

The Honorable John Shimkus
C/O United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Environment
2125 Rayburn Office Building
Washington, DC 20515-6115

March 20, 2018

RE: “New Source Review Permitting Challenges for Manufacturing and Infrastructure” Hearing and Questions for the Record

Mr. Shimkus,

Thank you for the honor and opportunity to testify before your subcommittee on Feb. 14 regarding “New Source Review Permitting Challenges for Manufacturing and Infrastructure.” Reforms to this program are necessary to secure the vitality and vibrancy of our nation’s economy and competitiveness and can (and should) be done in a way that not only does not unwind the significant and documented progress this country has made in improving air quality, but furthers that progress as the economy expands. As I and other panelists noted at the hearing and in submitted testimony, policy changes that allow businesses the certainty to proceed with efficiency upgrades and facility improvements will yield a net positive environmental benefit.

Please find below responses to your Questions for the Record, as written in your March 9, 2018 letter.

Will you explain the various costs that an owner experiences when complying with the NSR program?

The costs associated with NSR compliance can be placed on a wide spectrum. On the low end, in cases where there is not disagreement with and among state and federal air regulators and where third-party NGO’s do not litigate, large companies may be able to handle permitting obligations using in-house managers, resources and staff. In such an ideal case, the company could also utilize expected line-items from a project’s business plan to pay for the costs of goods and services paid for the construction and installation of the controls or equipment to comply with the rate. But more common, particularly for small or mid-sized manufacturers or in cases where there are disputes with and among regulators and where third-party NGO’s litigate, are expenditures totaling tens of thousands to hundreds of thousands for legal, consulting and engineering fees. Equipment costs can total into the millions of dollars, and, depending on the company’s compliance strategy and availability of such credits, the securing and retirement of Emission Reduction Credits can also result in six to seven-figure expenditures.

Discussions pertaining to compliance costs should also not exclude consideration of circumstances in which protracted periods of time spent wading through the NSR permitting process result in a company failing to capitalize on a market opportunity or being unable to scale or alter production schedules. In these cases, the company may well have lost out on tens of millions of dollars in revenue.

Which industries or manufacturing are most affected by NSR permitting issues?

NSR permitting affects a wide swath of industries, including manufacturers in petrochemical, pulp and paper, glass, cement and asphalt, landfills, refining and power generation sectors. In addition, in certain cases, distributed power generation and heating projects to provide heat and power to data centers, hospitals, educational campuses, and financial institutions may also be subjected to NSR permitting.

I am told that the complexity of the NSR program makes it difficult for facility owners to understand and comply with NSR requirements. Can you provide a few examples of how the NSR program is unnecessarily complex or unclear?

In some cases, there is dispute among state and federal regulators regarding the interpretation or application of regulatory criteria, such as the methodologies applicable to calculating potential future emissions. Our members have reported that, in addition to disputes between state and federal regulators, EPA staff who work in separate permitting and State Implementation Plan teams will make separate and in some cases contradictory demands on projects in order to secure permits and SIP modifications.

There have also been, over the past several decades, multiple and conflicting administrative memoranda from EPA re-interpreting key regulatory criteria for the so-called “demand growth exclusion” and single source aggregation.

Most challenging to businesses is the lack of a precise (and consistently applied) definition of routine maintenance, repair and modification. While the Clean Air Act provides exemption for NSR permitting for projects undergoing routine maintenance, repair and modification, EPA interpretation and a host of court cases have resulted in considerable ambiguity over when activity at existing sources will be subject to NSR permitting requirements. This tension must be resolved, and could in part do so via an EPA rulemaking to define routine maintenance, repair and modification. It could also be done by Congress answering the question in statute and making clear where it was ever the legislative’s intention to establish policy that encourages the retirement and shutdown of existing manufacturing plants and, in their place, the building of new facilities outside the country’s borders.

In closing, the PA Chamber endorses and supports legislative, regulatory and administrative remedies that will reform NSR in a thoughtful manner. Thank you for the opportunity to testify and for your leadership on this issue.

Sincerely,

A black rectangular redaction box covering the signature of Kevin Sunday.

Kevin Sunday
Director of Government Affairs