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6 MARKUP OF H.R. 3128, TO AMEND SECTION 111 OF

7 THE CLEAN AIR ACT TO CLARIFY WHEN A PHYSICAL

8 CHANGE IN, OR CHANGE IN THE METHOD OF

9 OPERATION OF, A STATIONARY SOURCE

10 CONSTITUTES A MODIFICATION, AND FOR OTHER

11 PURPOSES

12 TUESDAY, JULY 17, 2018

13 House of Representatives

14 Subcommittee on Environment

15 Committee on Energy and Commerce

16 Washington, D.C.

17

18

19

20 The subcommittee met, pursuant to call, at 1:00 p.m., in

21 Room 2322 Rayburn House Office Building, Hon. John Shimkus

22 [chairman of the subcommittee] presiding.

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23           Members present: Representatives Shimkus, McKinley,  
24           Barton, Harper, Olson, Johnson, Flores, Hudson, Cramer,  
25           Walberg, Carter, Duncan, Walden (ex officio), Tonko, Ruiz,  
26           Peters, Green, DeGette, McNerney, Dingell, Matsui, and  
27           Pallone (ex officio).

28           Staff present: Mike Bloomquist, Deputy Staff Director;  
29           Samantha Bopp, Staff Assistant; Daniel Butler, Staff  
30           Assistant; Karen Christian, General Counsel; Kelly Collins,  
31           Staff Assistant; Wyatt Ellertson, Research Associate,  
32           Energy/Environment; Margaret Tucker Fogarty, Staff Assistant;  
33           Adam Fromm, Director of Outreach and Coalitions; Ali Fulling,  
34           Legislative Clerk, Oversight & Investigations, Digital  
35           Commerce and Consumer Protection; Jordan Haverly, Policy  
36           Coordinator, Environment; Peter Kielty, Deputy General  
37           Counsel; Ryan Long, Deputy Staff Director; Mary Martin,  
38           Deputy Chief Counsel, Energy & Environment; Sarah Matthews,  
39           Press Secretary, Energy & Environment; Drew McDowell,  
40           Executive Assistant; Brandon Mooney, Deputy Chief Energy  
41           Advisor; Brannon Rains, Staff Assistant; Peter Spencer,  
42           Professional Staff Member, Energy; Austin Stonebraker, Press  
43           Assistant; Evan Viau, Legislative Clerk, Communications &  
44           Technology; Hamlin Wade, Special Advisor, External Affairs;

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45 Jeff Carroll, Minority Staff Director; Elizabeth Ertel,  
46 Minority Deputy Clerk; Jean Fruci, Minority Energy and  
47 Environment Policy Advisor; Caitlin Haberman, Minority  
48 Professional Staff Member; Rick Kessler, Minority Senior  
49 Advisor and Staff Director, Energy and Environment; Jourdan  
50 Lewis, Minority Staff Assistant; Alexander Ratner, Minority  
51 Policy Analyst; Tuley Wright, Minority Energy and Environment  
52 Policy Advisor; and Catherine Zander, Minority Environment  
53 Fellow.

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54 Mr. Shimkus. The subcommittee will come to order. The  
55 chair recognizes himself for an opening statement.

56 Kind of before we do that, we are going to do the  
57 opening statements and then the schedule is that votes should  
58 be called around 1:20. Then we will go vote and then we will  
59 come back and we will probably at that time deal with the  
60 amendments.

61 Secondly, I want to embarrass my son, who's in the front  
62 row on the right with the short-sleeved white shirt. So  
63 that's a to-do list and I got that done.

64 Mr. Tonko. Are we going to share his name?

65 Mr. Shimkus. Oh. What is his name? I don't know.

66 [Laughter.]

67 Mr. Duncan. I'd like to introduce my son in the pink  
68 tie on the front there, too.

69 Mr. Shimkus. Daniel Shimkus is my son's name. Yes.  
70 Yes.

71 So good afternoon, and welcome to today's subcommittee  
72 markup of H.R. 3128, a bill introduced by Mr. Griffith last  
73 year which clarifies when changes at stationary sources  
74 should be subject to New Source Review preconstruction  
75 permitting.

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76           The legislative text we consider today is substantially  
77 similar to the discussion draft we examined in our May  
78 legislative hearing, reflecting the technical feedback from  
79 EPA and stakeholders.

80           It will be offered as an amendment in the nature of a  
81 substitute to H.R. 3128 upon which the text is based. The  
82 New Source Review program is desperately in need of reform.

83           Witnesses have testified that the New Source Review  
84 program is overly complex and is discouraging companies from  
85 doing things that we all want them to do like improving  
86 energy efficiency, making incremental pollution control  
87 upgrades, and keeping facilities in good working order.

88           Perhaps the most frustrating aspect of the New Source  
89 Review program is that the regulated community and even the  
90 regulator themselves are confused about what types of  
91 facility upgrades require a company to obtain a New Source  
92 Review permit.

93           In theory, only projects that result in an emissions  
94 increase require a New Source Review permit. However, in  
95 practice, we have seen examples where the EPA has issued  
96 enforcement actions against companies for making facility  
97 upgrades that actually resulted in an emissions decrease,

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98 which doesn't make any sense.

99 An environmental program to discourage these companies  
100 from carrying out environmentally beneficial projects is an  
101 environmental program that needs to be reformed and that is  
102 exactly what Mr. Griffith's legislation does.

103 Today's bill makes the New Source Review program work  
104 better by clarifying that the only types of facility changes  
105 that require a New Source Review permit are changes that  
106 increase a facilities capacity to emit pollutants at the  
107 higher hourly rate.

108 Opponents of New Source Review will claim that this  
109 legislation will result in massive pollution increases. This  
110 is simply not true.

111 The legislation applies solely to stationary sources and  
112 actually removes hurdles to installing pollution control  
113 projects and devices.

114 Most important, it does not affect operating permits and  
115 other regulatory tools used to study emission limits at major  
116 facilities.

117 Two state air regulators testified before this  
118 subcommittee that the Clean Air Act currently provides a  
119 range of effective tools and programs to successfully control

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120 emissions from existing sources and that nothing in this  
121 legislation will change that.

122 This bill's clarification in the law will make it easier  
123 for companies to invest in, modernize in existing facilities,  
124 leading to a stronger economy and more jobs.

125 For these reasons, a wide range of stakeholders have  
126 sent letters in support for New Source Review reform,  
127 including multiple labor unions representing the building  
128 trades, the National Association of Manufacturing, National  
129 Rural Electric Cooperative Association, American Public Power  
130 Association, American Forest and Paper Association, Portland  
131 Cement Association, American Iron and Steel Institute,  
132 National Mining Association, U.S. Chamber, Pennsylvania  
133 Chamber of Business and Industry, American Energy Alliance,  
134 and Citizens for Responsible Energy Solutions.

135 I look forward to voting in favor of this legislation  
136 and urge my colleagues on both sides of the aisle to do the  
137 same.

138 I now recognize my friend from New York, Mr. Tonko, for  
139 three minutes for an opening statement.

140 Mr. Tonko. Thank you, Mr. Chair, and today we are here  
141 to consider H.R. 3128, which would make a number of

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142 significant changes to EPA's New Source Review program for  
143 existing sources of emissions.

144 Over the last half century we have gained a better  
145 understanding of how dangerous air pollution can be and how -  
146 - and have developed impressive technologies to reduce it.

147 During our oversight and legislative hearings on New  
148 Source Review, we heard how important the program is to  
149 reducing harmful air pollution.

150 But this bill would ultimately enable some polluters,  
151 many of which were initially grandfathered into the NSR  
152 program and have avoided installing pollution controls for  
153 decades, to continue operating without taking any steps to  
154 clean up their facilities.

155 Today, many old coal-fired power plants are entering the  
156 end of useful life unless they undertake significant capital  
157 investments.

158 Under the current NSR program, if these facilities make  
159 a major modification, the grandfathering is over and modern  
160 pollution controls would be required to be installed.

161 The discussion draft before us today would create new  
162 loopholes to enable those old facilities, which have put off  
163 adopting pollution reduction technologies for decades to

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164 continue polluting our air indefinitely and I do not think  
165 that is fair.

166 It is not fair to the facilities that have made the  
167 investments to clean up their pollution and it is not fair to  
168 the people that live and work near these sites.

169 I understand that businesses need time to transition and  
170 plan for the investments needed to install pollution  
171 controls. But now we have four decades of evidence of  
172 facilities going to great lengths to avoid triggering the  
173 major modification requirement and turning to Congress is  
174 just the latest attempt.

175 Allowing major polluters to extend their lives while  
176 avoiding installation of available technology to prevent  
177 unnecessary pollution is unacceptable and runs counter to the  
178 bipartisan intent of the Clean Air Act.

179 I want facilities to be able to invest in efficiency and  
180 reliability upgrades and I want United States businesses to  
181 be as competitive as possible.

182 But it cannot come at the expense of their neighbors'  
183 health. This bill will result in dirtier air and I urge  
184 members to oppose it.

185 With that, Mr. Chair, I yield back.

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186 Mr. Shimkus. The gentleman yields back his time and I  
187 thank him.

188 The chair looks for the chairman of the full committee.  
189 He has not arrived yet. The chair would like to now  
190 recognize, if he is ready, the ranking member of the full  
191 committee, Mr. Pallone, for three minutes.

192 Mr. Pallone. Thank you, Mr. Chairman.

193 The bill before us today is a bad bill that puts  
194 polluters before people. If Republicans on this committee  
195 were serious about protecting the environment and human  
196 health, they would have never brought this bill up for a  
197 markup, and that's, of course, not the case.

198 We are here, and, as I said at the legislative hearing  
199 in May, the threshold test for any legislation to reform the  
200 Clean Air Act is whether it will reduce air pollution and  
201 protect public health.

202 The amendment in the nature of a substitute is far more  
203 likely to increase air pollution substantially and put the  
204 health of the American public at great risk in the process.

205 This bill exacerbates existing loopholes in the New  
206 Source Review program to the benefit of old polluting  
207 facilities that have avoided complying with modern pollution

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208 control standards.

209           These bad actors have been able to game the system to  
210 change operations and expand without ever reducing emissions,  
211 and this bill only makes this problem worse.

212           In ensures that anyone downwind of these plants will be  
213 forced to continue breathing polluted unhealthy air every  
214 day.

215           Neighboring communities will get no relief from the many  
216 health problems associated with chronic exposure to  
217 pollution, asthma attacks, heart and lung disease, and, of  
218 course, cancer.

219           This bill amounts to a pro-polluter wish list that is so  
220 egregious it would be virtually impossible to compel dirty  
221 facilities to clean up their act.

222           The legislation essentially grants a permanent amnesty  
223 to bad actors, getting some of the oldest and least  
224 economical facilities in the country the green light to  
225 pollute without consequence.

226           And it's safe to try to avoid overall increases in  
227 pollution using other Clean Air Act authorities, as some have  
228 suggested. These reductions will have to come from  
229 businesses and other economic sectors.

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230           So this creates a very unfair situation where some  
231 businesses have no obligation to clean up pollution and  
232 others are left footing the bill.

233           The Trump administration has spent its time undermining  
234 public health protections and diverting the mission of the  
235 Environmental Protection Agency away from protecting public  
236 health to protecting polluters.

237           This bill continues that pattern of prioritizing the  
238 needs of polluters over people. It codifies the  
239 administration's plans to forego enforcement of the Clean Air  
240 Act and lets polluters off the hook.

241           I urge my colleagues to oppose it because the American  
242 public deserves better from Congress. It's just another  
243 handout to the special interests and not worthy of debate in  
244 this subcommittee.

245           In fact, this time could have been better used getting  
246 answers from HHS on the progress, or lack thereof, that is  
247 being made to reunify more than 2,500 children who were  
248 forcibly stripped away from their parents by the Trump  
249 administration's inhumane immigration policies.

250           And I yield back, Mr. Chairman.

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

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252 The chair now recognizes the chairman of the full  
253 committee, Mr. Walden, for three minutes.

254 The Chairman. Thank you, Mr. Chairman. Thanks for your  
255 leadership on this and so many other issues.

256 Today, we take an important step in this committee's  
257 work to advance reasonable updates to our environmental laws  
258 to ensure more effective environmental programs as well as a  
259 more productive economy.

260 Now, H.R. 3128 was developed by Congressman Griffith and  
261 it addresses a problem that has been identified in a clear  
262 Clean Air Act's New Source Review program, and that is the  
263 controversy surrounding when a change in a major source of  
264 emissions, be it an efficiency improvement, and emission  
265 control improvement, or basic upkeep in parts replacement is  
266 sufficient to trigger a preconstruction permitting.

267 The uncertainty over this costly time-consuming process  
268 creates powerful incentives to avoid making beneficial  
269 improvements to manufacturing and other facilities.

270 Now, this deprives communities benefits for the  
271 environment and for efficient operations at helping increase  
272 jobs and economic activity.

273 So this bill simply adds much needed clarification into

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274 the law to say that a change at a facility that warrants this  
275 NSR review should be based on a maximum hourly emissions rate  
276 -- a clear and objective measure which, by the way, is  
277 consistent with similar provisions in the Clean Air Act.

278 This will greatly accelerate decision making at  
279 regulated facilities around the nation.

280 So I want to thank our colleague from Virginia, Mr.  
281 Griffith, for his efforts on this legislation. I urge my  
282 colleagues to support this common sense bill.

283 And I would be happy to yield or yield back.

284 I'll yield back the balance of my time.

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

286 The chair looks to see if anyone wants to speak on the  
287 bill.

288 If not, without objection, the chair calls up H.R. 3128  
289 and asks the clerk to report.

290 [The Bill H.R. 3128 follows:]

291

292 \*\*\*\*\*INSERT 1\*\*\*\*\*

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293           The Clerk. H.R. 3128, to amend Section 111 of the Clean  
294 Air Act to clarify when a physical change in or change in the  
295 method of operation of a stationary source constitutes a  
296 modification and for other purposes.

297           Mr. Shimkus. Without objection, the first reading of  
298 the bill is dispensed with and the bill will be open for  
299 amendment at any point. So ordered.

300           The chair recognizes himself to offer an amendment in  
301 the nature of a substitute and the clerk will report the  
302 amendment.

303           [The Amendment offered by Mr. Shimkus follows:]

304

305           \*\*\*\*\*INSERT 2\*\*\*\*\*

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306 The Clerk. Amendment in the nature of a substitute to  
307 H.R. 3128, offered by Mr. Shimkus.

308 Mr. Shimkus. Without objection, the reading of the  
309 amendment is dispensed with and the chair is recognized for  
310 five minutes in support of the amendment.

311 This amendment in the nature of a substitute is  
312 substantially similar to the New Source Review and discussion  
313 draft that this subcommittee examined in May.

314 The amendment makes some clarifications based on the  
315 legislative hearing as well as feedback from EPA and  
316 stakeholders on the discussion draft.

317 As with the base bill, it seeks to reduce the complexity  
318 and uncertainty that discourage owners from modernizing and  
319 maintaining existing facilities by clarifying when a change  
320 in an existing facility requires a New Source Review permit.

321 To illustrate why this legislation is needed, one  
322 hearing witness told us about a project to switch a  
323 manufacturing facility to a cleaner-burning fuel that was  
324 canceled because the current New Source Review emissions  
325 accounting methodology incorrectly showed that the paper --  
326 on paper that the project would cause an emissions increase.

327 Yet, the project would have resulted in improved air



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328 quality. In another example a witness described how  
329 customers are choosing to not buy and install a particular  
330 gas turbine of great technology that is capable of improving  
331 turbine performance by 2.6 percent while lowering carbon  
332 dioxide emissions per megawatt hour by 6.5 percent because  
333 doing so might trigger the NSR -- New Source Review --  
334 permitting process.

335           These examples highlight how New Source Review hinders  
336 investments that actually lead to environmental benefits.  
337 The main reason for this is because the New Source Review  
338 program measures future emissions using a complicated annual  
339 emissions projection approach projecting future annual  
340 emissions is a difficult and confusing process that requires  
341 the consideration of many complex factors, which frequently  
342 overestimates the facility's future emissions.

343           Rather than go to this costly process, companies  
344 commonly choose to forego incremental improvements to their  
345 facilities.

346           The base bill improves the new resource review process  
347 by specifying the use of an hourly emissions rate test for  
348 determining whether an upgrade at an existing facility causes  
349 an emission increase, thereby requiring an owner to obtain a

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350 New Source Review permit.

351 This amendment further clarifies how to implement that  
352 test. An hourly rate test is a straightforward to carry out  
353 because it only relies upon engineering design factors, not  
354 complicated future emission projections and assessments.

355 A separate program under the Clean Air Act, the new  
356 source performance standard, has successfully used an hourly  
357 rate test with little to no controversy for over 40 years,  
358 and I think that's the basic point of our argument and  
359 debate.

360 The amendment also specifies more clearly the  
361 circumstances by which air pollution control, efficiency, and  
362 equipment repairs do or do not trigger New Source Review.

363 This amendment clarifies the base bill and makes target  
364 improvements to how the New Source Review program works and I  
365 urge my colleagues to vote in support of the amendment in  
366 nature of a substitute.

367 Votes have been called. We would like to recess and  
368 return to consider the amendments to the substitute amendment  
369 after the last vote in the series if that's okay with my  
370 ranking member.

371 This markup is recessed.

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372 [Recess.]

373 Mr. Shimkus. The chairman calls the markup back to  
374 order and we are on the amendment in the nature of the  
375 substitute. Are there any -- are there any bipartisan -- I  
376 hate to ask -- any bipartisan amendments to the amendment --  
377 none.

378 Seeing none, are there any amendments to the amendment  
379 in the nature of a substitute?

380 Mr. Tonko. Mr. Chair, I have an amendment at the desk.  
381 I believe it's amendment number one.

382 Mr. Shimkus. The clerk will report the amendment.

383 [The Amendment offered by Mr. Tonko follows:]

384

385 \*\*\*\*\*INSERT 3\*\*\*\*\*

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386 The Clerk. Amendment to the amendment in the nature of  
387 a substitute to H.R. 3128, offered by Mr. Tonko.

388 Mr. Shimkus. The gentleman from New York is recognized  
389 five minutes in support of his amendment.

390 Mr. Tonko. Thank you, Mr. Chair.

391 As I said earlier, I have a real concern that the bill  
392 before us today is going to result in more air pollution.

393 The New Source Review program was intended to ensure  
394 that when a facility made modifications to expand capacity or  
395 extend design life by replacing major equipment that the  
396 facility would also upgrade its pollution control equipment  
397 to meet modern standards.

398 This bill will allow facilities to make these  
399 modifications without having to install modern pollution  
400 control equipment or make any adjustments to reduce their  
401 emissions.

402 There are still many communities across our country  
403 where air quality is not healthy and pollution levels are too  
404 high.

405 Regulatory relief for facilities in these areas means  
406 poor air quality and more health problems for neighboring  
407 communities.

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408 My amendment would exclude facilities that are within  
409 five miles of a school, hospital, veterans health care  
410 facility, or a nursing home from the NSR loopholes of this  
411 bill.

412 Children, veterans, the elderly, and people being  
413 treated in a hospital are already more vulnerable to air  
414 pollution than adults in good health.

415 Shifting the threshold test for whether a modification  
416 will trigger a review of a proposed project to a change in  
417 the maximum hourly emission rate of a pollutant virtually  
418 assures the requirements of the NSR program will never apply.

419 It is unlikely that any construction project including  
420 one that would expand a facility's capacity and increase its  
421 overall pollution output substantially would alter the  
422 maximum hourly rate of pollution produced by the plant.

423 At a minimum, a facility in close proximity to schools,  
424 to nursing homes, to hospitals and veterans' health centers  
425 should face a threshold for evaluation that ensures pollution  
426 levels will not increase.

427 My amendment will not fix all of the problems this  
428 legislation creates. It will not limit all of the pollution  
429 increases it will allow.

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430 But it will offer some protection to those who are the  
431 most vulnerable to the diseases worsened or caused by air  
432 pollution.

433 With that, I urge my colleagues to support this  
434 amendment.

435 Ms. DeGette. Will the gentleman yield?

436 Mr. Tonko. I will yield.

437 Ms. DeGette. Mr. Chairman, thank you, and I speak in  
438 favor of this amendment. It really highlights the  
439 fundamental problems with the bill, which is it'll make it  
440 easier for polluters to increase their emissions and harm  
441 vulnerable populations.

442 I am a representative for a nonattainment area under the  
443 Clean Air Act so this is not an abstract issue for my  
444 constituents.

445 The northern front range of Denver is already plagued by  
446 a rise in ozone, which is associated with a wide range of  
447 public health harms including an elevated risk of asthma and  
448 cardiovascular disease.

449 We know the polluters are already pushing to take  
450 advantage of every loophole they can find. For example,  
451 Succor Energy has a refinery just outside my district that's

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452 in the midst of seeking dozens of permit modifications.

453 They are evading undergoing a New Source Review by  
454 claiming all the modifications are below the significance  
455 level. Residents of the Swansea Elyria neighborhood, which  
456 is right next to this refinery, have expressed grave concerns  
457 about these modifications and the facility's ongoing  
458 operations.

459 Earth Justice found that the refinery has filed at least  
460 40 malfunction reports and 21 permit deviation reports since  
461 January 2013.

462 Meanwhile, the Department of Public Health and  
463 Environment of Denver has reported that residents from this  
464 neighborhood and Globeville increasingly suffer from several  
465 diseases associated with elevated air pollution including  
466 asthma, cancer, cardiovascular diseases, diabetes, and  
467 obesity.

468 As is so often the case for neighborhoods near  
469 industrial facilities, these communities have lower median  
470 incomes and a higher proportion of minority residents than  
471 other areas of my district.

472 That's what's happening today under current law. The  
473 bill before us today only will open up further loopholes.

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474 Polluters will spew more toxins in the air and vulnerable  
475 populations, low income areas, and communities of color will  
476 suffer the health consequences.

477 I urge my colleague to support the amendment and to  
478 oppose the underlying bill. I thank the gentleman for  
479 yielding, and I yield back.

480 Mr. Tonko. Thank you. Anyone else wishing to use 45  
481 seconds?

482 Mr. Green. Will the gentleman yield?

483 Mr. Tonko. I yield to Representative Green.

484 Mr. Green. Thank you.

485 Mr. Chairman, members, if this bill passes, the district  
486 I represent will have 200 more tons a year in emissions. I  
487 have a very industrial area with refineries, chemical plants,  
488 and we are challenged on our air emissions already and this  
489 bill would make it even worse.

490 And I want to thank my New York colleague for yielding  
491 to me. Just wanted to let you know that this is not going to  
492 help air quality in my community.

493 Mr. Tonko. The gentleman yields and I yield back, Mr.  
494 Chair.

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

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496           The chair recognizes -- for what purpose does the  
497 gentleman from Ohio seek recognition?

498           Mr. Johnson. Mr. Chairman, I rise in opposition to this  
499 amendment.

500           Mr. Shimkus. The gentleman is recognized for five  
501 minutes.

502           Mr. Johnson. Mr. Chairman, I'd like to note that in  
503 earlier subcommittee hearings, two state air regulators  
504 testified that H.R. 3128 does not reduce the ability of air  
505 regulators to successfully control emissions from existing  
506 sources and that H.R. 3128 would not allow a facility to  
507 operate in a way that would violate any emission limits or  
508 air quality conditions specified in the facility's operating  
509 permit.

510           We are trying to improve the NSR permitting process so  
511 that companies are better able to modernize and maintain  
512 existing facilities.

513           Moreover, the bill makes it easier for companies to  
514 carry out projects at existing facilities that actually will  
515 reduce emissions like incremental pollution control upgrades  
516 and energy efficiency improvements.

517           This bill is about providing greater clarity and

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518 certainty to the NSR process so that companies can  
519 confidently name needed investments and improvements to our  
520 nation's existing industrial facilities, which will lead to a  
521 stronger economy and more American jobs.

522 And lastly, in no way does this bill allow existing  
523 facilities to increase emissions levels beyond currently  
524 established operating permit limits.

525 So, Mr. Chairman, this amendment is unnecessary and I  
526 urge a no vote on this amendment.

527 Mr. Shimkus. Would the gentleman yield to me?

528 Mr. Johnson. Yes, I will yield.

529 Mr. Shimkus. Thank you. I want to just follow up on my  
530 colleague from Ohio. I appreciate him taking the time.

531 The bill, basically, goes from a yearly calculation to  
532 the hourly calculation. It's the same standard that we use  
533 under the National Ambient Air Quality Standard.

534 I think it's instructive in that we -- for 40 years we  
535 have used it under that program and I don't think any of us  
536 have heard complaints on either side on how the environmental  
537 rule and regulations implied in that instance.

538 So we are just trying to take a successful regulatory  
539 look at in moving the New Source Review program to that type

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540 of standard.

541 I would also just add that -- and I could read the list  
542 of all the environmental rules and regs that comply with  
543 stationary facilities and there is about 12 -- this law does  
544 not reduce any of the current laws that deal with power  
545 plants.

546 So those laws stay in effect. And with that, I would  
547 then yield back to the gentleman from Ohio.

548 Mr. Johnson. Mr. Chairman, unless anyone else needs  
549 time, I yield back.

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

551 For what purpose does the gentleman from New Jersey seek  
552 recognition?

553 Mr. Pallone. Strike the last word in support of Mr.  
554 Tonko.

555 Mr. Shimkus. The gentleman is recognized for five  
556 minutes.

557 Mr. Pallone. Thank you, Mr. Chairman.

558 Schools, hospitals, veterans health facilities, and  
559 nursing home care for those most vulnerable to health  
560 problems created are exacerbated by air pollution and some of  
561 these facilities already are in areas of unhealthy air

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562 quality.

563           So we should not allow additional pollution in these  
564 areas and this bill puts public health at risk. These  
565 facilities produce multiple pollutants that are extremely  
566 harmful to public health like sulfur dioxide, nitrogen oxide,  
567 carbon monoxide, and particulate matter, and air pollution  
568 around schools is linked to poor student health and academic  
569 performance. We should be working harder to improve air  
570 quality, not helping polluters to degrade it.

571           Many elderly patients have reduced lung function and  
572 weaker immune systems. Air pollutants irritate their  
573 conditions and, in some cases, contribute to their premature  
574 death.

575           Many of the facilities that will benefit from this  
576 rollback of the NSR program have already avoided controlling  
577 their pollution for decades.

578           When they expand their output and fail to install modern  
579 pollution control equipment they will add tons of additional  
580 pollutants to the air every year.

581           So Mr. Tonko's amendment will not fix all of the serious  
582 problems with this bill but it will at least prevent  
583 facilities in areas that serve our most vulnerable citizens

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584 from continuing to avoid doing their fair share to clean up  
585 the air that we all have to breathe.

586 So I would urge support for his amendment.

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

588 The chair recognizes himself for five minutes in  
589 opposition just to -- I saw Gene looking over at me saying  
590 Shimkus doesn't know what he's talking about.

591 I think the standard was New Source Performance  
592 Standards as what -- and when I noticed that I go -- I said  
593 something that was incorrect.

594 So the hourly standard is applying to the New Source  
595 Performance Standards, part of the other regulation. The  
596 other thing that I'd like to highlight is that nothing -- and  
597 we believe this -- nothing in this bill will negatively  
598 impact air quality, and under the law, if a change at a  
599 facility would adversely affect public health as this  
600 amendment is purporting to assume, then the project must go  
601 through the full New Source Review permitting process as  
602 specified in Section 2 of the bill.

603 All we want to do is to allow our facilities to be able  
604 to update and modernize, either become more energy efficient  
605 or, obviously, have a lower profile on emissions by

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606 upgrading, and I think it's been stated that there has been  
607 folks slow in responding and I think the way the new source  
608 program is currently implemented that's the reason why we  
609 haven't had updating to the system.

610 So with that, anyone else seeking time? Seeing none, I  
611 yield back the balance of my time.

612 Anyone seek time? Seeing none, the vote now occurs on  
613 Amendment 1.

614 All those in favor say aye.

615 All those opposed, no.

616 In the opinion of the chair, the noes have it. The noes  
617 have it. A roll call vote has been asked for and then is  
618 accepted.

619 So the clerk will record the roll.

620 The Clerk. Mr. McKinley.

621 Mr. McKinley. No.

622 The Clerk. Mr. McKinley votes no.

623 Mr. Barton.

624 [No response.]

625 Mrs. Blackburn.

626 [No response.]

627 Mr. Harper.

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628           Mr. Harper.   No.  
629           The Clerk.   Mr. Harper votes no.  
630           Mr. Olson.  
631           Mr. Olson.   No.  
632           The Clerk.   Mr. Olson votes no.  
633           Mr. Johnson.  
634           Mr. Johnson.   No.  
635           The Clerk.   Mr. Johnson votes no.  
636           Mr. Flores.  
637           Mr. Flores.   No.  
638           The Clerk.   Mr. Flores votes no.  
639           Mr. Hudson.  
640           Mr. Hudson.   No.  
641           The Clerk.   Mr. Hudson votes no.  
642           Mr. Cramer.  
643           Mr. Cramer.   No.  
644           The Clerk.   Mr. Cramer votes no.  
645           Mr. Walberg.  
646           Mr. Walberg.   No.  
647           The Clerk.   Mr. Walberg votes no.  
648           Mr. Carter.  
649           Mr. Carter.   No.

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650 The Clerk. Mr. Carter votes no.

651 Mr. Duncan.

652 Mr. Duncan. No.

653 The Clerk. Mr. Duncan votes no.

654 Chairman Walden.

655 [No response.]

656 Mr. Tonko.

657 Mr. Tonko. Yes.

658 The Clerk. Mr. Tonko votes aye.

659 Mr. Ruiz.

660 Mr. Ruiz. Aye.

661 The Clerk. Mr. Ruiz votes aye.

662 Mr. Peters.

663 Mr. Peters. Aye.

664 The Clerk. Mr. Peters votes aye.

665 Mr. Green.

666 Mr. Green. Aye.

667 The Clerk. Mr. Green votes aye.

668 Ms. DeGette.

669 Ms. DeGette. Aye.

670 The Clerk. Ms. DeGette votes aye.

671 Mr. McNerney.



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672           Mr. McNerney. Aye.

673           The Clerk. Mr. McNerney votes aye.

674           Mr. Cardenas.

675           [No response.]

676           Mrs. Dingell.

677           Mrs. Dingell. Aye.

678           The Clerk. Mrs. Dingell votes aye.

679           Ms. Matsui.

680           Ms. Matsui. Aye.

681           The Clerk. Ms. Matsui votes aye.

682           Mr. Pallone.

683           Mr. Pallone. Aye.

684           The Clerk. Mr. Pallone votes aye.

685           Chairman Shimkus.

686           Mr. Shimkus. Shimkus votes no.

687           The Clerk. Chairman Shimkus votes no.

688           Mr. Shimkus. Anyone else seeking to be recorded?

689           Seeing none, the clerk will report.

690           The Clerk. Mr. Chairman, on that vote, there were 11

691           eyes and nine noes.

692           Mr. Chairman, on that vote, there were nine eyes and 11

693           noes.

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694 Mr. Shimkus. Nine ayes, 11 noes. The amendment is not  
695 agreed to.

696 Is there any other amendments to the amendment in the  
697 nature of a substitute?

698 All right. Someone has one.

699 For what purpose does the gentlelady from Michigan rise?

700 Mrs. Dingell. I have an amendment, Mr. Chair.

701 Mr. Shimkus. The clerk will report the amendment.

702 [The Amendment offered by Mrs. Dingell follows:]

703

704 \*\*\*\*\*INSERT 4\*\*\*\*\*

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705 The Clerk. Amendment to the amendment in the nature of  
706 a substitute to H.R. 3128, offered by Mrs. Dingell.

707 Mr. Shimkus. The gentlelady is recognized five minutes  
708 in support of her amendment.

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

710 My amendment proposes to make what I believe is a very  
711 simple change to the underlying bill -- to exempt any source  
712 of lead in air emissions from the provisions of this act.

713 Lead is a dangerous and pervasive substance. Once in  
714 our bodies, lead is absorbed into and stored in our bones,  
715 blood, and tissues.

716 Even exposure to small amounts of lead can have long-  
717 lasting and devastating health effects. Lead-poisoned  
718 children have decreased neurological function and behavioral  
719 issues.

720 Exposures to pregnant women cause irreversible damage to  
721 a baby's developing systems and, potentially, stillbirths or  
722 miscarriages, and even low levels of exposure in adults have  
723 been linked to adverse health effects like high blood  
724 pressure, heart disease, kidney disease, reduced fertility,  
725 and violent or criminal behavior.

726 Sources of lead emissions vary from one area to another.

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727 At the national level, major sources of lead in the air are  
728 metal processing, particularly lead smelters and other  
729 sources are waste incinerators, copper smelting, utilities,  
730 and lead acid battery manufacturers.

731 The highest air concentrations of lead are usually found  
732 near lead smelters. Historically, lead gasoline was also a  
733 major source of pollution. We have made great progress and  
734 lead emissions sharply declined after it was eliminated from  
735 gasoline and remained low.

736 But the provisions of the bill before us could undo all  
737 of that good work. Major stationary sources of lead  
738 emissions like lead acid battery manufacturers or lead  
739 smelters would be given the green light to expand and ramp up  
740 their operations without control or consequence.

741 As long as they maintain a consistent rate of emissions,  
742 these polluters would be able to increase the frequency and  
743 intensity of their operations, triggering an exponential  
744 surge in their emissions.

745 And where do you think all of that new lead pollution  
746 goes? Into the surrounding and downwind communities. It  
747 will be inhaled while still in the air by children on the  
748 playground and it'll be ingested after it settles in water or

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749 on land by families sitting down for dinner.

750 The people of Michigan can't afford the victims of more  
751 lead -- for there to be more victims of more lead poisoning,  
752 and we are not alone.

753 We should be working together to advance policies that  
754 help protect the people who live in the communities that  
755 represent not the polluters who have been championed by this  
756 administration.

757 In the spirit of putting people over polluters, my  
758 amendment would ensure any facility that emits lead into the  
759 air is barred from the loophole provisions of this act.

760 I urge my colleagues to support this amendment and I  
761 yield back the balance of my time.

762 Mr. Shimkus. The gentlelady yields back the balance of  
763 her time.

764 Anyone seek time in opposition?

765 The chair recognizes the gentleman, Mr. Harper, for what  
766 purposes?

767 Mr. Harper. Move to strike the last word.

768 Mr. Shimkus. The gentleman is recognized for five  
769 minutes.

770 Mr. Harper. Thank you, Mr. Chairman. This amendment is

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771 really unnecessary. Under the bill, the EPA administrator is  
772 given explicit authority to deal with any situation in which  
773 an increase in hourly emissions would cause an adverse effect  
774 on human health or the environment.

775 Moreover, this legislation does not affect the very  
776 stringent National Ambient Air Quality Standards, or NAAQS,  
777 requirement that govern the levels of lead in the air.

778 In cases where a facility does emit lead, this bill does  
779 not affect operating permit requirements to relate to  
780 emissions levels of lead.

781 Put plainly, NSR reform in no way, shape, or form alters  
782 NAAQS or a state's obligation to attain and maintain NAAQS,  
783 and NAAQS are set at levels deemed protective of public  
784 health.

785 These standards have been tremendously successful. In  
786 point of fact, lead levels are down 99 percent from 1990 and  
787 facilities in communities that presently do not meet the lead  
788 standards are subject to requirements that are completely  
789 unaffected by this bill.

790 This amendment would place an unnecessary restraint on  
791 certain facilities from seeking to make reasonable changes  
792 that would include incremental air pollution controls,

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793 efficiency improvements, and other changes that ensure more  
794 effective operations to the benefit of the communities they  
795 serve.

796 This bill, H.R. 3128, makes it easier for owners to  
797 carry out pollution control projects, energy-efficient  
798 projects, and equipment reliability and safety improvements.

799 I urge a no vote on this amendment, and with that, I  
800 yield back.

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

802 Anyone seeking time?

803 The chair recognizes the gentleman from New York for  
804 what purpose?

805 Mr. Tonko. Mr. Chairman, I want to strike the last  
806 word.

807 Mr. Shimkus. The gentleman is recognized five minutes.

808 Mr. Tonko. Thank you.

809 I speak in support of Representative Dingell's  
810 amendment. Lead is a very serious issue that affects  
811 everyone and in particular I am very much concerned about the  
812 impact on children.

813 At the request of Member Pallone, our ranking member of  
814 the standing committee and myself as ranker on the

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815 Environment Subcommittee and the Democrats as members of this  
816 committee, we ask that the GAO conduct a report -- assemble a  
817 report.

818 And just today, I believe around 2:00 o'clock, they  
819 issued that report that addresses lead in drinking water in  
820 our schools.

821 Now, the findings are very troubling. Forty-one percent  
822 of schools serving some 12 million students have not tested  
823 for lead recently. Of the schools that did test, elevated  
824 levels were found 37 percent of the time. Sixteen percent of  
825 schools did not even know whether or not they did test for  
826 lead.

827 Now, we need to continue to think about the best ways to  
828 reduce the risk of lead. Yes, we can do that very well by  
829 testing drinking water and addressing it that way.

830 But it's also part of air pollution and that should be a  
831 concern also. So given the serious nature of lead  
832 contamination, I, again, support the amendment offered by  
833 Mrs. Dingell. I believe it makes the bill stronger and ask  
834 that my colleagues support her amendment.

835 With that, I yield back. I'll yield to Mr. Pallone,  
836 please.



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837 Mr. Pallone. Thank you.

838 I wanted to also express support for Mrs. Dingell's  
839 amendment. One source category of lead emissions is coal-  
840 fired power plants.

841 Under the current New Source Review program any existing  
842 coal-fired power plant that wants to modify its facilities or  
843 operations must obtain permits to ensure the changes won't  
844 worsen air pollution and they also must use up to date  
845 pollution controls.

846 However, an existing loophole in the Clean Air Act,  
847 which allowed facilities built before 1978, to run without  
848 new controls until they retired or did construction that  
849 triggered New Source Review has been misused, letting dirtier  
850 plants operate longer at the expense of public health.

851 A recent independent investigation found that last year  
852 145 coal plants without control technology collectively put  
853 out nearly 580,000 tons of sulfur dioxide. Of these, 107  
854 were built prior to 1978, meaning they directly benefitted  
855 from this loophole.

856 And while this investigation did not focus on the lead  
857 emissions from these facilities, it is certainly relevant to  
858 the debate we are having today.

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859           The bill before us seems to exacerbate this very  
860           loophole in the NSR program using fuzzy math to virtually  
861           guarantee that existing sources will never have to reduce  
862           their air pollution.

863           And Congress never intended for existing sources of  
864           harmful air pollution to be grandfathered forever. But these  
865           zombie facilities have been able to game the system for 40  
866           years.

867           So-called NSR reform is just the latest iteration of  
868           their mission to avoid ever cleaning up their act and with  
869           that reality in mind Mrs. Dingell's amendment ensures that  
870           these dirty facilities do not get a free pass on their lead  
871           emissions and C&C's perpetual grandfathered facilities are  
872           also a source of lead air pollution, they would not be able  
873           to take advantage of the provision of the act.

874           So I believe it is eminently reasonable to pass this  
875           amendment. It would vastly improve the bill and I would urge  
876           all members to vote yes on her amendment.

877           And I yield back to Mr. Tonko.

878           Mr. Tonko. Mr. McNerney, do you want to --

879           Mr. McNerney. I thank the ranking member for yielding.

880           My congressional district has poor air quality, which

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881 has caused a variety of illnesses for my constituents.  
882 California has been working to improve the New Source Review  
883 and should be an example on how to improve this program where  
884 this bill weakens the Clean Air Act and would put the public  
885 health at risk and is in historic opposition to the public's  
886 overwhelming support of the Clean Air Act.

887 Now, the Clean Air Act was passed on a bipartisan basis.  
888 It was signed by a Republican president. It's worked, so  
889 this bill looks like an ideological run at eliminating  
890 regulations.

891 Let's work together instead of pushing through a  
892 partisan message bill. I support the amendment and oppose  
893 H.R. 3128.

894 Mr. Tonko. Anyone else choosing to use 30 seconds?

895 If not, Mr. Chair, I yield back.

896 Mr. Shimkus. The gentleman yields back his time. The  
897 chair recognizes himself for five minutes in opposition to  
898 the amendment.

899 So the air regulation that deals with lead is the  
900 National Ambient Air Quality Standards, and this New Source  
901 Review bill does not affect that standard.

902 So the standard for lead in the air is left unchanged.

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903 The premise of the bill is to make it easier for owners to  
904 carry out pollution control projects, energy efficiency  
905 projects, and equipment reliability to safety improvements,  
906 and I urge a no vote on this amendment and I yield back my  
907 time.

908 Anyone else seeking time to speak on the amendment?

909 Seeing none, the vote now occurs on the amendment  
910 offered by the gentlelady from Michigan.

911 All those in favor say aye.

912 Those opposed, say no.

913 The noes have it. In the opinion of the chair the noes  
914 have it. The noes have it.

915 The gentlelady from Michigan.

916 The gentlelady requests a record of the vote.

917 The record of the vote will be called. The clerk will  
918 call the vote.

919 The Clerk. Mr. McKinley.

920 Mr. McKinley. No.

921 The Clerk. Mr. McKinley votes no.

922 Mr. Barton.

923 Mr. Barton. No.

924 The Clerk. Mr. Barton votes no.

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925 Mrs. Blackburn.  
926 [No response.]  
927 Mr. Harper.  
928 Mr. Harper. No.  
929 The Clerk. Mr. Harper votes no.  
930 Mr. Olson.  
931 Mr. Olson. No.  
932 The Clerk. Mr. Olson votes no.  
933 Mr. Johnson.  
934 Mr. Johnson. No.  
935 The Clerk. Mr. Johnson votes no.  
936 Mr. Flores.  
937 Mr. Flores. No.  
938 The Clerk. Mr. Flores votes no.  
939 Mr. Hudson.  
940 Mr. Hudson. No.  
941 The Clerk. Mr. Hudson votes no.  
942 Mr. Cramer.  
943 Mr. Cramer. No.  
944 The Clerk. Mr. Cramer votes no.  
945 Mr. Walberg.  
946 Mr. Walberg. No.

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947 The Clerk. Mr. Walberg votes no.  
948 Mr. Carter.  
949 Mr. Carter. No.  
950 The Clerk. Mr. Carter votes no.  
951 Mr. Duncan.  
952 Mr. Duncan. No.  
953 The Clerk. Mr. Duncan votes no.  
954 Chairman Walden.  
955 The Chairman. No.  
956 The Clerk. Chairman Walden votes no.  
957 Mr. Tonko.  
958 Mr. Tonko. Yes.  
959 The Clerk. Mr. Tonko votes aye.  
960 Mr. Ruiz.  
961 Mr. Ruiz. Aye.  
962 The Clerk. Mr. Ruiz votes aye.  
963 Mr. Peters.  
964 Mr. Peters. Aye.  
965 The Clerk. Mr. Peters votes aye.  
966 Mr. Green.  
967 Mr. Green. Aye.  
968 The Clerk. Mr. Green votes aye.

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969 Ms. DeGette.

970 Ms. DeGette. Aye.

971 The Clerk. Ms. DeGette votes aye.

972 Mr. McNerney.

973 Mr. McNerney. Aye.

974 The Clerk. Mr. McNerney votes aye.

975 Mr. Cardenas.

976 [No response.]

977 Mrs. Dingell.

978 Mrs. Dingell. Aye.

979 The Clerk. Mrs. Dingell votes aye.

980 Ms. Matsui.

981 Ms. Matsui. Aye.

982 The Clerk. Ms. Matsui votes aye.

983 Mr. Pallone.

984 Mr. Pallone. Aye.

985 The Clerk. Mr. Pallone votes aye.

986 Chairman Shimkus.

987 Mr. Shimkus. Chairman Shimkus votes no.

988 The Clerk. Chairman Shimkus votes no.

989 Mr. Shimkus. Anyone else wishing to be recorded?

990 Seeing none, the clerk will report the vote.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

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991 The Clerk. Mr. Chairman, on that vote there were nine  
992 ayes and 13 nays.

993 Mr. Shimkus. Nine ayes and 13 nays. The amendment is  
994 not agreed to.

995 The question now is on -- if there are no further  
996 discussion the vote occurs on the amendment in the nature of  
997 a substitute.

998 All those in favor shall signify by saying aye.

999 Those opposed, no.

1000 The ayes have it. The amendment in the nature of a  
1001 substitute is agreed to.

1002 The question now occurs on forwarding H.R. 3128 as  
1003 amended to the full committee.

1004 All those in favor say aye.

1005 Those opposed, no.

1006 The ayes have it -- appear to have it.

1007 Mr. Tonko. Can we have a roll call?

1008 Mr. Shimkus. A roll call is requested. The clerk will  
1009 report the roll.

1010 The Clerk. Mr. McKinley.

1011 Mr. McKinley. Aye.

1012 The Clerk. Mr. McKinley votes aye.



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1013 Mr. Barton.

1014 Mr. Barton. Aye.

1015 The Clerk. Mr. Barton votes aye.

1016 Mrs. Blackburn.

1017 [No response.]

1018 Mr. Harper.

1019 Mr. Harper. Aye.

1020 The Clerk. Mr. Harper votes aye.

1021 Mr. Olson.

1022 Mr. Olson. Aye.

1023 The Clerk. Mr. Olson votes aye.

1024 Mr. Johnson.

1025 Mr. Johnson. Aye.

1026 The Clerk. Mr. Johnson votes aye.

1027 Mr. Flores.

1028 Mr. Flores. Aye.

1029 The Clerk. Mr. Flores votes aye.

1030 Mr. Hudson.

1031 Mr. Hudson. Aye.

1032 The Clerk. Mr. Hudson votes aye.

1033 Mr. Cramer.

1034 Mr. Cramer. Aye.

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1035 The Clerk. Mr. Cramer votes aye.  
1036 Mr. Walberg.  
1037 Mr. Walberg. Aye.  
1038 The Clerk. Mr. Walberg votes aye.  
1039 Mr. Carter.  
1040 Mr. Carter. Yes.  
1041 The Clerk. Mr. Carter votes aye.  
1042 Mr. Duncan.  
1043 Mr. Duncan. Aye.  
1044 The Clerk. Mr. Duncan votes aye.  
1045 Chairman Walden.  
1046 The Chairman. Aye.  
1047 The Clerk. Chairman Walden votes aye.  
1048 Mr. Tonko.  
1049 Mr. Tonko. No.  
1050 The Clerk. Mr. Tonko votes no.  
1051 Mr. Ruiz.  
1052 Mr. Ruiz. No.  
1053 The Clerk. Mr. Ruiz votes no.  
1054 Mr. Peters.  
1055 Mr. Peters. No.  
1056 The Clerk. Mr. Peters votes no.

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1057 Mr. Green.

1058 Mr. Green. No.

1059 The Clerk. Mr. Green votes no.

1060 Ms. DeGette.

1061 Ms. DeGette. No.

1062 The Clerk. Ms. DeGette votes no.

1063 Mr. McNerney.

1064 Mr. McNerney. No.

1065 The Clerk. Mr. McNerney votes no.

1066 Mr. Cardenas.

1067 [No response.]

1068 Mrs. Dingell.

1069 Mrs. Dingell. No.

1070 The Clerk. Mrs. Dingell votes no.

1071 Ms. Matsui.

1072 Ms. Matsui. No.

1073 The Clerk. Ms. Matsui votes no.

1074 Mr. Pallone.

1075 Mr. Pallone. No.

1076 The Clerk. Mr. Pallone votes no.

1077 Chairman Shimkus.

1078 Mr. Shimkus. Aye.

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1079 The Clerk. Chairman Shimkus votes aye.

1080 Mr. Shimkus. The clerk will report.

1081 The Clerk. Mr. Chairman, on that vote, there were 13  
1082 ayes and nine nays.

1083 Mr. Shimkus. Thirteen ayes, nine nays. The bill is  
1084 reported to the full committee.

1085 Without objection, staff is authorized to make technical  
1086 and conforming changes to the legislation approved by the  
1087 subcommittee today. So ordered.

1088 The chairs asks unanimous consent to the following  
1089 letters in support of H.R. 3128 be entered into the record:  
1090 a joint letter from the Affiliates of North American Building  
1091 Trade Unions -- do I list all these guys?

1092 No. American Iron and Steel Institute, Portland Cement  
1093 Association, American Forest and Paper Association, National  
1094 Mining Association, American Public Power Association,  
1095 National Rural Electric Cooperative Association, National  
1096 Association of Manufacturers, U.S. Chamber, Pennsylvania  
1097 Chamber of Commerce, Citizens for Responsible Energy  
1098 Solutions, and American Energy Alliance.

1099 Without objection, so ordered.

1100 [The information follows:]

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1101

1102 \*\*\*\*\*COMMITTEE 5\*\*\*\*\*

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1103           Mr. Shimkus. And the -- without objection, the  
1104           subcommittee stands adjourned and the chair thanks the  
1105           members for being present.

1106           [Whereupon, at 2:28 p.m., the committee was adjourned.]