansas  
369 Department of Environmental Quality, testifying on behalf of  
370 the Association of Air Pollution Control Agencies; Mr. Kevin  
371 Sunday, director of government affairs, Pennsylvania Chamber  
372 of Commerce Business and Industry; Mr. Paul Noe, vice  
373 president, public policy, American Forest and Paper  
374 Association and American Wood Council; Emily Hammond, Glen  
375 Earl Weston research professor of law, the George Washington  
376 University Law School; John Walke, clean air director,  
377 Natural Resources Defense Council; and a friend of ours from  
378 years past, Jeffrey Holmstead, who is a partner at Bracewell.

379 So with that, we'd like to begin our testimony and we  
380 will begin with Mr. Spencer. Your entire record is in the  
381 file. You have five minutes and you are -- you can begin.

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382 STATEMENTS OF STUART SPENCER, ASSOCIATE DIRECTOR, ARKANSAS  
383 DEPARTMENT OF ENVIRONMENTAL QUALITY, OFFICE OF AIR QUALITY,  
384 ON BEHALF OF THE ASSOCIATION OF AIR POLLUTION CONTROL  
385 AGENCIES; KEVIN SUNDAY, DIRECTOR OF GOVERNMENT AFFAIRS,  
386 PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY; PAUL NOE, VICE  
387 PRESIDENT PUBLIC POLICY, AMERICAN FOREST AND PAPER  
388 ASSOCIATION AND AMERICAN WOOD COUNCIL; EMILY HAMMOND, GLEN  
389 EARL WESTON RESEARCH PROFESSOR OF LAW, THE GEORGE WASHINGTON  
390 UNIVERSITY LAW SCHOOL; JOHN D. WALKE, CLEAN AIR DIRECTOR,  
391 NATURAL RESOURCES DEFENSE COUNCIL; JEFFREY R. HOLMSTEAD,  
392 PARTNER, BRACEWELL LLP

393

394 STATEMENT OF MR. SPENCER

395 Mr. Spencer. Thank you.

396 Good afternoon, Chairman Shimkus, Ranking Member Tonko,  
397 and distinguished members of the subcommittee. I appreciate  
398 the invitation to join you today to discuss the important  
399 issue of New Source Review reform.

400 I am here in two capacities. First, I am here as an  
401 associate director of the Arkansas Department of  
402 Environmental Quality. Our Office of Air Quality staff  
403 includes epidemiologists, engineers, ecologists, chemists,  
404 biologists, a meteorologist, and a lawyer in the primary

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405 branches of compliance, permits, policy, and planning in  
406 asbestos and enforcement.

407 Our primary mission is to protect and improve air  
408 quality in Arkansas while fostering responsible economic  
409 expansion opportunities.

410 Second, I am here as the president of the Association of  
411 Air Pollution Control Agencies, or AAPCA. AAPCA is a  
412 consensus-driven organization comprised of 45 state and local  
413 air agencies.

414 The AAPCA board of directors is made up of the air  
415 directors from our 20 geographically diverse member states  
416 including states with representation on this subcommittee.

417 As AAPCA's president, I serve on the board of the  
418 directors along with air directors from states as diverse as  
419 Wyoming, Maine, South Carolina, and Arizona, and despite the  
420 miles between our state borders, we have common goals and  
421 missions.

422 Today, I will be addressing a few common themes in  
423 regard to NSR reform. The first thing is practical  
424 application.

425 Environmental regulations should encourage necessary  
426 repair in replacement projects and should incentivize  
427 projects that improve the safety of operations increase

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428 energy efficiency or reduce the emissions of regulated air  
429 pollutants.

430 The second theme is clarity. This includes removing  
431 undefined terms and exemptions such as routine maintenance  
432 and nonroutine modification from the NSR rules and guidance  
433 and replacing them with clear definitions.

434 A prime example would also be refining the term  
435 modification to truly mean a substantial change. An  
436 ambiguous or muddy rule inhibits planning due to its lack of  
437 certainty and therefore stifles growth and innovation.

438 This leads me to my final theme, modernization. NSR is  
439 outdated and cumbersome. The documents that comprise the NSR  
440 rules in the guidance take up at least two file boxes if  
441 printed out in hard copy form.

442 The time to reform was yesterday so I am glad we are  
443 having this conversation today.

444 With those themes in mind, I will speak first as the  
445 associate director of ADEQ. The Office of Air Quality  
446 implements all programs delegated by EPA Region 6 to the  
447 state of Arkansas.

448 Under the leadership of one of your former colleagues  
449 and now governor of Arkansas, Asa Hutchinson, and ADEQ  
450 Director Becky Keogh, Arkansas has committed to protective

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451 permitting.

452 This practice is essential to achieving our goals of  
453 maintaining our status as the natural state, protecting  
454 public health and the environment in our communities and  
455 promoting and sustaining economic growth.

456 The Arkansas NSR program follows the federal program.  
457 ADEQ believes that the NSR rules should be clear and concise  
458 to allow companies to achieve compliance and ensure that both  
459 ADEQ and our regulated community have a well-defined  
460 understanding of what is required by the program.

461 Arkansas believes that changes to the NSR program would  
462 support its efforts to ensure that our regulated community  
463 and the companies in our communities are in compliance with  
464 the rules and do not become subject to enforcement actions  
465 based on rule interpretations that are either not well  
466 defined or continue to evolve.

467 For these reasons, we appreciate that EPA intends to  
468 tackle NSR reform again. The 2002 NSR reform rule was  
469 helpful but it did not go far enough to clarify the program  
470 and provide certainty to regulators and the regulated  
471 community.

472 So based on these points that I've made, any efforts to  
473 modernize and reform NSR reform -- NSR, particularly the

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474 upcoming EPA-directed NSR task forum discussions should  
475 address the following issues.

476         Number one; revise the emission increase test under NSR  
477 to match the hourly test under New Source Performance  
478 Standards -- our NSPS program.

479         This would eliminate and streamline many of the issues  
480 with the current program. Many of the other changes could be  
481 avoided or simplified if NSR applicability was based on an  
482 increase in maximum achievable emission rates rather than  
483 annual tons.

484         Next, clarify the factors to be considered in  
485 determining whether a project is a routine maintenance repair  
486 or replacement activity.

487         Next, create an exemption from NSR for efficiency  
488 projects. The current program is a disincentive to companies  
489 undertaking projects to make their operations more efficient.

490         Next, codify the information in EPA Administrator Scott  
491 Pruitt's December 7th, 2018 memo that EPA will not second  
492 guess a facility's emissions projections and clearly identify  
493 the circumstances when an emissions projection will be  
494 subject to review.

495         Next, clarify the definition of a source in order to  
496 ensure that geographically separate sources are not

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497 artificially combined or aggregated to create a single major  
498 source for NSR purposes.

499 And finally, clearly identify what types of projects  
500 should be considered as changes in the method of operation.

501 Thank you for your time again today and I am available  
502 to answer any questions upon request.

503 Thank you.

504 [The statement of Mr. Spencer follows:]

505

506 \*\*\*\*\*INSERT 3\*\*\*\*\*



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507 Mr. Shimkus. Thank you. Excellent.

508 I now turn to Mr. Kevin Sunday. You are recognized for  
509 five minutes.

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510 STATEMENT OF MR. SUNDAY

511

512 Mr. Sunday. Good afternoon, Mr. Shimkus, Mr. Tonko, and  
513 members of the committee.

514 My name is Kevin Sunday, director of government affairs  
515 with the Pennsylvania Chamber of Business and Industry. It's  
516 an honor to appear before you today to discuss the challenges  
517 our members have had when it comes to complying with New  
518 Source Review requirements.

519 Our nearly 10,000 member companies are of all sizes and  
520 across all industry sectors. We, as an organization, seek  
521 stewardship of our nation's land, air, and water and we seek  
522 to provide thoughtful and balanced ways in which we can  
523 continue to reduce our environmental impacts and grow the  
524 economy.

525 Thanks to tax reform and the prolific supply of our  
526 natural resources in nuclear, coal, gas, oil, and renewables  
527 we have before us a generational opportunity to invest in our  
528 workforces, our infrastructure, and our future.

529 And we applaud the members of the House of  
530 Representatives and the United States Senate who took a bold  
531 stand for growth and sent the Tax Cut and Jobs Act to the  
532 president's desk for his signature last year, and we thank

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533 our senator, Pat Toomey, for his leadership in getting that  
534 bill through the Senate.

535 In the short time since that bill was enacted, employers  
536 across the country have announced plans to increase hiring  
537 and wages, and it is expected that in the near term consumer  
538 spending and economic growth will increase considerably, as  
539 much as 4 percent on an annualized basis according to the  
540 Atlanta Fed.

541 As the economy grows, capital is going to be repatriated  
542 and rates on employers come down. Manufacturers and  
543 businesses have a generational opportunity to secure global  
544 competitive advantage by reinvesting into their facilities,  
545 enhancing their sustainability profiles, and expand to  
546 capture a share of the growing economy, provided, of course,  
547 that regulatory obligations do not present unnecessary  
548 hurdles.

549 What energy means to Pennsylvania and the region is  
550 significant. We are part of an endeavor called Forge the  
551 Future, which forecasts \$60 billion in state GDP and 100,000  
552 new jobs because of energy assets.

553 The Appalachian region at large including Pennsylvania,  
554 Ohio, West Virginia, and Kentucky could become a  
555 petrochemical and plastics manufacturing hub and, according

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556 to the American Chemistry Council, more than \$28 billion in  
557 economic expansion and more than 100,000 new jobs could be  
558 created should the region capitalize on an ethane storage  
559 project and secure the construction and operation of several  
560 petrochemical plants.

561 However, these projects too must wind through the  
562 permitting process to become reality. Our manufacturers in  
563 Pennsylvania have reported that the current NSR process is an  
564 impediment to investing in the efficiency of their operations  
565 and improve their ability to compete abroad.

566 Because of the costs associated with crossing NSR  
567 thresholds, companies have shelved projects that would have  
568 reduced their emissions and their operating costs.

569 Disputes between state and federal regulators over the  
570 interpretation and application of regulatory criteria have  
571 resulted in sizeable legal and engineering costs and left  
572 projects in limbo for months if not years.

573 Lenders will not sign off on financing until the  
574 revolving door of lawsuits from third party groups over the  
575 perpetually changing universe of BACT and LAER control stops  
576 spinning.

577 Economic growth and environmental progress depend upon a  
578 well functioning and rational regulatory system and the NSR

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579 program as it is being administered show signs of being  
580 neither.

581 From a land use perspective alone, it's illogical that  
582 we would have a regulatory program that would encourage  
583 building entirely new facilities, oftentimes outside the  
584 U.S., when existing mothballs -- when existing plants are  
585 being mothballed and retired that could have been upgraded.  
586 And how much has the closure of large-scale manufacturers in  
587 this country led to the flat electricity demand that has so  
588 troubled the power generation and utilities sectors.

589 So that's why we applaud EPA Administrator Scott Pruitt  
590 and his team at EPA for the December 7th memo that clarifies  
591 how NSR requirements should be interpreted and applied.

592 That's a crucial first step to reform of the program and  
593 we look forward to additional progress on that front.

594 The National Federation of Independent Businesses  
595 yesterday came out and said a record number of small  
596 businesses believe now is a good time to expand.

597 We believe we can ill afford to waste this opportunity  
598 in front of us by leaving up barriers to growth. We have the  
599 opportunity to make our regulatory process more efficient,  
600 allow our companies to invest, and reduce their environmental  
601 footprint and waste less of our natural resources.

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602           And if we don=t capitalize on that opportunity, that=s a  
603 failure. It=s bad for business and it=s bad for the  
604 environment.

605           Instead, let us pursue stewardship of our natural  
606 resources and secure economic growth in a thoughtful  
607 responsible manner and that starts with NSR reform.

608           Thank you.

609           [The statement of Mr. Sunday follows:]

610           \*\*\*\*\*INSERT 4\*\*\*\*\*

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611 Mr. Shimkus. The chair thanks you.

612 The chair now recognizes Mr. Paul Noe. You=re

613 recognized for five minutes.

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614 STATEMENT OF MR. NOE

615

616 Mr. Noe. Chairman Shimkus, Ranking Member Tonko, and  
617 distinguished members of the committee, on behalf of the  
618 American Forest and Paper Association and the American Wood  
619 Council, I want to thank you for the opportunity to be here  
620 to discuss the challenges posed by EPA's NSR program for the  
621 forest products industry and to provide our perspectives on  
622 how it can be improved.

623 This is consistent with the twin purposes of the Clean  
624 Air Act, which is to promote public health and welfare as  
625 well as the productive capacity of our nation.

626 Unfortunately, NSR is an outdated, inefficient, and slow  
627 regulatory approach that currently just doesn't work very  
628 well for existing sources and it's impeding modernization and  
629 growth in the U.S. manufacturing sector.

630 It just doesn't make sense to discourage upgrading  
631 plants already subject to a myriad of other regulatory  
632 requirements or to block beneficial projects using best  
633 controls simply due to unrealistic air quality modelling and  
634 assumptions.

635 Our country has made great strides in improving air  
636 quality, largely under other programs. To borrow from my

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637 friend and former EPA general counsel Don Elliott when he  
638 testified before Congress 15 years ago on the need for NSR  
639 reform, quote, ANSR is slow, costly, and ineffective, and  
640 those are the kindest things that one can say about it. It  
641 is the least successful of all the programs under the Clean  
642 Air Act."

643 The reality is that energy efficiency and modernization  
644 projects for existing sources are delayed, modified, or  
645 thwarted by complex NSR interpretations that have accumulated  
646 and evolved over time.

647 The program requires expensive but unrealistic air  
648 modelling that frequently delays projects and can cost  
649 \$100,000 or more to complete. Unreasonable permitting delays  
650 tie up investment capital and undermine the economic benefits  
651 from expansion projects.

652 There are many ways EPA could improve the permit process  
653 but let me focus on two key points. First, consistent with  
654 this statute, EPA should focus the NSR program on larger  
655 projects that really have a greater potential to impact air  
656 quality.

657 Changing the NSR applicability criteria could reduce  
658 unnecessary workload on permitting agencies and create  
659 business certainty and positive incentives without

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660 jeopardizing air quality.

661 For example, currently the NSR regulations use a two-  
662 step calculation process to determine if a project is subject  
663 to NSR. The emissions increases from a project are  
664 calculated first to see if they are significant before any  
665 decreases are subtracted.

666 This step one then step two analysis is complicated,  
667 expensive, and time consuming. By simply allowing increases  
668 and decreases to be netted projects with emissions below  
669 significant levels could proceed.

670 Second, once a project truly does trigger a higher level  
671 of scrutiny, EPA ought to use realistic assumptions and  
672 analytic tools, including probabilistic air quality modelling  
673 approaches.

674 This is needed now more than ever because there is  
675 little room for error. This is because in recent years EPA  
676 has lowered the national ambient air quality standards close  
677 to background levels.

678 This has left little room for permits, even in  
679 attainment areas. In the past, when NAAQS for PM or SO<sub>2</sub> or  
680 nitrogen dioxide were higher, if you looked at that versus  
681 the ambient level in emissions from the nearby sources and  
682 the facilities exposures, there was enough room or head room,

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683 as we call it, for a permit.

684 The problem seriously exacerbated by many of EPA=s  
685 current policy approaches and modelling tools which  
686 significantly over predict impacts from facilities,  
687 especially when a series of unrealistic assumptions are  
688 compounded.

689 So it=s critical that the modelling results reflect the  
690 reality of local air quality.

691 For example, EPA=s current modelling guidelines have an  
692 expansive interpretation of where the general public must be  
693 protected from nearby plant emissions.

694 Rather than focussing on where people actually are, it  
695 is assumed that ambient air is anywhere a person  
696 theoretically could be such as by illegally trespassing at  
697 the facility or where the general public in reality could not  
698 be, such as standing on a railroad or a road that runs  
699 through the facility.

700 Overly conservative modelling analysis can lead to  
701 unverifiable and nonexistent concentration estimates that  
702 cause costly changes or cancellations of beneficial projects,  
703 even though real-world exposure to the general public around  
704 these locations is minimal, improbable, or even impossible.

705 Therefore, EPA should issue new guidance to update its

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706 policies for placing receptors considering natural, manmade,  
707 or jurisdictional barriers.

708 Although forest products mills typically are located in  
709 attainment areas with better quality, they face problems as  
710 soon as NAAQS are issued because they're immediately  
711 effective and EPA has compounded the confusion and delay by  
712 not providing implementation and modelling guidance until  
713 after the NAAQS are issued.

714 I don't believe Congress intended this confusion and  
715 delay when it enacted the act and I believe the U.S. is the  
716 best place in the world for a robust manufacturing sector.  
717 We have the best workers in the world.

718 We have created entrepreneurs and innovators. We have  
719 abundant resources. We have a strong free-market democracy  
720 and we have regulatory agencies that are capable of leading  
721 the world on sustainable regulation.

722 Thank you, Mr. Chairman.

723 [The statement of Mr. Noe follows:]

724

725 \*\*\*\*\*INSERT 5\*\*\*\*\*

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726 Mr. Shimkus. The gentleman's time is expired.

727 The chair now recognizes Emily Hammond. You're

728 recognized for five minutes.

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729 STATEMENT OF MS. HAMMOND

730

731 Ms. Hammond. Thank you, Chairman Shimkus, Ranking  
732 Member Tonko, and distinguished members of the subcommittee.

733 One year ago almost to the day, I testified before this  
734 subcommittee about the many health and environmental benefits  
735 of clean air protections and I cautioned against efforts to  
736 roll back progress achieved over decades of hard work.

737 Today, I urge you to scrutinize recent actions by EPA  
738 that amount to nothing short of an abnegation of the agency=s  
739 statutory responsibilities and I emphasize once more that  
740 human lives and our economy are at stake.

741 The Clean Air Act is a technical and complex statute but  
742 two of its basic policies are straightforward. First, it is  
743 meant to clean up dirty air.

744 Second, it aims to keep clean air clean. By keeping in  
745 mind these first principles, it=s easy to see what=s wrong  
746 with EPA=s current approach.

747 New Source Review makes sure that new or modified  
748 sources of air pollution use the right technology so that in  
749 areas where poor air quality harms human health, we can  
750 improve over time.

751 And in areas where air quality meets human health

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752 standards, New Source Review guards against creating a new  
753 public health problem with new uncontrolled air pollution.

754 But on December 7th of this past year, the same day that  
755 EPA Administrator Scott Pruitt testified to this subcommittee  
756 that EPA should not issue guidance documents, he issued a  
757 guidance document that promises to polluters that EPA won't  
758 check the work of those major polluters when they decide  
759 whether New Source Review is necessary.

760 This approach opens a gaping hole in the statutory  
761 design and it violates fundamental principles of good  
762 governance and legitimacy.

763 The president, Administrator Pruitt, and members of  
764 Congress have all spoken against the perils of overreach when  
765 agencies make major policies through nondemocratic  
766 procedures.

767 Yet, the December 7th guidance does just that. When an  
768 agency adopts a policy so blatantly contrary to its mandate  
769 and does so without any public input, that action lacks  
770 legitimacy.

771 In the words of the Supreme Court in Heckler v. Chaney,  
772 the agency has consciously and expressly adopted a general  
773 policy that is so extreme as to amount to an abdication of  
774 its statutory responsibilities.

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775           This institution should hold EPA to task, not give it  
776 cover to make our air dirtier. And what is at stake? The  
777 lives of people across our country and the benefits of  
778 economic growth.

779           You will hear a lot from industry about the costs of  
780 clean air protections and the supposed impediments clean air  
781 poses to economic growth. But they won't tell you about the  
782 attendant benefits because the numbers are so compelling.

783           Between 1970 and 2011, aggregate emissions of air  
784 pollutants dropped 68 percent while the U.S. gross domestic  
785 product increased 212 percent.

786           During that same period, private sector jobs increased  
787 by 88 percent. Our population has increased. We have used  
788 more energy. We have built more infrastructure, all while  
789 improving our environment.

790           Consider as well that major regulations issued by EPA  
791 undergo a rigorous cost-benefit analysis. EPA is required to  
792 follow Office of Management and Budget accounting principles  
793 and assess both the costs and the benefits of regulations.

794           Many researchers have concluded that these constrained  
795 analyses vastly understate the benefits of environmental  
796 regulations. So the values I am about to describe should be  
797 understood as very conservative.

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798           Even with this caveat, the results are compelling. A  
799           2011 peer-reviewed study showed that the benefits of the 1990  
800           Clean Air Act amendments and implementing regulations exceed  
801           the costs by a factor of more than 30 to 1.

802           The 2011 study also revealed that EPA's Clean Air Act  
803           rules saved over 164,000 lives in 2010 and are projected to  
804           save 237,000 lives in 2020.

805           These same rules saved millions of days of lost work and  
806           missed school and will continue to do so. Further, since EPA  
807           began regulating lead as a criteria pollutant under the NAAQS  
808           program, the median concentration of lead in the blood of  
809           children between one and five years old has decreased 93  
810           percent.

811           These numbers speak for themselves and they demonstrate  
812           that those who would roll back clean air protections have set  
813           up a false choice. Clean air and economic growth do indeed  
814           go hand in hand.

815           Thank you.

816           [The statement of Ms. Hammond follows:]

817

818           \*\*\*\*\*INSERT 6\*\*\*\*\*

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819 Mr. Shimkus. The chair thanks the gentlelady.

820 And now the chair recognizes, and I mispronounce the

821 last name -- Mr. Walke. You're recognized for five minutes.

822 I apologize for that.

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823 STATEMENT OF MR. WALKE

824

825 Mr. Walke. You got my first name right so that=s good.

826 Thank you.

827 Thank you, Chairman Shimkus, Ranking Member Tonko, and  
828 distinguished members. My name is John Walke and I am clean  
829 air director and a senior attorney for the Natural Resources  
830 Defense Council.

831 Any so-called reform to the Clean Air Act=s New Source  
832 Review program first should answer one simple question --  
833 will it let industry pollute more.

834 In my experience, unfortunately, the answer to that  
835 question is usually yes. That is the case for changes to New  
836 Source Review safeguards that industries comment -- that  
837 industry commenters are seeking from the Trump  
838 administration.

839 That is also the case for changes sought in testimony by  
840 other witnesses at today=s hearing apart from Professor  
841 Hammond=s. Many of the requested changes would let industry  
842 pollute more by significantly higher amounts and in the  
843 process evade pollution controls and pollution offsets.

844 Insufficient political attention and concern are being  
845 given to the problems with a tax on clean air safeguards. In

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846 a 2017 Gallup poll, 67 percent of Americans favor setting  
847 higher emission standards for industry. In that same poll,  
848 69 percent of Americans favor stronger enforcement of federal  
849 environmental regulations.

850 New Source Review is a Clean Air Act preconstruction  
851 permitting program that imposes cleanup requirements only  
852 when industries -- industrial facilities significantly  
853 increase air pollution.

854 I urge you to remember that pollution increase trigger  
855 during today=s hearing. Attempts to evade NSR applicability  
856 translate into the ability to increase air pollution  
857 significantly without control.

858 Taking evasion that would allow huge air pollution  
859 increase is reflected in two bills referred to this committee  
860 -- H.R. 3127 and H.R. 3128.

861 Several witnesses endorse the bill and the approach  
862 contained therein, which would allow huge air pollution  
863 increases so long as a source did not increase its capacity  
864 to pollute only by exceeding an extraordinarily high maximum  
865 hourly emissions rate plucked from its past history.

866 One of the problems here is comparable to saying police  
867 should never fine drivers to be speeding if they don=t exceed  
868 the maximum speed they have ever driven.

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869           The second problem is even worse. By weakening the law  
870           so extremely, to ask only whether a polluting facility  
871           exceeded its maximum capacity to pollute, this concept would  
872           allow massive enormous increases in actual emissions of  
873           harmful air pollution in the real world.

874           Americans care about increases in actual pollution that  
875           worsens air quality and harms their health, not whether a  
876           plant exceeds its polluting capacity.

877           For the parents of a child being rushed to the ER due to  
878           an asthma attack caused by massive pollution increases from a  
879           nearby plant, it is not solace to tell them that the higher  
880           pollution levels that choked their daughter=s breathing did  
881           not result from the plant exceeding its maximum hourly  
882           emission rate.

883           How bad could these pollution increases be? Well, under  
884           the Bush administration when Mr. Holmstead worked there,  
885           EPA=s enforcement office calculated the weakening effect of a  
886           maximum hourly emissions rate approach.

887           In just one power plant example, the plant increased its  
888           toxic sulfur dioxide pollution by 13,000 tons per year  
889           without exceeding this maximum rate. That is 327 times  
890           higher than the level that the law considers significant and  
891           subject to control today.

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892           My testimony identifies an astonishing number of coal-  
893           burning power plants that still lack air pollution -- modern  
894           air pollution controls today or that are uncontrolled and  
895           these two bills and the approaches sought by some of the  
896           members of this panel would make that even worse by allowing  
897           emissions increases of thousands and even increases in excess  
898           of 10,000 tons.

899           No acceptable NSR reform should give an affirmative  
900           answer to the question posed at the top of this testimony --  
901           will it let industry pollute more.

902           This committee should reject any appeals for reform that  
903           would let industries pollute more by significantly higher  
904           amounts and in the process evade are pollution controls and  
905           pollution offsets in areas already experiencing unsafe air  
906           quality.

907           Americans deserve better.

908           Thank you.

909           [The statement of Mr. Walke follows:]

910

911           \*\*\*\*\*INSERT 7\*\*\*\*\*

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912 Mr. Shimkus. The chair thanks the gentleman.

913 The chair now recognizes Mr. Holmstead for five minutes.

914 Welcome back.

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915 STATEMENT OF MR. HOLMSTEAD

916

917 Mr. Holmstead. Thank you. Thank you for inviting me to  
918 be here today.

919 As some of you know, for almost 30 years I've focused my  
920 professional career on the Clean Air Act as a White House  
921 staffer, as head of the EPA Air Office, and as an attorney in  
922 private practice.

923 I think even that my good friend John Walke here would  
924 concede that I know a lot about the various programs that  
925 apply to major manufacturing and energy facilities.

926 But some of you may not be quite so aware -- you might  
927 be surprised to know that there are many different Clean Air  
928 Act programs that regulate the very same pollutants from the  
929 very same facilities.

930 For example, SO<sub>2</sub> and NO<sub>x</sub> emissions from coal-fired power  
931 plants would seem to be the pollutants of greatest concern.  
932 These pollutants from these plants are regulated under at  
933 least 14 different Clean Air Act programs -- yes, 14 -- the  
934 acid rain program, the NO<sub>x</sub> SIP Call, MATS, NSPS, regional  
935 haze program, the 110(a)(2)(d) good neighbor provision,  
936 Section 126, CSAPR, BART, the SO<sub>2</sub> NAAQS, the NO<sub>2</sub> NAAQS, the  
937 Ozone NAAQS, the PM<sub>2.5</sub> NAAQS, and NSR.

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938           If I had said the full names of these programs instead  
939 of the acronyms, I would have used up all of my time. Over  
940 the last 25 years, serious regulators and researchers have  
941 learned that good regulatory design makes an enormous  
942 difference and they will tell you that of these programs,  
943 some of them are much more effective than others.

944           Because of all of the overlapping regulatory programs,  
945 our society -- you and I and all the people you represent --  
946 are paying much more than we need to pay for preserving and  
947 improving air quality.

948           If we take advantage of the lessons that we have learned  
949 over the last 25 years and we use the most effective  
950 approaches for reducing air pollution, we can achieve the  
951 same air quality goals that we have today at a much lower  
952 cost.

953           Today, we are talking about just one Clean Air Act  
954 program. As the name implies, New Source Review, this is an  
955 important program for regulating emissions from new sources.

956           But over the last 20 years as EPA has tried to expand it  
957 to capture as many existing sources as possible, NSR has  
958 become a convoluted, burdensome, and completely unnecessary  
959 mess.

960           As someone who has worked on Clean Air Act policy for

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961 almost three decades, I can say with confidence that the NSR  
962 program as it applies to existing facilities is the least  
963 successful and most counterproductive of the dozens of  
964 programs created under the Clean Air Act.

965 To the extent it provides environmental benefits, those  
966 same benefits can be preserved by reforming the program in a  
967 thoughtful way and by relying on other much more effective  
968 programs that regulate the same pollutants from the same  
969 facilities.

970 The critique offered by my friend here from NRDC is more  
971 than a bit over the top. I did a Word search last night and  
972 found 10 different places in his testimony where he says that  
973 the reforms being proposed by Congressman Griffith would  
974 allow, quote, "massive or enormous increases in harmful air  
975 pollution," 15 places where he says the bills would allow  
976 facilities to evade pollution controls, and 11 places where  
977 he used the words reckless or irresponsible to refer to the  
978 proposed reforms.

979 Statements like this are just plain silly and they are  
980 demonstrably untrue. They ignore the fact that every single  
981 existing facility that is covered by the NSR program is also  
982 regulated by multiple other Clean Air Act programs -- in the  
983 case of coal-fired power plants by as many as 13 other

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984 programs that regulate the very same pollutants.

985 Even -- and I can guarantee you this -- even if the NSR  
986 program disappeared completely tomorrow, there would not be a  
987 massive increase in air pollution.

988 In fact, there would not be any increase in air  
989 pollution at all and we would see, because of the many other  
990 programs that regulate the same pollutants from the same  
991 facilities, air pollution would continue to decrease as it  
992 has since 1990.

993 As I explain in my written statement, the reforms being  
994 proposed by Mr. Griffith would simply reintroduce some common  
995 sense into the NSR program and make sure that it does what it  
996 was intended to do -- ensure that when a new industrial  
997 facility is built or an existing facility is significantly  
998 expanded, modern pollution controls will be used to minimize  
999 its emissions and, two, ensure that the NSR program does not  
1000 make it hard for companies to keep their facilities in good  
1001 working order and where possible to reduce the operating  
1002 costs of these facilities by making them more efficient.

1003 Again, I thank you for inviting me here today. I hope  
1004 we can have a serious discussion about Clean Air Act policy  
1005 and I look forward to answering any questions that you might  
1006 have.

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1007 [The statement of Mr. Holmstead follows:]

1008

1009 \*\*\*\*\*INSERT 8\*\*\*\*\*

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1010 Mr. Shimkus. And I thank the gentleman for his  
1011 testimony and thank you all, and you all were very punctual  
1012 to the -- to the dot almost and that=s going to be helpful.

1013 I recognize myself five minutes for the -- for the  
1014 opening round of questions, and Mr. Holmstead, you answered  
1015 by question about how many different tools are there out  
1016 there. So I don=t need to ask that one.

1017 Mr. Spencer, first, just to clarify your role for the  
1018 record, you are -- you are the responsible authority in your  
1019 state for implementing air quality standards which includes  
1020 New Source Review permitting. Is that correct?

1021 Mr. Spencer. Correct. Yes.

1022 Mr. Shimkus. And to perform your job you rely upon  
1023 engineers, scientists, and an attorney, I think you said in  
1024 your --

1025 Mr. Spencer. I wanted to clarify. Yes, we do have one  
1026 in-house in the Office of Air Quality.

1027 Mr. Shimkus. But you also have engineers and scientists  
1028 and --

1029 Mr. Spencer. Epidemiologists, meteorologists, chemists,  
1030 biologists.

1031 Mr. Shimkus. Given your experience, do you believe the  
1032 New Source Review reforms you describe in your testimony will

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1033 create a gap in protection or will result in declining air  
1034 quality standards for your state, and let me add one other --  
1035 will it allow industry to pollute more?

1036 Mr. Spencer. No and no, and I would like to acknowledge  
1037 something that Mr. Holmstead said. It's important to  
1038 recognize the projects or the programs that are working in  
1039 tandem with each other. We have several different -- we have  
1040 our NAAQS SIPs that are state implementation plans that we  
1041 prepare and submit to EPA that are -- that indicate and  
1042 acknowledge that we'll be protective of those individual  
1043 criteria pollutants.

1044 We have our regional haze plans that we submit and, as  
1045 Mr. Holmstead indicated, those are specific to controlling  
1046 particularly NOx, SO2, and PM 2.5.

1047 So there are a number of different programs which we  
1048 implement that stack up on each other to ensure that we have  
1049 protective programs.

1050 Mr. Shimkus. So let me go to Mr. Noe. I was struck by  
1051 the example you shared where it took -- and I use this many  
1052 times, this example, when I've talked about this program for  
1053 20 years now -- the -- when it took a paper mill owner 18  
1054 months to obtain a New Source Review preconstruction permit  
1055 for a project to replace two older inefficient boilers with a

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1056 single larger energy efficient boiler, which uses less  
1057 energy, and I want to underline this because it=s in response  
1058 to one of the other panellist=s statements -- did not result  
1059 in an emissions increase.

1060 So to you, Mr. Noe, does it really make sense that an  
1061 owner has to receive a preconstruction permit just to install  
1062 newer more environmentally beneficial technology, especially  
1063 considering how long it takes to obtain a permit?

1064 Mr. Noe. What we would like, Mr. Chairman, is for  
1065 projects that are going to have decreases associated as well  
1066 as increases, just net the increases and decreases at the  
1067 start.

1068 So if there=s not really a significant net increase, why  
1069 go through this onerous process and delay? If I could, I  
1070 would like to give you another example where a company was  
1071 going to do something that would decrease emissions but  
1072 because of this way in which EPA does the math, this two-step  
1073 process, it was slowed down and you basically took a longer  
1074 time to get less emissions.

1075 This was a wood products facility that essentially  
1076 wanted to use better emissions control, reroute its exhaust  
1077 from a unit to better emissions control. It had to do a  
1078 \$100,000 study.

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1079           There was months of delay. The agency ultimately  
1080 concluded this was a good thing. But there was a delay in  
1081 getting a beneficial project done and more emissions because  
1082 of the delay from NSR.

1083           Mr. Shimkus. And I think your response was following up  
1084 on my second question about affecting the development of and  
1085 implementation of newer and cleaner technologies. So I  
1086 don=t= need to ask that.

1087           Let me go to you all, if I have time. A report  
1088 conducted by Resources for the Future showed that from 2002  
1089 to 2014 the average time to obtain a prevention of  
1090 significant deterioration -- an NSR permit -- throughout the  
1091 country was 420 days.

1092           More specifically, in certain states, during that time  
1093 period the average permit time was 770 days. Do you think --  
1094 and if you can get yes or no or as short as possible -- do  
1095 you think that is reasonable for an owner to wait one or two  
1096 years on average just to obtain a preconstruction permit?

1097           Mr. Spencer.

1098           Mr. Spencer. No. I can say that the permit backlog and  
1099 permit issuance time frames were very important to our  
1100 administration -- to this current administration and we=ve  
1101 seen that --



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1102 Mr. Shimkus. Quickly. Quickly. Quickly.

1103 Mr. Spencer. Yes. So no, that=s not a reasonable time  
1104 frame.

1105 Mr. Shimkus. Thank you.

1106 Mr. Sunday?

1107 Mr. Sunday. No.

1108 Mr. Shimkus. Mr. Noe?

1109 Mr. Noe. Agreed.

1110 Mr. Shimkus. Ms. Hammond?

1111 Ms. Hammond. I agree that efficiency is important to an  
1112 agency but I think taking the time is worth it to do it  
1113 right.

1114 Mr. Shimkus. Okay.

1115 Mr. Walke?

1116 Mr. Walke. I am not here defending delays. I am  
1117 opposing pollution increases. So no.

1118 Mr. Shimkus. Okay.

1119 Mr. Holmstead?

1120 Mr. Holmstead. There=s no reason for it to take that  
1121 long.

1122 Mr. Shimkus. Thank you very much.

1123 My time is expired. The chair now recognizes the

1124 ranking member of the subcommittee, Mr. Tonko, for five

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1125 minutes.

1126 Mr. Tonko. Thank you, Mr. Chair.

1127 New York has done a lot to clean up air pollution in our  
1128 state but we are still facing problems that blow in from the  
1129 West. We need the New Source Review program to work.

1130 We have to make progress on air quality together as a  
1131 nation because cleaning up the air is a common responsibility  
1132 and we all have to do our part.

1133 Mr. Walke, I am very concerned about the implications of  
1134 Administrator Pruitt's December 7th memo for state  
1135 enforcement of the New Source Review program.

1136 I have a number of questions for you related to that  
1137 memo. In your experience both as an EPA employee and as a  
1138 representative for various interests on clean air issues,  
1139 would you say that it is usual or unusual for the  
1140 administrator of EPA to issue a memo that announces the  
1141 agency's intent not to enforce a statute, regulation, or  
1142 other legal requirement?

1143 Mr. Walke. Extraordinary, and I've never seen it  
1144 before.

1145 Mr. Tonko. So we go with unusual there.

1146 I have the 1984 enforcement office's memo related to  
1147 issuance of assurances of no enforcement that you mentioned

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1148 in your testimony.

1149 To your knowledge, has the policy in this 1984 memo  
1150 issued during President Reagan's administration ever been  
1151 rescinded or replaced?

1152 Mr. Walke. No, it has not.

1153 Mr. Tonko. Are there provisions of the Clean Air Act or  
1154 within the NSR regulations that expressly provide EPA with  
1155 discretion to not enforce the requirement for a facility to  
1156 provide credible estimates of their projected actual  
1157 emissions in the NSR program?

1158 Mr. Walke. No, and to the contrary, Mr. Pruitt  
1159 contravened the EPA regulations.

1160 Mr. Tonko. Is there any credible argument that  
1161 loosening the criteria for estimating projected actual  
1162 emissions or foregoing enforcement of this NSR regulation  
1163 would be in the public interest and therefore justify issuing  
1164 an assurance of no enforcement as discussed in this memo?

1165 Mr. Walke. None whatsoever. Those emissions increases  
1166 are what harm the public and Mr. Pruitt has granted amnesty  
1167 to industries that get it wrong including badly wrong.

1168 Mr. Tonko. Administrator Pruitt has made much of his  
1169 dedication to cooperative federalism. But this memo appears  
1170 to do the opposite.

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1171           Doesn't EPA's declaration that the agency will not  
1172 pursue enforcement in these situations undercut states that  
1173 want to enforce New Source Review standards?

1174           Mr. Walke. Yes. Many states will choose not to grant  
1175 amnesty and the last paragraph of the memo is really coercive  
1176 federalism -- threatening states that don't buckle under to  
1177 withdraw their program approval. Again, it's very unusual.

1178           Mr. Tonko. Thank you.

1179           Your written testimony refers to a cryptic warning in  
1180 the memo to states that -- to states to toe the line. Would  
1181 you elaborate on that, please?

1182           Mr. Walke. Sure. So states administer the NSR program  
1183 approved by EPA and states don't have to follow EPA's  
1184 decisions to grant enforcement discretion or, in this case,  
1185 outright amnesty across the board.

1186           Mr. Pruitt's memo seems to anticipate that and says in  
1187 the very final paragraph in what's not even a very subtle  
1188 veiled threat that EPA has the ability to withdraw its  
1189 approval from states that don't conform to the understanding  
1190 of the program that EPA has.

1191           And a memo like this, this is clearly a threat of  
1192 coercive federalism to remove approval from states that don't  
1193 follow this amnesty approach.

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1194 Mr. Tonko. Thank you.

1195 As administrator of this agency, Mr. Pruitt is supposed  
1196 to uphold and enforce the law, not subvert it. This program  
1197 is supposed to clean up the air and bring older facilities up  
1198 to modern pollution standards.

1199 The people that I represent need a functioning program.  
1200 For us, cooperative federalism means that EPA is a partner in  
1201 enforcement, not a partner in sidestepping the law and  
1202 creating more pollution.

1203 Ms. Hammond, is there anything you want to add about the  
1204 December 7th memo? Do you think if a polluter believes EPA  
1205 will not check their work it incentivizes applicants to  
1206 underestimate their emissions projections?

1207 Ms. Hammond. Absolutely. It incentivizes the kind of  
1208 gaming that we've seen throughout the entire history of this  
1209 program. Over and over again we see polluting industries,  
1210 especially old dirty coal, looking for loopholes and this  
1211 just opens that wider.

1212 Mr. Tonko. EPA's leaders often speak about the rule of  
1213 law. That phrase takes an outsized role in the EPA's latest  
1214 budget request.

1215 For Mr. Walke or Ms. Hammond, can you help us understand  
1216 how EPA is upholding its rule of law commitment by shirking

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1217 its responsibilities to enforce the Clean Air Act as outlined  
1218 in the administrator=s December 7th memo?

1219 Mr. Walke. Well, the president=s budget now twice has  
1220 proposed historically high cuts to EPA=s enforcement program.  
1221 Thankfully, Congress did not follow suit the first time.

1222 I hope they will not this time. But what we have seen  
1223 is an enforcement amnesty memo issued by the administrator  
1224 himself that does not contain the name of any enforcement  
1225 official on it, and as I detail in my testimony there=s some  
1226 very serious concerns about the process that resulted in that  
1227 amnesty.

1228 Mr. Tonko. Ms. Hammond, anything?

1229 Ms. Hammond. Yes. Just the further point that when an  
1230 agency uses a guidance document to set binding policy, that  
1231 evades the rule of law set forth in the Administrative  
1232 Procedure Act. So we have that further problem as well.

1233 Mr. Tonko. Thank you.

1234 Mr. Chair, I yield back and thank you for your --

1235 Mr. Shimkus. Gentleman yields back his time.

1236 The chair now recognizes the vice chair of the  
1237 subcommittee, Mr. McKinley, for five minutes.

1238 Mr. McKinley. Thank you, Mr. Chairman.

1239 I=ve been listening to testimony about this for now

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1240 seven years in Congress and I think one of the conclusions I  
1241 am hoping we will come to is that the -- something=s broken,  
1242 because we are hearing some strong push back from both sides.

1243 But I am -- I feel like a couple of you up there are  
1244 unwilling to recognize that the system may need some  
1245 modification. Is that fair to say, Mr. Walke?

1246 Mr. Walke. No, sir.

1247 Mr. McKinley. You don=t think it needs modification?

1248 Mr. Walke. We are happy to discuss modifications that  
1249 don=t result in pollution increases. But that=s what=s  
1250 before this committee.

1251 Mr. McKinley. Well, no one=s talking about increasing  
1252 pollution --

1253 Mr. Walke. I was answering your question, Congressman.

1254 Mr. McKinley. That=s what I just -- and thank you on  
1255 that. But, you know, I just feel that in many respects the  
1256 previous administrations have used -- have weaponized the  
1257 EPA=s rule on NSR and it=s delayed, cost grief and -- I spent  
1258 my career in the engineering field and many of them in power  
1259 plants getting these permits and I saw the delay, the delay  
1260 and delay and the costs that were associated with those, and  
1261 it was unnecessary. But I believe their -- the intent was to  
1262 try to slow walk the project so it didn=t happen.

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1263           So I am first trying to recognize or get people to --  
1264           the system, it=s broken. It needs modification. Been  
1265           talking about, I think, Mr. Holmstead, you said 15 years ago  
1266           they were talking about making modifications to it.

1267           I don=t know why we haven=t during this -- is this just  
1268           because we=ve got people with their head in the sand?  
1269           There=s a problem here associated with this issue and we need  
1270           to have an adult conversation instead of saying no and trying  
1271           to focus on a distraction that none of us in the engineering  
1272           field or in the energy generation want to have this problem  
1273           or increased emissions.

1274           But I am afraid that what=s going to happen is that we  
1275           are going to close down more and more of our power plants and  
1276           as a result -- with this delay and the fear of the unknown of  
1277           our power plants and we are going to reach into that issue  
1278           that we=ve been talking about for now the last two years has  
1279           been about grid reliability and resiliency.

1280           When we have more and more -- since the Polar Vortex of  
1281           2014, we=ve had 82 coal-fired power plants shut down. I know  
1282           during this last winter that many of our gas and coal-fired  
1283           power plants were under advisory about that there was maybe a  
1284           shut down because of the lack of supply, particularly in gas.

1285           So I am very concerned that we are continuing to focus

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1286 on something where we should be able to cooperate and get  
1287 something accomplished.

1288 So, Mr. Holmstead, I've seen you just be very frustrated  
1289 with this. You and I have had numbers of conversations about  
1290 this.

1291 Can you give us some direction or advice? Because I  
1292 applaud what Morgan Griffith is trying to do is to have an  
1293 adult conversation and address this issue.

1294 So, Mr. Holmstead, do you have some thoughts about how?  
1295 Because I thought Mr. Spencer laid out a good plan. I  
1296 thought Sunday did as well on that. But what=s your  
1297 perspective? What should we be doing to resolve the  
1298 differences?

1299 Mr. Holmstead. I think we should just be having an  
1300 honest conversation about how all of the Clean Air Act  
1301 programs work together. I can=t tell you how many times  
1302 someone who=s criticized a reform says that, you know, you=re  
1303 tearing at the heart of the Clean Air Act.

1304 As far as I know, the Clean Air Act must have 30  
1305 different hearts because no matter you try to reform, you  
1306 know, you=re tearing at the heart of the Clean Air Act.

1307 Look, there are -- air pollution control is enormously  
1308 important. The benefits of controlling air pollution are

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1309 very significant.

1310 No one is talking about increasing pollution. There=s  
1311 no such thing as a massive increase that would occur even if  
1312 we eliminated it.

1313 Come on, let=s have a serious conversation about this  
1314 and that=s the frustrating part. Let=s be honest with each  
1315 other about how these programs work and how some of them  
1316 don=t.

1317 Mr. McKinley. Thank you.

1318 Speaker -- Chairman, I yield back.

1319 Mr. Shimkus. Gentleman yields back his time.

1320 The chair now recognizes the ranking member of the full  
1321 committee, Mr. Pallone, for five minutes.

1322 Mr. Pallone. Thank you, Mr. Chairman.

1323 My questions are of Mr. Walke and I am going to continue  
1324 where my colleague, Representative Tonko, left off. I have  
1325 also serious concerns about Administrator Pruitt=s December  
1326 7th memo.

1327 In your written testimony, you discuss a number of  
1328 concerns with the memo and I want to explore that you did not  
1329 mention in your written testimony.

1330 I understand that several circuit courts have now  
1331 rendered decisions that limit EPA=s authority to enforce New

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1332 Source Review violations by upholding a statute of limitation  
1333 of five years from the time the first violation occurs.

1334 Is that correct? Yes or no.

1335 Mr. Walke. Yes.

1336 Mr. Pallone. The December 7th memo states that EPA will  
1337 not take enforcement actions against any facility operator in  
1338 relation to preconstruction permit requirements under the New  
1339 Source Review program and these requirements include  
1340 estimating projected actual emissions, determining whether  
1341 they need a permit or not, and any other actions that are  
1342 required before a construction project is initiated and  
1343 completed.

1344 Administrator Druitt justifies this in part by  
1345 initiating a policy that defers consideration of enforcement  
1346 actions until the agency sees the actual emissions, quote,  
1347 "during the five- or 10-year record keeping or reporting  
1348 period after," unquote, the project in question has been  
1349 completed and the facility resumes operation.

1350 So, Mr. Walke, am I correct in my concern that deferring  
1351 enforcement to this post-construction period places any  
1352 enforcement action past the five-year statute of limitations  
1353 being upheld by the circuit courts? Again, yes or no.

1354 Mr. Walke. Absolutely. Yes, you are -- have a right to

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1355 be concerned.

1356 Mr. Pallone. Thank you.

1357 So it appears that Administrator Pruitt has ensured that  
1358 the agency will never act because the time period for action  
1359 designated in the memo will always be beyond the statute of  
1360 limitations.

1361 Any action taken by the agency deferred until this time  
1362 period would very likely be overturned by the courts. So Mr.  
1363 Walke, again, do I have that right, yes or no?

1364 Mr. Walke. One hundred percent right.

1365 Mr. Pallone. Okay. It doesn't seem likely to me that  
1366 these circuit court decisions would be unknown or overlooked  
1367 by the administrator or by Mr. Wehrum, the Air Office chief  
1368 who came on board at the agency about one month before this  
1369 memo appeared. What do you think about that? That's not a  
1370 yes or no.

1371 Mr. Walke. I can guarantee you Mr. Wehrum is aware of  
1372 those cases.

1373 Mr. Pallone. Okay. So the next thing is, look, the  
1374 bottom line is the policy Mr. Pruitt is pushing in the  
1375 December 7th memo is inconsistent with the law, in my  
1376 opinion, and clearly will allow any facility owner that wants  
1377 to get around the NSR program to do so and that's terrible

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1378 public policy and will commit us to many more tons of harmful  
1379 pollution and, in my opinion, it should be rescinded  
1380 immediately.

1381 So I just have a few more questions on this memo and its  
1382 relationship to the policy memo from the Reagan  
1383 administration mentioned by Mr. Tonko.

1384 Hasn't it been longstanding established EPA policy and  
1385 direction to all agency personnel not to give either written  
1386 or oral assurances to regulated parties that EPA will not  
1387 take an enforcement action if a violation occurs?

1388 Mr. Walke. Yes, and Mr. Pruitt's memo directly  
1389 contradicts a memo dating to the Reagan administration that  
1390 lays out very specific criteria for no action assurances that  
1391 he did not follow.

1392 Mr. Pallone. Okay. However, I am aware that there are  
1393 cases in which EPA has provided assurances of no action to  
1394 regulated parties.

1395 But these are in special narrowly-tailored circumstances  
1396 and with limited time periods often associated with  
1397 emergencies such as in the aftermath of a catastrophic storm  
1398 like Hurricane Maria, for example.

1399 So is that correct?

1400 Mr. Walke. Yes. They are very short lived, directed to

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1401 specific companies, and not broad grants of amnesty like Mr.  
1402 Pruitt=s memo.

1403 Mr. Pallone. All right.

1404 So does the DTE Energy case or any other situation  
1405 described in this memo fit within the narrow circumstances  
1406 that warrant an enforcement holiday?

1407 Mr. Walke. It does not fit within EPA=s policy.

1408 Mr. Pallone. All right. So Mr. Walke, I have another  
1409 question related to the administrator December 7th memo. The  
1410 memo appears to create a new exclusion for emissions  
1411 increases based on a facility operator=s intent to manage  
1412 emissions increases once a project is completed.

1413 Now, how is such emissions management to be measured, if  
1414 that=s the case?

1415 Mr. Walke. We never know because they don=t have to  
1416 self-report. If it=s done after five years, EPA cannot  
1417 enforce. It=s completely trusting the source with a promise  
1418 that EPA will not second guess whatever they decide.

1419 Mr. Pallone. So if a facility operator intends to  
1420 manage emissions but then does not manage them, how would  
1421 this failure be documented? Could EPA enforce this policy?

1422 Mr. Walke. EPA would never know about it. It won=t be  
1423 documented because the memo doesn=t require it and, indeed,

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1424 the EPA will probably never find out about it and the  
1425 emissions increases will go uncontrolled.

1426 Mr. Pallone. All right.

1427 Thank you so much. Thank you, Mr. Chairman.

1428 Mr. Shimkus. Gentleman yields back his time.

1429 The chair recognizes the gentleman from Texas, Mr.

1430 Flores, for five minutes.

1431 Mr. Flores. Thank you, Mr. Chairman. I appreciate the  
1432 panel and their enlightened testimony today.

1433 Mr. Spencer, I am going to start with you. You support  
1434 the administration=s recent guideline memo on NSR permitting  
1435 which clarifies that the EPA will not second guess a facility  
1436 reconstruction emissions analysis.

1437 And so explain for me -- for the committee what was the  
1438 problem with the second guessing and why this memo is helpful  
1439 for states= work on NSR permitting.

1440 Mr. Holmstead, I will follow up with you on this as  
1441 well.

1442 Mr. Spencer. I think that the clarification was needed  
1443 and it doesn=t necessarily create a blanket exemption from  
1444 the responsibility that facilities have.

1445 I think that there should be some accountability such as  
1446 if there is an error in a calculation that=s clear if their

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1447 companies use a wrong significant emissions threshold. And  
1448 so there are backstops for that kind of empirical data to be  
1449 provided that would ensure that the calculations that have  
1450 been submitted by the company are in fact accurate.

1451 Mr. Flores. Okay.

1452 Mr. Holmstead, do you have any additional comments?

1453 Mr. Holmstead. Yes. This whole situation shows that --  
1454 why this -- why this program is so broken. Here=s what  
1455 happened.

1456 The company used a very sophisticated modelling  
1457 technique that has been approved by, you know, other  
1458 regulators to estimate its future emissions and it showed  
1459 that there wouldn=t be an emissions increase.

1460 EPA brought an enforcement action and they said you  
1461 didn=t do it right -- you should use this methodology.  
1462 Methodology that EPA enforcement officials wanted to use  
1463 always showed every project would cause an emissions  
1464 increase.

1465 So you have these two different ways of projecting out  
1466 five years into the future and it=s so subjective and we have  
1467 so much litigation over it that=s why we just need to use the  
1468 simple engineering technique of saying look, what is your --  
1469 what is your hourly emission rate.

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1470           That=s what we do in other programs. That=s knowable,  
1471           that=s ascertainable, and instead we have these kind of  
1472           ridiculous fights, and what makes this particularly  
1473           ridiculous is that case was brought more than five years ago.

1474           So we now have five years of data showing that the plant  
1475           actually decreased its emissions. But EPA is insisting that  
1476           they should have predicted an increase and we know that  
1477           whatever EPA was -- turned out to be wrong because emissions  
1478           have actually gone down.

1479           Mr. Flores. Okay. That leads me to into my next -- a  
1480           follow-up question for you and Mr. Noe and Mr. Sunday.

1481           An important component of the NSR program focuses on how  
1482           an owner must calculate the anticipated emissions increase  
1483           associated with the potential project which determines  
1484           whether or not an owner is required to obtain an NSR  
1485           reconstruction permit.

1486           So my questions are this. Did the NSR program=s rules  
1487           on emission accounting typically result in a calculated  
1488           emissions value that accurately reflects the true emissions  
1489           increase?

1490           Do you want -- do you want to waive off to somebody  
1491           else?

1492           Mr. Holmstead. No. I would just say there is not an

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1493 approved EPA method for predicting and that=s one of the  
1494 problems.

1495 And because every circumstance is so different and  
1496 because future emissions depends so much on things that are  
1497 completely out of the control of the plant owner it=s kind of  
1498 a fool=s errand to be saying that you can predict with  
1499 accuracy what your emissions are going to be next year and  
1500 year after.

1501 And we ought not to be putting people in the position to  
1502 do that and one of the problems is there is no approved  
1503 method for doing this.

1504 Mr. Flores. Now, does -- do you think that the current  
1505 NSR emissions projections are overestimating the actual  
1506 change in emissions?

1507 Mr. Holmstead. Certainly, the current approach is  
1508 better than the way it used to work. But, again, it creates  
1509 all kind of uncertainty and problems and it ought to be  
1510 fixed.

1511 Mr. Flores. Okay.

1512 Mr. Noe, do the NSR program=s rules on emissions  
1513 accounting typically result in a calculated emissions value  
1514 that accurately reflects a true emissions increase?

1515 Mr. Noe. My sense is not and --

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1516 Mr. Flores. Oh, microphone. I am sorry. Yes.

1517 Mr. Noe. My sense, Congressman, is no and we'd like a  
1518 simpler way to do the math that allows you to move quickly if  
1519 you don't have a significant emissions increase.

1520 Mr. Flores. Okay.

1521 Mr. Sunday, same question.

1522 Mr. Sunday. No. In general, our facilities are  
1523 obligated to account for emissions that they're never going  
1524 to produce.

1525 Mr. Flores. Okay. All right.

1526 I yield back the balance of my time. Thank you.

1527 Mr. Shimkus. Gentleman yields back his time.

1528 The chair now recognizes the gentleman from California,  
1529 Mr. McNerney, for five minutes.

1530 Mr. McNerney. Well, I thank the chairman.

1531 Mr. Walke, sometimes it's hard to see the negative  
1532 consequences of deregulation, especially if they sound  
1533 reasonable.

1534 In this case, industry recommended that to improve the  
1535 NSR program, we should allow owners of a facility to avoid  
1536 the requirements of the NSR program if they improve facility  
1537 energy efficiency or if they invest in a project for  
1538 pollution prevention or pollution control simply on those

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1539 bases.

1540 What=s wrong with that argument?

1541 Mr. Walke. Congressman, you have to look behind the  
1542 labels. We all support energy efficiency projects that  
1543 decrease emissions. Mr. McKinley said so.

1544 But these energy efficiency projects, the way the label  
1545 is misused will allow and result in emissions increases.  
1546 That=s the only way that the New Source Review requirements  
1547 apply.

1548 The same is true for the pollution control project  
1549 label. If they just reduced emissions, NSR requirements  
1550 would not apply. Instead, they increase emissions.

1551 So the labels are very important and the requirements  
1552 only apply when pollution increases. They do so in both  
1553 examples that you provided as used by industry.

1554 Mr. McNerney. I think that was pretty clear. Thank  
1555 you.

1556 Mr. Walke. Thank you.

1557 Mr. McNerney. Ms. Hammond, it=s clear that the Clean  
1558 Air Act has driven innovation and the U.S. economy has  
1559 continued to grow and innovation has continued to thrive.

1560 Is there any evidence that the cost of pollution  
1561 controls are so high that we=ve seen massive layoffs and loss

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1562 of revenue?

1563 Ms. Hammond. The studies that I am aware of suggest  
1564 that do the extent companies do have to change their business  
1565 plans because of Clean Air Act controls, it's not that.

1566 It's market conditions that they're responding to and,  
1567 indeed, that's the case with coal, most certainly. And in  
1568 fact, with New Source Review we are often talking about these  
1569 very old, very dirty coal-fired power plants and what you  
1570 don't hear is that in most jurisdictions these power plants  
1571 can recover the cost of pollution control technology from  
1572 their ratepayers. So they're not even asking shareholders to  
1573 bear those costs.

1574 Mr. McNerney. So is there any evidence that current  
1575 regulations have caused a reduction in economic growth?

1576 Ms. Hammond. No, and in fact, the opposite is true.

1577 Mr. McNerney. Well, industry claims that the NSR  
1578 program has stifled innovation and discouraged investment in  
1579 technologies, new factories, and renovations that would  
1580 deliver significant benefits.

1581 Is there any evidence for that claim?

1582 Ms. Hammond. No, and in fact, pollution control  
1583 technology is itself a business and there are many small  
1584 businesses that benefit from developing those technologies.

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1585           So you can also add that to the list of more generalized  
1586 economic benefits that we see.

1587           Mr. McNerney. Geez, you're getting ahead of me. I was  
1588 going to bring that up.

1589           Manufacturing gets left out of the conversation.  
1590 American domestic manufacturing does get left out of the  
1591 conversation -- manufacturers that produce pollution control  
1592 equipment.

1593           And a report from 2013 states that the market for these  
1594 systems was expected to grow to \$78 billion a year by 2019  
1595 and a 2017 report expects the market to grow to \$92 billion  
1596 by 2022, and more than 75 percent of that growth is overseas  
1597 and continues to grow as other countries invest in pollution  
1598 control equipment, and these are medium to small-sized  
1599 private businesses located throughout the country.

1600           Would you anticipate the economic impact of these  
1601 companies and their employees to be if the air quality  
1602 protections are deregulated and unenforced?

1603           Ms. Hammond. Indeed, they will suffer in that case.

1604           Mr. McNerney. So do you believe, based on facts and  
1605 economic realities, that there is a choice between  
1606 environmental control and regulation on the one hand and  
1607 economic prosperity on the other hand?

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1608 Ms. Hammond. No. It=s a false choice. They go  
1609 together. We see over and over again the clean air is good  
1610 for the economy. It=s good for health. People can go to  
1611 school. They can work. We prosper with clean air.

1612 Mr. McNerney. Okay.

1613 Mr. Holmstead, I am going to throw you a bone here. You  
1614 talked about good regulatory design. What do you mean by  
1615 that?

1616 Mr. Holmstead. I mean trying to find the most  
1617 effective, the most cost-effective ways of reaching our air  
1618 pollution goals.

1619 Mr. McNerney. Is there an academic model for good  
1620 regulatory --

1621 Mr. Holmstead. Yes. There are academic studies that  
1622 look at all kinds of regulatory programs and in particular --  
1623 I will say this. The way we have regulated cars and fuels  
1624 has been very successful. That=s probably been the most  
1625 successful part of the Clean Air Act.

1626 But if you look at these so-called stationary sources,  
1627 the programs that have been most cost effective, where we  
1628 have the highest rates of compliance, are these cap and trade  
1629 programs where an overall cap is set.

1630 That really started with the acid rain program. There=s

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1631 been a number of programs that are built upon that -- the NOx  
1632 SIP Call, the Care Program, CSAPR, state programs, and those  
1633 programs are very cost effective and very effective at  
1634 reducing pollution.

1635 Mr. McNerney. So we shouldn't just deregulate  
1636 everything?

1637 Mr. Holmstead. No, no, no. No one's --

1638 Mr. McNerney. And that's what I -- what I hear a lot.

1639 Mr. Holmstead. No, no, no. No.

1640 Mr. McNerney. Not from you, necessarily.

1641 Mr. Holmstead. So I think what we need to do is just  
1642 let's figure out the most cost effective ways of achieving  
1643 our air pollution goals. That's what I -- I mean, I agree  
1644 about all the benefits of reducing air pollution. Let's just  
1645 do it in the most cost effective way.

1646 Mr. McNerney. Okay. Thank you.

1647 I yield back, Mr. Chairman.

1648 Mr. Shimkus. I apologize to my Republican colleagues  
1649 for letting my Democratic colleague go so long.

1650 But the chair now recognizes the gentleman from  
1651 Michigan, Mr. Walberg, for five minutes.

1652 Mr. Walberg. Thank you, Mr. Chairman. Thanks to the  
1653 witness team here as well. Appreciate your involvement.

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1654 Mr. Noe, you have highlighted a couple of improvements  
1655 to the NSR and PSD programs in your testimony. Given your  
1656 description of how broken the program is, are there any other  
1657 reforms you think are critical to streamlining the permitting  
1658 process while protecting the environment, which we all agree  
1659 on?

1660 Mr. Noe. Thank you, Congressman.

1661 I think there=s a couple I want to mention quickly.  
1662 First of all, EPA presumes that emissions from multiple  
1663 projects at a plant over several years should be aggregated  
1664 when determining significance for NSR applicability.

1665 They believe the projects are connected economically if  
1666 they serve the basic purpose of the plant even if they incur  
1667 many years apart or undertaken for very different business  
1668 reasons and by themselves are minor.

1669 Once those emissions are added together, NSR can  
1670 potentially be triggered with its heavy burdens and delays  
1671 and we believe the EPA should only add together emissions  
1672 from projects that are truly linked. So that=s one example.

1673 A second is EPA=s PSD modelling guidelines historically  
1674 have required excessively conservative assumptions about  
1675 dispersion model inputs that frequently result in gross over  
1676 estimates of a project=s air quality impacts and regulatory

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1677 air quality models have the capability to calculate ambient  
1678 air concentrations based on variable emissions background and  
1679 modern probabilistic tools and meteorological conditions.

1680 So rather than assuming, for example, that the facility  
1681 is going to be running at maximum levels, all the other  
1682 nearby sources are going to be running 24/7 at maximum  
1683 potential level and that they ought to look at the  
1684 distributions of the emissions in a probabilistic way.

1685 And EPA can address this rapidly-developing permit  
1686 gridlock by having more flexible policies that actually  
1687 reflect the realistic emissions and the realistic modelling.

1688 Mr. Walberg. Rather than always the worst case  
1689 scenario?

1690 Mr. Noe. Yes, sir.

1691 Mr. Walberg. What other Clean Air Act obligations does  
1692 the forest products industry face?

1693 Mr. Noe. You know, we have a whole bunch of regulations  
1694 that we are covered by. Jeff gave you some examples with  
1695 power plants.

1696 For us, let me just give you some of the major ones. So  
1697 for hazardous air pollutants, EPA's MACT program has targeted  
1698 pulp and paper operations, wood product driers and presses,  
1699 industrial boilers and coating operations where emissions

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1700 have reduced as much as 92 percent.

1701 For criteria pollutants that are regulated by the NAAQS,  
1702 those criteria pollutants have been dramatically reduced  
1703 through a regulatory action such as the NOx SIP Call regional  
1704 haze program and state efforts to implement the NAAQS through  
1705 state implementation plans.

1706 For example, our SO2 emissions are down by over 50  
1707 percent since the year 2000.

1708 Mr. Walberg. Okay. Thank you.

1709 Mr. Holmstead, you were involved at the EPA in the early  
1710 2000s, have, as you said, three decades of experience on NSR  
1711 reform.

1712 As a former EPA official, speaking from that experience,  
1713 why has EPA over the past 28 years had so much difficulty  
1714 finalizing NSR guidance documents?

1715 Mr. Holmstead. Well, I think some of the controversy  
1716 you have seen here gives you a hint at why that is.

1717 Mr. Walberg. I am not egging you on. I am just --

1718 Mr. Holmstead. No. But, you know, part of the problem  
1719 here is that this NSR program has become primarily an  
1720 enforcement program. We refer to it as a permitting program  
1721 but when it comes to existing sources, it=s become the  
1722 program where EPA puts almost all of its money when it comes

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1723 to enforcement. A huge percentage of the budget for EPA

1724 enforcement and DOJ enforcement goes to NSR.

1725 They love this program because they believe that if they  
1726 just look long enough they can find NSR violations wherever  
1727 they look and they don't want to give up that weapon because  
1728 if we actually made the program more sensible so it really  
1729 was a fair and predictable regulatory program you wouldn't be  
1730 able to bring all these lawsuits.

1731 And that -- I mean, I am being pretty candid here but  
1732 that I think is the main reason why we haven't been able to  
1733 reform the program.

1734 Mr. Walberg. Kind of target rich.

1735 To the extent court decisions and litigation have  
1736 contributed to this, what's the cure to ensure regulatory  
1737 certainty?

1738 Mr. Holmstead. Boy, if we could just have some narrow  
1739 thoughtful legislative reforms, I mean, that's the best way  
1740 to take care of it.

1741 Mr. Walberg. To get the job done and do it in the least  
1742 restrictive but most efficient way?

1743 Mr. Holmstead. Yes, sir.

1744 Mr. Walberg. Okay. Thank you. I yield back.

1745 Mr. Shimkus. Gentleman's time is expired.

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1746           The chair now recognizes the gentleman from Texas, Mr.  
1747           Olson, for five minutes.

1748           Mr. Olson. I thank the chair, and welcome to our six  
1749           witnesses. A special welcome to you, Mr. Noe. I am a fellow  
1750           paper guy. My dad got a Ph.D. in paper chemistry from the  
1751           Institute of Paper Chemistry when it was in Appleton,  
1752           Wisconsin in 1967 -- a long, long time ago.

1753           He spent over 30 years working for Champion  
1754           International, now became International Paper. He worked at  
1755           mills in Ohio, North Carolina, Alabama, and Texas.

1756           And your association has members all across America. As  
1757           to the members of Region 6 -- Texas, Arkansas, New Mexico,  
1758           Oklahoma, and Louisiana by their new regional administrator,  
1759           Ann Idsal, and she has already said that she sees major  
1760           differences between the regions in terms of enforcement of  
1761           some of these things involving the NSR.

1762           My question is, as you deal with EPA's regional  
1763           differences in the offices, do you see these differences and  
1764           how they impact your members of your association?

1765           Mr. Noe. Yes, Congressman. We -- our members do see  
1766           these differences and, you know, there is, unfortunately, a  
1767           lot of confusion with the NSR program.

1768           I can't tell you how complicated it is and, honestly,

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1769 I=ve literally been in discussions with some of the best  
1770 lawyers you could find anywhere and people get into debates  
1771 and I=ve seen examples where none of them can figure it out  
1772 and they maybe defer to one in the room.

1773 I mean, this is just not how our government should work  
1774 where things are that complicated and where the law might be  
1775 different based not only on what region in the country you=re  
1776 in but who actually is the person dealing with your permit.  
1777 That=s just not the way a democracy ought to work. That=s  
1778 not the way a good regulatory process should work.

1779 Mr. Olson. So there=s lots of uncertainty in that  
1780 process, correct?

1781 Mr. Noe. Yes, sir.

1782 Mr. Olson. Another question -- a crucial step in any  
1783 construction project, probably the most crucial step is to  
1784 obtain necessary financing -- the money.

1785 Have you members had a hard time getting project  
1786 financing due to uncertainty like multiple standards in  
1787 multiple regions of the EPA and time delays caused by the NSR  
1788 process?

1789 Mr. Noe. I think any time there=s regulatory  
1790 uncertainty that creates business uncertainty. It creates  
1791 risk. So it does impede projects from going forward.

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1792 Mr. Olson. Mr. Sunday, how about you? Difficulty  
1793 getting permitting process with all the financial stuff as  
1794 well?

1795 Mr. Sunday. Yes. If you're going into the debt markets  
1796 or to do private financing, the lender is not going to give  
1797 the revenue or capital until all appeals are settled.

1798 And so what we've seen is perpetual litigation by third  
1799 party groups where the permit goes through the process.  
1800 There's a challenge. They go through the court. Now the  
1801 universe of controls is different. Lender is still not  
1802 giving the capital. We go through the litigation again. So  
1803 it really hangs up the process because we can't get that  
1804 clear path to yes.

1805 Mr. Olson. One question for you, Mr. Spencer. In your  
1806 testimony, you describe some of the issues with the NSR in  
1807 terms of enforcement.

1808 Specifically, you said, and I quote this, "It's  
1809 important to reorient policies toward pursuit of actual  
1810 violations that create emissions increases," end quote.

1811 I assume the NSR was involved with pursuing actual  
1812 violations and you say we have to reorient that process. Can  
1813 you explain that more -- elaborate on why you made that  
1814 statement?

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1815 Mr. Spencer. Yes. Thank you, Congressman.

1816 I have been dying to say bizarre NSR all day long. So I  
1817 got that into the record.

1818 I wrote down a few phrases here -- unintended  
1819 consequences, perverse incentives, absurd results -- and  
1820 those are terms I've heard more in my practice with Clean Air  
1821 Act regulations and enforcement than I've heard in my entire  
1822 career.

1823 And so I think what you're looking at is something that  
1824 Mr. Holmstead alluded to earlier. When you have a facility  
1825 that has engaged in an emissions projection but the reality  
1826 of the situation is that time had advanced since that  
1827 projection was made and there has been no actual increase.

1828 And so as a state regulator, when we exercise our  
1829 enforcement ability, we are looking for actual events --  
1830 actual emission violation events.

1831 Mr. Olson. One final question. From your perspectives,  
1832 does EPA's memo of December 7th improve the reorientation of  
1833 the NSR? Is that what you tried to do? I am sorry, the NSR.

1834 Mr. Spencer. Yes. I would agree with that.

1835 Mr. Olson. Okay.

1836 And Mr. Chairman, I yield back the balance of my time.

1837 Mr. Shimkus. The gentleman yields back.

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1838           The chair now recognizes the gentleman from Georgia, Mr.  
1839 Carter, for five minutes.

1840           Mr. Carter. Thank you, Mr. Chairman.

1841           Mr. Noe, I too -- I grew up in the South where paper  
1842 mills are plentiful. In fact, my dad worked in a paper mill.  
1843 He didn't have a degree.

1844           He was just a laborer. He worked in a paper mill for  
1845 over 35 years and the best thing he ever did for me after my  
1846 freshman year in college was to put me to work on a broke  
1847 beater. Do you know what a broke beater is?

1848           Mr. Noe. I -- I am not sure.

1849           Mr. Carter. Well, it's at the end of the process. It's  
1850 where all the excess paper goes and you --

1851           Mr. Noe. The broke comes out. Yes.

1852           Mr. Carter. Yes, and you just take it and you assemble  
1853 it and you put it back and then you recycle it, per se. But  
1854 I can tell you that it was as close to hell as I've ever  
1855 been.

1856           [Laughter.]

1857           I have never been that close. But it may -- I could not  
1858 get to school quick enough. I could not get back to school  
1859 and study hard quick enough, I will tell you that. It was a  
1860 life lesson.

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1861 Air quality was important to us. People would visit us  
1862 and they would say, "What's that smell?" And we'd say,  
1863 "That's money you smell," because that's what it was for us.

1864 But it is important and I understand that. But I want  
1865 to try to understand. Tell me what project netting is. What  
1866 essentially is that?

1867 Mr. Noe. So, basically, what we want to make sure we  
1868 have is a system when we do the math and we look at a project  
1869 to see if it results in a significant emissions increase. If  
1870 it does, then by all means, let's go through the heightened  
1871 scrutiny. Let's put on best controls if that's indeed the  
1872 case.

1873 But when we do the math, let's look at the increases and  
1874 decreases together so we don't wind up getting the project  
1875 gummed up in the works, delayed, spend hundreds of thousands  
1876 of dollars on consultant studies just to get to the obvious  
1877 answer that when there's not a real significant emission  
1878 increase we should be putting into NSR. We ought to go  
1879 forward with the project because these beneficial projects.

1880 And one point I would like to make is, you know, I think  
1881 one thing that's being lost is when a regulatory program  
1882 inhibits efficiency improvements at one facility. It's doing  
1883 that all around the country for a bunch of them.

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1884           So when we have demand X to meet, we are going to do it  
1885           as a nation in a more inefficient and higher-polluting way.  
1886           When we can get these efficiency improvements in by nature we  
1887           are going to have not only less CO2 but other pollutants as  
1888           well.

1889           Mr. Carter. Okay. You know, I've heard the process.  
1890           Tell me -- tell me how we reform the process. Tell me what  
1891           we'd do differently from what we are doing now that makes it  
1892           practical and sensible because that's what we all want to get  
1893           to.

1894           Mr. Noe. Sure. And some of the things I've mentioned  
1895           these are things EPA can do either through guidance or  
1896           through rule making. There are some things Congress can do.  
1897           Mr. Holmstead mentioned some of them.

1898           Ones I would like to highlight is we would like to  
1899           ensure that clean units have legislative support. So, in  
1900           other words, an emission unit that's been through the  
1901           permitting process, to have best controls put on it -- that  
1902           that ought to be only an increase in the units permitted  
1903           allowable emissions would trigger NSR.

1904           For pollution control projects, those need legislative  
1905           support and they're excluded under the New Source Performance  
1906           Standards program. It makes sense to do the same thing in

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1907 the NSR program, we believe.

1908 Mr. Carter. Right. Right.

1909 Well, Mr. Noe, I want to -- I want to thank you and I  
1910 want to thank you for what the paper industry did for me and  
1911 for my family.

1912 It provided us a living.

1913 Mr. Noe. Well, Congressman, if I could just briefly  
1914 thank you and Mr. Olson and I am glad to hear you have a  
1915 connection to the industry. Our workers are up here visiting  
1916 many of your offices this week.

1917 Mr. Carter. Yes, they are.

1918 Mr. Noe. I hope you get to meet them. And you know  
1919 these are very proud hardworking people --

1920 Mr. Carter. Absolutely.

1921 Mr. Noe. -- and they're not asking for anything from  
1922 any of you other than the right to compete in this country.  
1923 They can beat anyone in the world as long as they are given a  
1924 playing field that's workable.

1925 No one is here asking you to take controls off projects  
1926 that ought to have emissions controls. We just don't want  
1927 the delay and the unnecessary red tape that is gumming up our  
1928 modernization.

1929 Mr. Carter. Thank you, Mr. Noe.

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1930 Mr. Chairman, I yield back.

1931 Mr. Shimkus. Gentleman yields back his time and the  
1932 chair now recognizes the gentleman, if he's ready, the  
1933 gentleman from Texas. Do you want me to go to -- all right.  
1934 The gentleman is recognized for five minutes.

1935 Mr. Green. Thank you, Mr. Chairman. I am thanking you  
1936 and the ranking member for holding the hearing today on the  
1937 New Source Review and I would also like to thank our  
1938 panellists.

1939 I come from an area -- a very urban area in Houston. We  
1940 have issues. We have five refineries and more chemical  
1941 plants than I can count.

1942 This is a question for, I think, everyone on there.  
1943 Many stakeholders have noted that the substantial delays for  
1944 air permits under the New Source Review program delays two  
1945 years or even longer.

1946 My question is are the delays for issuing the permits  
1947 the fault or the EPA or the state agencies that are  
1948 administering the program?

1949 Mr. Spencer. Since I am with a state agency I am going  
1950 to say it's EPA's fault.

1951 [Laughter.]

1952 No, I think that, as we've indicated in our testimony,

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1953 certainty adds to the process of being able to issue timely  
1954 permits. So the more certainty we have and clearing up the  
1955 muddied guidance documents, applicability determinations,  
1956 court cases, the better, and more efficient permits we can  
1957 issue.

1958 Mr. Green. Anybody else?

1959 Mr. Noe. We=d like to say, Congressman, what we=d like  
1960 to see happen to streamline the process is just make sure  
1961 that we get the -- sort the wheat from the chaff. The truly  
1962 significant projects with significant increases ought to go  
1963 through NSR. They ought to put on controls.

1964 But for these minor projects, why gum them up in the  
1965 works with these consultant studies that take all this time  
1966 and money and delaying these projects from going forward?

1967 So we=d like to streamline the process. I believe EPA  
1968 could do that.

1969 Mr. Walke. Congressman, the permits in this country are  
1970 issued primarily and overwhelmingly by the states, and it=s  
1971 the -- it=s, frankly, a lack of resources and capacity at the  
1972 state level that=s responsible for most of the permitting  
1973 delays.

1974 There was a good Houston Chronicle article about a week  
1975 or two ago in which a Texas regulator said exactly that about

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1976 issuing air permits in Texas.

1977 Now, the Trump administration yesterday just proposed a  
1978 33 percent cut to the state and tribal air grants, which are  
1979 the moneys from Congress responsible for issuing permits in a  
1980 timely fashion.

1981 So we've got cross purposes and I expect that our  
1982 friends at AAPCA and the National Association of Clean Air  
1983 Agencies would like to see Congress fully fund them so they  
1984 can issue permits on time. We all want to see that.

1985 Mr. Green. I was involved in a permit a few years ago  
1986 because right now we are seeing in east Harris County,  
1987 particularly along the Gulf Coast, expansion of chemical  
1988 plants just because of the low price of natural gas, and the  
1989 delay in the permits were a combination. And I would call  
1990 EPA and say, okay, tell me what's going on. It was for Exxon  
1991 Mobil in Baytown -- huge expansion of their chemical facility  
1992 -- jobs and everything else.

1993 And so sometimes it's both sides. It's both the Feds  
1994 and the -- because at that case it delayed it a little bit  
1995 because there was -- I didn't know the EPA, Mr. Chairman, had  
1996 an appeals process within their agency and when I was told by  
1997 the deputy EPA administrator he said, oh, we got a good  
1998 result -- I mean, we got a good brief and it'll go to this

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1999 group.

2000 I said, AWell, who are they? I want to do a letter to  
2001 them." And he said, AOh, no, they=re all EPA administrators."  
2002 I said, AWell, how long will that happen?" He said, AIt will  
2003 take a few months," and it took six months to get through  
2004 that EPA appeals board. So, you know, which didn=t do  
2005 anything to it. Just delayed it six months.

2006 Why are there long waits for air permits in industry-  
2007 friendly states like Texas? Could delays from the state  
2008 agencies be a result of the budget cuts? And I think you  
2009 answered that.

2010 Earlier this week, President Trump=s 2019 budget  
2011 proposed a 25 percent cut in EPA and reduced the EPA=s  
2012 workforce by over 3,000 employees and I think it=s already  
2013 answered that if you believe these cuts in EPA will improve  
2014 air permitting times, I don=t know if you can do it with less  
2015 -- do it faster with less people. Is that possible?

2016 Mr. Walke. I don=t see how it=s humanly possible, and  
2017 you=re right, that it=s EPA and states contributing and the  
2018 Trump budget proposes cuts to both.

2019 Mr. Green. Okay.

2020 Thank you, Mr. Chairman. I yield back.

2021 Mr. Shimkus. The gentleman yields back his time.

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2022           The chair now recognizes the very patient, although he=s  
2023 not a member of the subcommittee, Mr. Griffith, for five  
2024 minutes.

2025           Mr. Griffith. Mr. Chairman, I am just very appreciative  
2026 to be here as we discuss this issue, which is very near and  
2027 dear to my heart.

2028           I will say that I appreciated somebody saying that what  
2029 we need is narrow thoughtful regulatory reform. I believe  
2030 that was you, Mr. Holmstead, and I am attempting that with my  
2031 bills and open to suggestions and, you know, I am looking in  
2032 my file here -- all kinds of changes and rewrites and so  
2033 forth, and that=s what we are trying to do is just have a  
2034 narrow thoughtful regulatory reform that works right.

2035           And it comes about because, as some people say, you  
2036 know, there=s a lot of people out there that want to see this  
2037 thing work. We all want clean air.

2038           Mr. Noe mentioned his industry. They were out in the  
2039 hallway. I had to step out right at the beginning just to  
2040 say hi because I have probably a couple thousand employees at  
2041 West Rock at two different facilities in my district and it=s  
2042 important.

2043           Likewise, I thought we=d touched on maybe part of the  
2044 problem in Ms. Hammond=s comments earlier when she was

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2045 talking about putting on controls at coal-fired power plants  
2046 and she said the plants can -- agencies or the power  
2047 companies can pass -- and I am going to -- I hope I get it  
2048 right but it=s pretty close -- can pass the cost on to the  
2049 ratepayers so it doesn=t cost their shareholders anything.

2050 That=s the problem. It=s the ratepayers who get it.  
2051 And so I received -- I thought it was interesting -- exactly  
2052 two weeks ago I received a series of texts from a friend of  
2053 mine in the district and it said, "Just opened my AEP bill."

2054 She gives me the numbers and I calculated it. It=s 70  
2055 percent higher than what she said her highest bill was last  
2056 year. She goes on to say, "We can handle it but many are  
2057 suffering. Do you think we can get it turned around?" Big  
2058 subject on Facebook. Everyone is panicking.

2059 So when we do regulations that -- you know, maybe it  
2060 doesn=t affect the shareholder. But most of my constituents  
2061 in southwest Virginia aren=t shareholders. They=re  
2062 ratepayers, and it=s easy to sit here in Washington where  
2063 people have big incomes and say, well, we are just going to  
2064 pass this on to the ratepayer.

2065 But when you=re dealing with a lot of folks who have  
2066 modest means, we can handle it. I can handle it. This lady  
2067 who wrote me can handle it. But many in my district are

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2068 suffering and we have to come up with reasonable reform that  
2069 makes sense, where we don't open up for pollution but we do  
2070 make sense.

2071 And I am going to give you another example. I got a  
2072 furniture manufacturer in my district and I haven't been  
2073 there in a couple years now so maybe they fixed it somehow.

2074 But Mr. Noe mentioned earlier about the confusion on the  
2075 law, and he had a loop in his conveyer belt that was about  
2076 half the size of this room and there was nothing there. It  
2077 was just a big loop.

2078 And he said, "I bet you wonder why we have that," and I  
2079 said, "Yes, I do." And he said, "It's because if we change  
2080 this -- this was once a part of our paint system and if we  
2081 change it, we have to get permission from the EPA in advance.  
2082 So we built these ramps to go over it and we just leave it  
2083 there and it just runs off here into the middle of nowhere  
2084 and back."

2085 That's what we are trying to fix. It is -- you know,  
2086 that's the one I can understand best. Some of you all can  
2087 talk about all the different controls and different  
2088 improvements at the -- at the big power plants.

2089 But I know that it also deals with things like conveyer  
2090 belts and the end result if we don't get it right, and we

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2091 haven=t, is a 70 percent increase and the people back home  
2092 having to pay for their electricity.

2093 All right. Got that off my chest. I appreciate you  
2094 all=s patience on that.

2095 I do think that we can work together to get this done.  
2096 Mr. Holmstead, you had some concerns that you raised earlier  
2097 and I understand in the written testimony that Mr. Walke  
2098 claims that when you were head of the EPA Air Office back in  
2099 2002 the Bush administration weakened the clean air  
2100 regulations at issue here to insert loopholes and exemptions  
2101 that let industry increase harmful air pollutants  
2102 significantly and evade any modern pollution controls. Would  
2103 you like to respond?

2104 Mr. Holmstead. Thank you.

2105 What you just read indicates part of the problem here,  
2106 and just in terms of the honesty of the debate.

2107 So that was a quote from my friend=s testimony who said  
2108 that the Bush administration weakened them to insert  
2109 loopholes and exemptions that let industry increase harmful  
2110 pollution significantly and evade any modern pollution  
2111 controls.

2112 I don=t know how anyone can say that. That was 2002.  
2113 You go on EPA=s website. You do a search and you see where

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2114 emissions have gone since 2002 and all of these pollutants  
2115 that we are talking about have been reduced by about 35  
2116 percent since 2002.

2117 So we did do some important reforms that I think made  
2118 the -- made the program better. We didn't let industry  
2119 increase harmful pollution significantly.

2120 We tried to do things in a thoughtful way, and that=s  
2121 part of the problem here.

2122 Mr. Griffith. And I appreciate that and I appreciate  
2123 the opportunity to be with you all today and appreciate  
2124 everybody=s testimony.

2125 And what I appreciate most is that two of you who  
2126 completely disagree -- Mr. Holmstead and Mr. Walke -- are  
2127 sitting side by side and that=s the way it=s supposed to be  
2128 in America.

2129 We can disagree. We can have battles of ideas. But we  
2130 don't have to be completely disagreeable or get so angry that  
2131 we can't sit at the table together.

2132 Thank you for that and appreciate your testimony. I  
2133 yield back.

2134 Mr. Shimkus. The gentleman yields back his time.

2135 Seeing no further members wishing to ask questions for  
2136 the first panel I would like to thank you for being here and

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2137 joining us today.

2138 Before we conclude, I would like to ask unanimous  
2139 consent to submit the following documents for the record.

2140 We have a letter on the EPA=s NSR program. We have this  
2141 article, AEPA=s New Source Review Program: Time for Reform?"  
2142 -- Mark Fraas, John Graham, and a guy named Jeff Holmstead.

2143 [The information follows:]

2144

2145 \*\*\*\*\*INSERT 9\*\*\*\*\*

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2146           And pursuant to committee rules, I remind members they  
2147           have 10 business days to submit additional questions for the  
2148           record and I ask the witnesses to submit their responses  
2149           within 10 business days upon receipt of the questions.

2150           Without objection, the subcommittee is adjourned and I  
2151           would encourage my colleagues to get downstairs for our  
2152           markup.

2153           [Whereupon, at 3:54 p.m., the committee was adjourned.]