

**Testimony of
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**U.S House of Representatives
Energy and Commerce Committee
Subcommittee Energy and Power**

Date: February 3rd, 2016
Time: 10:15 A.M.
Location: Room 2123
Rayburn House Office Building
Washington, D.C.

Title: 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

Chairman Ed Whitfield, Ranking Member Bobby Rush, and distinguished Members of the Subcommittee, good morning and thank you for inviting me to testify on this important issue. My name is Davis Henry. I am the President of Henry Brick, which has manufactured clay brick in Selma, Alabama for over 70 years. I represent the third generation of Henry's to operate this plant. I also currently serve as the Vice Chairman of the Board for the Brick Industry Association (BIA), the national trade association that represents manufacturers and distributors of clay brick and pavers. I am here today to speak on behalf of both my company and my industry.

Henry Brick currently employs 58 people, including our manufacturing, sales and support staff. That number, hopefully, will grow this year to about 95 when we bring Plant 2 back online. It has been idle since June of 2008 due to the economy. As you can imagine, the last 8 years have been a very trying time for our company as well as the rest of the brick industry. We are committed to doing our share to protect our environment, but with a finite amount of resources, we need to be sure that we know what is required of us and that the expectations will not change once the resources are committed. I am here today because we were directly impacted by a previous change in regulation and I want to ensure that my company—and all remaining brick companies—do not fall victim to this again.

In 2003, the first maximum achievable control technology, or MACT, standard was promulgated for our industry. This rule applied only to major sources of hazardous air pollutants, or HAP, and only to the larger kilns in our industry. For our industry, with only two pollutants emitted in any large amount, the only definition of major source that really applies is a facility that has the potential to emit 10 tons or more of any single HAP. Henry Brick was a major source of HAP in 2003 and had two kilns considered to be large by the EPA. We had until 2006 to install and begin operating control devices to meet the limits, which we did. We installed limestone based systems, called dry limestone adsorbers or DLAs, on both of our kilns at a total capital cost of approximately \$1.5 million.

In 2007, almost a full year after our industry achieved compliance with the 2003 Brick MACT, it was vacated by the courts for deficiencies. Unfortunately, most of us, including Henry Brick, were unable to turn off our control devices because our existing air permits would not allow us to stop operating the controls. The cost to operate the control devices over the last 8+ years has been significant as well. During the compliance time for the 2003 Brick MACT, the number of controlled kilns in our industry soared from just over 20 to more than 100 kilns.

In 2008, the EPA began developing the replacement MACT that eventually became the 2015 Brick MACT. To develop the standard the EPA looked at the best performing kilns, including those brand new controls that would not have been in place except for the 2003 Brick MACT, to establish the limits.

Unfortunately, like many who installed DLAs, our kilns cannot meet these new, more stringent limits. We recently conducted a stack test at our facilities that confirmed our inability to meet the limits for two of three HAP categories with numeric limits. We cannot meet the mercury limit, nor the PM/non-mercury metals limit. To comply with the 2015 Brick MACT, we believe we would need to rip out the DLAs and install a new lime-based system called a DIFF, which the EPA estimates would cost approximately \$3.8 million per kiln. EPA believes that there may be a solution that would only cost \$1.65 million per kiln, but that is an untested control scenario and no one knows whether it will actually work on a brick kiln- so I am uncomfortable relying on that estimate. The EPA's estimated emission reduction for an average kiln for mercury and metals is less than 400 pounds per year for an uncontrolled source, so our incremental reduction from our controlled kilns would likely be lower.

There is a way to avoid MACT compliance. In fact, EPA's first listed option for "complying" with the rule is to avoid the rule by becoming a "synthetic minor" or "synthetic area" source. To become a synthetic area source, a facility accepts Federally enforceable limits that ensures that they never emit more than the 10 tons per year that makes you a major source. If you are like Henry Brick, and have both of your kilns controlled with air pollution control devices, EPA assumes that you can become a synthetic area source at little or no cost. If you follow EPA's approach to assigning costs, you would assign an annual cost of less than \$20,000 per year.

Unfortunately, our most recent tests also demonstrate that we cannot become a synthetic area source as we currently operate. It appears that the clay we are currently using will not allow us to stay under the HAP limits. Whether we identify a new raw material source or have to modify or replace our current controls to become a synthetic area source, the cost will be significant. We are still investigating our options to determine the best course of action.

While compliance with this regulation alone threatens small businesses like Henry Brick. If you consider that this is not the only regulation we face, correctly identifying the appropriate place to spend our finite resources is critical to our survival. For example the Occupational Safety and Health Administration is about to finalize a new permissible exposure limit for silica dust that, if promulgated as it was proposed, will add almost another million dollars in

equipment that my company may need to finance and install to remedy a non-existent silicosis threat in brick plants. Regulations like these threaten the continued existence of many small companies in our industry, including mine. In fact, compliance with both of these rules, at the same time, could devastate much of our already-threatened industry, where 75% of the companies are small businesses. This is documented in a report issued earlier this week 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 Henry Brick 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.

Henry Brick simply cannot afford to try to hit another potentially moving target of Brick MACT compliance. We acted in good faith to comply with the 2003 Brick MACT and now face some of the steepest costs in the industry because we may need to rip out our DLAs and replace them with DIFFs. We need the BRICK Act to ensure that we are not required to invest again until we know that the standard is not going to change. This is not a hypothetical issue to Henry Brick. It is real. It happened to us. Please do not let it happen again.

Thank you for introducing this bill and for taking the time to listen to me today. I am happy to answer any additional questions you may have.