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6 LEGISLATION ADDRESSING NEW SOURCE REVIEW

7 PERMITTING REFORM

8 WEDNESDAY, MAY 16, 2018

9 House of Representatives,

10 Subcommittee on Environment,

11 Committee on Energy and Commerce,

12 Washington, D.C.

13

14

15

16 The subcommittee met, pursuant to call, at 10:15 a.m.,
17 in Room 2322 Rayburn House Office Building, Hon. John Shimkus
18 [chairman of the subcommittee] presiding.

19 Members present: Representatives Shimkus, McKinley,
20 Barton, Harper, Olson, Johnson, Flores, Hudson, Walberg,
21 Carter, Duncan, Walden (ex officio), Tonko, Ruiz, Peters,
22 Green, Dingell, Matsui, and Pallone (ex officio).

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23 Also present: Representative Griffith.

24 Staff present: Samantha Bopp, Staff Assistant; Daniel
25 Butler, Staff Assistant; Kelly Collins, Legislative Clerk,
26 Energy and Environment; Wyatt Ellertson, Professional Staff
27 Member, Energy and Environment; Margaret Tucker Fogarty,
28 Staff Assistant; Jordan Haverly, Policy Coordinator,
29 Environment; Mary Martin, Chief Counsel, Energy and
30 Environment; Drew McDowell, Executive Assistant; Peter
31 Spencer, Senior Professional Staff Member, Energy; Austin
32 Stonebraker, Press Assistant; Hamlin Wade, Special Advisor,
33 External Affairs; Jeff Carroll, Minority Staff Director; Jean
34 Fruci, Minority Energy and Environment Policy Advisor;
35 Caitlin Haberman, Minority Professional Staff Member; Rick
36 Kessler, Minority Senior Advisor and Staff Director, Energy
37 and Environment; Jourdan Lewis, Minority Staff Assistant;
38 Alexander Ratner, Minority Policy Analyst; C.J. Young,
39 Minority Press Secretary; and Catherine Zander, Minority
40 Environment Fellow.

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41 Mr. Shimkus. The Subcommittee on Environment and the
42 Economy will now come to order. The chair recognizes myself
43 for five minutes for an opening statement.

44 At today's hearing, we are examining a discussion draft
45 led by Mr. Griffith with reforms and new sources review
46 program.

47 The goal of this discussion draft is to add greater
48 certainty to the New Source Review permitting process, making
49 it easier for industry to modernize existing facilities and
50 carry out environmentally beneficial projects.

51 At a February hearing in this subcommittee, we learned
52 that the uncertainty, complexity, and burdens associated with
53 New Source Review permitting programs are deterring companies
54 from properly maintaining and upgrading existing
55 manufacturing plants, power plants, refineries, and
56 industrial facilities.

57 This is disappointment because it means we are missing
58 out on opportunities to increase the nation's industrial
59 capacity to create more American jobs and to improve our
60 environment.

61 The discussion draft before us today reforms the New
62 Source Review program by clarifying which types of facility

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63 upgrades require an owner to obtain a New Source Review
64 permit.

65 Historically, there has been a great deal of controversy
66 and uncertainty surrounding this very issue.

67 The main reason for this controversy is due to the fact
68 that the New Source Review program uses a complicated annual
69 emissions projection approach to determine whether a project
70 triggers New Source Review.

71 Projecting future annual emissions is a difficult and
72 confusing process requiring the consideration of many complex
73 factors such as future demand of the product being produced
74 and a facility's future hours of operation.

75 Because of this complexity, it is difficult for
76 companies to know whether they are correctly projecting a
77 facility's future annual emissions and in many instances
78 companies are being targeted by EPA enforcement actions for
79 having carried out these emission projects incorrectly.

80 The end result of this regulatory confusion and
81 enforcement risk is that many companies are choosing to no
82 modernize and upgrade their existing facilities because they
83 fear that these types of activities could trigger the New
84 Source Review permitting process.

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85 In contrast, the new source performance standards
86 program under the Clean Air Act uses a much better test to
87 determine if an emissions increase has occurred, known as the
88 hourly emissions rate test.

89 This hourly rate test has proven to be much less
90 controversial, much easier to carry out, and only relies upon
91 engineering design factors, not complicated future emissions
92 projections.

93 The hourly rate test simply looks at whether a project
94 at an existing facility will increase the facilities ability
95 to release emissions at a higher hourly rate.

96 In order to provide more certainty to the New Source
97 Review program, the discussion draft takes the hourly rate
98 test used by the new source performance standard program,
99 applies that same test to the New Source Review program.

100 I am doing that because I don't like to say NSPS and NSR
101 all the time. This targeted reform to the New Source Review
102 program would provide much-needed regulatory clarity and
103 would make it easier for companies to properly maintain and
104 modernize their facilities.

105 Lastly, the discussion draft before us today includes
106 provisions making it easier for owners to carry out pollution

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107 control projects, energy efficiency upgrades, and projects
108 that keep facilities in good working order.

109 The fact that the New Source Review program can be a
110 barrier to projects that would result in better air quality
111 is unacceptable.

112 We have to remove the red tape that is discouraging
113 companies from doing things like installing carbon capture
114 technology or making manufacture equipment more fuel
115 efficient.

116 This discussion draft does exactly that. At our hearing
117 this morning we will first hear from EPA Assistant
118 Administrator Wehrum who will explain the agency views on
119 this discussion draft.

120 And then we will hear from a second panel of witnesses
121 consisting of state air regulators, industry witnesses, and
122 Clean Air Act experts who will provide important perspectives
123 on how this bill address New Source Review reform.

124 With that, I'd like to thank Congressman Morgan Griffith
125 for the good work he has done on this bill and I'd like to
126 thank our witnesses for joining us this morning.

127 And I have five minutes left so -- no -- so I yield back
128 my time and I will yield to the ranking member of the

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129 subcommittee, Mr. Tonko, for five minutes.

130

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

132

133 *****INSERT 1*****

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134 Mr. Tonko. Thank you, Mr. Chair, and we have a magic
135 clock this morning.

136 I also want to thank EPA Assistant Administrator Wehrum
137 and other witnesses who are joining us today for attending
138 the hearing.

139 First, Mr. Chair, I want to congratulate you on getting
140 the nuclear waste bill through the House last week. This
141 subcommittee has demonstrated it can get difficult things
142 done in a bipartisan fashion.

143 However, I am afraid the discussion draft we are
144 considering today will not be added to that list. I am not
145 interested in Clean Air Act amendments that will result in
146 dirtier air.

147 EPA's New Source Review program plays an important role
148 to ensure that new and modified major sources utilize the
149 best available pollution controls to limit emissions of
150 criteria pollutants.

151 But in recent months, EPA has issued a number of
152 troubling Clean Air Act policy changes including to the NSR
153 program by memorandum.

154 In December 2017, EPA announced that it will not second
155 guess permit applicants' analysis on emissions projections

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156 nor enforce against applicants that provide invalid
157 estimates.

158 In January 2018, EPA withdrew the long-standing "once in
159 always in" policy for major source MACT standards, and in
160 March 2018 the EPA decided to change the project emissions
161 accounting formula that will allow facilities to ignore
162 contemporaneous emissions increases.

163 These are not new ideas. Some were tried over a decade
164 ago by Administrator Wehrum during the Bush administration
165 through the rulemaking process.

166 Sadly, EPA's political leadership has spent its time
167 reviving these policies rather than taking any proactive
168 steps to actually reduce air pollution and, make no mistake,
169 today's discussion draft is no different.

170 The draft would make a number of changes to EPA's New
171 Source Review program. The NSR program is probably the most
172 important Clean Air Act program for controlling pollution
173 from new sources.

174 It might surprise some of my colleagues to learn that
175 was a quote from Mr. Holmstead's testimony, who will be a
176 witness on today's second panel.

177 And to be fair to him, he also said the NSR program was

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178 not intended to be a key program for controlling emissions
179 from existing facilities.

180 Now, if we are being honest, we also must acknowledge
181 that in the 1970s, Congress did not intend for existing
182 facilities to be able to avoid installing pollution control
183 technology for 40 years.

184 But that has been the case for many facilities across
185 our country, which were grandfathered into the program until
186 they underwent a major modification.

187 The NSR modification rules attempted to ensure that,
188 over time, existing sources add pollution controls when those
189 facilities made investments and upgrades that increased
190 emissions.

191 Among other things, the discussion draft would change
192 the definition of modification at an existing source to
193 consider whether it would increase the maximum achievable
194 hourly emissions rate rather than total annual emissions.

195 This would permit facilities to make upgrades that do
196 not increase hourly emissions but do enable the source to
197 operate much more frequently, which will greatly increase
198 overall pollution.

199 We will hear that the NSR program is preventing

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200 facilities from undertaking efficiency and reliability
201 upgrades.

202 But we are failing our constituents if we do not
203 acknowledge that operation of these facilities comes with a
204 serious cost -- harmful air pollution and oftentimes a lot of
205 it.

206 That, frankly, could be drastically reduced with
207 pollution controls. Today, many old coal-fired power plants
208 are entering end of useful life unless they undertake
209 significant capital investments.

210 Under the current NSR program, if these facilities make
211 a major modification, the grandfathering is over and modern
212 pollution controls would need to be installed.

213 This has caused these facilities to call the program
214 unworkable. The reality is they just do not like how it
215 works. The discussion draft before us today would enable
216 those old facilities, which have put off adopting modern
217 pollution controls for decades, to continue polluting out air
218 indefinitely.

219 Just yesterday, the Center for Public Integrity reported
220 that in 2017, nearly a quarter of the nation's coal-fired
221 power plants lacked pollution controls limiting emissions of

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222 sulfur dioxide and, on average, plants without scrubbers
223 discharged more than twice the amount of SO₂.

224 One hundred and seven of the 145 coal plants without
225 control technology for sulfur dioxide were built prior to
226 1978.

227 We know how to reduce harmful air pollution, and I
228 understand that businesses need time to transition and plan
229 for the investments needed to install pollution controls.

230 But many of these facilities have had for decades. The
231 Clean Air Act has been successful because it is premised on
232 making progress over time.

233 Since the 1970s, we have made major strides in reducing
234 air pollution. We have demonstrated that we can grow the
235 economy while protecting public health.

236 But allowing major polluters to extend their lives
237 without -- excuse me, while avoiding installation of
238 avoidable technology to prevent unnecessary pollution is
239 unacceptable and runs counter to the bipartisan intent of the
240 Clean Air Act. I believe we will not be able to find common
241 ground based on the discussion draft under consideration
242 today.

243 Moving forward, I hope this subcommittee and EPA will

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244 abandon these notions and policy memos and get back to
245 considering policies that will actually reduce air pollution
246 and improve public health in our country.

247 With that, Mr. Chair, I thank you and yield back.

248 Mr. Shimkus. Gentleman yields back his time.

249 The chair now recognizes the chairman of the full
250 committee, Congressman Walden, for five minutes.

251 The Chairman. Thank you very much, Mr. Chairman, and to
252 everyone just thank you for being here today.

253 Today's legislative hearing represents another important
254 step in this committee's work to advance reasonable updates
255 to our environmental laws.

256 Our goal has always been to ensure more effective
257 environmental programs and also a more productive economy. A
258 clean environment and a strong economy are not mutually
259 exclusive.

260 The draft legislation being developed under the
261 leadership of Representative Morgan Griffith aims to address
262 problems that have been identified in the Clear Air Act's New
263 Source Review program, and I know he has a very specific
264 example that he shared with us about how we need to modernize
265 these laws.

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266 This legislation reflects the committee's goal to
267 implement reforms that will more efficiently preserve and
268 improve air quality.

269 It'll also help responsibly reduce barriers to
270 increasing productivity of manufacturers in industries and
271 communities around our country.

272 New Source Review was initially developed some 40 years
273 ago. It's well past time for reform. Over the past several
274 decades, the program has evolved in regulatory complexity,
275 leading to time-consuming permit decisions, expensive
276 regulatory requirements, and, frankly, litigation.

277 We learned in testimony three months ago how costly and
278 lengthy reviews associated with NSR permitting can lead
279 businesses to forego making beneficial investments in
280 existing facilities and these investments can include
281 efficiency upgrades, pollution control projects and other
282 environmentally beneficial changes to operations.

283 This does not make sense. Decisions to not make such
284 investments deprive communities of the benefits gained from
285 environmental improvements in addition to the increased jobs
286 and economic activity that flow from the activity.

287 We learned that even when facilities choose to run the

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288 NSR gauntlet with efficiency projects the result is
289 unnecessary expense and costly delay with the required
290 bureaucracy providing no additional environmental benefit.

291 In addition, state and local permit authorities are tied
292 up on the NSR matters instead of working on more pressing
293 environmental reviews.

294 I mentioned before the needless costs of poorly
295 administered environmental regulations and the example of a
296 proposed data center expansion in my district in Prineville,
297 Oregon.

298 That expansion ran headlong into permitting issues
299 because of a dispute over a single air monitor, which made it
300 unclear whether the expansion could go forward.

301 It was only after the city of Prineville persuaded the
302 EPA to add an additional air sampling location that the issue
303 cleared and the expansion was able to go forward.

304 That instance involved hundreds of millions of dollars
305 in investments and hundreds of construction jobs.

306 At our NSR hearing earlier this year, we learned of a
307 case in the pulp and paper and packaging industry in which a
308 facility was forced to make more than \$100,000 in additional
309 assessments and incurred substantial delay for a project that

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310 would actually reduce pollution.

311 In another project, a paper mill sought to shut down two
312 older and inefficient boilers and upgrade a large boiler to
313 meet the same power needs more efficiently.

314 But due to EPA NSR interpretations that ignored the
315 replaced boilers, this project was subject to 18 months in
316 costly red tape and scope adjustments, again, for a project
317 that would not increase emissions.

318 We should have an NSR program that presents clear
319 standards for when reviews are necessary. This will lead to
320 more efficient business decisions, more efficient permitting
321 decisions, and more environmentally beneficial operations.

322 We should have a program that works within the broader
323 framework of state decision making concerning permitting and
324 meeting clear air standards.

325 I am looking forward to hearing from EPA's assistant
326 administrator for air and from our second panel, which
327 includes state, industry, and legal perspectives, these
328 discussions will go a long way in helping us perfect the
329 discussion draft.

330 So I want to thank Mr. Griffith. Morgan, thank you for
331 your hard work on this specific piece of legislation. I

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332 think we are taking really important steps to both grow
333 America's economy and improve our air quality and the
334 environment.

335 Doing this will ultimately benefit American workers,
336 consumers, and others around the country.

337 With that, Mr. Chairman, unless someone wants the
338 remainder of my time, Mr. Griffith, do you want to make any
339 comments? With the remaining minute I would so yield.

340 [The prepared statement of Chairman Walden follows:]

341

342 *****INSERT 2*****

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343 Mr. Griffith. I thank you, Mr. Chairman, and I
344 appreciate the kinds words. I will be discussing this but I
345 think one thing we have to remember, as everybody else has
346 pointed out, this is not just about the big businesses or the
347 big electric plants.

348 It's about small businesses as well, and I will detail
349 how a medium-sized business in my district has been impacted
350 on this and how silly it is when you're trying to deal with
351 issues that have nothing to do with air pollution. You're
352 just trying to make your factory better.

353 Also, we sometimes ignore, and I thought it was
354 interesting in Mr. Tonko's opening statement, he said, you
355 know, nobody intended for this to last for 40 years without
356 people doing upgrades.

357 The problem is the rule itself forced people not to do
358 upgrades because they couldn't afford to completely redo the
359 facility.

360 How much cleaner would the air be if we'd have had
361 reasonable rules in place from the get-go that would have let
362 them slowly move forward a little bit at a time instead of
363 having to bite off the whole apple -- eat the whole apple in
364 one swallow?

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365 I yield back.

366 Mr. Shimkus. The gentleman --

367 The Chairman. And I yield back as well.

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

369 The chair recognizes the ranking member of the full
370 committee, Congressman Pallone from New Jersey, for five
371 minutes.

372 Mr. Pallone. Thank you, Mr. Chairman.

373 We are here this morning to discuss draft legislation to
374 amend the New Source Review permitting program of the Clean
375 Air Act and I am pleased that Paul Baldauf, the assistant
376 commissioner for air quality, energy, and sustainability at
377 New Jersey's Department of Environmental Protection, is here
378 as a witness. Good to see you.

379 The NSR program has existed since the 1970s but it's not
380 been as effective in reducing air pollution as Congress
381 hoped.

382 Lax enforcement and the ability to exploit legal
383 loopholes have helped or have allowed old facilities to game
384 the system, and too often these facilities have been able to
385 avoid installing modern pollution controls, which has left
386 neighboring communities exposed to tons of dangerous

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387 pollution.

388 And these pollution problems are not only local; they
389 also impact downwind states like New Jersey. With all the
390 pollution control technology development over the past 40
391 years, there is no reason for any facility to operate without
392 modern pollution control equipment.

393 The ultimate test for any legislation to reform the NSR
394 program is simply this -- will it reduce air pollution -- and
395 by that test, this bill fails.

396 There is no doubt this bill will increase pollution.
397 Republicans are simply resurrecting previously rejected ideas
398 promoted during the Bush administration by two of today's
399 witnesses -- Assistant Administrator Wehrum and Mr.
400 Holmstead.

401 Together, they have worked for years to undermine the
402 NSR program. And when we enacted the NSR program, Congress
403 recognized that existing facilities would need time to plan
404 for and install pollution controls and that's why existing
405 facilities were required to install new equipment when
406 undergoing capital improvements, expansions, and life-
407 extending renovations.

408 But industries have spent years employing legions of

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409 attorneys with the sole mission of creating carve-outs in the
410 NSR program for their clients just to avoid controlling their
411 pollution.

412 And so what happened? We ended up with the situation
413 Congress tried to avoid -- new facilities disadvantaged to
414 the benefit of old polluting ones that have remained around
415 well past their design life.

416 The proponents of this bill claim it will fix this
417 problem but it will not. Without a firm requirement that
418 facilities reduce the levels of all the dangerous pollution
419 they emit, they simply will be allowed to pollute more and
420 that's what the language in this bill on maximum achievable
421 hourly emissions rate is all about.

422 Rather than closing loopholes in the NSR program, this
423 draft bill expands them. It continues to disadvantage new
424 facilities by allowing old facilities to operate without
425 modern pollution controls.

426 If these changes go forward, air pollution will only
427 increase. Communities that have fought to reduce toxic air
428 pollutants including benzene, mercury, and other dangerous
429 chemicals will see pollution and their health problems
430 increase, and that means more asthma attacks and more people

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431 getting cancer and heart disease and lung disease.

432 And Congress never intended to grant a permanent license
433 to pollute to any facility. But that is exactly what this
434 legislation would achieve.

435 The provisions in this bill will guarantee that no
436 existing facility will be subject to the NSR program when
437 it's modernized or expanded and it will ensure the public
438 will be subject to greater pollution from these plants after
439 they are modified.

440 And no one has a choice about breathing. Each of us
441 does it between 17,000 and 23,000 times every day.

442 However, we can choose to limit air pollution so that
443 each breath delivers the clean and healthy air we need. The
444 NSR program can certainly be improved but not with this bill.

445 It's long past time for old coal-fired generation and
446 refineries to reduce their emissions and do their fair share
447 to keep the air clean and safe to breathe.

448 I don't know if anyone wants my minute or so. If not,
449 Mr. Chairman, I will yield back.

450 Mr. Shimkus. The chair thanks the gentleman and the
451 gentleman yields back his time.

452 We now conclude with members' opening statements. The

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453 chair would like to remind members that pursuant to committee
454 rules, all members' opening statements will be made part of
455 the record.

456 We want to thank all of our witnesses for being here
457 today and taking the time to testify before this
458 subcommittee.

459 Today's witnesses will have the opportunity to give
460 opening statements followed by a round of questions from
461 members.

462 Our first witness panel for today's hearing includes the
463 Honorable William Wehrum, assistant administrator for the
464 Office of Air and Radiation, U.S. Environmental Protection
465 Agency.

466 We appreciate you all being here today. We will begin
467 the panel and, Mr. Wehrum, you're now recognized for five
468 minutes for your opening statement. Your full statement has
469 been submitted for the record.

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470 STATEMENT OF THE HONORABLE WILLIAM WEHRUM, ASSISTANT
471 ADMINISTRATOR FOR THE OFFICE OF AIR AND RADIATION, U.S.
472 ENVIRONMENTAL PROTECTION AGENCY

473

474 Mr. Wehrum. Thank you, Chairman Shimkus, Ranking Member
475 Tonko, and members of the subcommittee.

476 I appreciate the opportunity to testify today on the New
477 Source Review permitting program. Although the
478 administration does not have an official position on the
479 draft, I am very supportive of the committee's efforts to
480 improve the NSR permitting program.

481 I have long believed that the NSR permitting program
482 stands as a significant barrier to the implementation of many
483 projects that would improve facility and performance, enhance
484 efficiency, and protect the environment.

485 In addition, the program is unnecessarily complicated
486 and confusing. The program can and should be improved.

487 In accordance with the administration wide priorities
488 for streamlining permitting requirements for manufacturing,
489 we have undertaken an assessment of the agency's
490 implementation of the NSR program.

491 We quickly and, I would have to say, predictably

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492 identified several areas that are ripe for improvement.

493 In December 2017 and March of 2018, Administrator Pruitt
494 issued memoranda to EPA's regional offices to provide greater
495 clarity as to how certain NSR rules should be interpreted.

496 The December memo focused on NSR permitting
497 applicability provisions. That memo set forth EPA's
498 interpretation of the procedures contained in the NSR rules
499 for sources that intend to use projected actual emissions in
500 determining NSR applicability and the associated pre- and
501 post-project source obligations.

502 The March memo set forth EPA's interpretation that in
503 determining whether a proposed project will result in a
504 significant emissions increase, which is the initial step
505 that a source must take in determining whether the project
506 will result in an overall significant net emissions increase,
507 that any emissions decreases that are projected to occur as a
508 result of the project also should be taken into account in
509 this first NSR applicability step.

510 We have done other things as well. In April of 2018, we
511 issued a memoranda on so-called significant emissions levels,
512 which are common sense provisions intended to simplify and
513 expedite the permitting process and the analysis that's

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514 necessary to go along with the permitting process focus on
515 air quality.

516 In January of 2018, although this is not strictly an NSR
517 issue, as has been mentioned already we issued clarifying
518 guidance on the so-called "once in always in" policy under
519 our air toxics programs.

520 Regarding the subcommittee's discussion draft, the
521 administration does not have an official position on the
522 bill. But as I've said before, I personally strongly support
523 the overall goals of the discussion draft.

524 The principal focus of the discussion draft is on
525 refining the definition of modification in the Clean Air Act,
526 and that would go a long way towards simplifying application
527 of the NSR program.

528 It would make clear that a project undertaken in the
529 existing stationary source will trigger NSR only when that
530 project would result in an increase in the source's maximum
531 design capacity to emit.

532 That is, the project would result in an increase in a
533 source's hourly emissions rate, which is how emissions
534 increases have been determined under the new source
535 performance standard program since its inception.

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536 The bill would also resolve long-standing and
537 unfortunate anomaly in the NSR program, which is that the
538 installation of pollution control equipment at existing
539 sources by itself can trigger the onerous New Source Review
540 program.

541 I appreciate the opportunity to testify today. I
542 support the committee's effort to provide clarity for the
543 regulated community that can finally allow the private sector
544 to invest in more efficient manufacturing in this country and
545 I welcome any questions you may have regarding the discussion
546 draft for the agency efforts to improve the NSR program.

547 Thank you again.

548 [The prepared statement of Mr. Wehrum follows:]

549

550 *****INSERT 3*****

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551 Mr. Shimkus. The gentleman yields back the time and the
552 chair thanks you and I'll now begin with the round of
553 questioning with myself and I recognize myself five minutes
554 for questioning.

555 Mr. Wehrum, aside from your current role as assistant
556 administrator for Air at EPA, you have a lot of experience
557 with the New Source Review program both as a regulatory
558 lawyer and working for EPA in past administrations.

559 Given your experience, let me ask, from a big picture
560 perspective, what is the role of the New Source Review in
561 improving air quality?

562 Mr. Wehrum. New Source Review program is one but only
563 one of many tools that we have under the Clean Air Act to
564 protect air quality.

565 The NSR is different than many of the other programs
566 that we implement because, you know, it doesn't apply to you
567 just because you exist, as many of our ambient air quality
568 programs or air toxic standards do.

569 It applies to you depending on what you do and that
570 creates the real problems under the NSR program and as has
571 been pointed -- as I pointed out in my testimony and as
572 several of the members here including yourself, Mr. Chairman,

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573 pointed out, you know, because the applicability is based on
574 what you do, then the program has an effect on decisions
575 affected facilities make as to what projects they implement
576 and which ones they don't, and in many cases I firmly believe
577 -- and I've been doing this for a long, long time now and
578 I've seen it -- that facilities choose not to implement
579 common sense improvements to their facility that would
580 improve efficiency, would improve productivity, in a lot of
581 cases would improve environmental performance because those
582 projects stand the possibility of triggering the NSR
583 permitting program. So they just don't do them. That makes
584 no sense whatsoever.

585 Mr. Shimkus. We are talking today about the New Source
586 Review permitting reforms that make it easier for existing
587 sources to carry out efficiency improvements and other
588 measures that would provide environmental benefits.

589 Do you see the discussion draft reform approach as
590 creating a large loophole that will lead to unhealthy
591 emission increases?

592 Mr. Wehrum. No, Mr. Chairman, not at all. I see the
593 discussion draft as significantly improving the program and
594 how it operates right now.

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595 As I pointed out in my testimony, you know, primarily
596 what the discussion draft would do is align the applicability
597 process under New Source Review with the applicability
598 process under the new source performance standard program.

599 They are closely aligned. They are both programs that
600 apply to new modified sources and, interestingly, they both
601 rely on the very same statutory definition of modification
602 and yet, for the past 30, 40 years the agency has used
603 different definitions under the new source performance
604 standard program versus the New Source Review program to
605 determine how emissions -- you know, whether an emissions
606 increase has occurred as a result of a project.

607 So the primary benefit of the discussion draft is it
608 would align the programs, make them simpler to implement, and
609 I think significantly improve their implementation.

610 Mr. Shimkus. The discussion draft's most significant
611 policy change concerns a switch from the annual emissions
612 projection test to an hourly emission rate test used under
613 the new source performance standards program to determine if
614 a project will cause an emission increase.

615 Would you speak to the benefits of reforming the New
616 Source Review program to use an hourly emissions rate test?

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617 You kind of already did mention it but can you restate that?

618 Mr. Wehrum. Yes, Mr. Chairman. I certainly will.

619 I mentioned it in passing in my testimony, but the other
620 significant problem with the New Source Review program is
621 it's just confusing.

622 It's very complicated. It's very confusing. It says
623 something that, you know, very sophisticated operators --
624 refinery operators, power plant operators, big companies that
625 have a lot of resources on staff and available -- have to
626 hire people like me when I was in private practice to help
627 them figure out how the program applies.

628 That speaks volumes. So, you know, in addition to
629 eliminating the barriers to common sense projects I described
630 before, I think a real value of the discussion draft would be
631 it simplifies the program and gets people like me, you know,
632 a lawyer in private practice, you know, before I rejoined the
633 EPA, out of the equation and lets, you know, people on the
634 plant floor do this.

635 And I am sorry, I don't want to take up too much of your
636 time, Mr. Chairman, but I started my career as a chemical
637 engineer. I worked in chemical plants and I was responsible
638 for implementing this permitting program.

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639 And I can tell you it's impenetrable to somebody like
640 that and that's part of why I went into law, part of why I
641 came to EPA because fixing this program is a very high
642 priority.

643 Mr. Shimkus. We are going to hear from two states in
644 the second panel. Do you think this change will undermine
645 states' efforts to ensure air quality?

646 Mr. Wehrum. I do not, not one bit, Mr. Chairman.

647 Mr. Shimkus. And why?

648 Mr. Wehrum. Because this is but one of many, many
649 elements of the Clean Air Act and all of these elements work
650 together in concert. They each serve a purpose and the
651 totality of the Clean Air Act requirements is what should be
652 measured and not the function of each individual piece.

653 So this is not going to result, in my judgment, in any
654 significant reduction in the overall effectiveness of the
655 act.

656 Mr. Shimkus. I thank the gentleman, and now I yield
657 back my time.

658 The chair recognizes the gentleman from New York, Mr.
659 Tonko, for five minutes.

660 Mr. Tonko. Thank you, Mr. Chair, and Administrator

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661 Wehrum, thank you again for being here today.

662 As I mentioned, many members have concerns about a
663 number of EPA rulemakings, memos, and other regulatory
664 actions that will consequence for the Air Office.

665 I particularly want to highlight the recently proposed
666 strengthening transparency and regulatory science rulemaking,
667 which will have significant impact on Clean Air Act
668 regulations, including NAAQS.

669 And a few days ago, the chair of the Science Advisory
670 Board working group on EPA planned actions for SAB
671 consideration issued a memo recommending that this proposal
672 merits further review by the board.

673 Obviously, you oversee a number of programs that rely on
674 epidemiological studies and private health data so you are
675 more than qualified to weigh in on this.

676 Do you believe the Science Advisory Board should have
677 conducted a review of the proposal before it was published in
678 the Federal Register?

679 Mr. Wehrum. No, Mr. Ranking Member, I don't think
680 that's necessary at all.

681 Mr. Tonko. Do you believe the Science Advisory Board
682 should be asked to conduct the review now?

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683 Mr. Wehrum. Mr. Ranking Member, taking a step back, I
684 think the overall concept and the goal of the transparency
685 proposal I think is indisputable, which is to make sure that
686 the science the agency relies upon is replicable and --

687 Mr. Tonko. I understand that, but do you believe the
688 Science Advisory Board should be asked to conduct a review
689 now?

690 Mr. Wehrum. And Mr. Ranking Member, the --

691 Mr. Tonko. Yes or no.

692 Mr. Wehrum. The importance of making sure --

693 Mr. Tonko. Yes or no, sir.

694 Mr. Wehrum. -- the science is replicable -- well, it's
695 important to put this in context, Mr. Ranking Member, because
696 you're -- it's a basic scientific principle that science that
697 -- studies that scientists create, part of science is the
698 ability of other scientists to replicate their work and
699 either confirm the findings that were made or possibly refute
700 --

701 Mr. Tonko. Well, I am not hearing a yes that the
702 advisory board should be asked to conduct a review now so
703 I'll move on.

704 Do you believe the Office of Air and Radiation should

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705 have been involved in the review of the proposals through a
706 formal intra agency review process before it was published?

707 Mr. Wehrum. Yes, and in fact, we were. I mean, we had
708 a copy of the draft before it was --

709 Mr. Tonko. Did --

710 Mr. Wehrum. -- before it was proposed. We circulated
711 it to our office directors and key staff and we had an
712 opportunity to review and provide input.

713 Mr. Tonko. Was that amongst political appointees only?

714 Mr. Wehrum. No. No.

715 Mr. Tonko. There were career staff involved?

716 Mr. Wehrum. Yes.

717 Mr. Tonko. Would you share the Air Office's comments on
718 the rule with this subcommittee and the committee?

719 Mr. Wehrum. I don't know what form they take but I'd be
720 happy to do that.

721 Mr. Tonko. Well, we'd ask that you share those comments
722 with us, please. So that's a yes, you'll offer them?

723 Mr. Wehrum. Yes, Mr. Ranking Member.

724 Mr. Tonko. The SAB working group's memo notes the
725 proposed rule appears to have been developed without a public
726 process for soliciting input from the scientific community.

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727 A number of scientific organizations, state attorneys
728 general, and members of Congress have called for an extension
729 of the public comment period in order to more fully consider
730 the impacts of the proposal.

731 This is particularly important since the proposal sought
732 comment on issues fundamentally related to its design.

733 Do you believe this proposal warrants an extended public
734 comment period in public hearings similar to what has been
735 done for other consequential rulemakings?

736 Mr. Wehrum. Well, OAR is responsible for lots of things
737 but this rulemaking is not one that's actually in my office
738 and I believe Administrator Pruitt is prepared to speak to
739 that question in the hearing that he's participating in as we
740 speak.

741 Mr. Tonko. So would he support extended public comment
742 periods and public hearings?

743 Mr. Wehrum. I believe the administrator will speak to
744 the issue and he'll speak for himself.

745 Mr. Tonko. Do you have a sense that he would want to
746 see more comment period and more public hearings?

747 Mr. Wehrum. Well, what I would say is we have nothing
748 to hide, I mean, which is a bit redundant. This is all about

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749 transparency. So it's important.

750 I mean, I'll just speak for myself. The rulemaking
751 process is enormously important. When we put out rules for
752 public comment, that's a meaningful thing.

753 It allows for us to get input and data and thoughts from
754 affected folks and people who are knowledgeable on the
755 issues. And so --

756 Mr. Tonko. Thank you.

757 Mr. Wehrum. -- you know, I know the administrator
758 shares those views.

759 Mr. Tonko. Thank you. Last week, Administrator Pruitt
760 issued a memorandum on the NAAQS standard-setting process.

761 Moving forward, EPA intends to act the Clean Air
762 Scientific Advisory Committee to address several issues,
763 including any adverse public health, welfare, social,
764 economic, or energy effects.

765 Did EPA consider soliciting feedback from the public SAB
766 or the CASAC before this memo was released?

767 Mr. Wehrum. We received input on a continuous basis in
768 a variety of ways on how we do NAAQS reviews, on the NAAQS
769 decisions that we make and the implementation decisions that
770 we make. So --

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771 Mr. Tonko. Would that include soliciting comments from
772 the public?

773 Mr. Wehrum. We always solicit comments from the program
774 -- public when we set NAAQS standards and do implementation
775 rules.

776 Mr. Tonko. Mr. Chair, I yield back.

777 Mr. Shimkus. The gentleman's time has expired.

778 And Mr. Wehrum, can you pull your mic a little bit
779 closer? I think --

780 Mr. Wehrum. Yes.

781 Mr. Shimkus. Okay. And the chair now recognizes the
782 gentleman from Texas, Congressman Barton, for five minutes.

783 Mr. Barton. Mr. Chairman, could I pass and let you go
784 to some members who've been here while I --

785 Mr. Shimkus. That would be great.

786 The chair recognizes the gentleman from West Virginia,
787 Mr. McKinley, for five minutes.

788 Mr. McKinley. Thank you, Mr. Chairman, and thank you,
789 Mr. Wehrum, for being here.

790 Mr. Shimkus. Come sit next to me. Get closer. It's
791 okay.

792 Mr. McKinley. Yes, I've heard that before.

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793 [Laughter.]

794 The -- so if I could -- and now they've already run off
795 half a minute on me on this thing. Thank you. Thank you.
796 Yes, there we go.

797 I want to focus -- I know a lot of the discussion is
798 going to be about some of the other matters on NSR but I want
799 to stay as focused as I could on energy and the coal-fired
800 power plants and gas-powered power plants.

801 And I am trying to -- I am trying to reconcile the
802 differences or the questions about the NSR versus -- and grid
803 reliability and ability of our electric grid, because we have
804 had so many hearings about grid reliability, and over a dozen
805 hearings we have had about grid reliability and the concerns
806 we have, particularly when we hear from FERC -- their
807 comments about the concern of whether we are going to have
808 enough power plants.

809 So as a result of this uncertainty that I am trying to
810 reconcile the differences between the two, I see how that
811 many of our power plants are just simply saying because of
812 the uncertainty that you referred to and our chairman has
813 referred to, are just prematurely shutting down the power
814 plant because they don't want to go through the process of

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815 upgrading a facility that may not be used for 12 months and
816 be faced with something that would cost hundreds of millions
817 of dollars.

818 So they are concerned. I want to get -- I want to get
819 to one issue here, if I could, just quickly with you. Would
820 you agree that if a power plant replaced a part in
821 maintenance with, essentially, the original part maybe 40
822 years ago, would it fall -- would it not be exempt from the
823 NSR ruling if they are just going to replace in maintenance a
824 part that was the original part that had just worn out?

825 Mr. Wehrum. Congressman, there are a couple questions
826 that would have to be asked and answered about that. One is
827 would that project represent so-called routine maintenance
828 and the very first part of the applicability process is if
829 you're doing something --

830 Mr. McKinley. I am just saying, Mr. Wehrum, it's a
831 worn-out part that they are just -- it's routine maintenance
832 -- we are going to replace that part.

833 Mr. Wehrum. Right. So --

834 Mr. McKinley. It may be a 40-year-old part.

835 Mr. Wehrum. So what you described very well could be
836 considered routine maintenance and that may be the beginning

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837 and the end of the applicability determination.

838 Mr. McKinley. Thank you.

839 So I want people to understand that what we are saying
840 if you -- if Tonko is correct that 25 percent of our power
841 plants don't have fundamental SOCs and NOx air controls, here
842 the plant now wants to upgrade -- wants to do some work on
843 their plant to do that.

844 They are going to go through a delay process that might
845 be a year or more and the uncertainty that perhaps it might
846 cost \$100 million to \$200 million dollars to do something
847 when they just simply want to put in some new control
848 devices.

849 So, again, I am trying to understand. If you do nothing
850 -- if you don't improve your air quality, you don't follow
851 the NSR, because if I am just doing routine maintenance, I am
852 okay.

853 But if I try to improve the efficiency and the operation
854 and the emissions of my plant, then I fall into something
855 else.

856 Does that make sense to you?

857 Mr. Wehrum. Absolutely not, and you put your finger on
858 one of the two key problems as I see with the New Source

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859 Review, which is it very much stands as a barrier to the
860 implementation of projects that are necessary to maintain
861 facilities, improve efficiency and, as I said earlier, in
862 many cases improve environmental performance.

863 And, as you pointed out, relatively minor projects in
864 this -- in the grand scheme of the facility, you know, an
865 expansive view of NSR applicability could trigger the program
866 and trigger the obligation to spend hundreds of millions of
867 dollars on air pollution controls and as a result -- I've
868 seen it real live, first hand -- companies decide not to go
869 forward with those projects and they leave plants in a
870 dilapidated condition and in a condition that's worse for the
871 environment than it would be if they were able to continue to
872 maintain it.

873 Mr. McKinley. Not only worse, but doesn't it put us in
874 a concern for reliability of the grid when we don't have
875 these power plants available for implementation?

876 Mr. Wehrum. Yes. So I think it's really important for
877 EPA to stay in its lane. I am not a grid guy. I am an air
878 guy, and I think part of the problem in the past with the EPA
879 is it's tried to assume responsibility for things it's not
880 responsible for.

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881 So I am going to take off my AA hat and put on my -- you
882 know, maybe my engineer hat and my common sense guy and just
883 say yeah, grid reliability is enormously important and there
884 is a real live debate going on right now about all the coal
885 plant retirements which are resilient.

886 They have fuel onsite. They can operate for days and
887 sometimes weeks without additional fuel delivery and that's
888 very different than a natural gas-fired plant that if the
889 pipeline delivery is disrupted for whatever reason there is
890 no onsite storage and there is no generation.

891 So there is a real live debate going on right now about
892 the issues that you raise. I am not the expert but I think
893 it's important to run that to ground.

894 Mr. McKinley. Perhaps on the next panel. I want to
895 continue that line of reasoning, questioning. So thank you.
896 I yield back.

897 Mr. Shimkus. Gentleman's time has expired.

898 The chair recognizes the gentleman from Texas, Mr.
899 Green, for five minutes.

900 Mr. Green. Thank you, Mr. Chairman, and welcome to our
901 subcommittee.

902 The New Source Review program has been an important

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903 program for protecting air quality in districts like I have.
904 I have a very urban district in east Houston that -- we have
905 lots of industry in the district that brings in many high-
906 paying jobs for our constituents.

907 But Houston also struggles with meeting attainment
908 levels under the Clean Air Act and I am worried that some of
909 the EPA's recent moves would threaten many of the gains we
910 have made in recent years in improving the air quality in
911 Houston.

912 Again, thank you for being here today. It's not always
913 easy to get officials from our administration here to talk
914 about legislation and I appreciate your involvement.

915 In 1995, the EPA created the "once in always in" policy
916 for regulation of hazardous air pollution, or HAPs. Many of
917 these HAPs, like benzene, are produced by numerous plants in
918 our district.

919 Only "once in always in" industrial facilities that were
920 determined to be major sources of HAPs were required to
921 employ strong pollution controls under the maximum achievable
922 control technology measure, or MACT.

923 Under the previous policy, sources must apply MACT if
924 they are emitting more than 10 tons per year for a single

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925 hazardous chemical or 25 tons per year for combined hazardous
926 chemicals.

927 And your January 25th guidance changed this policy now
928 for major sources to be classified as area sources under the
929 Clean Air Act if they were below this threshold.

930 While I understand that many facilities have done a
931 great job of reducing their emissions through upgrades and
932 would not now fall under the major source classification when
933 "once in always in" was created in the tonnage decision or
934 was based on defining a major source not on what level of
935 emissions were necessarily safe.

936 Under the new policy, our district will see as much of
937 200 more tons a year in emissions. Has the EPA done any of
938 the new studies on what a safe level of emission is for the
939 HAPs that prompted this decision?

940 Mr. Wehrum. Well, thank you for your question, Mr.
941 Congressman. There is a lot packed into what you just said.

942 Mr. Green. I know. Well --

943 Mr. Wehrum. So let me just --

944 Mr. Green. -- we all represent our districts.

945 Mr. Wehrum. Oh, absolutely. So let me take a shot and
946 you can tell me if I get to the point that you want.

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947 So the "once in always in" policy is a very important
948 policy. We issued the memo that we did because, like the NSR
949 program, we think that policy stood in the way of people
950 doing common sense things to reduce emissions.

951 So, for instance, prior to issuance of the policy, there
952 was absolutely no incentive for any industrial facility to
953 reduce emissions to lower the major source thresholds
954 because, you know, they -- it's nothing but additional cost
955 and expense for them and produces nothing in the way of
956 regulatory benefit.

957 So under the "once in always in" policy, if they take
958 voluntary measures to reduce emissions further than the law
959 requires and they take limits to below major source
960 thresholds, then we will see emissions reductions and they
961 see real regulatory relief and it's a win-win situation.

962 Now, there are those who say look at -- you know, so
963 what I just offered is the glass half full perspective, which
964 I think is absolutely right. But there is a glass half empty
965 perspective and there are those who say, oh no, there is
966 going to be huge emissions increases associated with these
967 people who are going to, you know, shuck off the standards
968 that apply to them and then, you know, intentionally increase

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969 emissions all the way up to just under the major source
970 thresholds.

971 You know, the studies that purport to show that are
972 basically -- they are just shoddy, and I'll tell you, if we
973 try to rely on those kind of studies in a rulemaking, we'd
974 get laughed out of court.

975 Mr. Green. Well, I only have a very short time. Has
976 the EPA done any new studies on what a safe level of
977 emissions for these HAPs that prompted the decision? Has the
978 EPA done that study?

979 Mr. Wehrum. You know, part and parcel of the program
980 this toxics program that the policy applies to is a two-step
981 program. Step one says we have to apply technology standards
982 and step two says we have to follow up after a period of
983 years with a risk assessment to make sure that there is no
984 unacceptable remaining risk. So we are --

985 Mr. Green. Okay. The emissions from HAPs from these
986 facilities are they classified as area sources considered a
987 safe level, that you know of?

988 Mr. Wehrum. I am not -- I am sorry, Mr. Congressman. I
989 don't understand the question.

990 Mr. Green. Okay. Well, you can get back.

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991 Have you done any estimates on the potential increase in
992 emissions that this guidance will allow that --

993 Mr. Wehrum. Yes. We took a very hard look and, as was
994 pointed out earlier in this hearing, in my prior tenure at
995 EPA during the Bush administration this is an issue we talked
996 about and actually proposed a rule to make a change in the
997 regulations to accomplish what we did in the memo just a
998 couple months ago.

999 And so we have abundant public comments that were
1000 received when that rule was proposed and we have taken a hard
1001 look at those public comments.

1002 There, honestly, is no way to comprehensively analyze
1003 because of the broad, broad applicability of these programs.
1004 But what we have done is looked at very targeted sectors
1005 based on comments that we have received and what we have seen
1006 is a preponderance of information indicating that we think
1007 ultimately this policy is going to produce emissions
1008 reductions and is not going to result in the hypothetical
1009 increases that many people are worried about.

1010 Mr. Shimkus. The gentleman's time has expired.

1011 Mr. Green. Mr. Chairman, I'll submit the rest of the
1012 questions. Thank you.

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1013 Mr. Shimkus. And the chair now recognizes the gentleman
1014 from Texas, Mr. Barton, for five minutes.

1015 Mr. Barton. Thank you. Thank you, Mr. Chairman.

1016 Thank you, sir, for testifying. This is a very
1017 complicated issue. The average person doesn't understand the
1018 difference, you know, between a New Source Review or whatever
1019 else we are talking about here.

1020 But it's an important issue. So I am going to ask some
1021 questions, and I am not sure I understand myself what I am
1022 asking. But, hopefully, you will.

1023 Under current law, if an hourly emission per unit of
1024 output stays the same or goes down, is it possible to have an
1025 annual increase in emissions? So you change your process.
1026 You have -- you have equal or less emissions.

1027 But on this annual standard, would it be possible in
1028 such a case for the annual standard to be violated? I would
1029 think the answer would be no.

1030 Mr. Wehrum. Well, it is theoretically possible to not
1031 have an increase in hourly emissions but to have an increase
1032 in annual emissions. So that's theoretically possible.

1033 Mr. Barton. It is.

1034 Mr. Wehrum. And one of the primary criticisms of the

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1035 discussion draft is that it may allow that to -- you may not
1036 see a short term -- the hourly measured short-term emissions.
1037 You may not see a short-term increase in emissions.

1038 But there is a possibility -- a hypothetical possibility
1039 to see a long-term in annual emissions.

1040 Mr. Barton. I would think it's not possible unless you
1041 increase the output.

1042 Mr. Wehrum. That's exactly right. That -- Mr.
1043 Congressman, that is exactly right. You put your finger on
1044 it, and I think it's important to point out, and this must be
1045 kept in mind as work on the discussion draft goes forward,
1046 this is only one of many, many tools we have in the Clean Air
1047 Act toolbox.

1048 So I have said hypothetical possibility and I use that
1049 word intentionally because I believe it is just hypothetical
1050 and so let's just talk about power plants, and this program
1051 applies to way more than just power plants.

1052 So just look at power plants. There is the acid rain
1053 program. There are interstate transport requirements that
1054 apply. There are, in some cases, nonattainment requirements
1055 that apply.

1056 There is state-level requirements that apply. There are

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1057 air toxic standards that apply. There is a plethora of
1058 emissions limitations that apply to these standards.

1059 So is it hypothetically possible you'll see an emissions
1060 increase with an hourly emissions test? Yeah. But in
1061 reality, you can see that --

1062 Mr. Barton. Let's --

1063 Mr. Wehrum. -- but it's hard to see because we are not
1064 operating in a vacuum. We are operating in a heavily,
1065 heavily regulated --

1066 Mr. Barton. Let's use a real-world example. ERCOT,
1067 down in Texas, is predicting that there could be -- there is
1068 a possibility of rolling power outages this summer in Texas
1069 because the maximum generation for electricity, if you had
1070 the worst case scenario -- 105 in Houston, 105 in Dallas, 105
1071 in Austin -- I mean, just a hellacious hot summer all over
1072 the state -- that we might not have the ability to handle
1073 that.

1074 So we try to get more -- get existing plants to generate
1075 electricity to expand so they can generate more electricity.
1076 Okay. But their emission per unit of output, since they are
1077 going to use newer technology, you get more output than the
1078 old technology.

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1079 But the overall emissions are going to go up because
1080 they are going to generate a lot more electricity. Would
1081 that -- would that trigger a New Source Review under existing
1082 law?

1083 You've got -- you've got a shortage. You're trying to --
1084 a potential shortage. You're trying to plan for that. You
1085 don't have time to build a brand new power plant so you're
1086 going to expand and existing one but use new technology.

1087 You get more output for the same level of emissions but
1088 the overall level of emissions will go up because you're
1089 going to generate 25 or 30 percent more output. So that
1090 would trigger a New Source Review?

1091 Mr. Wehrum. It could.

1092 Mr. Barton. Under new --

1093 Mr. Wehrum. Under current law, and one of the -- one of
1094 the real benefits of the discussion draft is it would allow
1095 for the use of a so-called output-based measure of emissions
1096 increases.

1097 And so it would solve the problem you just described
1098 because it would recognize that in the situation you
1099 described we all want plants to run more and be more
1100 efficient because that is better for the environment.

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1101 Mr. Barton. So my time is about to go out.

1102 Does the Trump administration support the discussion
1103 draft as it's currently drafted?

1104 Mr. Wehrum. The administration has not taken a position
1105 on the draft but, in my capacity -- as I said, in my
1106 testimony, I strongly support what you're --

1107 Mr. Barton. You would recommend my support?

1108 Mr. Wehrum. Yes, Mr. Congressman.

1109 Mr. Barton. Thank you, Mr. Chair.

1110 Mr. Shimkus. The gentleman's time has expired.

1111 The chair now recognizes the gentlelady from Michigan,
1112 Mrs. Dingell, for five minutes.

1113 Mrs. Dingell. Thank you, Mr. Chairman.

1114 Chairman, I've got a number of questions for you today
1115 on ongoing policy changes at the EPA. Before I get -- I am
1116 going build on what my colleague, Mr. Green, was asking you.

1117 But I care very deeply about one of the activities that
1118 you were doing and that is the mid-cycle review on the fuel
1119 economy standards.

1120 First, given recent press reports, I thought there was a
1121 good meeting at the White House on Friday. But yesterday
1122 afternoon's Post made me think that that was not the case.

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1123 Mr. Wehrum, I understand that Administrator Pruitt sat
1124 down with the president and a number of the auto -- CEO
1125 automakers last Friday to discuss automotive fuel economy and
1126 GHG emission standards.

1127 In that meeting, I understand the president directed
1128 Administrator Pruitt and Transportation Secretary Chao to
1129 reach out and negotiate a possible deal with California to
1130 ensure that we have one national program in this country for
1131 fuel economy and that GHG standards are maintained.

1132 I was happy to hear that. That's what the autos say
1133 that they need. California has said that they will work with
1134 everybody.

1135 But I am concerned that yesterday I heard that that was
1136 not the case -- that you were not going to work with
1137 California, signaling the exact opposite of what we heard on
1138 Friday.

1139 It's troubling, because the auto industry needs
1140 stability. They need to know where they are going. Can you
1141 tell me what EPA is doing on this, please?

1142 Mr. Wehrum. Yes, Mrs. Congresswoman.

1143 I wasn't in the meeting with the president so I can't
1144 speak to what was said or what was not said. Like you and

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1145 like everyone else, I got no reports about it. So I am not
1146 going to do a he said, she said about that.

1147 But I can tell you we are working very hard on a
1148 proposed rule. You know the administrator issued the
1149 determination not long ago saying he thinks a change needs to
1150 be made to the current standards in the 2021 and 2025 time
1151 frame, and we are hard at work on that in conjunction with
1152 NHTSA on a proposed rule that would suggest some possible
1153 changes based on the administrator's findings and Secretary
1154 Chao's similar concerns.

1155 Mrs. Dingell. But does EPA understand the importance to
1156 the auto industry of one national standard and that the
1157 importance of what was originally negotiated was having all
1158 players at one table and that if you care about jobs having
1159 two sets of standards so that they are producing one car for
1160 14 states and another is not going to give the companies the
1161 certainty they need?

1162 Mr. Wehrum. I'll speak for myself and say absolutely.
1163 I understand the importance of that and what I would say is
1164 it's a priority of, you know, my office and I believe a
1165 priority of the administration to try to maintain one
1166 national program.

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1167 And so I think to the degree the press reports are
1168 saying that's not a goal I would say that's wrong.

1169 But what I would say is we think changes need to be made
1170 and we have started a dialogue with the state of California.
1171 I've personally been involved in those conversations.

1172 We plan to continue that dialogue consistent with what
1173 the president said in last week's meeting and, in fact, as we
1174 speak are trying to set up the next discussion with our
1175 colleagues at CARB for Wednesday.

1176 They are going to be here this week for meetings and we
1177 are hoping to get together with them while they are here in
1178 town. So we have the dialogue underway.

1179 We intend to continue that dialogue and if we can find a
1180 way to maintain one national program we certainly want to do
1181 that.

1182 I know California wants to do it. I know the OEMs want
1183 to do it and we are going to try.

1184 Mrs. Dingell. I find that reassuring. I would love
1185 your personal commitment to keep trying to make that happen
1186 because we all care about the health of the auto industry.

1187 Mr. Wehrum. We are going to keep trying.

1188 Mrs. Dingell. Let me go quickly, because I am going to

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1189 run out of time, and build on what my colleague, Mr. Green,
1190 was asking about in "once in always in."

1191 Is it -- when Administrator Pruitt testified at a Senate
1192 Oversight hearing, he said that the decision to end "once in
1193 always in" policy was made outside of your office.

1194 Is that accurate? Was the decision to rescind the "once
1195 in always in" policy made outside of your office? What was
1196 your role, if any, in the decision to rescind this policy?

1197 Mr. Wehrum. Well, I signed the memo. But anything I do
1198 is based on the authority of the administrator.

1199 So I can tell you that he was highly involved in the
1200 vetting. He was highly involved in setting the policy and I
1201 ultimately issued the memo. But it's a reflection of the
1202 agency's position.

1203 Mrs. Dingell. So I've got 25 seconds left and I'll
1204 probably ask you to do more of this for the record. But you
1205 were talking that you did do do studies -- studied the issue
1206 but we haven't seen anything and we need to have more
1207 transparency about what the impact was going to be about when
1208 it was conducted, is it publicly available.

1209 You know, we have got the Union of Concerned Scientists
1210 saying that there'll be an additional 155 tons of hazardous

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1211 air pollutants per year. Can we make that data available
1212 that you've analyzed?

1213 Mr. Wehrum. Well, an important part of what we said
1214 when the memo came out is we intend to follow up the memo
1215 with the rulemaking so we can lock in our new policy as
1216 actually part of the codified regulations.

1217 So that will be an opportunity for everyone with an
1218 interest to look at our assessment, to look at our analysis,
1219 and to give us their comments as to whether they think it's
1220 right or not.

1221 Mrs. Dingell. Thank you.

1222 Mr. Shimkus. Gentlelady's time has expired.

1223 The chair recognizes the gentleman from Ohio, Mr.
1224 Johnson, for five minutes.

1225 Mr. Johnson of Ohio. Thank you, Mr. Chairman, and I'd
1226 like to start out by thanking you and Representative Griffith
1227 for your work on this really important bill and for holding
1228 this legislative hearing today.

1229 I am also appreciative of the EPA's work to date to
1230 inject some certainty and common sense into NSR permitting.

1231 It's now incumbent on Congress to further that certainty
1232 through advancing this discussion draft. As Mr. Johnson,

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1233 with America's Electric Cooperatives, who will testify in the
1234 second panel, explains in his testimony, innovative
1235 technologies and systems to improve facilities are being left
1236 on the shelf because of current NSR processes, essentially
1237 undermining the goals and intent of the Clean Air Act.

1238 I think everyone here can agree that's an issue. The
1239 discussion draft we are looking at and discussing today will
1240 rectify that issue while addressing much-needed other reforms
1241 and I am supportive of these efforts.

1242 So, Mr. Wehrum, seeing that there is only one definition
1243 for the term modification in the Clean Air Act, why has the
1244 EPA interpreted this definition differently for the NSR
1245 program than it did for the NSPS program?

1246 Mr. Wehrum. That's hard to answer, Mr. Congressman.
1247 That decision was made a long, long time ago. The NSR
1248 program was first put in place just by regulation in the mid-
1249 70s and then followed up with, you know, a revised program
1250 after the law was changed in 1977.

1251 But the fact is there has been a differently regulatory
1252 definition for a long, long time now and the idea of creating
1253 consistency between the two programs makes perfect sense.

1254 As I said earlier, there is a lot of overlap between the

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1255 two programs. They are intended to accomplish a lot of same
1256 thing and creating that kind of consistency would improve
1257 understandability and implementation.

1258 Mr. Johnson of Ohio. Well, it seems to me that if
1259 Congress wanted the definition to be different it would have
1260 provided a separate definition for each program. That's the
1261 way I look at it.

1262 Mr. Wehrum. That seems logical, Mr. Congressman.

1263 Mr. Johnson of Ohio. Okay. Thank you.

1264 State regulators and the EPA both play an important role
1265 in administering the NSR permitting program. In what ways
1266 are you seeking to improve this federal-state interaction
1267 related to the NSR program?

1268 Mr. Wehrum. Well, you're right. I mean, the Clean Air
1269 Act, in many respects, is an exercise in cooperative
1270 federalism. We, at the federal government level, have a lot
1271 of responsibility.

1272 But Congress intended states to take a lot of
1273 responsibility themselves and, in fact right at the beginning
1274 of the Clean Air Act it says air pollution control at its
1275 source is the responsibility of the states under the Clean
1276 Air Act.

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1277 So Administrator Pruitt takes that very seriously. I
1278 take that very seriously. Part of our concern with the
1279 program is it has been too federal heavy, as a lot of what we
1280 do has been federal heavy.

1281 And so in addition to improving the federal program. Our
1282 intention is to make sure the states understand they have
1283 flexibility in what they do and how they do it under the NSR
1284 program.

1285 The things we do we think make good sense and would be
1286 real improvements and we hope states pick up those ideas.
1287 But if they have other ideas they want to implement we are
1288 going to be flexible because we should be flexible. That's
1289 how the law was intended to be implemented.

1290 Mr. Johnson of Ohio. Well, I -- you know, while it's
1291 not perfect I certainly applaud the efforts of the EPA to
1292 engage the states across the spectrum in policy making
1293 because I agree with you -- I think that's important.

1294 Can you talk about the role of the policy office and
1295 enforcement offices at the EPA? Specifically, should the
1296 policy office or the enforcement office determine what
1297 defines a modification under NSR?

1298 Mr. Wehrum. As I like to say, they is us. I mean, the

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1299 EPA is an entity and the EPA is part of a larger entity,
1300 which is the executive.

1301 So, you know, as things currently stand, the
1302 responsibility of rulemaking sits with my office. But a
1303 responsibility for interpretation and implementation, you
1304 know, in some cases, including NSR, sits in other offices --
1305 in the enforcement office.

1306 So we -- in a lot of ways -- you know, that was done
1307 intentionally during the Clinton administration for reasons
1308 but for a lot of reasons that doesn't make a lot of sense
1309 and, you know, we have had a conversation in the way as to
1310 whether those delegations should be reassigned because a lot
1311 of people think and, frankly, I believe that people who write
1312 the rules should be the people who interpret the rules.

1313 Mr. Johnson of Ohio. In the last 30 seconds I've got,
1314 what are you doing to ensure that there is clear up-front
1315 guidance, which will reduce uncertainty about future
1316 enforcement penalties?

1317 Mr. Wehrum. Oh, boy. Well, I said earlier I need to
1318 stay in my lane. So enforcement penalties is not in my lane.
1319 That's a question that's best asked to the enforcement
1320 office assistant administrator.

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1321 Mr. Johnson of Ohio. Okay. All right.

1322 Mr. Chair -- Mr. Chairman, I yield back.

1323 Mr. Shimkus. Gentleman yields back his time.

1324 Chair recognizes the gentleman from California, Mr.

1325 Peters, for five minutes.

1326 Mr. Peters. Thank you, Mr. Chairman. Thank you, sir,
1327 for being here.

1328 As you well know, in 2011 the EPA entered into an
1329 agreement to settle a lawsuit brought by states and
1330 environmental groups in which EPA agreed to set standards for
1331 GHG emissions from new and existing fossil fuel-powered fired
1332 power plants under Section 111 of the Clean Air Act.

1333 The Supreme Court ruled that EPA must regulate
1334 greenhouse gases if EPA finds that they endanger the health
1335 and welfare of current and future generations.

1336 Following the Supreme Court's decision, EPA issued what
1337 is known as an endangerment finding. That finding requires
1338 the EPA to take regulatory action under the Clean Air Act to
1339 curb emissions of carbon dioxide, methane, and four other
1340 heat-trapping air pollutants from vehicles, power plants, and
1341 other industries.

1342 That ruling allows the EPA to regulate greenhouse gases

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1343 as air pollutants covered by the Clean Air Act.

1344 This led to the clean power plan and essentially the
1345 endangerment finding gave EPA its mandate to regulate fuel
1346 economy standards for vehicles, permitting requirements for
1347 new construction, or the GHG regulation of vehicles and new
1348 stationary sources.

1349 So now that you're on the job, I wanted to ask you
1350 specifically do you believe that greenhouse gas emissions
1351 endanger the public health?

1352 Mr. Wehrum. Well, as I said in my confirmation hearing,
1353 there is a progression you need to go through to kind of get
1354 to where you are and one question is, is the climate changing
1355 and I think the answer is, clearly, yes.

1356 The second question is do manmade emissions contribute
1357 to that and I think the answer is, clearly, yes.

1358 The third question is, how much do manmade emissions
1359 contribute to that, and what I said in my confirmation
1360 hearing and what I continue to believe is I am not sure.

1361 And what I said then was, you know, in -- for the last
1362 10 years before coming here I was an attorney in private
1363 practice and nobody every hired me to go dive into the
1364 mountain of data that exists on climate and so there is a lot

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1365 I had to learn and that's what I said six months ago.

1366 Mr. Peters. So right now, you have no opinion on
1367 whether greenhouse gas is a danger to the public health?

1368 Mr. Wehrum. Well, where I was going was I said I have a
1369 lot to learn and, you know, I am putting my money where my
1370 mouth is and the climate protection division is, you know,
1371 one of the divisions within my office and what I asked them,
1372 you know, beginning a few months ago is to do a series of
1373 briefings on the state of climate science to help me better
1374 understand, you know, what science is out there --

1375 Mr. Peters. Have you taken those briefings yet?

1376 Mr. Wehrum. We are in the process. I've done several
1377 and we have more to go. There is a mountain. There is a lot
1378 out there and --

1379 Mr. Peters. Has the staff indicated that they've
1380 changed their conclusions about this at all?

1381 Mr. Wehrum. Well, the endangerment -- I mean, all
1382 decisions like that flow from the administrator. So that
1383 wasn't a staff decision. That was a decision by the
1384 administrator at the time.

1385 Mr. Peters. Has the administrator expressed to you
1386 whether he has an opinion on whether greenhouse gases

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1387 endanger the public health?

1388 Mr. Wehrum. He has a process concern, at a minimum.
1389 His concern is the endangerment finding you describe was made
1390 without consideration of alternative views.

1391 Mr. Peters. I want to get to that in a minute. But I
1392 am asking his particular opinion on the -- whether --

1393 Mr. Wehrum. Well --

1394 Mr. Peters. -- what's the opinion of the administrator
1395 of whether greenhouse gases endanger the public health? Has
1396 he expressed that to you?

1397 Mr. Wehrum. Well, I am not going to speak for the
1398 administrator. But, again, I just -- to complete the
1399 thought, he -- he's very concerned about process and, you
1400 know, believes -- the way he talks about I think is the way
1401 to talk about it is, you know, people with a different view
1402 haven't had a voice so far in this process and, you know,
1403 he's been trying to find a way to allow them to have some
1404 voice and --

1405 Mr. Peters. What's the schedule for that process? Do
1406 you know what his process is going to be?

1407 Mr. Wehrum. Well, there is no process in place and
1408 there is no schedule right now. So we have talked about it

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1409 but we are not --

1410 Mr. Peters. Is it your intention or do you understand
1411 it to be the administrator to revisit the endangerment
1412 finding with respect to the greenhouse gases?

1413 Mr. Wehrum. We don't have any plans right now. As I
1414 said, we have talked a lot about the integrity of the process
1415 that led to that determination and so far we are focused on
1416 process and integrity and we haven't talked about outcome.

1417 Mr. Peters. I am totally willing to accept your answer
1418 except there is no process either. There is no answer on
1419 whether the administration believes that greenhouse gases
1420 pose a threat to human health and the environment.

1421 There is no answer. I don't get it from the
1422 administrator. I don't get it from you. Apparently, you
1423 haven't gotten it yet from your staff.

1424 And then everyone talks about a process, but there is no
1425 process either. There is no process for these voiceless oil
1426 and gas companies to get their voices heard.

1427 So I am just -- I am just expressing a little bit -- I
1428 mean, I am uncomfortable staying where we are but I am
1429 suspicious that that's not where you want to be.

1430 Mr. Wehrum. Well, what I would say is it's important to

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1431 look at the broader context. So we -- well, what I mean by
1432 that is Congresswoman Dingell asked me a question a second
1433 ago about car and truck standards that exist at least from an
1434 EPA standpoint because of greenhouse gas emissions.

1435 And, you know, my answer was we will work on a proposed
1436 rule to maybe change those standards. I didn't say we are
1437 working on a proposed rule to eliminate those standards and,
1438 you know, we are not going to do that.

1439 Mr. Peters. Just to conclude, there is no -- there is
1440 no action right now to revisit the endangerment finding
1441 pursuant to greenhouse gas. Is that correct?

1442 Mr. Wehrum. There is -- that's correct.

1443 Mr. Peters. Thank you. I yield back.

1444 Mr. Shimkus. Gentleman yields back his time.

1445 The chair recognizes the gentleman from Texas, Mr.
1446 Olson, for five minutes.

1447 Mr. Olson. I thank the chair, and welcome, Mr. Wehrum.

1448 As you know, many projects we see being undertaken at
1449 large sites are designed to improve emissions. One of the
1450 best examples is from home, Texas 22.

1451 It's called the Petra Nova Project. That's a power
1452 plant owned by NRG. They have four coal generators and four

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1453 natural gas generators.

1454 On their own, they had a goal to reduce greenhouse gas
1455 emissions. Their solution was to capture carbon emissions
1456 from the coal production and use those captured CO2 to
1457 increase oil production.

1458 Their capture right now the equivalent of 350,000
1459 emissions daily from automobiles -- a big amount of carbon
1460 captured by this one power plant.

1461 Its NRG -- the capture system was designed by JX Nippon
1462 and the oil companies, Hilcorp, that has an old oil field
1463 that's about 75 miles southwest with a pipeline in existence
1464 that would get rid of that.

1465 I invite you to come down there, all my colleagues, to
1466 see what's working. It's the only one in the whole world
1467 that's actually viable for carbon capture.

1468 But that's unique. Can you talk about some of the other
1469 types of large-scale projects like Petra Nova that you have
1470 seen that make our air cleaner and what are you doing to
1471 clear the pathway for those guys to get through this
1472 bureaucracy and help us make our air cleaner?

1473 Mr. Wehrum. Mr. Chairman, I am not aware of any other
1474 ongoing projects like Petra Nova. I think it's a very unique

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1475 facility -- at least in the United States. I think there are
1476 some internationally.

1477 But I think enormous strides continue to be made in
1478 controlling air emissions generally and CO2 emissions, more
1479 specifically.

1480 So that's a very unique technology doing a very unique
1481 thing. But when you set that aside and look at -- just
1482 thinking about the world of power generation, tremendous
1483 progress has been made and continues to be made.

1484 And we have talked a little bit about the shift away
1485 from coal power into natural gas-fired and that's happening
1486 for a variety of reasons. But as a result of that alone
1487 there have been substantial reductions in emissions from the
1488 power sector nationwide over the past few years.

1489 So think substantial progress has been made.
1490 Substantial progress will continue to be made and our job as
1491 an agency is to be smart about how we implement our program
1492 so that we accomplish good results but don't accomplish
1493 adverse results at the same time.

1494 Mr. Olson. Again, Petra Nova is just one example of
1495 what we can do with our technology right now.

1496 My question is are there other projects out there, big

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1497 ones, that you're looking at that you can help them get
1498 through this bureaucracy, get that project online and make
1499 our air cleaner like Petra Novas? Doing anything else out
1500 there in the country as a model that you're working on?

1501 Mr. Wehrum. And, again, the Petra Nova technology is
1502 very, very specific. But the answer to your broader question
1503 is on a daily basis we work with individual facilities who
1504 come to us seeking help and understanding how to interpret
1505 and apply our regulations.

1506 So we do applicability determinations. We do
1507 interpretive memos of the sort that we have been talking
1508 about. So we put a tremendous amount of time and effort into
1509 helping affected facilities, understand how the program
1510 applies and help them navigate or, you know, as you said,
1511 navigate the complex programs that do apply.

1512 Mr. Olson. Thank you.

1513 Final question -- you commented that the New Source
1514 Review process can be very complex and time consuming. It
1515 hurts my brain, it's so time consuming.

1516 Can you talk about why reducing complexity does not mean
1517 necessarily improving air quality? If we have reduced
1518 complexity, can we have reduced air quality? Or is it -- is

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1519 it direct tie? How does it work? No complexity -- have to
1520 get more complex or can we do less complexity cleaner air?

1521 Mr. Wehrum. Oh, I think we can have it all. You bet.

1522 Mr. Olson. There we go. I've got 52 seconds -- a
1523 colleague want my time?

1524 Mr. Shimkus. Yield back.

1525 Mr. Olson. The chair will yield back.

1526 Mr. Shimkus. The gentleman yields back the time.

1527 The chair recognizes the gentleman from -- the other
1528 gentleman from Texas, Mr. Flores, for five minutes.

1529 Mr. Flores. Thank you, Mr. Chair, and I appreciate the
1530 witness for being here today.

1531 We talked through several of the concerns about the NSR
1532 program this morning and one of the ones we haven't talked
1533 about is the penalties for lack of compliance.

1534 And it's my understanding that by statute the EPA may
1535 impose fines of more than \$95,000 per day for Clean Air Act
1536 violations. Is that correct?

1537 Mr. Wehrum. I believe that's true.

1538 Mr. Flores. Okay. So if the EPA believes that a
1539 facility should have gone through an NSR for a change at the
1540 facility it could threaten to fine that facility \$95,000 for

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1541 every day that the facility operated since that change was
1542 made? Is that also correct?

1543 Mr. Wehrum. That's correct, Congressman.

1544 Mr. Flores. Okay. So in this case, just
1545 hypothetically, if the EPA identifies a change more than
1546 three years after the fact, this could be a potential --
1547 could involve fines of more than \$100 million.

1548 Would you agree that this type of penalty and the
1549 uncertainty driven by the penalty serves as a disincentive
1550 for companies to carry out efficiency improvements?

1551 Mr. Wehrum. Well, Mr. Congressman, let me take a step
1552 back.

1553 Mr. Flores. Sure.

1554 Mr. Wehrum. I've said a couple times in this hearing
1555 it's really important for me to stay in my lane and, you
1556 know, I am responsible for program development and
1557 implementation but not for enforcement.

1558 So I have personal views on the questions you're asking
1559 but I think from an institutional standpoint they are best
1560 directed to the assistant administrator for the enforcement.

1561 Mr. Flores. But if you put yourself into the shoes of a
1562 company that's trying to improve their efficiency and they

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1563 determine that they -- they make a determination that they
1564 didn't need to do an NSR because they are trying to improve
1565 efficiency and to reduce their emissions, but then the EPA
1566 comes in after the fact and says, oh, here's a \$100 million
1567 penalty, then the folks making the decision about whether or
1568 not to invest may elect to not invest at all because of the
1569 uncertainty regarding the fines that could happen to them.

1570 Mr. Wehrum. Mr. Congressman, so notwithstanding what I
1571 just said --

1572 Mr. Flores. I understand.

1573 Mr. Wehrum. -- the point you're raising is, is there
1574 significant liability associated with possible violations
1575 with New Source Review, the answer is absolutely yes.

1576 You've been focusing in penalties, but penalties are one
1577 piece of the overall picture if there is an enforcement
1578 action. They can add up, as you say, over a period of years
1579 to a big number. But they are also -- often the bigger
1580 number in the enforcement cases is the injunctive relief,
1581 which is the order to install air pollution controls and take
1582 other mitigation measures.

1583 So all of that together can turn into a very big number
1584 for, you know, a typical power plant, and your point is do

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1585 affected facilities think about that as they are making
1586 decisions about how to implement projects and the risks that
1587 may come with that, and the answer is absolutely positively
1588 yes.

1589 Mr. Flores. Right. And that sort of leads to the next
1590 question is does it make sense that a company making a small
1591 investment or a change in an existing facility should be
1592 required by the NSR program to spend hundreds of millions of
1593 dollars on a new study of their pollution control equipment
1594 if they were just trying to improve efficiency, reduce
1595 emissions already.

1596 Mr. Wehrum. Right. And that doesn't make sense at all.

1597 Mr. Flores. Okay. Also, some equipment manufacturers
1598 report that there is little demand for energy efficiency
1599 products that they are selling because companies are
1600 unwilling to retrofit old equipment with newer technologies
1601 due to the concern about triggering an NSR.

1602 This is the whole purpose of the hearing and that is how
1603 can we reform the NSR program so that companies can be --
1604 certainly won't be penalized for doing activities that
1605 actually reduce pollution.

1606 And that gets us into the discussion draft and I think

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1607 you've said that you support the direction we are going in
1608 the discussion draft.

1609 Mr. Wehrum. Yes, Mr. Congressman. I think it would
1610 mark real improvement.

1611 Mr. Flores. Okay. Thank you. I yield back.

1612 Mr. Shimkus. Gentleman yields back the time.

1613 The chair now recognizes the gentleman from Georgia, Mr.
1614 Carter, for five minutes.

1615 Mr. Carter. Thank you, Mr. Chairman.

1616 Thank you, Mr. Wehrum, for being here. I appreciate you
1617 being here.

1618 I wanted to change our focus. I know we are here to talk
1619 about NSR but there is the subject that is very important to
1620 me that I brought up in a number of meetings with Secretary
1621 Pruitt that I'd like to ask you about.

1622 And not only -- and that is about marine engine waivers
1623 for pilot boats. That's something that's very important. I
1624 have two major seaports in my district. They are struggling
1625 with this issue.

1626 I brought it up, as I said, to EPA staff and to
1627 Secretary Pruitt when he's been before our committee. Not
1628 only do I want to change the subject but I want to change the

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1629 tone because I want to say thank you. You've responded, and
1630 I would ask that you convey my thanks to Secretary Pruitt as
1631 well.

1632 He committed, last time he was here, that he would
1633 personally look into this, and he did, and I want to thank
1634 you for that. And my confidence has been restored and I
1635 appreciate it very much, so kudos to EPA for this.

1636 I want to ask you, because what happened is that three
1637 staff members were sent out to one of the -- one of the
1638 engine manufacturers to look at this and to study in and see
1639 what a problem it was and, particularly, for the high-speed
1640 commercial vessels between 45 and 80 feet, which is what we
1641 use in the Savannah Harbor and what is very important to us.

1642 And this is -- we feel like we are the tip of the spear
1643 here because we are kind of the first ones that have had to
1644 deal with this.

1645 So we are trying to get it resolved as quickly as we can
1646 and it's very important because if we don't have those harbor
1647 boats out there -- those pilot boats out there, business
1648 stops and commerce is business for us down there.

1649 And I wanted to ask you, the staff that visited the boat
1650 manufacturer indicated that they were going to be putting

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1651 together a report.

1652 Have they come back with any initial findings yet or any
1653 feedback that you might be able to share with us?

1654 Mr. Wehrum. They have not, but they were just out there
1655 last Thursday. So they haven't had much time to --

1656 Mr. Carter. I understand. Any idea -- I hate to be
1657 impatient but, you know, I got -- they are bearing down on me
1658 and this has, in all honesty, been going on a while -- any
1659 idea about -- because we have heard that it may take up to
1660 two years and that is simply not acceptable. That's just not
1661 going to work.

1662 Mr. Wehrum. Well, we are moving expeditiously,
1663 Congressman. I've talked with my staff on a number of
1664 occasions about this issue. I understand exactly what's
1665 going on.

1666 Mr. Carter. Thank you.

1667 Mr. Wehrum. You know, it was important for our folks to
1668 get some boots on the ground out at the engine manufacturers.
1669 So we were happy to have that opportunity and we plan to
1670 press forward as quickly as we can.

1671 And, I think as you know, it may not be a few weeks kind
1672 of thing. It may be a few months kind of thing just because

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1673 we may have to revise our rules to accommodate what's going
1674 on.

1675 Mr. Carter. Well, let me ask you this.

1676 Mr. Wehrum. May was the key word there --

1677 Mr. Carter. Okay. I understand.

1678 Do you not normally put waivers in your rules like that
1679 with anticipation that there will be, you know, exceptions to
1680 those rules?

1681 Mr. Wehrum. We do sometimes. But usually when we know
1682 there is an issue to be resolved. This was something we
1683 didn't see coming. So there is nothing in the rule that says,
1684 you know, there is a way to -- well, there may not -- again,
1685 may is the key word.

1686 Mr. Carter. I understand.

1687 Mr. Wehrum. We are trying to find a way.

1688 Mr. Carter. Well, two more things real quick. First of
1689 all, I just -- I would just ask your commitment to keep this
1690 on the front burner and to please, you know, go back and if
1691 you can provide my staff with any information we would
1692 certainly appreciate it.

1693 Mr. Wehrum. Absolutely.

1694 Mr. Carter. And secondly, do you know of -- if you see

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1695 any other regulatory hurdles that we are going to have to
1696 overcome if you'll please let us know about those as well.

1697 Mr. Wehrum. Will do.

1698 Mr. Carter. And then, finally -- and I'll yield after
1699 this -- again, please convey my sincere thanks to the
1700 secretary for acting on this and fulfilling his commitment.

1701 Mr. Wehrum. We will do that.

1702 Mr. Carter. Thank you, and I yield back, Mr. Chair.

1703 Mr. Shimkus. Gentleman yields back his time.

1704 The chair recognizes the gentleman from South Carolina,
1705 Mr. Duncan, for five minutes.

1706 Mr. Duncan. Thank you, Mr. Chairman.

1707 I want to begin by saying that I am supportive of Mr.
1708 Griffith's efforts to improve and reform the NSR permitting
1709 program.

1710 In my opinion, the NSR program in its current seems like
1711 a counterproductive policy that disincentivizes companies
1712 from pursuing projects that would increase efficiency and
1713 mitigate environmental pollution.

1714 And I would say that frustration with the American
1715 people and federal bureaucracies and the speed of permitting,
1716 whether it's this or whether it's getting a Class III license

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1717 with ATF, it permeates the whole government the frustration
1718 of the American people.

1719 They expect our government to be more efficient and I
1720 think that's what the purpose of Mr. Griffith's efforts are -
1721 - to make government and at least the EPA and its permitting
1722 process a little more efficient.

1723 So I agree with your remarks, Administrator Wehrum, that
1724 we need to simplify the program and provide clarity to
1725 companies regulated by this.

1726 I want to talk about some of the confusion on how much
1727 construction companies are allowed to do prior to obtaining
1728 an NSR permit. I do not believe that this is addressed in
1729 the discussion draft.

1730 Can you speak to this a little bit? What can
1731 construction companies do prior to getting approval?

1732 Mr. Wehrum. This is another example of why the NSR
1733 program drives people crazy. So it's a preconstruction
1734 permit program, which means, you know, you need to have the
1735 permit in hand before you begin the permitted activity --
1736 begin constructing the permitted activity.

1737 So that sounds simple but it's complicated in practice
1738 because what is the permitted facility? You go out and pour

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1739 a foundation -- is that part of the facility? You go out
1740 and, you know, if you build roads, security gates, is that
1741 part of the permitted facility?

1742 You go out -- if you're building a boiler, wouldn't you
1743 buy the boiler and put it in place? So a judgement has to be
1744 made as to what point in the physical construction process is
1745 the point that you can, you know, that marks the beginning of
1746 the regulatory process.

1747 The EPA has spoken to that many times in the past but
1748 it's a subjective thing, not an objective and there is no
1749 bright line here and, you know, EPA has made several case-
1750 specific determinations.

1751 I said in my opening remarks and in my written
1752 testimony, you know, we have begun what I believe to be an
1753 aggressive process of identifying problems with rules and
1754 opportunities for improvement in the rules and the issue that
1755 you've raised is one of those things that's on our radar
1756 right now.

1757 You know, what we want to do is encourage investment in
1758 facilities, allow for projects to go forward in anticipation
1759 of, you know, getting the permits that are necessary.

1760 So the permits shouldn't stand as an unnecessary

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1761 obstacle to common sense activity. And I think there -- you
1762 know, I think we could put a finer point on this issue and
1763 it's something that we intend to do, going forward.

1764 Mr. Duncan. And I appreciate that. Let me ask, how
1765 much technology is used? I applied for a big game permit for
1766 my son online. Got a notification we got accepted. I can
1767 dial up a buoy in the Charleston Harbor and find out what the
1768 weather conditions are.

1769 Is the agency using the technology to find out what the
1770 air quality emissions are at a plant in Easley, South
1771 Carolina, and whether they are in attainment or not, or a
1772 construction project that may be expanding an operation
1773 there, looking at current air quality and I guess the whole
1774 application process online with feedback from the agency.

1775 How are you guys using technology and what can you do
1776 better?

1777 Mr. Wehrum. We are trying very hard to keep up.
1778 Technology and the air quality monitoring and information
1779 management areas is growing by leaps and bounds. So
1780 substantial improvement is being --

1781 Mr. Duncan. Are all these monitors transmitting to
1782 Washington or wherever the field office is our is somebody

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1783 having to drive their pickup truck out there and pull that
1784 data?

1785 Mr. Wehrum. A little bit of both. A little bit of
1786 both.

1787 Mr. Duncan. Little bit of both?

1788 Mr. Wehrum. Yes. So, you know, the answer to your
1789 question is we have room for improvement and we are trying --
1790 I have a whole office down in North Carolina that's focused
1791 on emissions measurement technology and I can tell you this
1792 is very much a focus of ours.

1793 Mr. Duncan. What do you need from Congress to help make
1794 that happen? To help make the technology into the 21st
1795 century?

1796 Mr. Wehrum. You know, I don't think there are barriers
1797 under the law for us right now. You know, I think what we
1798 need to do just as an institution is be smart about using our
1799 resources and be smart about keeping up with the technologies
1800 and we are committed to doing that.

1801 Mr. Duncan. Okay.

1802 Mr. Chairman, I don't have anything further. I yield
1803 back.

1804 Mr. Shimkus. The gentleman yields back his time. The

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1805 chair now recognizes the gentleman from Virginia, Mr.
1806 Griffith, who's been patiently waiting, for five minutes.

1807 Mr. Griffith. Thank you very much, Mr. Chairman. I
1808 greatly appreciate it and I want to thank you, the E and C
1809 staff and everyone who has helped get this bill to this
1810 critical point in the process and I do appreciate it.

1811 And I appreciate you, Administrator Wehrum, for being
1812 here as well today. The current EPA has made New Source
1813 Review reform a priority. I share this priority and
1814 appreciate your comments on my legislation today.

1815 I've heard from folks in my district as well as
1816 industries here and in the previous hearing how complicated
1817 and burdensome this program is and it was singled out
1818 multiple times in the Department of Commerce's report on
1819 regulatory burdens for domestic manufacturing.

1820 That being said, I have a story in my own district which
1821 I think brings home the need for this reform. It doesn't
1822 cause a lot of pollution nor any pollution at all.

1823 What we have is a manufacturer of furniture, and when
1824 touring that manufacturer of furniture who was -- it was
1825 Vaughan-Bassett Company that was the subject of "Factory
1826 Man," the fight of John Bassett to keep American furniture

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1827 going when it looked like China and the Asians were going to
1828 chase us out of the marketplace and he did a great job.

1829 But I am touring his factory and there is a conveyer
1830 belt that runs down and runs back and there is nothing out
1831 there, and they built ramps to get over -- get back over it
1832 again on the other side.

1833 And I said to him at the time, five or six years ago
1834 when I was first touring, and I said, "What's this here for?"
1835 "Oh, we got some regulation. If we change it, we have to
1836 redo everything. So we have this conveyor belt that goes out
1837 to nowhere and comes back. And it's not efficient, but we
1838 don't want to deal with it."

1839 In checking to make sure it was New Source Review before
1840 I came to this hearing, we checked on this last week. They
1841 had to check with their regulatory guy who handles all this
1842 because they are not really sure. They just know they can't
1843 touch it. Goes to nowhere. Adds time to the production of
1844 the pieces of furniture.

1845 They don't use what the original purpose was but they
1846 have to keep the conveyor belt going. That affects their
1847 factory, and let me detail from the book how I know it
1848 affects their factory.

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1849 So he's getting heavy competition from the Chinese and
1850 he's going to have to do something about it. He's taken
1851 apart one of the pieces they are doing to see what they are
1852 doing more efficiently than what he's doing in his factory,
1853 and it states in this book by Beth Macy, "In his sweat-
1854 stained golf hat, John Bassett stood atop a conveyor belt and
1855 told his workers he had no intention of closing the factory.
1856 Bassett asked his workers to not only work faster but also
1857 suggest ideas for factory floor improvements. What he didn't
1858 want to hear, what he never wants to hear, was the phrase,
1859 'It can't be done.' If something was wrong with a machine
1860 and it was slowing production down, the workers should
1861 personally let him know."

1862 That conveyor belt is slowing down that process. That
1863 conveyor belt means his factory is less efficient. He gets
1864 fewer pieces of furniture out every day than it might
1865 otherwise be able to do.

1866 That conveyor belt is a part of the problem and the New
1867 Source Review keeps him from changing that conveyor belt
1868 because they are afraid that they will -- EPA will whisk in
1869 on changing that conveyor belt and make them comply with
1870 every new standard that's come about since whenever it was

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1871 they put their process in place.

1872 Instead of being able to make small improvements along
1873 the way or even change this conveyor belt, they can't get it
1874 done because this regulation is too burdensome, so burdensome
1875 they had to even go check with the regulatory guy to find out
1876 for sure that that was the rule that caused the problem, and
1877 it was.

1878 I am not going to tell Mr. Bassett it can't be done. We
1879 need to change this rule and I appreciate your help in that
1880 regard.

1881 So you disagree with anything I've just said?

1882 Mr. Wehrum. I do not.

1883 Mr. Griffith. And I appreciate that.

1884 You know, we have heard a lot about electric generation
1885 and other things today, and I've just told you this story.

1886 But, you know, whatever it is, can you speak to what the
1887 EPA is doing on its own? I mean, I think the bill is the
1888 best way to do it but what's the EPA doing on its own to try
1889 to reform the NSR?

1890 Mr. Wehrum. So a couple comments.

1891 First of all, thank you very much for what you're doing,
1892 Mr. Congressman. As you know, I've spent a lot of time on

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1893 this program in my career. It's a very high priority of mine
1894 to make it better and I appreciate your efforts.

1895 I think your example highlights an important aspect of
1896 NSR, which is it applies to everybody who emits stuff, not
1897 just power plants, not just petroleum refineries.

1898 So a big reason why we need to improve the program is
1899 for the furniture makers of the world and the brick plants of
1900 the world and the small businesses and the small entities and
1901 facilities that grapple with this on a daily basis.

1902 We, at EPA, are working very hard, you know, within the
1903 authority we have to improve the program through rule changes
1904 and interpretations and policy memos and we are going to
1905 continue to try as long as I am here.

1906 Mr. Griffith. Well, and I am glad that we agree that
1907 narrow and targeted NSR is necessary but that we need to make
1908 some reforms.

1909 And with that, I yield back.

1910 Mr. Shimkus. Gentleman's time has expired.

1911 The chair thanks Mr. Wehrum for being here and being
1912 patient and answering our questions, and seeing that there is
1913 no other members wishing to ask you questions, we will
1914 dismiss you and impanel the second group.

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1915 [Pause.]

1916 Okay. Thank you all for being here. You all saw the
1917 first panel so we will recognize each one of your for five
1918 minutes for an opening statement.

1919 Your full record is -- testimony is submitted for the
1920 record and we will start with Mr. Sean Alteri, director,
1921 Division of Air Quality, Kentucky Department of Environmental
1922 Protection.

1923 Sir, you are recognized for five minutes.

1924 And I think there is a button on there and make sure --
1925 you kind of pull the mic a little bit close to you.

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1926 STATEMENTS OF SEAN ALTERI, DIRECTOR, DIVISION OF AIR
1927 EQUALITY, KENTUCKY DEPARTMENT OF ENVIRONMENTAL PROTECTION;
1928 PAUL BALDAUF, P.E., ASSISTANT COMMISSIONER, AIR QUALITY,
1929 ENERGY, AND SUSTAINABILITY, NEW JERSEY DEPARTMENT OF
1930 ENVIRONMENTAL PROTECTION; ROSS E. EISENBERG, VICE PRESIDENT,
1931 ENERGY AND RESOURCES POLICY, NATIONAL ASSOCIATION OF
1932 MANUFACTURERS; KIRK JOHNSON, SENIOR VICE PRESIDENT,
1933 GOVERNMENT RELATIONS, NATIONAL RURAL ELECTRIC COOPERATIVE
1934 ASSOCIATION; BRUCE BUCKHEIT, ANALYST AND CONSULTANT; JEFFREY
1935 R. HOLMSTEAD, PARTNER, BRACEWELL LLP

1936

1937 STATEMENT OF SEAN ALTERI

1938

1939 Mr. Alteri. Thank you.

1940 Good morning, Chair Shimkus, Ranking Member Tonko, and
1941 members of the subcommittee.

1942 My name is Sean Alteri and I currently serve as the
1943 director of the Division for Air Quality in Kentucky. I am
1944 honored to testify today and share a state's perspective
1945 relative to New Source Review.

1946 As an air quality regulator, I applaud your efforts to
1947 address elements of the New Source Review permit program.

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1948 The New Source Review permit program is necessary to
1949 protect public health and carry out the congressional
1950 declaration of purpose, which is to ensure that economic
1951 growth will occur in a manner consistent with the
1952 preservation of existing clean air resources.

1953 To effectively administer the New Source Review program,
1954 permitting authorities must be provided with regulatory
1955 certainty. During this -- during this February's New Source
1956 Review hearing, Chair Shimkus correctly noted that there are
1957 over 700 guidance memos and documents related to New Source
1958 Review.

1959 Under Kentucky law, unlike the federal government, the
1960 cabinet is prohibited from regulating by policy and guidance.
1961 Codification of EPA's New Source Review guidance memos will
1962 provide regulatory certainty to the permitting authorities as
1963 well as the regulated community.

1964 Regarding the proposed reform legislative discussion
1965 paper included with this hearing, the narrow scope of the
1966 language further defined modification highlights issues
1967 related to routine maintenance, repair, and replacement.

1968 Pursuant to Section 111 of the Clean Air Act, a physical
1969 change to an emissions unit or a change in the method of

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1970 operation constitutes a modification and it may subject the
1971 facility to New Source Review.

1972 Due to potential New Source Review requirements and the
1973 applicability of new source performance standards, facilities
1974 have, unfortunately, foregone efficiency improvements that
1975 could provide significant environmental benefits.

1976 In an effort to reduce significant delays in permitting,
1977 the proposed amendment to the definition of modification does
1978 not apply to projects that implement the efficiency measures.

1979 The proposed amendment also addresses projects that are
1980 designed to restore, maintain, or improve the reliability or
1981 safety of the source and limits the emissions increases to
1982 the maximum achievable hourly emission rate demonstrated in
1983 the last 10 years.

1984 These proposed amendments will provide the timely
1985 issuance of permits. Permitting energy efficiency projects
1986 effectively will be critical when EPA issues a clean power
1987 plant replacement rule and states are mandated to reduce its
1988 CO2 emission rates from its existing electric-generating
1989 units.

1990 In addition, the proposed legislative text also
1991 clarifies the term construction under the New Source Review

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1992 program and when a modification should be subject to New
1993 Source Review as a major modification.

1994 The proposed statutory text clarification eliminates
1995 confusion as to when NSR applies. Currently, the most
1996 difficult aspect of permitting a major emitting facility
1997 under NSR is the air dispersion modeling.

1998 Last March, I testified before this subcommittee and
1999 expressed the need for EPA to fully develop and codify
2000 implementation requirements at the same time the EPA revises
2001 a national ambient air quality standard.

2002 H.R. 806 proposed to extend the review time of a NAAQS
2003 to a period of 10 years, which would allow EPA to resolve the
2004 technical deficiencies of the NAAQS evaluation and provide
2005 regulatory certainty to permitting authorities.

2006 Specifically, air dispersion modeling requirements
2007 necessary to evaluate the consequences of any decision to
2008 permit increased pollution in an area must be promulgated at
2009 the same time the EPA revises a national ambient air quality
2010 standard.

2011 As an example, EPA revised the national ambient air
2012 quality standard for particulate matter less than 2.5 microns
2013 in July of 1997.

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2014 However, due to technical issues and limitations
2015 associated with the inventories as well as the modeling
2016 techniques, EPA applied the PM 10 surrogate policy until
2017 March 23rd, 2010.

2018 EPA's inability to promulgate clear regulatory
2019 requirements unnecessarily led to several Title V permit
2020 objections.

2021 And to reiterate, EPA must promulgate implementation
2022 requirements at the same time it promulgates a new or revised
2023 national ambient air quality standard to avoid costly
2024 unnecessary delays.

2025 Another example is the 2010 revision to the SO2
2026 standard. Although the sulfur dioxide standard was revised
2027 in 2010, the EPA promulgated amendments to the modeling
2028 techniques in February of 2017.

2029 These amendments addressed significant unresolved
2030 technical limitations of the models. As a result of the
2031 regulatory uncertainty, several projects were not able to
2032 conduct the necessary evaluations required by the New Source
2033 Review program and thus limiting the potential for economic
2034 growth and development.

2035 In closing, state, tribal, and local permitting

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2036 authorities must be provided with regulatory certainty
2037 throughout the New Source Review permitting process.

2038 The regulatory certainty is necessary to carry out our
2039 statutory obligations, which include providing for economic
2040 growth and development.

2041 And thank you for the opportunity to participate in
2042 today's hearing and I look forward to any questions you may
2043 have regarding my testimony.

2044 [The prepared statement of Mr. Alteri follows:]

2045

2046 *****INSERT 4*****

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2047 Mr. Shimkus. Thank you.

2048 The chair now recognizes Mr. Paul Baldauf, professional
2049 engineer, assistant commissioner, Air Quality, Energy, and
2050 Sustainability, New Jersey Department of Environmental
2051 Protection.

2052 Sir, you're recognized for five minutes.

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2053 STATEMENT OF PAUL BALDAUF

2054

2055 Mr. Baldauf. Thank you, Chairman Shimkus, Ranking
2056 Member Tonko, and members of the committee for the
2057 opportunity to testify today.

2058 My name is Paul Baldauf. I am the assistant
2059 commissioner for Air Quality, Energy, and Sustainability at
2060 the New Jersey Department of Environmental Protection.

2061 I have 30 years of engineering and management experience
2062 related to environmental protection. I would like to take
2063 the opportunity today to provide a state perspective on the
2064 regulatory challenges associated with our mission to protect
2065 and improve air quality.

2066 As we all understand, air pollution has no respect for
2067 state borders. Individual states with effect and robust
2068 regulatory programs have little influence to encourage upwind
2069 states to similarly control their emissions.

2070 The Environmental Protection Agency must lead to ensure
2071 a level playing field with all entities held to the same
2072 emission standards. Any discussion of New Source Review
2073 permitting reform must focus on emissions reduction.

2074 Amendments to the NSR process that have the potential

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2075 the increase emissions cannot be tolerated and these
2076 amendments will cause New Jersey to fall out of attainment to
2077 the National Ambient Air Quality Standards.

2078 New Jersey is the most densely populated state in the
2079 nation with a long history of air quality challenges. New
2080 Jersey has made major improvements in air quality over the
2081 last two decades.

2082 Today, New Jersey is attaining all the NAAQS except the
2083 70 parts per billion ozone. About half of the air pollution
2084 responsible for causing ozone in New Jersey comes from
2085 outside of New Jersey.

2086 The NSR program and the cost-effective control
2087 technologies that exist to reduce emissions have been
2088 critical to the improvements of New Jersey's air quality.

2089 If the proposed changes are adopted, emissions from out-
2090 of-state sources are likely to increase, not only for ozone
2091 but for other air pollutants including particulates and air
2092 toxics.

2093 Governor Murphy has set numerous ambitious climate
2094 change goals such as 100 percent clean energy by 2050 in New
2095 Jersey. States will be unable to attain the air quality
2096 benefits from clean energy if upwind states continue their

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2097 current levels of emissions.

2098 Adverse health effects -- adverse health impacts can
2099 come from both short-term and long-term exposure to air
2100 pollution. Maintaining the current NSR program and its
2101 associated requirements to reduce emissions with plant
2102 upgrades will not only improve the ability of states to
2103 attain or maintain NAAQS but will result in greater air toxic
2104 reductions.

2105 Co-benefit reductions are frequently called out in
2106 rulemaking as a secondary benefit. Annual emissions of
2107 mercury and hexavalent chromium, a known neurotoxin and a
2108 known carcinogen, respectively, both of which are trace
2109 elements in coal, would also increase with associated ton per
2110 year increases of other pollutants.

2111 Mercury and hexavalent chromium are closely associated
2112 with coal power plants and any increase, short term or long
2113 term, will have detrimental effects on the environment and
2114 public health.

2115 The proposed amendments would alter when a source would
2116 be subject to NSR in two key ways -- first, a project that
2117 increases the efficiency of a unit, regardless of whether the
2118 project also increases the annual emissions of the unit,

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2119 would be exempted from NSR and its associated emission
2120 reductions.

2121 While increasing efficiency may be desirable, the
2122 increase in emissions associated with the change should be
2123 evaluated for their impacts.

2124 Second, the proposal would eliminate the requirement to
2125 evaluate the project for increases in annual emissions. This
2126 could result in major sources expanding the annual capacity
2127 of a plant, increasing the number of hours it operates each
2128 year without the inclusion of modern air pollution controls
2129 or the replacement of older equipment with modern, more
2130 efficient equipment and associated lower air pollution.

2131 These amendments would allow it to continue to keep
2132 operating at the same level of hourly emissions indefinitely,
2133 even though cost-effective technologies exist to reduce
2134 emissions, undermine the continuous emissions reductions
2135 we've achieved over the last 40 years.

2136 Without the required air quality evaluation, there would
2137 be no way of knowing if the existing source operation was
2138 having adverse effects to the airshed and a source's useful
2139 life could be extended indefinitely with no consideration for
2140 reducing air pollution leading to continued operation with

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2141 old and inefficient equipment.

2142 These annual emission increases would negatively impact
2143 annual air quality standards. Such states as New Jersey to
2144 find it challenging to remain in attainment within NAAQS if
2145 the NSR program eliminated the requirement to evaluate a
2146 project for increases in annual emissions.

2147 NSR amendments as proposed could result in extension of
2148 the life of older power plants with modifications that result
2149 in small improvements to energy efficiency while causing
2150 significant increases in annual emissions of air
2151 contaminants, including carbon dioxide, sulfur dioxide,
2152 nitrogen oxide, particulates, mercury, and other hazardous
2153 air pollutants.

2154 That would be inconsistent with the Clean Air Act, which
2155 requires its sources to install best available control
2156 technology, lowest achievable emission rate, and maximum
2157 achievable control technology when modifying equipment
2158 facilities including energy efficiency modifications that
2159 would increase emissions of applicable air contaminants.

2160 Thank you again for the opportunity to appear today and
2161 to convey New Jersey's perspective on the importance of the
2162 NSR program.

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2163 I welcome any questions you may have.

2164 [The prepared statement of Mr. Baldauf follows:]

2165

2166 *****INSERT 5*****

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2167 Mr. Shimkus. Thank you very much.

2168 The chair now recognizes Mr. Ross Eisenberg, vice
2169 president, energy and resources policy, National Association
2170 of Manufacturers.

2171 You're recognized for five minutes.

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2172 STATEMENT OF ROSS EISENBERG

2173

2174 Mr. Eisenberg. Thank you, and good morning, Chairman
2175 Shimkus, Ranking Member Tonko, members of the subcommittee.

2176 Thank you for the opportunity to be here today to talk
2177 about manufacturers' continued dedication to reducing air
2178 emissions.

2179 The manufacturing sector is cleaner, more efficient,
2180 and, frankly, more responsible than we have ever been. This
2181 is not merely lip service.

2182 About 94 percent of the manufacturers listed on the
2183 Fortune 500 have in place a sustainability plan and they are
2184 keeping to it.

2185 Now, this commitment has yielded extremely positive
2186 results in terms of air emissions. Since 1970, the
2187 manufacturing sector has reduced its emissions of nitrogen
2188 oxides by 53 percent, carbon monoxide by 70 percent, sulfur
2189 dioxide by 90 percent, coarse particulate matter by 83
2190 percent, and VOCs by 47 percent.

2191 Fine particulate matter, PM 2.5, is down by 23 percent
2192 since its peak for manufacturers in 1999 and greenhouse gases
2193 are down by 10 percent over the past decade.

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2194 The industrial sector actually produces less greenhouse
2195 gas emissions than it did in 1990, which is considerably
2196 different than the broader economy.

2197 We appreciate the opportunity to testify today on a
2198 draft bill that would clarify the degree of physical or
2199 operational change to an emissions source that would
2200 constitute a modification under NSR.

2201 The NAM supports this bill because it would remove
2202 barriers that have prevented manufacturers from investing in
2203 efficiency projects and installing modern pollution control
2204 equipment at their facilities.

2205 The purpose of NSRs for requiring industrial facilities
2206 to install modern pollution control equipment when they are
2207 built or when they're making a change that it results in
2208 significant increase of emissions.

2209 In practice, however, NSR does stand in the way of the
2210 technologies that the statute was supposed to promote. I
2211 realize this is well-worn territory here and one that EPA has
2212 four years tried to fix.

2213 But I believe the need today is even greater than it was
2214 before. First of all, there is near universal adoption, as I
2215 said, across the manufacturing sector -- the sustainability

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2216 plans that are driving continued targets and continued
2217 progress. It's spurring a continuing need on shop floors to
2218 do things differently and make those technology upgrades.

2219 Secondly, there is the recently enacted tax reform
2220 package which, because of things like full expensing and
2221 other things, now provides an interesting little window for
2222 manufacturers to justify making these investments in more
2223 efficient emissions-friendly technologies.

2224 And then, finally, there's, honestly, the regulatory
2225 reality -- that there are significant new laws like MATS and
2226 boiler MACT that require -- requiring and demanding cleaner
2227 and more efficient electricity generation.

2228 And if you believe, as we do at the NAM, that the EPA
2229 should fill the void left by a repeal of the Clean Power Plan
2230 with a replacement regulation, you're still going to need to
2231 fix NSR at some point to make that work.

2232 A significant portion of the existing gas turbine and
2233 steam turbine fleet could benefit from equipment upgrades to
2234 improve their efficiency and operational flexibility,
2235 particularly given that many are now being used in a
2236 different fashion because of the onset of renewable energy
2237 and the way that the grid operates.

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2238 These upgrades for gas and steam turbines will ensure
2239 higher grade efficiency and lower emissions in supporting
2240 renewable energy use.

2241 However, NSR has stood in the way of customer adoption
2242 of these technologies. For example, an NAM member company
2243 that manufactures gas turbine upgrade technology could
2244 improve the vast majority of those in-service turbines by 22
2245 percent and reduce their total CO2 emissions by 62 percent.
2246 They report their customers are choosing not to install this
2247 equipment simply because it triggers NSR.

2248 An inability to define what is routine maintenance has
2249 resulted in NSR notices of violation being issued for
2250 environmentally beneficial projects.

2251 The Utility Air Regulatory Group has cited more than 400
2252 instances in which a regulated entity took on a project to
2253 improve the efficiency of a power plant only to face notices
2254 of violation or citizen suits over violating NSR.

2255 Same thing happens at industrial facilities. Our
2256 members have had trouble with projects involving switching
2257 from coal to gas or from number six fuel oil to low-sulfur
2258 distillate oil. Despite the obvious emission benefits of
2259 this, these projects have periodically triggered NSR because

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2260 they -- because of collateral emissions for carbon monoxide
2261 and VOCs, which becomes a barrier to undertaking the project.

2262 One of our members estimates that there's 100 million
2263 tons of CO2 that could be possibly reduced by deploying the
2264 full suite of available turbine upgrades into power plants.

2265 If these were to happen, we are talking about the
2266 equivalent of more than 20 million cars being taken off the
2267 road. That's 10 percent of the entire automobile fleet.

2268 And that's just for the power plant sector. The same
2269 technologies would work for turbines and industrial
2270 facilities as well. Many of these upgrades have been impeded
2271 because they may, honestly, potentially trigger an NSR.

2272 The draft legislation that is the subject of the hearing
2273 today would create flexibility in the definition of
2274 modifications so that these heat rate improvements and
2275 efficiency upgrades would not be deterred by NSR.

2276 It would eliminate a situation where a piece of this new
2277 modern equipment would trigger it because it generates
2278 collateral emissions of another pollutant and, most
2279 importantly, it would unlock a potentially massive market for
2280 the installation of energy efficient technologies that would
2281 drive our already impressive emissions down even further --

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2282 emissions reductions down even further.

2283 No matter our political, personal, or employment
2284 background, we all share the same goal, which is to
2285 permanently reduce pollution. We believe this bill will get
2286 us to that end goal by reducing barriers to the installation
2287 of efficient and environmentally beneficial technologies.

2288 Thank you.

2289 [The prepared statement of Mr. Eisenberg follows:]

2290

2291 *****INSERT 6*****

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2292 Mr. Shimkus. The chair thanks the gentleman.

2293 The chair now recognizes Mr. Kirk Johnson, senior vice
2294 president, government relations, National Rural Electric
2295 Cooperative Association.

2296 You're recognized for five minutes. Thank you.

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2297 STATEMENT OF KIRK JOHNSON

2298

2299 Mr. Johnson. Thank you, Chairman Shimkus, Ranking
2300 Member Tonko, members of the subcommittee. It's a pleasure
2301 to be with you here. Thank you very much for the invitation.

2302 I am here representing 900 rural electric cooperatives,
2303 representing 47 states across the country. We, collectively,
2304 power rural America but we do much, much more than that.

2305 We are the engines of economic development across much
2306 of rural America and we are very proud of our history of
2307 doing that, doing things that other companies would not do.

2308 Mr. Eisenberg referenced Fortune 500 companies. We are
2309 not Fortune 500. We are purely Main Street and that's who we
2310 represent. Being consumer owned means we have our consumers'
2311 best interests at heart 24 hours a day, seven days a week,
2312 365 days a year.

2313 We employ 71,000 people across the country. We serve 88
2314 percent of the counties across the country. One of every
2315 eight people gets their electricity from a rural electric
2316 cooperative nationwide. That's 42 million Americans.

2317 We have a different generation portfolio than much of
2318 the rest of the industry at retail. Overall, 41 percent of

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2319 our power comes from coal, 26 percent comes from natural gas,
2320 17 percent comes from wind, hydropower, solar, and other
2321 renewable resources, and 15 percent comes from nuclear. But
2322 we generate just 5 percent of the power generated in the
2323 country and we sell at retail 13 percent.

2324 So the remaining balance of the power that we provide at
2325 retail comes from other sources. But of the power that we
2326 self-generate, 61 percent comes from coal -- that's down from
2327 80 percent in 2003 -- 26 percent comes from natural gas -- up
2328 from 7 percent in 2003 -- 10 percent from nuclear.

2329 We don't self-generate much by way of renewables because
2330 the tax credits to incentivize those renewables are available
2331 to the taxpaying utilities, the investor-owned utilities, but
2332 not to -- not to us. So we generally get that power through
2333 purchase power agreements.

2334 We've made significant reductions in our emissions
2335 profile over the past 15 years. Between 2009 and 2016, SO2
2336 emissions are down 66 percent, NOx emissions are down 24
2337 percent, and CO2 emissions are down 8 percent.

2338 Let's talk about New Source Review, the subject of this
2339 hearing. We have been seeking reforms to the NSR program for
2340 two decades now and we think the time is now to act.

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2341 Representative Barton said this is a complicated issue.
2342 He's absolutely right. When I first heard about New Source
2343 Review, I thought it was a one-hit wonder 1990s boy band
2344 name. But it certainly is not that. It's something that
2345 actually impedes our ability to make progress on running our
2346 power plants as efficiently as we can and it certainly has a
2347 role in protecting the air quality of the country.

2348 Well, we need to remember that the goal of the Clean Air
2349 Act is not to ensure that power plant X or power plant Y has
2350 a piece of equipment X or piece of equipment Y on it.

2351 The goal and purpose of the Clean Air Act is to protect
2352 the air quality of this country so that people can breathe
2353 well.

2354 As a child, I had asthma. I know what it -- I know what
2355 it feels like not to be able to breathe and none of us want
2356 that situation in our country anywhere in our country, and
2357 that's why we continue to make these reforms.

2358 But the driving forces behind the emissions reductions
2359 coming from the electric cooperative sector and the electric
2360 utility sector overall don't just come from the NSR program.
2361 In fact, that's probably a very limited role.

2362 Under the other rules we have to follow, under the MATS

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2363 rule, the CSPAR rule, our Title V permits, all of those are
2364 what keep our emissions on a downward trajectory, coupled
2365 with changes in the economy.

2366 So we should not and must not look at NSR in a vacuum
2367 and we must look at the overall effort that is under the
2368 Clean Air Act and whether we are making that progress or not.

2369 On NSR reform, we see NSR as a barrier to making common
2370 sense efficiency improvements in our power plants and there
2371 are circumstances in today's power sector that are changing
2372 that are making it even more difficult for us to do that.

2373 Coal-based power plants didn't used to cycle up and
2374 down. Now they're being required to cycle up and down to
2375 follow renewable resources, especially in the Great Plains,
2376 and I know great examples in my home state of North Dakota.

2377 That cycling up and down puts more wear and tear on
2378 those power plants and the need to maintain those power
2379 plants then is even more central to keep that power flowing
2380 to the places that they're going, even as we are building up
2381 more renewables in those areas.

2382 So being able to address that in today's world. What
2383 was considered routine maintenance maybe 20 years ago may be
2384 different than what is routine today because of some of those

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2385 changes in the power sector and the rules of the road need to
2386 recognize that.

2387 So we are seeking those common sense reforms such as
2388 those contained in Congressman Griffith's draft bill. All we
2389 are asking and all we've ever asked is for clear rules of the
2390 road.

2391 We will follow them. We will make sure that we
2392 accomplish the objectives that are laid out in the Clean Air
2393 Act.

2394 But if we don't have clear rules of the road, we become
2395 very risk averse and we leave opportunities on the shelf that
2396 can improve the performance of the electric power sector,
2397 keep our consumers' costs down while continuing to meet all
2398 the clean air goals of this country.

2399 Thank you for the opportunity to be here, Mr. Chairman,
2400 and I look forward to your questions.

2401 [The prepared statement of Mr. Johnson follows:]

2402

2403 *****INSERT 7*****

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2404 Mr. Shimkus. Thank you very much.

2405 Now I would like to recognize Mr. Bruce Buckheit, and
2406 the title is analyst and consultant. Maybe I can have that
2407 title someday. That sounds pretty cool. Simple.

2408 You're recognized for five minutes.

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2409 STATEMENT OF MR. BUCKHEIT

2410

2411 Mr. Buckheit. Chairman Shimkus, Ranking Member Tonko,
2412 and distinguished members of the subcommittee. Yes, that's
2413 an easy title to come by when you work out of your house.

2414 As senior counsel for the Department of Justice and then
2415 as director of EPA's Air Enforcement Division, I've
2416 investigated and enforced and, most important, settled NSR
2417 cases starting in 1984 including leading the enforcement
2418 initiative against the coal-fired power plants for their NSR
2419 violations.

2420 And so my view of the world is not the 50,000-foot high
2421 altitude overview. My experience is in the trenches, working
2422 with the plant managers and their counsel and others to parse
2423 the difference between these sort of theoretical arguments
2424 and the real world realities of what they need to do to keep
2425 their plants going and how these programs actually work on
2426 the ground.

2427 And so that's my focus over the next couple of minutes
2428 is how do these things actually work on the ground. Before I
2429 got there, I just want to touch on one point and that is that
2430 Congress did intend in the 1977 amendments that over time,

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2431 gradually, the existing sources that were grandfathered would
2432 lose that grandfathered status.

2433 They expected plants to modify and have to put on
2434 controls and that would end a competitive advantage that
2435 those old uncontrolled plants would have over new plants that
2436 have to spend hundreds of millions of dollars to put on
2437 controls and those controls add operating costs that continue
2438 thereafter.

2439 So the overall intent was to level the playing field
2440 over time. Let me touch on some of these arguments that are
2441 floating at the 50,000-foot level that aren't true on the
2442 ground.

2443 First of all, it's been said that the NSR rules prevent
2444 operators from making repairs needed to improve safety. That
2445 is not true.

2446 Ongoing maintenance occurs all the time. There is no
2447 plant manager that I ever came in contact with who would tell
2448 you that he would defer a project needed for safety because
2449 of some potential Clean Air Act rule.

2450 The current rules actually encourage ongoing maintenance
2451 because if you let your plant decline hugely and then you do
2452 a project, you have a risk of liability.

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2453 If you do your ongoing maintenance year in year out to
2454 maintain your plant in a good state, you don't trigger NSR.

2455 The issues respecting the complexity in the NSR
2456 permitting process -- first of all, NSR permitting for
2457 existing sources is extremely rare. Other than a handful of
2458 plant expansions in some industrial settings, these permits
2459 are simply not needed with any frequency and so don't pose a
2460 substantial burden.

2461 I am not aware of any power plant that has ever gone
2462 through an NSR permitting process, okay, for anything other
2463 than expanding the size of the unit.

2464 The reason for this is simple. If you don't increase
2465 emissions, you don't need an NSR permit. You have a number
2466 of other options rather than going through the full NSR
2467 permitting process.

2468 It includes incorporating a limit in your operating
2469 permit so that you do the project but your emissions are
2470 capped.

2471 You can also avoid NSR by decreasing emissions elsewhere
2472 in your facility to offset the emissions from the project.

2473 And thirdly, you can do incremental pollution controls,
2474 such as the use of slightly lower sulfur coal to offset any

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2475 minor increases without having to go, you know, the route of
2476 the \$100 million pollution controls.

2477 And further -- last point here -- is that if a project
2478 actually improves the efficiency of a unit, emissions go
2479 down. You burn less coal to make the same amount of
2480 electricity or the same number of widgets.

2481 And so all of this focus on energy efficiency, I think,
2482 is overblown. With the power plants, the issue is life
2483 extension programs -- programs where not routine maintenance
2484 but replacing large chunks of the plant -- an equivalent to
2485 replacing the engine in the car, not just changing the spark
2486 plugs, and it was those sorts of projects and case law that
2487 stems from 1988 that got us at EPA involved in the forcing of
2488 these provisions.

2489 Today, roughly, half of the existing coal-fired plants
2490 don't have state-of-the-art controls for SO2 and three-
2491 quarters of them don't have full controls for NOx.

2492 This is the best most economic place to get your
2493 emissions reductions, not the small factories and not from
2494 individuals.

2495 I see I am out of time so I will say thank you to the
2496 chair.

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2497 [The prepared statement of Mr. Buckheit follows:]

2498

2499 *****INSERT 8*****

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2500 Mr. Shimkus. Thank you very much.

2501 And then I will turn to Mr. Jeffrey Holmstead, partner
2502 of Bracewell LLP -- testified numerous times before this
2503 committee -- recognized for five minutes.

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2504 STATEMENT OF MR. HOLMSTEAD

2505

2506 Mr. Holmstead. Thank you very much for giving me the
2507 chance to be here today. I hope, during the questions, I can
2508 maybe address a couple of things.

2509 Where I don't necessarily agree with my friend, Bruce,
2510 and explained why -- and EPA's theory by which they prevent
2511 energy efficiency projects and a rather strange theory about
2512 how you calculate emissions increases, but I want to focus on
2513 something different during my oral statement. I just have a
2514 minute.

2515 Look, we are talking about just one of the many programs
2516 that regulate emissions from manufacturing plants and power
2517 plants. New Source Review, and despite the name we are not
2518 talking about how it applies to new sources. We are only
2519 talking about how it applies to existing sources.

2520 In their testimony, Mr. Buckheit and Mr. Baldauf both
2521 focused primarily on power plants and how they believe the
2522 NSR program should work to reduce SO₂ and NO_x emissions from
2523 these plants.

2524 The problem is that the NSR program has been in place
2525 for more than 40 years and it has never worked that way. As

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2526 Bruce said, very few power plants -- in fact, unless they
2527 expand their capacity, they don't voluntarily go through NSR
2528 and even if the program worked the way that they want it to,
2529 you would not get overall reductions in power emissions
2530 because we have cap and trade programs in place.

2531 So if one facility goes through NSR and installs
2532 controls, that doesn't reduce the total number of allowances
2533 that plants are allowed to emit.

2534 You might be surprised to hear that there are actually
2535 14 different Clean Air Act programs that regulate these very
2536 same emissions that we are talking about -- SO2 and NOx
2537 emissions from power plants.

2538 Thankfully, although the NSR program has essentially
2539 done very little to reduce emissions from these plants, other
2540 programs have been very effective.

2541 My friend Bruce, Mr. Baldauf, did not discuss any of
2542 these other 14 programs. Based on their testimony, you might
2543 be left with the misimpression that the NSR program is the
2544 only way to require power plants to reduce their emissions.
2545 They appear to believe that if we just leave the NSR program
2546 alone, all power plants will be forced to install what Mr.
2547 Buckheit calls the full modern suite of controls that he

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2548 would like them to have.

2549 So even though all these plants have been covered by the
2550 NSR program for decades, in some cases more than 40 years, we
2551 just need to give the NSR program a little more time.

2552 But when Congress passed the 1990 Clean Air Act
2553 amendments, it gave EPA much more effective programs that
2554 were specifically designed to reduce emissions from power
2555 plants and these programs have been remarkably effective.

2556 One of these programs, the acid rain program, as some of
2557 you remember, was the centerpiece of the 1990 amendments. It
2558 was specifically designed to reduce SO₂ and NO_x emissions
2559 from power plants and it seems odd that if Congress expected
2560 the NSR program would force all those plants to install
2561 emission controls, it seems odd that it would have spent so
2562 much time and effort developing the acid rain program.

2563 Here are just a few things that I hope you will keep in
2564 mind. The Clean Air Act was passed in 1970. The NSR program
2565 came into place a few years later.

2566 Between 1970 and 1990 when the amendments were passed,
2567 SO₂ emissions from U.S. power plants decreased by about 9
2568 percent. NO_x, during that same period when they were covered
2569 by NSR and only NSR, NO_x emissions actually increased by 30

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2570 percent.

2571 Now, since 1990 when Congress passed the acid rain
2572 program to reduce emissions from power plants and also gave
2573 EPA authority to impose other cap and trade programs when
2574 further reductions were needed, here is what has happened.

2575 Since 1990, SO₂ emissions from power plants have been
2576 reduced by more than 92 percent -- more than 92 percent from
2577 almost 15 -- almost 16 million tons to 1.3 million tons.

2578 Since 1990, NO_x emissions from power plants have fallen
2579 by about 83 percent. What regulatory programs have been
2580 responsible for these reductions?

2581 Well, according to EPA's own analysis, it's not the NSR
2582 program. EPA itself says that these reductions have come
2583 because of a series of cap and trade programs, and I don't
2584 have time to go through them but there's been four that have
2585 been put in place by successive administrations, a Democrat
2586 and Republican.

2587 The NSR program does make it harder and more expensive
2588 for facilities to maintain their plants and make them more
2589 efficient. The NSR program is long and can often be very
2590 costly.

2591 I know of several companies that have teams of engineers

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2592 and lawyers who devote their time to figuring out how they
2593 can maintain their plants without triggering NSR.

2594 I have said in rooms where companies have evaluated
2595 projects that would make their plants more efficient and then
2596 decided not to do them because of concerns that they would
2597 trigger NSR.

2598 Look, these policies are very complicated and I am
2599 grateful that we are having this discussion. I sincerely
2600 hope that this committee will show that Republicans and
2601 Democrats can work together to remove unnecessary regulatory
2602 burdens.

2603 The bill being considered today would do just that and I
2604 hope that you will give it serious consideration.

2605 Thank you.

2606 [The prepared statement of Mr. Holmstead follows:]

2607

2608 *****COMMITTEE INSERT 9*****

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2609 Mr. Shimkus. Thank you very much.

2610 I will now recognize myself for the round of questions.
2611 I recognize myself for five minutes and I want to start with
2612 Mr. Alteri.

2613 The discussion draft seeks to make it easier for
2614 companies to carry out energy efficiency and pollution
2615 control projects.

2616 Would accelerating efficiency improvements and pollution
2617 control adoption even on just existing sources be a net
2618 benefit for meeting clean air standards?

2619 Mr. Alteri. Yes.

2620 Mr. Shimkus. Let me go to Mr. Eisenberg. In your
2621 testimony you described how the National Association of
2622 Manufacturers' member companies are struggling to sell gas
2623 turbine upgrade technologies because customers are not
2624 willing to buy and install equipment that would trigger New
2625 Source Review permitting.

2626 That being the case, would you agree that New Source
2627 Review is slowing innovation and the adoption of newer
2628 technologies?

2629 Mr. Eisenberg. I would agree.

2630 Mr. Shimkus. Very simple answers.

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2631 Would today's discussion -- same person -- would today's
2632 discussion draft make it easier for companies to install
2633 newer and cleaner equipment at existing facilities?

2634 Mr. Eisenberg. We believe it would, and it's a massive
2635 potential market. I mean, as I said during my oral remarks,
2636 that one particular manufacturer, just looking at its own
2637 turbine, said it could be somewhere on the order of over a
2638 100 million tons of CO2 potential reduced if everyone were to
2639 upgrade the steam turbine and gas turbine efficiency upgrades
2640 that they make available.

2641 Mr. Shimkus. And I think you made a good point with our
2642 tax bill that was passed -- the expending provision. We are
2643 seeing it throughout, really, the country -- a great increase
2644 in capital for new development and expansion and stuff like
2645 that. So this would segue very well into the ability of
2646 modernizing, retrofitting facilities, refineries and even
2647 small furniture makers.

2648 Mr. Eisenberg. That's absolutely true and the idea
2649 wasn't mine. It came from a member of ours who said hey,
2650 just change the internal rate of return on a project we were
2651 thinking about undertaking, and now we can do it and it's
2652 beneficial to the environment. So we are going to look more

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2653 into that ourselves, too.

2654 Mr. Shimkus. Great. Thank you.

2655 Mr. Holmstead, concerning -- concerns have been raised
2656 that the discussion draft reforms would enable existing
2657 facilities to collectively produce higher annual emissions.

2658 Even if hourly emission rate at the facility goes down,
2659 how do you respond to this concern?

2660 Mr. Holmstead. It's just not true. These facilities
2661 are covered by many, many other different programs that would
2662 -- that would assure that emissions continue to decrease over
2663 time.

2664 So anybody who claims that this bill would increase
2665 emissions is just wrong.

2666 Mr. Shimkus. Yes. We have a pretty good record, I
2667 think, on the subcommittee of trying to find that middle
2668 ground. This one's going to be a little bit tougher, I
2669 assume.

2670 And it's really over this debate about the question that
2671 I just posed is I think there can -- that my friend's
2672 concerns are that emissions are going to go up.

2673 I think you make a good point -- there's a lot of other
2674 air standards out there that are going to make sure that that

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2675 doesn't happen.

2676 Mr. Buckheit, riddle this for me, will you? Is there a
2677 lot of other clean air rules and regs that'll prohibit that
2678 from increasing?

2679 Mr. Buckheit. With all due respect with my good friend
2680 Jeff, we've had these debates for decades. There are a lot
2681 of other programs about there, none that would specifically
2682 address this issue.

2683 It is only the NSR program that will prevent each of
2684 these plants that we've been talking about from increasing
2685 annual emissions, and this is -- it's not all about power
2686 plants but it's mostly about power plants.

2687 Refineries and the like -- they tend to run 87/60 full
2688 time year round and so the hours of operation are not the
2689 issue for them so much. But and so reducing it -- there's
2690 already an embedded hourly test for them.

2691 If you increase your hourly emissions you're going to
2692 increase your annual emissions. This is more about the power
2693 sector where because of forced outages they can't run for,
2694 you know, three weeks a year and then they make the plant
2695 more reliable and they run those three weeks a year.

2696 Mr. Shimkus. Well, let me claim -- my time's almost

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2697 expired. I want to go to Mr. Alteri.

2698 Do states and other permitting authorities have other
2699 tools besides New Source Review to control existing
2700 facilities' annual emissions?

2701 Mr. Alteri. We do, and I think you really have to look
2702 at the nexus between the National Ambient Air Quality
2703 Standards. Previously, the standards were on an annual
2704 basis.

2705 Now they're hourly basis, and really, it is comparative
2706 that the maximum hourly emission rate is limited and not
2707 allowed to exceed -- to violate those standards.

2708 Mr. Shimkus. And that's what Congressman Griffith in
2709 his bill is attempting to do -- marry a successful standard
2710 with what is viewed out there as an unsuccessful. Would you
2711 agree?

2712 Mr. Alteri. I would, and you have the new source
2713 performance standards also that play a role.

2714 Mr. Shimkus. Great. Thank you very much. My time is
2715 expired.

2716 The chair now recognizes the ranking member, Mr. Tonko,
2717 for five minutes.

2718 Mr. Tonko. Thank you, Mr. Chair.

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2719 It's been suggested that short-term such as hourly
2720 emission rates are more meaningful from an environmental
2721 perspective, since the number of NAAQS are based on short
2722 time frames.

2723 Mr. Buckheit, I want to ask you what you think about
2724 that assertion and let me perhaps put it in the context of
2725 communities that are in that range of those facilities.

2726 Do these communities located near these facilities,
2727 which may be dealing with unsafe levels of particulates or
2728 other pollutants, benefit from maintaining an hourly
2729 emissions rate even if it causes a significant increase in
2730 overall pollution?

2731 Mr. Buckheit. It's kind of both, Congressman. There
2732 are some local impacts, particularly for the one-hour SO2
2733 standard where if you're near a power plant such as the
2734 facility in Alexandria here, you can have certain weather
2735 conditions where you will get an exceedance -- unhealthy
2736 levels on a short-term basis.

2737 The larger public health issue is chronic exposure to PM
2738 2.5, which is annual or multi-year exposures to lower levels.
2739 That is the more consequential form of air pollution -- most
2740 consequential form of air pollution in this country.

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2741 Mr. Tonko. Thank you.

2742 And Mr. Buckheit, you said that NSR permits for existing
2743 power plants are very rare. I believe that was the term you
2744 used.

2745 Why do you think that permits are rare? Is it because
2746 they're costly, over burdensome, or easily avoided?

2747 Mr. Buckheit. They're -- I would say easily avoided is
2748 the right answer.

2749 Mr. Tonko. And your testimony mentioned that the courts
2750 have weighed in on the so-called routine maintenance
2751 exemption in the past, and to make it clear, it was only for
2752 legitimate maintenance and not large capital projects.

2753 Is it fair to say there's been a strategy over the years
2754 by these facilities to find loopholes that might enable them
2755 to make modifications without needed to undergo NSR program
2756 requirements?

2757 Mr. Buckheit. Yes. The case you're referring to,
2758 Congressman, is the Webco case back in 1988, which the courts
2759 enforced a decision under the Bush I administration where
2760 replacing these large projects would not be considered
2761 routine maintenance.

2762 Thereafter, a number of those lobbying law firms in town

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2763 continue to press the notion that you could do anything or
2764 almost anything and call it routine maintenance and the
2765 number of the large utilities followed that advice, did
2766 projects without offsetting, without, you know, any of the
2767 other legal routes to avoid NSR permitting and without going
2768 through NSR permitting and that was the basis of our
2769 enforcement initiative back 10 years -- 1998 and thereafter.

2770 Mr. Tonko. Thank you.

2771 Can you give us a sense of the current operating status
2772 at facilities that have been putting off these major
2773 modifications? Generally speaking, are they in need of
2774 significant investments in order to keep running?

2775 Mr. Buckheit. Well, our fleet is getting pretty old --
2776 our coal fleet. Most of the coal-fired power plants came
2777 online in 1972 and before, and more and more the maintenance
2778 budgets have been cut at the plants as cost becomes an issue
2779 and competition in the electric market with natural gas and
2780 others become an issue.

2781 So I can forecast that as these plants -- they're, you
2782 know, now 60 years old, then coming on 70 years old and then
2783 coming on 80 years old.

2784 There's going to be a time when engineering is going to

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2785 force them to replace these components all over again.

2786 Mr. Tonko. So if the modification definition is
2787 expanded to allow projects designed to, and I quote, restore,
2788 maintain, or improve the reliability or safety of the source,
2789 would that essentially cover any investment needed for life
2790 extension projects?

2791 Mr. Buckheit. Yes. You could fundamentally replace the
2792 plant.

2793 Well, you can't go all the way there because then you
2794 might trigger some part of the NSPS rule. But you could
2795 spent 20, 30, 40 percent of the cost of the new plant
2796 replacing these very large components without having to put
2797 on controls.

2798 Mr. Tonko. And, finally, do you believe this discussion
2799 draft is just the latest attempt to create new loopholes to
2800 enable these sources to avoid some of the NSR program's
2801 requirements such as installing pollution controls?

2802 Mr. Buckheit. This is the current wave. It happens
2803 every eight years or so.

2804 Mr. Tonko. Okay. Thank you for your response and, Mr.
2805 Chair, I yield back.

2806 Mr. Shimkus. Gentleman yields back his time.

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2807 The chair now recognizes the gentleman from West
2808 Virginia, Mr. McKinley, for five minutes.

2809 Mr. McKinley. Thank you, Mr. Chairman.

2810 Mr. Holmstead, if I could direct perhaps my comments to
2811 you.

2812 Earlier, you were in the room when you -- I think you
2813 were in the room when we were asking the previous speaker
2814 whether this idea of maintenance -- routine maintenance, and
2815 what we were going -- because I had had conversations with
2816 some utility companies that have considered replacing the
2817 fins on their boiler as routine maintenance and that's
2818 apparently been deemed that's an -- that is a routine
2819 maintenance type of work.

2820 So if that's -- if that's the case that they can
2821 maintain their existing boiler, which is probably inefficient
2822 because it's 40 or 50 years old, and then I go back to what
2823 Congressman Tonko and I have been -- we've been working on now
2824 for three or four years getting research money to upgrade our
2825 and improve our turbine efficiency, here we have an
2826 opportunity to replace -- we can either replace the fins due
2827 to turbidity or erosion or whatever that might have caused
2828 and keep the efficiency low or we can use the research that

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2829 we've paid for to implement a new technology, a new boiler,
2830 in that and improve the efficiency -- the operation of that
2831 plant.

2832 But in so doing, that potentially triggers and likely
2833 triggers an NSR, and then you have to keep into consideration
2834 that from the February testimony we had here that you can go
2835 -- you can go back as long as -- there's 700 -- I think, Mr.
2836 Allen, you said this, 700 documents that we have to -- have
2837 to be filed to comply. But in Region 9 -- Region 9, the
2838 average approval is 777 days to get that approval.

2839 You may find it -- you may not -- it's over two years to
2840 get an answer of whether or not you're going to be in
2841 compliance with the NSR.

2842 How would you react to that? Is that -- am I reasonable
2843 about what -- what's the incentive for people to improve the
2844 efficiency of their -- of their plant if it may take two and
2845 a half years to get the approval?

2846 Mr. Holmstead. Well, you have highlighted a big
2847 problem, that in a series of cases EPA has argued that if you
2848 improve the efficiency of a power plant you trigger NSR.

2849 So it might be in your interest to invest in something
2850 that would reduce your CO2 emission rate. It would reduce the

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2851 emission rate of other pollutants.

2852 But here's the theory that Bruce has propounded in
2853 several cases. If you make your plant more efficient you
2854 will reduce the operating costs. So the cost of producing a
2855 megawatt hour will go down.

2856 That will make you more competitive than other plans so
2857 your plant will run more often, will run more hours. So the
2858 claim is that if you make your plant a little bit more
2859 efficient you might have a lower operating cost.

2860 Therefore, you would run more hours. Therefore, you
2861 can't make your efficiency improvement unless you go through
2862 this NSR process that can take, for a coal-fired power plant,
2863 two years. It would be -- would be the blink of an eye, and
2864 you might have to install brand new controls that would cost
2865 several hundred million dollars.

2866 So how many companies are actually going to make a
2867 decision to become more efficient if those are the
2868 consequences?

2869 Mr. McKinley. Thank you.

2870 I yield back.

2871 Mr. Shimkus. Gentleman yields back his time.

2872 The chair now recognizes the gentleman from Michigan,

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2873 Mr. Walberg, for five minutes.

2874 Mr. Walberg. Thank you, Mr. Chairman. Thanks to the
2875 panel for being here.

2876 Mr. Eisenberg and Mr. Johnson, I've got a couple
2877 question -- a question I would like to ask you here.

2878 Due to the positive impacts of the recently enacted tax
2879 reform bill, many companies are looking to make greater
2880 investments in new construction projects and facility
2881 upgrades.

2882 I've seen it in my district in plenty of sites. What
2883 effect does NSR have on a company's ability and willingness
2884 to pursue new projects or upgrade existing facilities?

2885 I will go with Mr. Eisenberg first.

2886 Mr. Eisenberg. Thank you, Congressman.

2887 So it's a barrier. It's a barrier that is in the way of
2888 a pretty amazing window that we now have to -- that we are
2889 seeing on the ground in real time -- manufacturers taking on
2890 new projects because of tax reform.

2891 I appreciate that this has been a coal-dominant
2892 discussion. But for us, I want to make clear that it is very
2893 much about manufacturing.

2894 The industry -- we asked our members at the beginning of

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2895 last year, you know, tell us what you care about in the
2896 regulatory space that we should be working on, and this issue
2897 was number one in the environmental space.

2898 So, you know, when I -- when I talk about NSR I hear
2899 from aerospace and defense and steel and aluminum and cement
2900 and pulp and paper and chemicals.

2901 These are the folks that are doing those things on the
2902 ground that you just mentioned because of tax reform and
2903 other things that need -- that real or perceived have to deal
2904 with NSR and need a clear signal that NSR is a problem.

2905 You know, to borrow a phrase from another context, the
2906 first step to solving a problem is admitting you have a
2907 problem.

2908 Mr. Walberg. Yes.

2909 Mr. Eisenberg. We have a problem, and we really hope
2910 that Congress and EPA will help us fix it.

2911 Mr. Walberg. Mr. Johnson. Thank you.

2912 Mr. Johnson. Thank you, Congressman.

2913 In the not for profit sector, the tax bill has not had
2914 as big of an impact on us but we are constantly looking for
2915 ways to improve the economics and the efficiency of the power
2916 plants that we run to generate electricity to keep our costs

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2917 down for the electricity in much of rural America and that's
2918 just a constant effort by all of our generation and
2919 transmission cooperatives to do that, and NSR is a barrier.

2920 We have had a number of our member cooperatives who's
2921 indicated they've considered undertaking projects and have
2922 decided not to do that because of the uncertainty of the NSR
2923 permitting program.

2924 But they have taken other projects. We've installed
2925 lots of pollution control equipment and Mr. Buckheit's
2926 testimony implied that older units have not added pollution
2927 control equipment.

2928 That is just not the case. The utility industry has
2929 invested over \$100 billion on pollution control equipment to
2930 reduce those emissions and make the accomplishments that have
2931 been documented here.

2932 So we are constantly looking for those opportunities
2933 this is in fact a barrier and the bill would help remove that
2934 barrier.

2935 Mr. Walberg. And, of course, you have that symbiotic
2936 relationship with business and industry -- manufacturing that
2937 goes with it. You have to be prepared for it and I've seen -
2938 - I've seen those upgrades at a great expense in my district

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2939 as well in the utilities.

2940 Mr. Johnson. A big part of what we do is try to make
2941 sure the economies of our communities are strong and that we
2942 are investing in businesses and bringing those jobs to our
2943 communities.

2944 Mr. Walberg. Okay. Let me -- let me follow up with
2945 both of you. Does the NSR program create an incentive for
2946 manufacturers and utilities to operate their plants exactly
2947 as they were built, and secondarily, if -- so what challenges
2948 is this creating?

2949 Mr. Eisenberg. So yes, I mean, and not every time but
2950 by and large it does create a perverse sort of incentive that
2951 -- to only replace your equipment with the vintage of the
2952 equipment that was from when it was first manufactured.

2953 It doesn't really make any sense in the grand scheme of
2954 things. Certainly, technology develops and gets better and
2955 manufacturers have an interest in installing that.

2956 NSR is a barrier and, you know, I've had, you know,
2957 countless companies say, look, the time line that we needed
2958 to get through to upgrade this boiler or do this or do that,
2959 NSR -- you know, my fear of waiting two years to get a permit
2960 and maybe having to litigate it isn't worth that expense. I

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2961 can't justify it to my board and my CEO.

2962 So it is a barrier. It is not the only barrier but it
2963 is one that we hope we can fix.

2964 Mr. Johnson. And Congressman, the utility sector -- not
2965 to be evasive, but there are lots of things we have to
2966 consider when making determinations about how to improve
2967 plants, what to go through.

2968 This is -- this is but one of those, but it is one that
2969 slows things down, doesn't speed things up.

2970 Mr. Walberg. Yes. To have a drag on your process is
2971 just that and we take as many drags away from it then it
2972 works better.

2973 So thank you. I yield back.

2974 Mr. Shimkus. The gentleman yields back his time.

2975 The chair recognized the gentleman from Georgia, Mr.
2976 Carter, for five minutes.

2977 Mr. Carter. Thank you, Mr. Chairman, and thank all of
2978 you for being here. We appreciate your presence here today
2979 and the work that you're doing.

2980 Mr. Johnson, I will start with you. In your testimony,
2981 you talked about the current system and how flawed it is for
2982 companies and organizations that are wanting to do the right

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2983 thing and trying to do the right thing and how easy it is for
2984 them to receive enforcement actions.

2985 How important is it for us to change the metric that's
2986 used to determine emissions from the annual emissions rate to
2987 an hourly rate?

2988 Mr. Johnson. Going to the hourly emissions rate would
2989 harmonize the rules between the NSR and the NSPS programs.

2990 So it would make some internal consistency. It would
2991 give our members much more clarity about what the rules of
2992 the road are and then they can make informed decisions about
2993 what they would to do to improve the efficiency of their
2994 power plants or do other maintenance activities because they
2995 would know what that clear line is between routine
2996 maintenance and what a major modification is.

2997 Giving them that clarity would speed their processes,
2998 cut our costs, while maintaining the environmental
2999 performance of the plant --

3000 Mr. Carter. Have you communicated that to the EPA? I
3001 mean, do they ever ask for any input or --

3002 Mr. Johnson. We went through a process during Bush II
3003 administration. Mr. Holmstead was at EPA at the time, trying
3004 to clarify rules of the road on New Source Review.

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3005 Ultimately, that was -- that was not successful. We've
3006 asked for legislative clarifications, as I've testified, for
3007 -- we've been looking for some clarity in this program for
3008 two decades and, you know, now is a good a time to act as
3009 any.

3010 Mr. Carter. Wow. Have you ever -- do you have any
3011 examples of any plants were just -- it was no longer feasible
3012 and they -- and they just, you know, had to shut down as a
3013 result of the NSR being triggered?

3014 Mr. Johnson. I can't point to a this moment a
3015 particular plant that closed because of NSR, per se. But
3016 where we've had plants that have closed or reduced their
3017 operations has been due to a multitude of factors and there
3018 have been times when plants have considered making, say,
3019 turbine upgrade projects or other improvements that improved
3020 the efficiency of the plant, that, as I said, they declined
3021 to do because of the uncertainty of the NSR process, its time
3022 line, the litigation that would follow from that, and
3023 ultimately our members tend to operate in a small C
3024 conservative business manner to try to keep those costs down
3025 and avoid risks when possible.

3026 Mr. Carter. Okay. Thank you.

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3027 Mr. Alteri, I want to ask you -- Chairman Shimkus has
3028 mentioned in our February meeting that -- and when we were
3029 talking about the New Source Review that were over 700
3030 guidance memos.

3031 How do you -- how do you sieve through all that? I
3032 mean, that's got to be unbelievable.

3033 Mr. Alteri. It surely is. EPA does a nice job in --
3034 out of Region 7 of trying to capture all of those
3035 applicability determination through an index. But there's
3036 also ongoing litigation that we have to be aware of because,
3037 ultimately, they decide.

3038 But, again, in Kentucky we are prohibited from
3039 regulating by policy and guidance and it should be noted that
3040 kind of the basis for what all NSR permitting actions are
3041 taken are through the 1990 puzzle book and it is still in
3042 draft form.

3043 And so we just want EPA to give us the certainty that
3044 when we make a decision that it's a final decision and then
3045 the companies can make the adjustments and the changes
3046 without fear of ongoing litigation.

3047 Mr. Carter. Let me ask you, from your perspective, if
3048 we were to shift to an hourly emissions rate would that help?

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3049 I mean --

3050 Mr. Alteri. Well, again, the idea is that you're going
3051 to make that unit as efficient as possible and, you know, to
3052 Mr. Buckheit's point is that it would be utilized more in
3053 increased emissions.

3054 But now with the 2010 standards for NOx and SOCS,
3055 they're one-hour standards and that's what the health-based
3056 standards are. They're not annual-based standards any
3057 longer.

3058 So I think it makes sense to focus on the hourly
3059 emission rates.

3060 Mr. Carter. Good. Good.

3061 Thank you all, again, for being here and, you know, I
3062 hope you will not be discouraged. I hope you will continue
3063 work. I want to think it's a new day at EPA and that they're
3064 more receptive and more input from you. So thank you for
3065 what you're doing.

3066 Mr. Chairman, I will yield back.

3067 Mr. Shimkus. The gentleman yields back his time.

3068 The chair now recognizes again the very patient author
3069 of the legislation, Mr. Griffith from Virginia, for five
3070 minutes.

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3071 Mr. Griffith. Thank you very much. If we could get the
3072 map put up on the board.

3073 Mr. Eisenberg, I've told the story earlier about the
3074 conveyor belt to nowhere because they didn't want to mess
3075 with the conveyor belt because -- and maybe their wrong.

3076 But the confusion and the concern about NSR is a
3077 problem. In response, we heard from Mr. Baldauf that they
3078 were concerned about New Jersey's mercury and other chemicals
3079 going up, and I knew I had this map somewhere in the back and
3080 if you can read it -- and if we need the bigger one we can
3081 bring it out -- I got it on foam board -- but that's a
3082 listing of the mercury deposited in the United States from
3083 foreign sources and you can see New Jersey is in the 40 to 45
3084 to 50 percent range of foreign sources.

3085 Am I not correct that a large amount of that comes from
3086 manufacturing and electrical generation in Asia and other --
3087 I see Florida's got a high percentage so I would assume some
3088 of it may be from Central America, too.

3089 Wouldn't that be correct, yes or no?

3090 Mr. Eisenberg. That would be correct, and not just on
3091 mercury but other pollutants as well.

3092 Mr. Griffith. And so when we have situations where the

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3093 confusion in the United States is a manufacturer of furniture
3094 can't change the conveyor to nowhere because he's no longer
3095 putting the lacquer on at that end of the conveyer belt, that
3096 tends to make our Asian competitors more competitive, does it
3097 not, when they're manufacturing goods?

3098 Mr. Eisenberg. It does.

3099 Mr. Griffith. And in fact, I would submit -- and I want
3100 to know if you agree -- that in some ways, by having rules
3101 that don't make sense we actually might increase the mercury
3102 being deposited from foreign sources in New Jersey that Mr.
3103 Baldauf is worried about, aren't we?

3104 Mr. Eisenberg. Well, certainly, if we are not promoting
3105 more efficient generation and more efficient technologies,
3106 yes. It would only exacerbate the problem.

3107 Mr. Griffith. But usually we are trying to be more
3108 efficient but we've got this rule in the way.

3109 Mr. Holmstead, I don't know if you can answer this
3110 question or not, and if not if you can get back to me later -
3111 - I think it's interesting, as I've been listening to the
3112 discussion.

3113 My understanding is is that the Obama administration
3114 EPA, which was very aggressive on a lot of these issues -- a

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3115 lot of these issues never tried to take the New Source Review
3116 rule and implant that into the new source performance
3117 standards. Am I not correct on that?

3118 Mr. Holmstead. No, that is right.

3119 Mr. Griffith. And if the New Source Review rule was so
3120 much better, because we heard from Mr. Johnson earlier, the
3121 language is the same in the bill but it's been interpreted
3122 differently. And if that was so much better, I would have
3123 thought they would have done that.

3124 Now, the hourly emissions rate test utilized by the new
3125 source performance standards program and included in this
3126 legislation provides an objective measure based on the
3127 facility's design and we've heard that it's easily determined
3128 by facility operators.

3129 Why is it easier to calculate and what is so complicated
3130 about the current emission project process?

3131 Mr. Holmstead. So the hourly emission rate is really
3132 the capacity of the plant and people who design the plant,
3133 people who buy that equipment, that's what they care about.

3134 That's an objective number, and I am not aware that
3135 there's ever been an issue whether that was triggered under
3136 the NSPS.

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3137 People do trigger it sometimes which means that they
3138 have to meet more efficient standards. With the annual test,
3139 Mr. Buckheit said something that's very revealing.

3140 So if you have a plant that in some time over the last
3141 five years had a forced outage, so you had a part that broke
3142 down and you had to shut down your plant for a day, even half
3143 a day, if you replace that part, then under the theory of --
3144 that EPA has taken in these cases, you increase your
3145 emissions because it was shut down for 24 hours or eight
3146 hours, you know, during some period and now that that part's
3147 not going to break down, the theory is well, you're going to
3148 increase your annual emissions.

3149 Some courts, but not all, have accepted that, and that's
3150 one of the other problems. We have different NSR rules
3151 around the country based on decisions by circuit courts on
3152 some of these theories.

3153 Mr. Griffith. So, basically, if you're more efficient,
3154 that's bad from the viewpoint of those that don't want to --

3155 Mr. Holmstead. Or --

3156 Mr. Griffith. -- or if you're just not closed down
3157 some --

3158 Mr. Holmstead. Or more reliable.

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3159 Mr. Griffith. Or more reliable.

3160 Mr. Holmstead. Right. So if you're more reliable then
3161 you can operate more hours and that should trigger NSR.

3162 Mr. Griffith. And whether we are dealing with
3163 manufacturing or we are dealing with electric generation or
3164 refining, we actually want those people to be more reliable,
3165 don't we?

3166 Mr. Holmstead. I would -- I would think so. But we
3167 also want them to reduce their pollution where we can and we
3168 have all these other tools.

3169 We are not waiting for them to trigger some program. We
3170 are saying, here's how you need to reduce your pollution and
3171 we are going to focus on it.

3172 Mr. Griffith. I think you pointed out earlier there are
3173 14 overlapping programs with the NSR -- is that accurate?

3174 Mr. Holmstead. Well, there's -- for the power sector
3175 there's at least 14 other programs that regulate the very
3176 same pollutants from the same plans.

3177 Mr. Griffith. Kind of makes it hard for folks to comply
3178 when you have got all these overlapping and sometimes
3179 confusing regulations, isn't it?

3180 Mr. Holmstead. Well, it's good for Clean Air Act

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3181 lawyers.

3182 Mr. Griffith. Yes, sir. I can appreciate that. As a
3183 lawyer, I am not sure I would be upset about that part of it
3184 but I hate it for the American people.

3185 I yield back.

3186 Mr. Shimkus. The gentleman yields back his time.

3187 Before I do the closing document, I was asked by the
3188 minority -- I am going to ask unanimous consent to allow Mr.
3189 Baldauf to at least respond to the air transport issue, if
3190 you would like, since the state of New Jersey was mentioned
3191 in my colleague's comment.

3192 Is that correct? Is that what you wish.

3193 Mr. Baldauf. Sure. So, generally, the transport issue
3194 just has to do with the simple fact that, you know, as a
3195 state we are probably almost in the top couple cleanest
3196 energy-generating states in the country.

3197 But the reality is no matter how clean your in-state
3198 generation is, if there's no control on the upwind states,
3199 you have the same amount of pollution, unfortunately, for
3200 your citizens as the other states do.

3201 One of our focus is on NSR. There's been talk about all
3202 the tools in the toolbox. Well, at the end of the day, these

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3203 grandfathered facilities have remained unchanged for 40
3204 years. So those other tools don't seem to be helping.

3205 I agree that the NSR rules are flawed. They're
3206 complicated, and I do think they need revised. But they need
3207 revised in such a way to make sure these grandfathered
3208 facilities reduce emissions and not increase emissions.

3209 Mr. Shimkus. Well, I thank you very much and you're
3210 welcome to give us some input on -- I mean, we do try to get
3211 to some type of compromise.

3212 We'd sure like to get this fixed. This might be a
3213 bridge too far but we could give it a try, right, Congressman
3214 Griffith?

3215 Mr. Griffith. Absolutely.

3216 Mr. Shimkus. So with that, seeing no other further
3217 members wishing to ask questions, I would like to thank you
3218 all for being here again today.

3219 Before we conclude, I would like to ask unanimous
3220 consent to submit the filing documents for the record: a
3221 joint letter from the American Forest and Paper Association
3222 and the American Wood Council.

3223 We also have a letter from the -- what did I do with it
3224 -- from the National Parks Conservation Association. Without

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3225 objection, so ordered.

3226 [The information follows:]

3227

3228 *****COMMITTEE INSERT 10*****

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3229 Mr. Shimkus. In pursuant to committee rules, I remind
3230 members that they have 10 business days to submit additional
3231 questions for the record and I ask that witnesses submit
3232 their responses within 10 business days upon receipt of the
3233 questions.

3234 Without objection, the subcommittee is adjourned.

3235 [Whereupon, at 12:48 p.m., the committee was adjourned.]