Testimony of
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U.S House of Representatives
Committee on the Judiciary
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law

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Title:	**Hearing on "Triple Threat to Workers and Households: Impact of Federal Regulations on Jobs, Wages and Startups."**

Chairman Marino, Ranking Member Johnson and distinguished Members of the Subcommittee, good afternoon and thank you for inviting me to testify on this important issue. My name is Janet Whitacre Kaboth. I am the President, CEO and Chairman of the Board of Whitacre Greer Company, which has manufactured clay products in Northeastern Ohio since 1916. The Company has been owned and operated by my father's family, the Whitacre family, since its beginning, and is a Woman Owned business. One of our founders, J. J. Whitacre, served as the elected representative to Congress from the 16th District in Ohio from 1910 to 1914.

As we celebrate 100 years in business, we are very proud of our heritage. We operate a manufacturing facility in Alliance, Ohio that employs approximately 80 people. We manufacture firebrick for the inside of masonry fireplaces and paving brick. In Washington, D.C., paving bricks made by Whitacre Greer form the sidewalks along Pennsylvania Avenue all the way from the Capitol to the White House. Our bricks are at the Statue of Liberty on Liberty Island, and at the Olympic Parks in Atlanta and Salt Lake City. Last year, we were awarded a Business Excellence award by the Canton Regional Chamber of Commerce.

I am here on behalf of my company and the brick industry as a whole, as I serve on the Board of the Brick Industry Association, the only national trade association representing clay brick and paver manufacturers and distributors. The U.S. brick industry has had many peaks and valleys through the years. According to the 2012 Annual Brick Industry Report there are currently only 43 companies that produce brick who operate 131 plants in the United States, compared to 209 plants that were operating in 1995. The companies like mine that continue to operate have been in business for close to 100 years or more. Our industry has changed greatly over these many years due to changes in product lines and market conditions, but also due to regulations that have been passed in recent years that can make it difficult to stay in business.

My job as President, CEO and as one of the owners of the business is to ensure to the best of my ability that Whitacre Greer Company is prepared to succeed for the next 100 years. We are a very small company within the brick industry, with only one plant that has two kilns. We focus our sales on smaller niche markets within the industry. We are in the middle of the second of five phases of modernization of our production facility to allow us to continue to exist over the longer term. Because we have limited financial resources, we have had to spread our modernization effort over phases and focus on areas that will produce the most improved results, which will allow us to finance the next phase.

Our industry is committed to doing our share and to doing the right thing for our employees, our vendors, customers and communities. However, as our industry continues to struggle to come out of the Great Recession, we—like many other industry sectors—have limited resources. It is imperative that these limited resources be used judiciously and on the most important issues. It is critical that every dollar we spend gives us back some benefit.

There are many regulations that affect my plant and my industry now and will in the coming years, but I am going to focus on only two regulations today—the air toxics standard, or brick MACT, developed by the U.S. Environmental Protection Agency (EPA) and the proposed revisions to the silica permissible exposure limit, or PEL, expected to be issued very soon by the Occupational Safety and Health Administration (OSHA).

These two rules, and their crippling impact on the U.S. brick industry that I will describe below, illustrate how workers and local communities can be devastated by new regulations even when jobs are being created at the national level and the overall unemployment rate is low. For workers in local communities, particularly those employed by small businesses, new regulations developed using a "one size fits all" model are a big problem. Federal agencies cannot simply assume that companies can afford to comply with regulatory requirements, that companies will be able to comply, or that the benefits of a rule will make it worthwhile. They need to understand the local impacts of their rule on real people whose real lives may be ruined by losing their job.

EPA's Brick MACT Rule

The current brick MACT rule is the second time in a decade that EPA imposed major requirements on our industry. The agency finalized a rule in 2003, our industry complied with the rule in 2006, but in 2007 the courts vacated the rule. Our industry was in compliance with that rule when it was thrown out—and had installed approximately 80 of the 100 controls that now exist in our industry.

We estimate that the brick industry spent over $100 million in capital and operating costs to comply with the vacated 2003 MACT. EPA used the performance of the controls we spent so much money to install to establish even lower limits for its current rule, which it finalized in late 2015. For many brick companies, this will require them to tear out the controls they spent millions on, and purchase even more costly new controls, in order to produce a very slight benefit to the environment.

While the brick MACT does allow a health based standard for some of the emission types, full compliance will probably require the installation of control devices for particulate matter and mercury for most kilns. The combined cost of these devices is about $2.2 million per kiln. For our plant in Alliance, Ohio the estimated cost is $4,000,000 for control devices and operation. This represents 23% of our current net worth. The investment of $4,000,000 would eliminate at most 4 pounds of mercury per year. On an individualized basis, this is probably less than the amount of mercury walking around the plant in our teeth every day.

<u>OSHA's Silica PEL Rule</u>

In September 2014, OSHA proposed revisions to the current PEL for silica. This reduction was proposed as a "one-size fits all" type regulation that is typical for OSHA. OSHA estimates costs for this rule to average $38,000 per year annualized over a ten year period for a brick plant. Data gathered prior to the Great Recession from the proposed regulation show the profit percentage for the brick industry to be 4.41% and the annualized cost for compliance would be 8.05% of profits. Actual financial results from Whitacre Greer since 2002 show that our average profit for this time frame is 1.06% and the annualized costs from OSHA represent **33%** of this average profit. Industry experts estimate that OSHA is underestimating the costs of the silica PEL by as much as 20 to 50 times.

OSHA has been provided a significant set of studies conducted over the last 75 or more years demonstrating that the response to the silica used in the brick industry is very different from other industries. OSHA even acknowledges the markedly reduced incidence rate of silicosis from our industry. They also acknowledge, but separately, the disproportionate costs of their rule. However, they do not put those two pieces of data together and consider our industry separately when attempting to show that this rule is justified.

Compliance with the proposed silica regulation will require the installation of engineering controls and other items which will require an investment based upon the OSHA estimates of $906,530 in the first year, which should be directly considered as opposed to only considering the annualized amount that OSHA uses. Even using OSHA's numbers, I calculated that given current bank lending formulas and procedures, Whitacre Greer would be unable to borrow the first-year capital costs needed.

In both cases, the statutes that direct EPA and OSHA to develop these rules have flexibilities contained within them to allow these agencies to meet their obligations without destroying our industry. We just don't know how to make them <u>USE</u> those flexibilities, and to take the time to do it right, rather than just doing it quickly and to not take a "one size fits all" approach that will destroy an industry.

Compliance with these regulations threatens the continued existence of many small companies in our industry, including mine. In fact, compliance with both of these rules, at the same time, is likely to devastate our entire already-threatened industry, where 75% of the companies are small businesses. This is well-documented in a report issued earlier this month by the U.S. Chamber of Commerce entitled *Regulatory Indifference Hurts Vulnerable Communities*. The report, which I include as an attachment to my testimony today, examines the burdens of complying with the EPA and OSHA rules for Whitacre Greer and other brick plants in comparison with the slight benefits of the two rules. The report concludes that, in the case of the brick industry, compliance with the EPA and OSHA rules is likely to cause more harm than it does good.

<u>What is the Real Harm of the EPA and OSHA Rules?</u>

Practically speaking, compliance with both these regulations would require me to obtain a loan for $5,000,000 to add equipment that would not reduce our costs, improve our product or increase our sales. Additionally there would be no health benefits for our employees or our neighbors. It would be impossible for us to obtain a loan of this size that would not provide us with any benefits at all. I have spent the last two years trying to obtain financing for a renovation of one of our kilns. This renovation will reduce our natural gas cost by approximately $500,000 per year, yet it took me two years to find a financial institution willing to lend us the money. The cost of compliance with both regulations at the same time would put us out of business, and we are certainly not the only brick company placed in this situation by the new regulations.

All the jobs at our facility provide our workers with a steady paycheck, good health insurance where each employee pays 10%, a 401 (k) where all employees receive 4% of their annual wages regardless of any individual contribution, and a profit sharing plan where 25% of the plant profit is split equally among all employees. Many of our employees have never graduated from high school and would have great difficulty finding similar employment without significant additional training. We are currently offering to pay the cost in full for any employee that desires to obtain more training in any area. We also offer a state-recognized apprenticeship program. We value our employees and have spent a great deal of time and effort over the last few years to improve our operations and continue to make our company a good place to work. We try very hard to be a good employer and a good neighbor in our community.

If the inability of complying with both these regulations causes Whitacre Greer to close our doors, more than $8,000,000 will be lost from our local community. We pay over $4,000,000 in wages to 80 families. Many of our employees would have difficulty finding other employment due to their low level of education. Also important in our local area is our payments of approximately $1,000,000 per year to local coal mining operations for our raw materials of clay and shale. Our purchases help them stay in business while they try to deal with their own rapidly-growing burden of expanding regulations.

We are certainly not alone in facing these challenges to our continued survival. One of my colleagues, Creighton McAvoy, recently testified in front of the House Energy and Commerce Committee about the impacts these regulations will have on his brick company.[1] McAvoy Brick employs 26 workers, most of them members of the United Steelworkers union, at its plant in Phoenixville, Pennsylvania. According to Mr. McAvoy, the company has an annual payroll of nearly $1,000,000, pays about $60,000 per year in taxes to local schools, and provides some $20,000 each month in health benefits. For a town like Phoenixville, which is smaller than Alliance, the loss of middle-class union jobs, local taxes, and health benefits is a serious matter. As Mr. McAvoy testified:

> You may think that the loss of our small brick company will not make any difference in our overall economy. However, if

[1] Testimony of Creighton McAvoy before the House Committee on Energy and Commerce, Subcommittee on Energy and Power, Hearing on H.R. 3797, the Satisfying Energy Needs and Saving the Environment (SENSE) Act and H.R. __, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act, February 3, 2016.

> McAvoy Brick is required to close our doors, more than $2.8 million will be lost from our local economy. We pay over $1 million in wages for 26 families. Many of these employees will have difficulty finding other employment.[2]

If these two regulations would save lives—the lives of our workers or our neighbors—it would be worth it. However, for both these rules, the agencies themselves have data that show that the benefit of these regulations is minimal or non-existent for the brick industry. This leads to my constant question concerning the regulatory development process: is anyone looking at the total impact of all these regulations on an industry and the communities where it is located?

I would like to think that after almost 100 years of providing good employment, paying taxes and being a responsible corporate entity that someone in our government could look at the cumulative effect of regulation compliance and help us.

Thank you for allowing me this time. I will be happy to answer any questions you may have.

[2] *Id*.