

RPTR TELL

EDTR HOFSTAD

BIG RELIEF FOR SMALL BUSINESS: LEGISLATION REDUCING REGULATORY
BURDENS ON SMALL MANUFACTURERS AND OTHER JOB CREATORS

WEDNESDAY, SEPTEMBER 13, 2017

House of Representatives,
Subcommittee on Environment,
Committee on Energy and Commerce,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2123, Rayburn House Office Building, Hon. John Shimkus [chairman of the subcommittee], presiding.

Present: Representatives Shimkus, McKinley, Barton, Blackburn, Harper, Olson, Johnson, Hudson, Cramer, Walberg, Carter, Walden (ex officio), Tonko, Ruiz, Peters, McNerney, Cardenas, Dingell, and Pallone (ex officio).

Staff Present: Ray Baum, Staff Director; Elena Brennan, Legislative Clerk, Energy/Environment; Chuck Flint, Policy Coordinator, Communications and Technology; Tom Hassenboehler, Chief

Counsel, Energy/Environment; Jordan Haverly, Policy Coordinator, Environment; A.T. Johnson, Senior Policy Advisor, Energy; Bijan Koohmaraie, Counsel, Digital Commerce and Consumer Protection; Ben Lieberman, Senior Counsel, Energy; Mary Martin, Deputy Chief Counsel, Energy/Environment; Drew McDowell, Executive Assistant; Alex Miller, Video Production Aide and Press Assistant; Dan Schneider, Press Secretary; Sam Spector, Policy Coordinator, Oversight and Investigations; Andy Zach, Senior Professional Staff Member, Environment; Jeff Carroll, Minority Staff Director; Jean Fruci, Minority Policy Advisor, Energy/Environment; Caitlin Haberman, Minority Professional Staff Member; Rick Kessler, Minority Senior Advisor and Staff Director, Energy/Environment; Alexander Ratner, Minority Policy Analyst; Andrew Souvall, Minority Director of Communications, Outreach, and Member Services; and C.J. Young, Minority Press Secretary.

Mr. Shimkus. The Subcommittee on Environment will now come to order.

The chair now recognizes himself for 5 minutes for an opening statement.

This morning, we will continue our subcommittee's oversight of the Clean Air Act. And while we usually focus our attention on major rules with multibillion-dollar impacts, today we will look at four EPA rules and policies that are far from major but are of great concern to small businesses dominating sectors affected by them. We will consider bills that make targeted changes to these policies so as to preserve jobs and investment in affected businesses and communities.

We welcome our business-owner witnesses who have come from considerable distances to be here today, as well as our other witnesses, in what I hope will be a productive hearing.

Two of the bills deal with small business manufacturers. Both the brick industry and the wood-heaters industry are comprised of companies that are downright tiny compared to GM or an Apple, but the well-paying jobs they provide often make them an important contributor to local economies where they are located. Unfortunately, both these sectors are struggling under the weight of costly EPA rules with tight deadlines.

H.R. 1917, the BRICK Act, would provide much-needed additional time for brick makers to comply with EPA's new requirements while also assuring that they won't be forced to comply with standards that are later thrown out by a Federal court, as has happened to this industry

in the past. I thank my good friend Bill Johnson for taking the lead on this bipartisan effort.

H.R. 453 is another bipartisan bill that would provide similar relief from a EPA rule impacting wood heaters, giving manufacturers 3 more years to comply to meet the second phase of EPA's latest requirements.

H.R. 1119, the SENSE Act, addresses facilities that take environmentally damaging coal refuse and turn it into electricity and harmless ash. That ash can be used to remediate the sites formerly contaminated by coal refuse piles. As with many of the businesses we will discuss today, these coal-refuse-to-energy plants not only provide direct jobs but also are an indirect source of employment in struggling communities.

Unfortunately, EPA lumps these waste treatment facilities in with traditional coal-fired power plants and has imposed requirements that are not achievable for many of them. The SENSE Act would make targeted changes to two regulations to establish emission reduction targets that are appropriate and achievable for this specialized technology.

Finally, H.R. 350, the RPM Act, seeks to clarify longstanding policy vehicles modified exclusively for competition on racetracks. Thousands of amateur racing enthusiasts support a wide range of large and small businesses, from the component manufacturers and retailers to racetrack operators to garages that service these specialized racing vehicles.

Never in the 47-year history of the Clean Air Act has the Agency

enforced the anti-tampering provisions against vehicles that are taken off public roads and driven exclusively on raceways, but in 2015 the Agency inserted language into an unrelated proposed rule suggesting a change in the policy.

While the EPA later retracted that language, it did so in a manner that left unclear the legal status of the owners of these cars and motorcycles, as well as the businesses that serve them. The RPM Act would remove that cloud and make clear the Agency's hand-off policy is indeed the law.

We welcome constructive input on these bills, but time is of the essence. The next wood-heater deadline takes place in 2020. The coal-refuse-to-energy deadline is 2019. And the brick deadline is 2018. This is a very short window for small businesses to line up financing to undertake the required work, assuming they can afford to do it at all. That is why I support action to enact these bills as soon as possible.

And I thank you for listening to my opening statement. And I now yield to the vice chairman of the Telecom Subcommittee, Marsha Blackburn, for as much time as she may consume.

[The prepared statement of Mr. Shimkus follows:]

***** COMMITTEE INSERT *****

Mrs. Blackburn. Thank you, Mr. Chairman.

And I just want to, first of all, thank our witnesses for being here. And I want to thank the chairman for putting these bills forward and allowing us to work on this on behalf of our constituents and our small business manufacturers.

You look at the impact of things like the BRICK Act and the good work that is being done there trying to get these clay products manufacturers out from under some of the weight of the EPA.

As I work in my district with small business manufacturers, whether it is building products, whether it is just-in-time manufacturing for the auto industry, whether it is those that are working in energy generation, I hear repeatedly that the EPA is a stumbling block. It has not been helpful over the last few years.

I am certain that Administrator Pruitt is going to do a good job of rightsizing the EPA and the rules and also making certain that we do what is necessary to conserve and protect our environment.

So I thank you for the hearing. I yield back.

[The prepared statement of Mrs. Blackburn follows:]

***** COMMITTEE INSERT *****

Mr. Shimkus. The gentlelady yields back her time.

The chair now recognizes the ranking member of the subcommittee, Mr. Tonko, for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair.

And good morning to our panelists.

Today's legislative hearing will focus on four bills that seek to amend and, in my opinion, weaken the Clean Air Act.

But, first, I want to thank all of our witnesses for being here today. I certainly appreciate hearing the perspectives from small businesses that are responsible for implementing the EPA rules.

I also want to thank Dr. Bascom for being here on behalf of the American Thoracic Society. It is equally important that we hear about the medical and public health effects of delaying Clean Air Act rules.

Finally, I am happy to welcome back Ms. Alexandra Teitz, who served as senior counsel to this committee for many years and is testifying on behalf of the Sierra Club.

The first two bills, the BRICK Act and the SENSE Act, were considered by the committee in the 114th Congress. Once again, I doubt the likelihood of either becoming law in the 115. I would recommend that, instead, we use our limited time to continue to build upon our bipartisan record of success.

H.R. 1917, the Blocking Regulatory Interference from Closing Kilns, or BRICK, Act, would delay implementation of the EPA's Brick and Structural Clay Products Rule until all legal challenges are resolved. Not only does this incentivize frivolous litigation and

delay compliance, it creates a bad precedent that could be applied to other standards. Personally, I believe this can more effectively be resolved by the courts.

H.R. 1119, the Satisfying Energy Needs and Saving the Environment, or SENSE, Act, would revise EPA's Cross-State Air Pollution Rule, or CSAPR, and Mercury and Air Toxics Rule, or MATS, to allow power plants that burn waste coal to emit higher levels of sulfur dioxide and hydrogen chloride.

New York has seen the benefits of the Clean Air Act's good-neighbor provision. I saw the damage caused by acid rain, particularly near my district, north of my district, in the Adirondacks, and much of it was due to out-of-State pollution.

CSAPR requires certain States to reduce their annual emissions of sulfur dioxide. This rule has been extremely effective, preventing tens of thousands of premature deaths and hospitalizations and millions of missed days of work or school each year.

CSAPR used a phased-in approach to achieve emissions reductions, where emissions allowances decreased over time. But the SENSE Act would hold allowances for waste coal constant. It is worth noting that States already have the ability to create their own implementation plans, which could include shifting allowances. This bill would impede on States' rights to determine the best path for reducing emissions.

Ultimately, I do not believe we should be giving any fuel source special treatment on reducing air pollution, especially when other

power plants are expected to meet similar requirements.

H.R. 453, the Relief from New Source Performance Standards Act of 2017, would delay the Step 2 compliance date by 3 years for three categories of wood-fueled heaters. I would note that there are companies already compliant with EPA's 2020 standard.

Finally, H.R. 350, the Recognizing the Protection of Motorsports Act of 2017, would exempt motor vehicles used solely for competition from penalties for altering a vehicle that results in increased emission of air pollutants. I am concerned how broadly this bill is written. It would create a loophole that would make it even more difficult for EPA to regulate manufacturers that produce emissions-control defeat devices for vehicles.

Ultimately, delaying or undermining rules that seek to reduce hazardous air pollutants is not good for Americans. It is not good for their health. The scientific, medical, and public health communities have ample evidence that polluted air is a threat to our health, particularly for vulnerable populations. We also know that pollution can be a tremendous drag on our economy and productivity, causing respiratory illnesses, costly hospitalizations, missed school- and workdays, and even premature deaths.

The Clean Air Act has been about making progress over time. The longer we delay new standards, the longer our constituents are forced to live with unhealthy levels of air pollution. Our country can do better than the status quo, and, in recent years, the EPA has worked hard to develop protections that will continue the decades-long trend

of improving our Nation's air quality.

So I want to reiterate my initial concerns with the bills before us today. I look forward to hearing from our witnesses, and I do yield back. Thank you, Mr. Chair.

[The prepared statement of Mr. Tonko follows:]

***** COMMITTEE INSERT *****

Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes the chairman of the full committee, Mr. Walden from Oregon, for 5 minutes.

The Chairman. I thank the gentleman and appreciate the hearing and your leadership on these issues.

I want to focus on this air quality issue, especially as it relates to wood stoves and what is happening in the West. Year after year after year after year after year after year after year, we have these catastrophic wildfires on Federal lands, some of which have been set aside and managed in a way that they have no management. Some people litigate, some organizations litigate every effort or nearly every effort, it seems, to go in and reduce the fuel loads.

My hometown of Hood River is under -- part of it has been under evacuation, 1 level, for fear of a fire that is burning in the Columbia Gorge National Scenic Area that blew out 14 miles overnight. The main freeway is closed, has been for the better part of a week and will be for another week.

I raise this because air quality issues in Oregon and elsewhere in the West in the summer have gotten to the hazardous level. So if you want to do something that is extraordinarily important, it is join us in trying to reform how we manage our precious public lands and our Federal forests to reduce the fuel loads.

This year, on the 30th anniversary of Cycle Oregon, they had to cancel it because the air quality was so bad. They had to cancel performances at the National Shakespeare Festival, the Britt Music

Festival. The Sisters Folk Festival had to be canceled. And schools have had to close because of the emissions, toxic emissions, from these forest fires.

We have had legislation the House has passed time and again -- we hope to do it again this year -- to be able to get in to manage these lands like all other forest land managers manage except for the Federal forests. We have to change this policy.

I have constituents who remain perplexed that they have to invest in new wood stoves to scrape by and heat their homes when all summer long they can't breathe in their homes or their schools because the smoke gets trapped in the valleys from the forest fires. Now, we need to improve both; I recognize that. But the same organizations that have litigated and shut down logging activities on our forests and deprived them of their economic activities that result in the increased fuel loads that end up with these fires that end up destroying our forests and polluting our air now want to make their costs go up to keep their homes warm in the winter.

So we have to do better as a country. I look forward to working with my friends across the aisle on our legislation. To really make a big change in air quality, we need to address how we manage our public forests. Because burning, dead trees emit carbon. Healthy, green trees sequester carbon. It is that simple. And we haven't even gotten into the runoff that will occur in our watershed, the damage to fish and habitat that exist on these fires.

So they cost us hundreds of millions of dollars a year. Five

hundred thousand acres have burned in Oregon already this summer. And we have to do better for air quality, for water quality, and for the future of our precious public resources.

With that, I would yield the balance of my time to my friend from North Carolina, Mr. Hudson.

[The prepared statement of The Chairman follows:]

***** COMMITTEE INSERT *****

Mr. Hudson. I thank the gentleman.

And thank you, Chairman Shimkus and Ranking Member Tonko, for holding today's important hearing on reducing regulatory burdens on small manufacturers and job creators.

I appreciate the subcommittee's consideration of this commonsense RPM Act, introduced by Representative Patrick McHenry and myself.

I am from Concord, North Carolina, arguably the heart of motorsports of America, so I know a thing or two about motorsports and its impact on our economy. I am fortunate to represent many of the 57 racetracks in our State, including the Charlotte Motor Speedway, as well as many race teams and small businesses that take part in the racing industry.

It will come as no surprise that the EPA's proposed racing regulation threatens the way of life of a lot of Americans who enjoy modifying cars for competition, as well as a \$1.6-billion-a-year industry.

In 1990, when Congress amended the Clean Air Act, the legislation made explicit these vehicles were off limits to regulation. But the EPA decided to ignore the law and targeted the racing industry anyway. Rightfully so, after that happened, I heard from many constituents who were concerned this rule would bring their industry to a screeching halt.

Former EPA Administrator Gina McCarthy once testified in front of this committee that job loss is not a consequence of environmental

rules. During a hearing on our budget, I reminded her of this statement and told her how many jobs this regulation alone would eliminate. The Administrator admitted the outcome of EPA's regulation did not match their intent. So, shortly after this testimony, I wrote a letter with my colleagues to EPA asking for clarification. Three days later, they reversed their decision and dropped this foolish proposal.

That is a huge victory, but the RPM Act is still needed to give long-term certainty to this industry and to stop the EPA from ever attempting to regulate this racing industry again. I look forward to working with the committee to advance this initiative.

And before I yield back, Mr. Chairman, I would ask unanimous consent that I be able to submit for the record a letter from John Marshall from Innovation Performance Technologies, a business in my district that will be impacted by this regulation.

Mr. Shimkus. Without objection, so ordered.

[The information follows:]

***** COMMITTEE INSERT *****

[The prepared statement of Mr. Hudson follows:]

***** COMMITTEE INSERT *****

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

The chair now recognizes the ranking member of the full committee, Congressman Pallone from New Jersey, for 5 minutes.

Mr. Pallone. Thank you, Chairman Shimkus.

The four bills before us this morning are more about transferring burdens than relieving them. My Republican colleagues repeatedly claim they support clean air, and yet they continually put forward bills designed to delay, weaken, or repeal regulations that are issued to protect public health by cleaning up the air.

The so-called relief from regulation comes at the expense of the public's health, and costs are not reduced. They are just transferred from favored businesses to the general public, who will pay for more doctor visits and lost work- or schooldays.

Exempting businesses from clean air rules leads to more air pollution. It is that simple. We all want small businesses to thrive, and the history of the Clean Air Act demonstrates clearly that we can grow the economy while cleaning up the air and improving public health.

We considered two of these bills in the last Congress, H.R. 1917, the BRICK Act, and H.R. 1119, the SENSE Act. And I opposed them then, and I oppose them now.

While I understand there are special circumstances relating to the hazardous air pollution rule for brick and clay ceramic manufacturing, the BRICK Act is the wrong answer. It would set a terrible precedent, encouraging endless legal challenges designed to stall compliance with regulations. In this case, it is proceeding in

the courts, and the court has the ability to stay the rule. This issue should be resolved there, not here.

The SENSE Act would revise the Mercury and Air Toxics Standards and Cross-State Pollution Rules to allow power plants that burn coal refuse to emit higher levels of sulfur dioxide and hydrogen chloride. It is unnecessary and would allow plants to produce more pollution.

As a Representative from a downwind State, I am particularly concerned about this bill. The Cross-State Rule uses a phased-in approach to achieve emissions reductions to allowance trading. It would shift a greater percentage of these emission allowances to coal refuse plants.

The EPA has a plan for how all these allowances should be allocated to individual plants. The States also have the ability to submit their own plans for achieving the required emission reductions. So the States already have the power to give extra allowances to coal refuse plants, as this bill would mandate.

H.R. 453, the Relief from New Source Performance Standards Act of 2017, extends the deadline for implementing new standards for residential wood-fueled stoves, hydronic heaters, and forced-air furnaces. EPA finalized rules for these appliances in 2015 and the new standards that apply to 2020. These standards have not been updated since 1988, nearly 30 years ago, and there is no justification for extending the deadline.

Wood smoke from inefficient heating devices creates harmful particulate pollution, as well as toxic air pollutions like benzene

and formaldehyde. Delaying this rule will allow noncompliant stoves and heaters to be sold for 3 more years, and since these appliances last for decades, it would take much more time to reduce pollution from these devices.

A number of States have taken steps to encourage the transition to cleaner-burning devices. Several States petitioned EPA to initiate this rule because of severe local problems with wood-smoke pollution. The companies that have invested to improve their products to meet the deadline -- and there are many -- should be rewarded for their efforts. And, instead, this bill rewards those who have delayed, while punishing the public with more pollution.

And, finally, we have H.R. 350, the Recognizing the Protection of Motorsports Act of 2017. Automobile racing's history is as long as the car itself, and amateur racing continues to be a popular pastime. No one wants to end this activity. But there is a big difference between racing on a track, whether as a professional or an amateur, and daily driving on public roadways.

The devices marketed and installed on a vehicle to improve its performance as a racing car are defeat devices. They undermine emission control systems and result in more pollution. And daily driving of such a vehicle pumps significantly more pollutants into the air. EPA just fined Volkswagen for using defeat devices, as we know.

So, if someone installs these devices on a vehicle, that vehicle should no longer be driven on public roads. It is now a racecar, and it should only be raced on a track. But H.R. 350 creates a loophole

in the Clean Air Act that is much too broad to ensure that these devices will only end up on a racetrack, and I oppose it in its current form. This may be something we can work on going forward, but I can't support a bill that facilitates emissions cheating.

Again, I do not accept that we have to compromise the public's health to have a healthy economy. These bills make that trade, and they undermine the public health protections within the Clean Air Act. And I think we can and should do much better, Mr. Chairman.

And, with that, I yield back.

[The prepared statement of Mr. Pallone follows:]

***** COMMITTEE INSERT *****

Mr. Shimkus. The gentleman yields back his time.

And we have now concluded members' opening statements. The chair would like to remind members that, pursuant to committee rules, all members' opening statements will be made part of the record.

Again, we want to welcome our panel. Thank you for being here. Many of you have traveled great distances to join us.

Your full statements will be submitted for the record. You will have 5 minutes. We will be lenient, but don't go 10. We will gavel you down.

And we appreciate you being here, and I will introduce you as your time comes forward. And I can't wait to introduce Alexandra before the committee, so that will be a real joy.

So, first, we would like to have Mr. Frank Moore, president of Hardy Manufacturing Company.

You are recognized for 5 minutes. Welcome.

STATEMENTS OF FRANK MOORE, PRESIDENT, HARDY MANUFACTURING COMPANY, INC.; RYAN PARKER, PRESIDENT AND CEO, ENDICOTT CLAY PRODUCTS; ALEXANDRA E. TEITZ, PRINCIPAL, AT STRATEGIES, LLC, ON BEHALF OF THE SIERRA CLUB; VINCENT BRISINI, DIRECTOR OF ENVIRONMENTAL AFFAIRS, OLYMPUS POWER, LLC, ON BEHALF OF THE ANTHRACITE REGION INDEPENDENT POWER PRODUCERS ASSOCIATION (ARIPPA); REBECCA BASCOM, M.D., PROFESSOR, PENN STATE COLLEGE OF MEDICINE, ON BEHALF OF THE AMERICAN THORACIC SOCIETY; AND STEVE PAGE, PRESIDENT AND GENERAL MANAGER, SONOMA RACEWAY

STATEMENT OF FRANK MOORE

Mr. Moore. Thank you, Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee. Thank you for holding today's hearing.

My name is Frank Moore, and I am president and owner of Hardy Manufacturing Company. We are a small, family-owned business with about 50 employees and a network of 400 dealers.

My father-in-law developed and patented the outdoor hydronic heater in the late seventies. This product was developed to help farmers and rural workers who had their own firewood to heat their homes and were trying to make ends meet. Those needs continue today.

I am here representing wood-burning stove and heater manufacturers, dealers, retailers, and installers, most of whom are small businesses, and all are impacted by the EPA's emissions standards

for new residential wood heaters. And so are the consumers who depend on wood burning to heat their homes. These products include hydronic heaters, wood and pellet stoves, and wood furnaces.

I will refer to this regulation as the New Source Performance Standard, or NSPS for short.

And I want to be clear, the wood-burning industry supports Federal standards. In fact, we have petitioned the EPA to set national standards so our industry would have uniformity and predictability. We did not ask to be regulated out of business. We are not asking Congress to repeal the EPA rule. We are only asking you to provide us an additional 3 years to continue R&D, testing, and certification of EPA.

So here is the situation that we face. The NSPS rule was finalized in 2015 with two sets of standards. Many manufacturers were able to meet the Step 1 standards, which for Hardy and other hydronic heater manufacturers meant about a 90-percent emissions reduction. Step 2 standards are the challenge, requiring a nearly 98-percent emissions reduction by May 2020. Products not meeting Step 2 standards cannot be sold after May 2020 even if they are sitting at a retailer's.

To accomplish all of the following steps by the summer of 2018 -- that is 1 year from now -- number one, develop new, cleaner technologies that don't yet exist; number two, test them internally for durability and customer satisfaction; number three, work through the coming logjam at one of only five EPA-approved test labs to have

the new product certified as compliant with Step 2; and, lastly, receive EPA approval on our certification application.

There is simply not enough time to complete these steps and manufacturing appliances can be sold by 2020. An additional 3 years would also help spread out significant R&D costs, ranging from \$200 to \$500,000 per product. Plus, EPA lab testing costs as much as \$20,000 per test. For small businesses like mine, these costs are huge.

This regulation is already costing jobs. As an example, a company in Minnesota has already laid off workers to divert capital into R&D, fearing they will not have product ready to sell in 2020. Some small manufacturers have told us they may exit the business because they cannot recoup their investment competing against larger companies.

Since the NSPS became law, Hardy's sales and payroll has been cut in half. We continue to be aggressive in developing Step 2 appliances, but with the short lead time to complete certification, I am not sure our company can survive.

If this deadline is not changed, the wood-burning home-heating industry will shrink, hurting small businesses and reducing jobs. For consumers, that means less choice and higher prices, factors that will slow improvements to our Nation's air quality because consumers will hold on to their older, higher-emitting heaters when faced with higher prices and fewer products.

Most NSPS standards are reviewed no more frequently than every 8 years. This rule combines two revisions within one 5-year period.

The small businesses in our industry are in dire need of a 3-year extension.

Thank you for your time today, and I will try to answer any questions that you might have.

[The prepared statement of Mr. Moore follows:]

***** INSERT 1-1 *****

Mr. Shimkus. The gentleman yields back his time, and the chair thanks you.

The chair now recognizes Mr. Ryan Parker, president and CEO of Endicott Clay Products.

You are recognized for 5 minutes, sir.

STATEMENT OF RYAN PARKER

Mr. Parker. Chairman Shimkus, Ranking Member Tonko, and distinguished members of the subcommittee, good morning, and thank you for inviting me to testify on this important issue.

My name is Ryan Parker. I am the president and CEO of Endicott Clay Products Company, which has manufactured clay brick near Endicott, Nebraska, for 97 years. Our company is a family-owned company, and I currently work with two of the three generations of that ownership.

We have grown from a plant that serves a local market to a nationally recognized manufacturer. We have a recipe that has made it possible: devoted employees, wonderful clay, and a passion for excellence.

I am also here on behalf of my industry, as I serve on the board of directors of the Brick Industry Association. We are an industry that has less than \$1 billion in total annual revenue. Approximately 75 percent of the companies in the brick industry are small businesses, like Endicott Clay Products Company, and have been making brick for 100 years or more.

The manufacturers in my association have been good employers and neighbors in their local communities. 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 have limited resources. It is imperative that these limited resources be used judiciously and on the most important issues. It is important that there is some benefit to every dollar spent and that the money not be spent needlessly or prematurely.

Our company currently employs approximately 325 people, including our manufacturing, sales, and support staff. The village of Endicott that we are located near has a population of 132. We work in a very rural area and struggle to attract qualified workers from a 45-mile radius around our plant. Most of our employees grew up in a small town or on a farm and exemplify the grit and determination that made our country the greatest in the world.

Our company makes something tangible, something real, something sustainable that people admire for generations on schools, churches, homes, and skylines all over North America. The permanency of what we do is our daily inspiration.

Nearly 10 years ago, the permanency of our business and our industry was called into question. Our industry was facing a massive recession and was coming into compliance with air regulations that hit our industry hard.

The first Brick Maximum Achievable Control Technology Rule, Brick

MACT, that was finalized in 2003 required state-of-the-art air quality emissions controls for many brick plants throughout the country. After \$100 million were spent by my industry to come into compliance with the 2003 Brick MACT through expensive stack tests and control devices, the rule was vacated by the courts in 2007.

The cost of coming into compliance with the vacated rule was never to be recouped, and many brick plants had to continue annual operation and expense of the installed control devices due to operating permits being issued that incorporated the devices.

The newest Brick MACT was promulgated in 2015 and requires existing source compliance by December 26, 2018. I am here today because we are concerned that this regulation could become the same moving target that the last Brick MACT did and that further expense and regulatory uncertainty could cripple our industry. We are here to ask your help to ensure that our companies comply with a rule that will not be vacated in the courts again. We believe the BRICK Act can give us the certainty we need.

The 2015 Brick MACT does include some innovative requirements, including health-based standards for over 99 percent of the hazardous air pollutant emissions from our industry kilns. Unfortunately, the requirements for the remaining 1 percent emissions, mercury and nonmercury metals, will require the same multimillion-dollar controls for many in our industry that would have been required before the health-based standards were conceived.

If the emission limits in the 2015 Brick MACT are altered as a

result of the current pending litigation, we could be facing a significant cost. The cost of adding air pollution control devices for our company alone would be approximately \$8 million. We have already spent hundreds of thousands of dollars on two baghouses, stack testing, and engineering support.

For many in our industry, they are quickly having to decide whether or not to add further control devices. Reminiscent of the painful decisionmaking made by many in our industry in the 2000s, the cost of compliance is now, while the certainty and form of the 2015 Brick MACT is unknown. Unknown costs and regulatory uncertainty hurts companies like ours. A financial burden of millions would be devastating to our company. We do not have the ability to pass along these costs to our customers.

I cannot say for certain that we would ever be able to borrow the money required to finance air quality controls that will increase our costs dramatically without adding to our revenue or product quality, especially since these controls would do very little to improve the air quality near our plant.

It is easy to imagine that the loss of a brick company here or there is manageable for the small communities that most of us operate within. However, if Endicott Clay Products were to cease operation, millions would be lost from our community. As the largest employer by far in our county, we pay over \$10 million in wages to our 325 employees per year. Most of our employees would have difficulty finding other employment due to lack of opportunity, educational

requirements, and jobs that require their lifelong skills acquired in brick-making.

Our historical narrative is a good one. We manufacture a sustainable product embraced by everyone on the political spectrum. We have a product that delivers thermal, lifecycle, aesthetic, and safety benefits to buildings and civilization since the Babylonians.

The BRICK Act would allow us some time to see exactly what is needed to comply with the 2015 Brick MACT and ensure that we and others in our industry are not investing in equipment that ultimately is not needed. Our industry's past experience with the 2003 Brick MACT compliance showed us how easily \$100 million in investment for air controls can be made obsolete. Please work together to allow our industry to gain the necessary time to see that our jobs, our product, and our livelihoods are not jeopardized.

Thank you for taking the time to listen to me today, and I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Parker follows:]

***** INSERT 1-2 *****

Mr. Shimkus. Thank you very much.

Now I would like to recognize Ms. Alexandra Teitz from AT Strategies, on behalf of the Sierra Club.

Welcome back, and it is great to see you.

STATEMENT OF ALEXANDRA E. TEITZ

Ms. Teitz. Thank you, Mr. Chairman, and thank you, Mr. Tonko and members of the committee, for this opportunity to testify today and for your very kind welcome.

My name is Alexandra Teitz. I am principal at AT Strategies, and I am here today representing the Sierra Club. The Sierra Club is the Nation's oldest and largest grassroots environmental nonprofit organization, with over 826,000 members nationwide.

I have practiced clean air law for over two decades now, first as an attorney in the Office of General Counsel at EPA for many years and then for many more years up here in jobs on the Hill and, in particular, as senior counsel to this committee, which was a truly wonderful experience.

Today's hearing considers four bills that would modify clean air regulations or the act itself to allow specified entities to emit more pollution into the air. Of a special concern, the SENSE Act would weaken the Cross-State Air Pollution Rule and the Mercury Air Toxics Standards Rule for power plants, which are two of the most important and effective pollution-control requirements in place today.

The bills we are discussing today would result in more smog, more fine particle pollution, and more toxic air pollution. The effects would be real, and they would be harmful. They mean more asthma attacks, more kids in emergency rooms, more bronchitis, more heart attacks, and more pneumonia, among other health impacts.

In addition, the bills embody a fundamentally unfair and deeply troubling approach to regulation. These bills grant favors to special interests. No matter how great these companies are, they are being singled out for special favors, picking winners and losers in competitive markets.

And with slim rationales for the proposed legislative actions, Congress would be overturning evidence-based scientific, technical, and legal decisions that were made by EPA, States, and courts after extensive open public processes, including with a lot of industry input.

Since Congress passed the Clean Air Act in 1970, we have made significant progress in cleaning up our air by following a basic principle: We hold polluting entities responsible for cleaning up their pollution.

Generally, where air pollution is harmful and can be controlled, we require polluters to take reasonable actions to reduce their emissions. Determinations of what is harmful and what is reasonable in specific instances are highly technical, and these decisions are made generally by EPA or State regulators as authorized by law and based on science, analysis, data, and open public process.

But these bills take a different approach. They would create loopholes in the requirements for a few specific entities: waste coal plants, brick manufacturers, manufacturers of residential wood heaters, and manufacturers of certain aftermarket auto parts. The loopholes are neither necessary nor justified, but the bills would allow these specific entities to meet looser standards, delay their cleanups, or avoid regulation altogether.

One of these bills would bypass a feature of our court system just for brick manufacturers by staying the effective date of air toxics standards for the brick industry until all challenges to the rules are resolved. This effectively eliminates the courts' current authority to grant or deny a stay request in the ongoing litigation.

Another bill would tamper with the longstanding principle under the Clean Air Act that, where EPA determines that States need to reduce a given quantity of pollution, the States retain the authority to determine how to achieve those reductions. But Congress would substitute its judgment, in this case.

And one bill, as a practical matter, although it is not at all clear this is the intent of the bill, but the effect would be to hobble EPA enforcement against cheating on vehicle pollution controls, which can be a very significant air pollution problem.

In granting special breaks to these entities, Congress would overrule decisions and authorities of States and courts as well as the EPA. It would hurt the many small businesses that have already made the investments to take care of their pollution and clean up by moving

the goalpost midgame, and it puts them at a competitive disadvantage.

By shifting cleanup responsibilities to sources of pollution with higher cleanup costs, as some of the bills do, Congress would interfere in the markets, create inefficiencies, and raise costs across the board.

And since there is no way to legislate away the harm from pollution, the American people and particularly our kids and our seniors would have to pay for these special breaks with their health. And, to me, that doesn't make sense, and it doesn't seem fair.

Thank you. I would be happy to answer any questions.

[The prepared statement of Ms. Teitz follows:]

***** INSERT 1-3 *****

Mr. Shimkus. The gentlelady yields back her time, and thank you for your testimony.

The chair now recognizes Mr. Vincent Brisini, director of environmental affairs, Olympus Power, on behalf of the Anthracite Region Independent Power Producers Association.

You are recognized for 5 minutes. Welcome.

STATEMENT OF VINCENT BRISINI

Mr. Brisini. Thank you, Chairman Shimkus, and thank you to the committee for allowing me to be here to testify today.

I am here today testifying on behalf of ARIPPA in support of the SENSE Act. ARIPPA is the trade association for a small but unique industry that removes coal refuse from the environment and then combusts that coal refuse along with limestone in circulating, fluidized bed boilers to make electricity.

The coal refuse being used by the ARIPPA member facilities and other similar facilities is typically material remaining after the historic mining and processing of coal. The resulting ash from this coal-refuse-to-energy process is used to remediate and reclaim coal refuse sites and other mining-affected lands. Coal refuse piles cause air, surface water, and groundwater pollution, as well as being safety and health hazards.

As a lifelong resident of the bituminous coal region of Pennsylvania, I lived among coal refuse piles and have experienced

firsthand the air pollution and odor issues caused by the piles that are burning, the dust that blows off of them, and the water pollution that causes many miles of stream to be so contaminated that they can't support aquatic life.

I have also witnessed the benefits provided by the coal-refuse-to-energy facilities. The coal refuse piles that were removed from Revloc, Pennsylvania, by Ebensburg Power Company and the land that was reclaimed as part of the coal-refuse-to-energy process not only eliminated sources of air and water pollution, it brought life back to the south branch of the Blacklick Creek. This project has allowed the South Branch Fishing Club to stock the stream for the past 3 years with between 500 and 1,000 trout each year.

In addition to these kinds of environmental and recreational benefits, the coal-refuse-to-energy facilities provide considerable economic benefits to the areas in which they are located.

According to reports prepared by Econsult Solutions, a Philadelphia-based economic consulting firm, the combined economic and environmental benefits of the coal-refuse-to-energy industry in Pennsylvania and West Virginia total about \$800 million per year. The industry directly and indirectly supports approximately 3,800 jobs, with total earnings for those employees of more than \$231.5 million per year.

While these coal-refuse-to-energy facilities are relatively small, the family-sustaining jobs they provide, directly and indirectly, are critical to the small communities where the facilities

are located.

One of the biggest problems, if not the biggest problem, that the SENSE Act faces is that most people have not personally experienced coal refuse piles. People who have never lived in a coal region and haven't experienced daily the environmental health and safety issues associated with coal refuse simply do not appreciate those issues and the amazing benefits provided by the coal-refuse-to-energy facilities.

The Pennsylvania Department of Environmental Protection recently issued a report showing diminished pollutant loadings -- generally well over 90-percent removal for most pollutants -- from the sites that have been remediated and reclaimed through the coal-refuse-to-energy process. These reduced loadings are exactly why the South Branch Fishing Club has been able to successfully stock trout in the south branch of the Blacklick Creek.

Absent the efforts of the coal-refuse-to-energy industry, it is likely that most of the remaining coal refuse piles will never be reclaimed or remediated. There simply isn't enough public funding available.

What is important to understand about the SENSE Act is that it addresses the one standard in the Mercury and Air Toxics Standards Rule that most of the bituminous-coal-refuse-fired facilities can't meet, the acid gas standard. The SENSE Act, instead, provides an additional performance limit for bituminous-coal-refuse-fired facilities only, which would require 93-percent removal of the potential sulfur dioxide in the coal refuse being used as fuel.

Importantly, under the SENSE Act, this is accomplished in a fashion that does not have any negative effect on the environment. Because the Cross-State Air Pollution Rule sulfur dioxide emissions budget, which the SENSE Act protects, and the Mercury and Air Toxics Standards Rule sulfur dioxide acid gas limit are both based on the same sulfur dioxide emission rate, the State and regional sulfur dioxide emissions will, at most, remain the same but, more likely, will be even lower under the SENSE Act.

Consequently, all of the monetized benefits of both the Cross-State Air Pollution Rule and the Mercury and Air Toxics Standards Rule will be preserved, if not increased, by the provisions contained in the SENSE Act.

So, to me, someone that has lived all of his life in the bituminous coal region, the SENSE Act makes perfect sense. It protects the environment and allows the bituminous-coal-refuse-fired facilities to continue to provide their economic, multimedia, environmental safety and health benefits.

Thank you very much for the opportunity to provide testimony in support of the SENSE Act. And thank you to Representative Rothfus for crafting a bill that is actually to everyone's benefit.

[The prepared statement of Mr. Brisini follows:]

***** INSERT 1-4 *****

Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes Dr. Rebecca Bascom, professor, Penn State College of Medicine, on behalf of the American Thoracic Society.

You are recognized for 5 minutes. Welcome.

STATEMENT OF REBECCA BASCOM, M.D.

Dr. Bascom. Mr. Chairman, Ranking Member, thank you for the opportunity to testify today.

Mr. Shimkus. Let's pull the mike down, and make sure the button is on.

Dr. Bascom. How is that?

Mr. Shimkus. That is great.

Dr. Bascom. Is the technology operative now?

Mr. Shimkus. It works.

Dr. Bascom. Okay. Thank you.

So I am Rebecca Bascom. I am professor of medicine at Penn State College of Medicine and practice at Milton S. Hershey Medical Center in Hershey, Pennsylvania.

I work as a lung doctor. Half of my time each week, I have a white coat on, I have a stethoscope, I am listening to the lungs of people to decide whether they have lung disease or not. And I can tell you, I know a lot about people who suffer from lung disease, and I know a lot about the grit of people who have to endure some of these very difficult diseases.

I also teach medical students, and I also do research and partner with amazing scientists at Penn State looking for solutions to some of these diseases and also to assess health effects and impacts on the respiratory system.

Today, the committee is considering four bills that would change the Clean Air Act to create industry-specific exemptions and delays to meeting Clean Air Act standards. And while the details of the bills vary, they share one thing in common, which is more air pollution.

And that is bad for the patients that I treat, because air pollution does make sick people sicker. For common diseases like asthma and COPD, exposure to air pollution makes people more likely to end up in the emergency room, to miss school, to need medications, and sometimes hastens their death.

Air pollution is also bad for healthy people, something that many people are not aware of. It reduces lung function development. It accelerates declines in lung function. It also increases all-cause mortality for healthy people.

And we know that acid gasses and sulfur dioxide have adverse lung effects. I had a patient who was bicycling, got near a power plant, and had to get off her bicycle because her asthma was kicked up. So the effects can occur very quickly.

They also contribute to the formation of particulate matter, another dangerous form of air pollution that can be distributed throughout the body, with effects not only in the lungs but in the heart and elsewhere.

So when we talk about air pollution, it is not just kids who are impacted; it is all of us.

Air pollution is a particular concern for people that I treat who have advanced lung disease, cystic fibrosis that affects children, and pulmonary fibrosis that affects people in their golden years. And I need to tell you about the impact of air pollution on those individuals, because it changes their lives from managing their disease to being on death's door. And this is a huge problem for them and a huge source of fear.

Forty years ago, when I started taking care of patients with lung disease, I was brought to a room of a patient who was a miracle guy. He was 20 years old, and he had lived that long with cystic fibrosis. And now all the time I am taking care of people, adults with cystic fibrosis, who have children who are living full lives, delivering pizza, you know, living their life.

However, the thing they fear is an acute exacerbation, because if they get an acute exacerbation, they are going to land in the hospital, they are going to lose their jobs because they will be out for 3 weeks, needing intravenous antibiotics. Air pollution makes them more likely to have an acute exacerbation.

And we have recently learned that air pollution makes it more likely that *Pseudomonas aeruginosa* and meth-resistant staph aureus take residence in the lungs of people with cystic fibrosis. And the presence of those bacteria make them have a much more difficult time maintaining their lung function. So air pollution puts them from a

controlled situation to being on death's door, and that is a real problem.

For people who have pulmonary fibrosis, air pollution makes them more likely to have an acute exacerbation. I see people with pulmonary fibrosis at our monthly support group. And I run the Pulmonary Fibrosis Care Center at Penn State. And I know that people who have an acute exacerbation may not leave the hospital and that ozone air pollution makes them more likely to have an acute exacerbation because it causes deep-lung injury, and injury and disrepair are the central problem for pulmonary fibrosis.

So people ask me whether or not improving air pollution can improve health, and the answer is absolutely yes. There are really good data. The Harvard Six-City Study, for example, showed that reductions in air pollution reduce morbidity and mortality; some fabulous studies from Southern California that look at the impact on children and that show that, over a 20-year period, that children's lung growth improves when air pollution levels are reduced. And that is true if you are a boy or if you are a girl, all ethnicities, if you have asthma or if you are healthy. So air pollution cleanup clearly benefits across a whole wide range of people.

So, in summary, we know that air pollution is bad for health, and we know that improving air pollution and protecting our air quality improves health. And so I really encourage you to resist any loopholes and rollbacks on air pollution control.

Thank you.

[The prepared statement of Dr. Bascom follows:]

***** INSERT 1-5 *****

Mr. Shimkus. The gentlelady yields back her time. Thank you for your testimony.

And the last-but-not-least member of the panel is Mr. Steve Page, president and general manager of Sonoma Raceway.

You are recognized for 5 minutes, and welcome.

STATEMENT OF STEVE PAGE

Mr. Page. Chairman Shimkus, Ranking Member Tonko, members of the subcommittee, I appreciate this opportunity to speak today about H.R. 350, the Recognizing the Protection of Motorsports Act.

The RPM Act confirms that the Clean Air Act allows for certified motor vehicles to be modified into race vehicles used solely for motorsports competition. This bipartisan bill was introduced by Representative McHenry and has 139 cosponsors, including subcommittee members Hudson, Carter, Johnson, Murphy, and Walberg, as well as my own Congressman, Mike Thompson.

My name is Steve Page. I am president and general manager of Sonoma Raceway, a motor racing and performance automotive center about 30 miles north of San Francisco.

For decades, Americans have converted their street vehicles into racecars, from pre-World War II classics to modern-era performance cars. Sonoma Raceway is proud to participate in this defining American tradition. Our raceway consists of a 2-1/2-mile, 12-turn, natural-terrain road course, a quarter-mile championship drag strip,

a three-quarter-mile karting track, an industrial park that is home to 75 racing businesses, a performance racing school, acres of campgrounds, and a variety of support facilities.

We offer one of the most diverse race schedules in the industry and are the only track in the U.S. to host all three of the Nation's top professional racing series: NASCAR, NHRA drag racing, and the IndyCar series, for which we host the season finale. And we invite you all to check out the championship race this Sunday on NBC Sports Network.

While these major event weekends garner attention and media coverage at a national level, Sonoma Raceway is actually a year-round motorsport complex, with racing scheduled 340 days and up to 50 weekends a year. In fact, most of the activity at Sonoma Raceway consists of amateur driving programs, sports car and vintage racing, drag racing, motorcycle racing, testing, and other activities involving the recreational racing community.

The majority of the vehicles competing on our track began their lives as assembly-line vehicles and have been modified with high-performance suspension, safety, and exhaust systems. These are cars, trucks, and motorcycles that have given up their license plates and arrive and depart our facility on trailers.

Sonoma Raceway employs about 80 full-time workers. The 75 small businesses located in our industrial park employ hundreds of skilled technicians who convert, modify, store, and prepare race vehicles for events.

Racing's footprint in the local economy extends well beyond our campus. In 2016, the Sonoma County Economic Development Board measured the total regional economic impact of a single vintage race weekend at our facility at nearly \$2 million. That is the kind of boost to the local economy that takes place at Sonoma Raceway on a regular basis, day-in, day-out, year-round, and is representative of hundreds of racetracks around the country.

Since the majority of our racing features motor vehicles that were originally designed and sold for street use, we were surprised to learn that the EPA had issued a proposed regulation in 2015 to prohibit the conversion of a motor vehicle into a race vehicle if the emissions system is modified. This is inconsistent with the EPA's application of the law for over 40 years and represents a serious threat to our sport.

According to the agency, a motor vehicle must always remain in its original configuration, even if it is trailered to the track and used exclusively for racing. While the EPA has signaled it does not currently intend to take enforcement action against individual racers, the agency maintains that it has the authority to do so. This interpretation now defines a majority of our customers as lawbreakers.

Given the agency's policy, a clarification to the law is absolutely needed. The RPM Act simply makes clear that converting a motor vehicle into a dedicated racecar does not violate the law. Further, it restores the original intent of the Clean Air Act, that the law applies to motor vehicles used on our roads and highways and

not to race vehicles and parts.

In California, which owns the strictest emission laws in the country, our State government takes a different approach. California statute and regulations specifically allow for motor vehicles to be modified for use exclusively in motorsport competition.

On behalf of Sonoma Raceway, our employees, and the many small businesses that would be affected by the EPA's action, I strongly support the RPM Act and ask the subcommittee to consider the important role that racetracks and motorsports play in our economy when reviewing this legislation.

Thank you again for this opportunity to address the subcommittee, and I look forward to taking any questions you may have.

[The prepared statement of Mr. Page follows:]

***** INSERT 1-6 *****

Mr. Shimkus. The gentleman yields back. Thank you for your testimony.

And thank you all for being pretty punctual on time. That gives us an opportunity to begin with opening statements. I recognize myself for 5 minutes.

Mr. Brisini, I want to -- and as quickly as possible, if you can, because I want to get a lot of questions out. This cost-benefit analysis kind of story this bill went through last Congress, can you address that, how, in your opinion, the benefits are outweighing what may be viewed as, you know, the cost of allowing a waiver of some of the Clean Air Act?

RPTR FORADORI

EDTR HOFSTAD

[11:00 a.m.]

Mr. Brisini. Well, I think what is really important to recognize is that you are not losing any of the monetized benefits, so there is really only upside by virtue of the SENSE Act.

The SENSE Act contains provisions to ensure that the Cross-State Air Pollution Rule budget for each State where this would happen is not increased. The allocations that would come to provide the additional allocation to the bituminous-coal-refuse-fired plants comes from retired units, units that have been retired as long as 5 years and possibly even longer, so that no existing plant's allocation is affected.

The retired plants in Pennsylvania, for example, keep 65 percent of what they were allocated. Thirty-five percent would be allocated to the bituminous coal refuse plants. And in West Virginia, the existing plants keep 87 percent of the -- the retired units keep 87 percent of their allocation. If you were to do a complete reallocation, they likely would get nothing.

So I look at the SENSE Act by virtue of the provisions that protect the CSAPR budget, and I look at those situations where you will have no regional increase because of that -- it is cap and trade -- you will actually have decreases in SO₂ likely, because they can't sell them, they can't trade them, they have to be used at the facility. The only

facility that can get this allocation is a bituminous-coal-refuse-fired plant that burns 75 percent coal refuse to ensure that they are cleaning up the environment by producing the beneficiary-use ash, and then they have to surrender those allowances when they retire.

So there is only upside to the SENSE Act.

Dr. Bascom. Can I speak a little about the cost?

Mr. Shimkus. Ma'am, it is my time. So we will recognize you --

Dr. Bascom. Okay.

Mr. Shimkus. -- if someone wants to ask you a question.

Mr. Page, let me ask about the statement of a concern that the aftermarket parts used in amateur auto racing might find their way into the regular vehicle market. Can you speak to that?

Mr. Page. Sure. Let me make two points.

There is nothing in what is proposed in the RPM Act that allows a modification of cars that are used on the highway --

Mr. Shimkus. So that would still be against the law.

Mr. Page. That would still be against the law.

Mr. Shimkus. Okay. Great. Thank you.

Let me go to Mr. Moore and Mr. Parker. I represent a big, rural area, 33 counties. My biggest community is 33,000, and then it goes down from there. You are both located in small communities, it sounds like. Endicott is 100. And, actually, 50 employees would be a big employer in my congressional district.

So, Mr. Moore, can you speak, and then Mr. Parker, in my minute

left, just briefly, the impact to the local community and the importance of the jobs and the tax base that you provide in rural America?

Mr. Moore?

Mr. Moore. Thank you.

You know, our business is small, with 50 employees, but we have -- there are several vendors all over the United States. We have dealers, a 400-dealer network that will have retailers, installers, that type. And then our community, everybody that we employ is local. And we do local banking; everything is done locally. We contribute back to the community, and we are just a part of that community. And, I mean, the loss of a --

Mr. Shimkus. Are you one of the major employers in the local community?

Mr. Moore. Semi-major, yes, sir, we are.

Mr. Shimkus. Okay.

Mr. Parker?

Mr. Parker. Thank you.

We are by far the largest employer in our county. For us, most of the employees that we attract, we have a very difficult time to get them. But adding to our tax base, in addition to the millions in wages that we pay, we have over 1,000 acres that we pay tax on, millions of dollars of equipment that we pay personal property tax on.

And local vendors depend on us for their businesses as well, whether that is welding, mechanics, electrical trades, and so forth. Our facility, while we are in the middle of nowhere, granted, we provide

a lot of jobs, and we have a lot of activity at our facility.

Mr. Shimkus. Great. Thank you very much.

The chair now recognizes the ranking member of the subcommittee, Mr. Tonko, for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair.

Ms. Teitz, can you explain CSAPR's phased-in approach to emission allowances, please?

Ms. Teitz. Sure. Mr. Tonko, could I briefly address just a couple points that were just made?

Mr. Tonko. Sure.

Ms. Teitz. Would that be -- thank you.

I just wanted to note that Mr. Brisini made the point that the SO2 levels would be held constant under the cap under the SENSE Act. And that may well be the intent of the bill. However, as it is drafted, that is not clear.

And the concern is that the language says, in one place, that EPA shall hold levels constant, but then in the very next section it says that they shall do that by taking allowances from other sources for a certain time period, which depends on those allowances being available from those sources and is limited to that 4-year period that is specified.

So, if that is the intent of the bill, it certainly could be fixed to address that portion of the concern, but that is not how it is currently clearly drafted. That would still leave the concern about acid gases increasing, but with respect to that piece of it, that is

the concern about the increased SO₂.

And then, in terms of the concern about the defeat devices that Mr. Shimkus raised, because -- again, it is a drafting question, and, as members of the committee know, drafting is critical. Because it is drafted to turn on what the purpose of the device is, you would be allowed to manufacture a defeat device that would have the purpose of being installed for racing, but, once it is on the market, it could be sold and people could use it for whatever purpose, as they have, in fact, done.

And EPA has no practical ability to go after some vehicles in the middle of 260 million vehicles that are on the roads today. So EPA just wouldn't be able to enforce that in any practical matter, without being able to go to the manufacturers and say, you can't sell these things.

So, again, there may be a way to do that, but that is not what the result of the bill would be. And we have seen in recent settlement cases that, in fact, defeat devices have been sold as aftermarket parts recently and have resulted in huge quantities of NO_x emissions -- in one case, NO_x emissions sufficient to offset recent updates to the Cross-State Rule.

And I apologize. Going back to your original question, Mr. Tonko, the -- I am sorry. Could you refresh me?

Mr. Tonko. Sure. CSAPR's phased-in approach to emission allowances, just explaining that phased-in approach, if you could.

Ms. Teitz. That is right.

So CSAPR has several phases, and it tightens down over time, because we want to be -- as technology improves and as we make reductions, we want to keep tightening those limits down. So there are two phases, and the second phase, you know, is critical in terms of continuing to make the emissions reductions that downwind States need to come into attainment.

Mr. Tonko. So, under the SENSE Act, would waste coal plants continue to receive higher phase-one allowances indefinitely?

Ms. Teitz. That is right. They would never ratchet down.

Mr. Tonko. So EPA would never be able to strengthen this standard even if emissions control technology greatly improves or becomes significantly cheaper. Is that correct?

Ms. Teitz. That is correct. And nor would States be able to do that. If they looked around and said, we need more emissions reductions and this is the cheapest place to get them, this is where we want to get them, they would not be able to do that.

Mr. Tonko. One of the central principles of the Clean Air Act is cooperative federalism. States have the authority to choose how to reduce emissions, but the SENSE Act would actually override this.

So, Ms. Teitz, is anything currently preventing States with waste coal plants from giving these plants additional allowances?

Ms. Teitz. I am sorry? Repeat the last bit?

Mr. Tonko. Is anything currently preventing States from --

Ms. Teitz. Oh. No. At this point, they absolutely have the ability to adopt their own plans and give these plants more allowances,

redistribute them however they wish.

Mr. Tonko. Okay.

And, Dr. Bascom, can you discuss the health impacts of sulfur dioxide pollution that you have seen in your patients or in recent medical studies?

Dr. Bascom. Sure.

Sulfur dioxide is a highly soluble gas, so it is taken up 99 percent by the upper respiratory tract. And what that mean is that it triggers asthma, it is a big actor. People that have asthma who are around sulfur dioxide can exercise less before they are set off, and they have an increased medication need.

The other thing about it is that, when it comes out of the stack, it can then contribute to particulate air pollution. And we have been there before, raising stacks on power plants in the Midwest and resulting in long-term transport of particulate air pollution to patients in Pennsylvania.

The idea of taking, I agree, bad coal that is sitting on the ground and messing with the streams and all of a sudden sending it up into the stack and spreading it out across Pennsylvania for my patients, it just seems like a really bad idea.

Mr. Tonko. So you do see a cost to this act.

Dr. Bascom. Yes. Absolutely.

Mr. Tonko. Thank you.

I yield back.

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

The chair now recognizes the vice chair of the subcommittee, Mr. McKinley from West Virginia, for 5 minutes.

Mr. McKinley. Thank you, Mr. Chairman.

Mr. Brisini, you tried to describe for the crowd here the issue of the mine refuse piles. We have seen them all over West Virginia. We have seen them in Pennsylvania and Ohio, where those plants are -- wherever they are mining coal and power plants, those things are located. And there have been -- I think, for people to understand, sometimes these mine gob piles -- as we refer to them, gob piles -- can catch fire spontaneously and burn for some period of time. They are really a problem for us.

So I admire the efforts here in Congress to try to clean those piles up and find a use for them. And when they have been able to do this by developing these power plants, these small qualified facilities, to use those facilities, we should be embracing that, because it is clearly cleaning up our environment.

But yet, in the last few years since -- I have been in Congress 6 years -- I have seen a relentless attack on these plants. So I admire Congressman Rothfus for addressing this legislation to try to bring some kind of commonsense approach to how we take care of this.

Dr. Bascom. But it is a pollution-shifting --

Mr. McKinley. But I have --

Mr. Shimkus. Would the gentlelady suspend?

The way the committee operates is that we ask questions to individuals and then the individuals are then asked to respond to our

questions. So it is not proper to just -- no. So I am sure one of my colleagues will get a chance to direct questions.

The gentleman can continue.

Mr. McKinley. I want to continue with that. Because of the interruption, I lost some time on that.

But what my issue is with this legislation -- and I am a cosponsor of the legislation. I know its intention, but I know also there are unintended consequences that can happen when you go through this legislative process and the rulemaking process that is attached to it.

So what I want to address is the SO₂ allowances under CSAPR. To address the SO₂ emissions, we have to address CSAPR. But when we address CSAPR, we open up NO_x gases as well.

Do you see that it could be interpreted, when we open up or look at CSAPR, that NO_x gases could be addressed or revisited?

Mr. Brisini. That is certainly not the intent --

Mr. McKinley. It is a "yes" or a "no," I think, hopefully.

Mr. Brisini. I don't think there is a "yes" or "no." I think that depends on what somebody else would try to do. Now, from the standpoint of this --

Mr. McKinley. Do you think it is possible that the NO_x gases could be revisited when --

Mr. Brisini. I think it is highly unlikely. I can't speak in a certainty because I can't control what somebody outside our industry would do. This has nothing to do with NO_x. This is not any interest --

Mr. McKinley. I understand that.

Mr. Brisini. -- in NOx.

Mr. McKinley. Would you have some language or do you have language to make sure that tightens up? Because I don't think that was the intention.

Mr. Brisini. We could provide that language, absolutely.

Mr. McKinley. I don't think their intention was to expand it over to NOx gas.

Mr. Brisini. Absolutely not.

Mr. McKinley. Okay. Thank you on that. And I do hope we can continue to clean this up.

I am also -- while we stay with you on this subject, do you think that the -- because we have been under this attack on these facilities. They have been chasing our coal-refuse-to-energy plants now for the last number of years. If they would be successful, do you have an idea of how many jobs could be lost?

Mr. Brisini. Well, I think, at this point in time, that you have the potential to lose probably a thousand-plus jobs and a corresponding percentage of that, somewhere close to \$100 million in earnings to those jobs. But you also lose the environmental benefits.

Now, I think -- and I really want to stress this point. The SENSE Act is crafted so there won't be any SO2 increase. Now, what is important about the SO2 increase and keeping that level is that all of the benefits -- virtually all of the benefits of the Mercury and Air Toxics Standards are there because of sulfur dioxide.

If you look in the preamble to the regulation and the EPA

identifies the benefits, it is due to sulfur dioxide, and it is as a precursor to fine particulate matter. The only air toxic identified in the MATS Rule as a monetized benefit is mercury, which is \$4 million to \$6 million a year. The benefit from sulfur dioxide is \$36 billion to \$89 billion a year, out of a total \$37 billion to \$90 billion benefit.

Now, because these facilities have already done dispersion modeling to verify that they do not cause or contribute, at their current emission levels, a violation of the sulfur dioxide standard, because they have provisions such that you maintain the CSAPR cap, by virtue of the fact that CSAPR and MATS are using in the CSAPR States exactly the same reductions to justify those regulations, there is no increase in the pollutant that provides for the monetized benefits identified for both of those rules.

Mr. Shimkus. The gentleman's time --

Mr. McKinley. Thank you. I yield back.

Mr. Shimkus. -- has expired.

The chair now recognizes the gentleman from California, Mr. Peters, for 5 minutes.

Mr. Peters. Thank you so much.

And thanks to all the witnesses.

First, I would just observe that one of the things that we struggle with is to try to achieve high-quality air standards with a minimum drag on the economy. And I want to give attention to both sides. One thing I thought I heard that wasn't fair was all the rules are

industry-specific, so, of course, the requests are pretty industry-specific. I think that is not a reason to be critical.

Mr. Moore, you made the point that, for your product, if we don't deal with this, it is possible that some superior technologies -- you said 90-percent-emissions-cutting technology -- won't be on the shelves because you can't hit 98 percent.

Do you believe that not just your company but the entire industry for your product has achieved that 90-percent level?

Mr. Moore. I will try to answer that as best I can.

My understanding is the majority of the manufacturers have met the Step 1 phase, which for hydronic heaters that is a 90-percent emission reduction.

Mr. Peters. Is there a date in the regulation itself for meeting Step 1?

Mr. Moore. In 2015. May of 2015.

Mr. Peters. So that is behind us, and now --

Mr. Moore. Correct.

Mr. Peters. -- we are just talking about the second step coming down the road.

Mr. Moore. Right. So, today, the only thing that I can manufacture is the Step 1, which is the 90-percent emissions reduction.

Mr. Peters. Right. I want to just say, I heard your testimony. It impressed me, because I think we don't want to have the perverse effect of not having better technology on the shelves because we couldn't achieve perfection.

I would be open to some sort of extension. I am not sure whether 3 years is the right amount. But I would like to indicate to the author of the bill that you made some sense to me.

Mr. Moore. Thank you very much.

Mr. Peters. Mr. Page, how does California address the issue that was raised in terms of enforcement? How do we make sure in our State that modified vehicles, vehicles that are modified for racing, with poorer performance in terms of air quality are not used on the street?

Mr. Page. I can't get into a lot of detail about enforcement techniques. What I can say is that the cars that are modified that compete on our track are pretty easy to identify. They arrive on trailers. They have been modified with roll cages, with slick tires, lots of sponsor decals. If they leave the facility and hit the public highways, it is pretty easy to identify --

Mr. Peters. Well, I would just say, some racing, though, is advertised as, you know, regular cars. So, you know, you would have Acuras racing, and they would look like Acuras. Maybe it wouldn't be so easy to identify. Is that right, or no?

Mr. Page. There are unmodified street cars that race on our track. There are rules for every kind of racing. Generally, the cars that are modified with high-performance exhaust systems are pretty easily identified as racecars.

Mr. Peters. And often louder.

Mr. Page. Significantly, yes.

Mr. Peters. Okay.

Again, I think -- I was surprised to hear that California has accommodated this, since we are pretty tough on this kind of thing. But, again, I will look more into that.

Mr. Parker, the question I had for you was, the lawsuit that invalidated the 2007 rules, presumably that was a lawsuit filed by the industry. Is that right?

Mr. Parker. The lawsuit was actually from Sierra Club.

Mr. Peters. Okay, so Sierra Club's lawsuit. Now, is the current lawsuit on the 2015 rules -- who has filed that?

Mr. Parker. Both the environmental as well as our industry.

Mr. Peters. One of the things that, as a lawyer, I would always wonder is whether I could get a stay of enforcement, because you have to show likely to have success on the merits and then irreparable harm. You have made a pretty decent case for irreparable harm. Have you tried to get a stay as part of the litigation?

Mr. Parker. We are working on that avenue right now. Our issue is that the clock is ticking for the compliance date, which is December of next year.

Mr. Peters. Yeah.

Mr. Parker. So we are really working on multiple avenues, including a stay, to try to ensure that we have time.

Mr. Peters. Do you have any sense from the court of when that stay decision might be issued?

Mr. Parker. I do not.

Mr. Peters. Ms. Teitz, do you know the answer to that specific

question?

Ms. Teitz. I don't know the answer to that specific question. I wasn't actually aware that a stay request had been filed with the court.

Mr. Peters. Okay.

Well, again, I think the one -- I am sympathetic to you, too, because I think that, again, it is tough for businesses to be knocked around without having certainty. On the other hand, I would ask you to pursue the remedies in court before you come to the legislature. I think there is a remedy available in court, it seems to me, to deal with this.

If that were unsuccessful -- I am not saying I am not sympathetic, but I would certainly be more sympathetic that you are careening toward not knowing what the answer is, and, you know, maybe we should step in.

But I would like to see you -- and would love to know if it is possible -- to tell me the timeline on getting a stay. That would make an impression on me.

Mr. Chairman, I yield back. Thank you.

Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. Johnson. Thank you, Mr. Chairman.

I appreciate the discussion that we are having today and all of our panel members for being here.

You know, our small businesses in America are the backbone of our economy. We have known that for a long time. And brick manufacturers are a part of those small companies that we are talking about, those small businesses. And I think it is a shame that the regulations that we are discussing today go after their very livelihood.

Unfortunately, Mr. Parker, you are no stranger to the very real economic consequences of heavy-handed Federal regulations. You have seen it firsthand. The brick industry has borne the brunt of an unpredictable regulatory process, beginning way back in the early 2000s.

And while some of my colleagues believe that the BRICK Act sets a concerning precedent, the situation that the brick and clay ceramic industries find themselves in today, this MACT on MACT situation, is, in itself, very unique.

So I think we need a bit of pragmatism when we approach this situation, not simply give history the option to repeat itself. And we need to consider the livelihood of the people that will be impacted by EPA's most recent reiteration of the BRICK Act.

Also troubling for me is this regulation essentially caps the economic productivity of the clay ceramics industry. While the EPA, under the former administration, admits that the regulation will not reduce emissions emitted by the industry, it decided to set new regulatory standards for it anyway. I would hope that my colleagues would appreciate the ridiculousness of this current regulatory environment.

So, Mr. Parker, the EPA essentially assumed that you can raise the prices of your bricks to pay for new control equipment. Is this really an option? And what type of competition does the brick industry face?

Mr. Parker. Well, I would love to be able to raise prices at any time, especially to cover costs that come up. If we could raise prices -- and this is speaking as a CPA from my prior professional career -- I would absolutely embrace getting revenue wherever I could. So, no, we cannot raise prices to cover, whether the control is a scrubber or any other type of device.

The competition that we are facing right now, our industry has really benefited from being isolated, in a way. We have not had a lot of foreign competition, especially for traditional face brick. It is a very heavy product with low value, and that does not lend itself very well to competition from overseas.

However, that is changing. And we have seen that with the tile manufacturers, where European imports decimated a lot of the tile manufacturers, including our line of tile that we used to make back in the eighties. We sell very, very little tile anymore. And we are also starting to see thin brick imports from China as well as Europe, which are now competing against our product.

Mr. Johnson. So competition is getting pretty stiff in the global economy.

Mr. Parker. It is more stiff today than it has ever been.

Mr. Johnson. Okay.

Is it correct to say that you and other brick manufacturers have already reduced their emissions substantially and that these new standards require further reductions from these already reduced levels?

Mr. Parker. It is. When the 2003 Brick MACT came in, compliance was within the 3-year window, so all of the companies in our industry came into compliance by 2006. The rule was then vacated in 2007.

Our companies and our industry continued to operate based upon operating permits that were issued with those control devices that were put in under a rule that was ultimately vacated.

Mr. Johnson. Okay. All right. Yeah, we talked about that a lot over the last several years.

Can you explain how this MACT-on-MACT approach could result in unachievable standards?

Mr. Parker. Sure.

When the 2015 MACT was drafted, they took a look at the best-performing kilns that were in existence. The control devices that were put on those kilns were very effective for the kilns at those locations. The EPA drafted the regulation looking at the performance of those kilns and used that as their baseline for establishing the new MACT. So, essentially, we now have a MACT-on-MACT-type situation.

Mr. Johnson. Okay. And if you are forced to implement this rule, what is it going to do to employment in your industry?

Mr. Parker. For our industry, it would be devastating. We have companies that put in control devices that spent \$1 million, \$2

million, \$3 million, \$4 million at a location to comply with the 2003 Brick MACT that was vacated. With the current MACT that is currently in front of our industry, many of those control devices are going to have to be torn out to put in a higher-performance-type scrubbing system.

Mr. Johnson. Okay.

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

Mr. Johnson. All right. I yield back, Mr. Chair.

Mr. Shimkus. The chair recognizes the gentlelady from the State of Michigan, Mrs. Dingell, for 5 minutes.

Mrs. Dingell. Thank you, Mr. Chairman.

The bills before us, in different ways, attempt to delay, roll back, or create loopholes in the Clean Air Act for multiple industries that would be detrimental to public health, I believe. Air pollution, no matter the source, adversely harms all of us. This is why it is so critical we protect the standards established by the Clean Air Act and continue to reduce all forms of harmful pollution.

So it is important we take a step back and have a real conversation about air pollution's direct impacts on public health. We must fully understand the real risks and consequences of allowing more particle pollution into our environment, which you all discussed in your testimony.

Dr. Bascom, how does pollution affect different age groups across our society? And is there a specific demographic most at risk with increased air pollution?

Dr. Bascom. We are most concerned about children because they breathe more for their body weight, so they have a higher toxicant dose.

If you think about the wood-burning stove issue, this is a very important one for children because they spend a lot of their time at home. The wood-burning stove, in a sense, can create the wood-burning emissions, like a forest fire, within their home.

In Pennsylvania, where there is radon, people that have high particulate burdens in the home get more radon into the lungs, and that increases lung cancer risk over a lifetime.

So children are the people that we are most concern because of their increased dose and the long trajectory where the pollutant can exert its impact.

Mrs. Dingell. Thank you.

Dr. Bascom, I am trying to give you your turn now. Many of the clean air standards we are discussing here today are already long overdue. What are your greatest long-term and short-term concerns, as a physician, if industries are granted specific exemptions or we continue to delay or circumvent EPA Clean Air Act standards moving forward?

Dr. Bascom. One of my biggest concerns is that the technology that is currently available is not being used. I think that in the State of Pennsylvania, when it comes to the power plants that we talked about, again, I agree that the slag coal is bad, we need to get rid of it, but to get rid of it by dispersing it into the air is a bad idea.

People live a long time, and pollutant effects, actually,

research shows, exert over the generations. So we have to clean up now as quickly as possible so that we are not causing these long-term burdens.

Mrs. Dingell. So, as an experienced physician and professor, you have seen firsthand the harmful effects of pollution on public health caring for patients. What do patients tell you regarding air pollution? Are they concerned about how more pollution might impact their day-to-day lives or quality of life?

And since you have been anxious to make comments, I am going to say to you now: Are there stories you would like to share with the committee to help us understand the human side of unhealthy air?

Dr. Bascom. Thank you for the opportunity.

My patients, when the VW story broke about the cheaters that were polluting and making air quality worse, people would come in with their asthma attacks, and they were furious. They couldn't believe that a company like VW was cheating.

So I don't think that we have airport sniffing dog equivalents for pollution technology on cars. And so I don't think we -- I think my patients would be furious at the thought that pollution was being allowed or that people were being allowed to cheat.

People are also very scared, when they have a chronic lung disease, about landing in the hospital and about dying. If they have a lung transplant, pollution makes it more likely that their lungs will be rejected, their new lung would be rejected.

The human cost of pollution on people's health and livelihoods

is huge. If you are sick, you can't work. If you are young and you have asthma, that is the most common cause of missed schooldays, so you don't learn as well. Air pollutions cost. I see it all the time in my patients.

Mrs. Dingell. So we have 50 seconds left. Are there any things that you have heard that you would like to respond to directly at this time, or do you have any final message you want to leave with members of this committee?

Dr. Bascom. I think that the health cost is a huge cost for people. It is economic to the individual, and it is often hidden, that the individuals bear the cost. And please keep them in mind as you are doing your deliberations.

Thank you.

Mrs. Dingell. Thank you.

It is not in the public's best interest to pass legislation that incentivizes frivolous litigation in an effort to stall or avoid compliance. Delaying important air quality standards ultimately hurts our quality of life.

Nor should we be passing legislation that would make exemptions or loopholes that weaken the Clean Air Act, make unnecessary delays, create inequities in the marketplace, or removes economic incentives to reduce pollution altogether. Public health is too important an issue to sacrifice.

I thank all of the witnesses for being here today.

I yield back my 5 seconds.

Mr. Shimkus. The gentlelady is over 5 seconds, but --

Mrs. Dingell. Oh, I apologize.

Mr. Shimkus. -- with my diligence, we allowed you to finish.

Mrs. Dingell. Thank you, Mr. Chairman.

Mr. Shimkus. So the chair recognizes the gentleman from North Carolina, Mr. Hudson, for 5 minutes.

Mr. Hudson. Thank you, Mr. Chairman.

My question is for Mr. Page, president and general manager at Sonoma Raceway.

A 2005 study found approximately 27,252 North Carolina residents were employed in motorsports-related jobs, including employees working for suppliers of the equipment used in racing. I am certain that the number has gone up in the 10-plus years since a full-scale economic impact study was completed by economists at my alma mater, UNC-Charlotte.

The most recent estimate by the Specialty Equipment Market Association estimates that the motorsports parts industry contributes \$1.6 billion a year to the economy. Of course, that doesn't even include the financial impact of racing itself.

I had the great opportunity to visit your facility a number of years ago and want to commend you on a wonderful operation. It is a terrific fan experience. Your track hosts major NASCAR and I believe very shortly will be hosting an IndyCar race. But please elaborate on the importance of amateur racing activities relevant here to your business.

Mr. Page. Well, amateur racing is really the foundation of what goes on at our track. And there is an enthusiast performance automotive community that is on our track using our facility day-in, day-out, year-round. And there are programs that are for unmodified street cars, but the majority of the club racing, which is vintage cars, sports cars, and a variety of different clubs that rent our track and promote events, are using cars that began as street cars that have been modified. They are clearly -- you can see them; they arrive on trailers. One of our biggest logistical challenges we have at the facility is just parking all of the trailers that arrive for a major race weekend.

So these are not cars that are driving in off the street. As I mentioned before, they have roll cages, they have slick tires, they have sponsored decals on the side. Any of these cars that hit the street are very clearly identified as a car that shouldn't be out there.

But that amateur race community is really the foundation of what goes on in our facility.

Mr. Hudson. I appreciate that.

The California Air Resources Board is famous, and some on the subcommittee might say infamous, for adopting extremely stringent environmental standards. But, in this case, it is fair to say that this board, unlike EPA, has made crystal-clear that it has no desire to target vehicles that have been modified for use exclusively on private racetracks.

Would the RPM Act conform Federal policy to the California State

policy and create more uniformity and certainly for those involved in this amateur racing?

Mr. Page. Yes, it would. The CARB regulations essentially mirror what was the policy of EPA for the first 45 years of the Clean Air Act, which is that a car that is used exclusively on a racetrack can modify its exhaust system. That is the policy that is followed by CARB.

And the intent of this legislation is to simply clarify that that has been and always was the intent of the Clean Air Act. And it takes a cloud of illegality off of the thousands of people that use our facility on a year-round basis, that, based on the current interpretation of the law by the EPA, they are considered lawbreakers.

Mr. Hudson. Well, and to that point, I mean, without the RPM Act, is it your testimony that there is some lingering doubt about whether the EPA may in the future choose to go after the owners of vehicles modified solely for competition as well as the businesses that serve them?

Mr. Page. Yes. And that cloud hangs as long as that is the stated -- regardless of whether they are currently enforcing it, that is the stated policy of the EPA, so that all of these people who compete on our track, the 75 businesses that work on cars at our track, all of those are engaging in an illegal activity and that that the EPA simply isn't enforcing it.

Mr. Hudson. Well, I appreciate your thoughtful responses today. I am sure many other racetrack operators share your concern.

And I guess it is obvious, then, you would prefer that this law clearly spell out that converting racing modified street vehicles is legal under the law rather than rely on the EPA not to enforce the law that exists. Is that correct?

Mr. Page. That is correct.

Mr. Hudson. Well, thank you very much, sir.

And, with that, Mr. Chairman, I yield back the balance of my time.

Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. McNerney. Well, I thank the chairman for holding this hearing.

And I want to thank the witnesses. You all make a pretty good case, and it is going to be hard, really, with an objective viewpoint, to ferret out what the best pathway here is, at least with regard to my vote.

I am going to start out on the coal refuse issue.

Ms. Teitz, can emissions of the coal -- burning coal refuse with limestone, can that be scrubbed to high standards, the emissions -- the --

Ms. Teitz. Yes. In fact, the coal refuse plants are actually -- the controlled ones are actually some of the cleanest of the plants. And, as Mr. Brisini pointed out in his testimony, eight of them were used to help set the MATS standards, the technology-based standards.

So it is clear that these plants do have the technological ability to clean up. And, in fact, many of them already have scrubbers on; it is more a question of how they are operated, how often they are operated, and how much sorbent is used, et cetera.

Mr. McNerney. Okay.

Mr. Brisini, what is the waste product, then, of the process? And how is it disposed of, the solid waste?

Mr. Brisini. When you combust the coal refuse with limestone -- and I will correct something, in that there is one plant that has a post-combustion device. All of the other plants rely completely on the combustion of coal refuse with limestone and fabric filters, the most effective particulate control device there is to achieve the sulfur dioxide reductions.

The difference that you see isn't because they have different technologies. It is primarily because of the particular vintage of the plant and the particular sulfur of the coal refuse. Bituminous coal refuse has higher sulfur than anthracite coal refuse, which is exactly why the NSPS includes a performance standard as opposed to a single standard for coal refuse plants.

Now, what gets done with the beneficial use ash? And that is what is it in Pennsylvania. By regulation, it is called "beneficial use ash" under Chapter 290. So long as it meets a number of criteria relating to leachate. And that is tested and verified quarterly. That material is beneficially used in the reclamation of the sites where the coal refuse was removed and also in the reclamation of other

mining-affected lands. And these are abandoned lands, in many cases, that have no one who has any environmental liability.

And something else that probably should be realized: In the re-mining process, by someone taking on the burden of re-mining coal refuse, they are accepting all of the burdens of the current mining regulations in terms of how it is done and how the reclamation of that area gets done.

Now, in terms of supporting the use, the --

Mr. McNerney. I am going to reclaim my time here. I like your answer, but you are taking way too much of my 5 minutes.

Ms. Teitz --

Mr. Brisini. Well, there is too much good story. Sorry.

Mr. McNerney. -- will this process cause further emission than other generators, other forms of power generation?

Ms. Teitz. So it depends how -- this is the ambiguity in how it is drafted. Mr. Brisini has testified that the intent of the regulation is to hold the caps constant, but it is not at all clear that it actually achieves that in practice. And it appears that it allows -- overall emissions levels could be allowed to go up. I mean, it could be drafted to hold the cap constant, but it doesn't achieve that at this time.

Mr. McNerney. Okay.

Ms. Teitz. In terms of the acid gas standards, in terms of MATS, the Mercury and Air Toxics Rule, it would allow increased emissions from these coal refuse plants.

Mr. McNerney. Thank you.

Professor Bascom, the arguments in favor of weakening or delaying the Clean Air Act is that the cost of incremental improvements -- in other words, improvements over improvements that have already been made -- are not cost-effective. In other words, the cost exceeds the benefit. Could you address that?

Dr. Bascom. One of the important lessons is that the current levels of particulate air pollution continue to exact an important health cost and that continuing reductions in particulate air pollution will cause important health benefits.

Furthermore, for people that have chronic respiratory conditions, these particulate levels cause tremendous costs in terms of suffering and healthcare costs.

So I think that the public health benefit continues to be -- the arc of the public health benefit is toward reducing human suffering and reducing healthcare costs. And that is important to keep in mind. We have not solved the problem of air pollution, although we have made great strides.

Mr. McNerney. So, in terms of dollars and cents, the dollars saved by not doing the additional pollution controls does not exceed the cost of health effects?

Dr. Bascom. Well, I am not an economist, but the people in the EPA who are doing regulation and proposing things work in that area, and I would refer you to them.

Mr. McNerney. All right. Thank you.

Dr. Bascom. I can tell you about phlegm.

Mr. McNerney. Thank you, Mr. Chairman.

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

The chair now recognizes the gentleman from Mississippi, Mr. Harper, for 5 minutes.

Mr. Harper. Thank you, Mr. Chairman. And I certainly want to thank you for holding this hearing today and for the invitation extended to Frank Moore to appear before the subcommittee to share his perspective.

Frank is a constituent of mine and is the owner and operator of Hardy Manufacturing in Philadelphia, Mississippi. And his father-in-law started the company, I believe, in 1976, and Frank and his wife bought the company back in 1992. And I think he offers a unique perspective, as an engineer, from Mississippi State University, I might add, and a small business owner, to see how the EPA regulation is affecting him and other small businesses.

And I am very proud to have you with us today, Mr. Moore. And I would like to ask you a few questions, if I may, to make sure that we are all on the same page here and that we come away with an understanding of how this impacts you and many others.

First of all, I think it is important just -- you know, of course, I have been by your facility. I know what you mean there in Philadelphia, Mississippi. Explain to us what your company actually means, contributes, or how the local community benefits from you being there and employing some 50 people.

Mr. Moore. Not only do we have the employees, as I was saying earlier, there are subcontractors, there are sales organizations that are located in Philadelphia. You know, we do the local banking. But, you know, vendors are not only all over Mississippi, they are all over the country. We buy stainless steel and we buy grates from a large area.

And, you know, I am just one small company. There are close to 60 manufacturers in the HPBA organization. And then there are thousands of dealers, installers, and retailers that, you know, sell these units.

And, you know, what we are asking today is, we just don't have enough time. And we do support the regulations; we just didn't want to be regulated out of business.

Mr. Harper. Right.

Mr. Moore. And this Step 2 essentially will regulate us out of business. And then, you know, without relief, our business owners and consumers, you know, will actually lose.

And, you know, when we change from a 90 to 98 percent, this is going to cause the consumer not to be able to change out their old high-emitting units. And a good example, in Libby, Montana, they had a change-out program there, and they had a 70-percent improvement in air quality. And we just feel like, by selling even the Step 1 units until we can develop our Step 2 units, that we are improving the environmental and air quality.

Mr. Harper. Sure. And we appreciate that and what your company

means to our State.

When you look at this, I know keeping the product affordable for families who have perhaps been pinched by the economy is very important. Who are the main consumers of your products?

Mr. Moore. Most of them are farmers. They are rural workers that have access to their own firewood. And, you know, when they have access to their own firewood, it is not like having the high cost of energy. And, you know, energy is unstable when people are trying to heat their homes and just trying to make ends meet. So being able to use your own firewood is an advantage, that they can make ends meet.

And so we are just trying to continue to make these wood-burning appliances available to them -- and clean wood-burning appliances.

Mr. Harper. And so what you are looking at is just more time to continue the development to get to that figure.

Mr. Moore. Exactly. We are just asking for 3 more years. We are hoping that we -- but we just got to get to that point. And we are hoping we will get there.

Mr. Harper. So if you don't get to that point and you don't get that additional time, what do you think the impact on employment in your company would be?

Mr. Moore. It would be over.

Mr. Harper. Okay.

Mr. Moore. I mean, you know, the only thing we manufacture is an outdoor wood-burning furnace. And I am not the only manufacturer or dealer or installer or retailer who will be affected. I mean, this

affects the whole wood-burning industry across the United States.

Mr. Harper. Well, let's talk about this in the seconds that we have left. If you don't get that relief and if the new wood heaters becomes much more expensive, could this have an environmental impact that is negative or consequences that that would be negative if consumers decide to keep using older wood heaters or find other heating options?

Mr. Moore. Absolutely. I mean, you know, if they don't have anything to buy or if they can't afford what is available to them, then what they are going to do is to repair their old units, somehow, in their shops. They are going to repair them, so then you have all those high-emitting units that are still out there.

We are trying to give them an option of having cleaner-burning units that they can replace their old higher-emitting units with.

Mr. Harper. Thank you, Mr. Moore.

With that, I yield back, Mr. Chairman.

Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes Mr. Cardenas for 5 minutes.

Mr. Cardenas. Thank you very much, Mr. Chairman. I appreciate the opportunity to get some question and answers with our witnesses here today.

I used to be a small business owner before I became a full-time politician. I was a State-licensed business owner as well. So I appreciate right-sized regulations that balance public good, short-term and long-term, with economic cause and effect, short-term

and long-term, as well.

I will take back us about a little bit. There was a time when humankind settled everything with a club, as in, you know, swinging a club. That is too simple of a way of dealing with things, and we hopefully, in this committee, can prove that we have evolved by, you know, tackling our everyday things that we have to do with a thoughtful, science-based, and sophisticated manner. I think that we have the capability of doing that.

And I think some of these bills in their form right now are just a little too simplistic, and they are ignoring something, such as these bills are delaying EPA rules, and they are hurting -- in my opinion, hurting companies by creating unpredictable changes in our standards.

My first question to Mr. Page is, I understand that California already has a similar regulation in place that mirrors this bill, which is the Recognizing the Protection of Motorsports Act of 2017. Can you talk about the regulations in California that are reflective of this issue?

Mr. Page. Yes.

The California Air Resources Board and California law allows for the conversion of a vehicle that was originally produced as a street vehicle to become a racecar, including the modification of the exhaust system. And, as I mentioned, that was the interpretation that the EPA adopted during the first 45 years of the existence of the Clean Air Act.

What this bill does is simply clarifies, for the people in our

industry, that that intent is, in fact, what the Clean Air Act intends and that that would make it congruent with the policy of the California Air Resources Board.

Mr. Cardenas. Thank you.

While California is certainly a leader on environmental issues, we do have a problem with individuals altering their vehicles to use them on the streets. The limit requiring transport on flatbeds is a good step in preventing bad actors from driving the altered vehicles on the street as well.

Ms. Teitz, I ask the same question of you. If you have knowledge of the California regulations, do you have the sense of how many bad actors there are in the State of California and how that number affects emissions?

Ms. Teitz. I don't have that information, Congressman.

But there is a key point here that I think we keep missing in this discussion. The concern with the bill is not whether or not so much racing conversion should be allowed. The issue is whether the bill would remove EPA's authority to enforce against defeat devices that are sold to overcome motor vehicle emissions controls, as a general matter.

And the way the bill is currently drafted, it is much broader than just allowing for the kind of thing that California allows for. Because it goes to the purpose or the intent, any manufacturer could sell any device that is a kit to convert a car and get rid of the motor vehicle emissions controls or to put in a computer tweak which they

sell to override the controls, and, as long as they say it is for the purpose of racing, EPA couldn't enforce.

Well, the practical reality is, once it is sold, California has a way to check and make sure that those vehicles are only used for racing, because they require inspection and maintenance programs; many other areas of the country do not have that safeguard. And EPA certainly isn't going out and checking individual vehicles' tailpipes.

Mr. Cardenas. Certainly not.

Ms. Teitz. So, as it is drafted, it could be incredibly damaging.

And just to provide an example of that, in recent years, there have been three big consent agreements where EPA enforced against manufacturers of defeat devices and they agreed that they were manufacturing defeat devices that were designed to overcome air pollution emissions controls; they paid penalties. And in just one of those cases, in 2015, EPA estimated the emissions impact of those defeat devices on the road is over 71,000 tons of NOx.

For comparison, EPA just updated or relatively recently updated the Cross-State Rule to reduce NOx emissions from power plants across 22-something States to help Eastern States attain the ozone standards, and that was 80,000 tons of NOx. So this almost wipes out the entire benefit of EPA rulemaking, the defeat devices sold by one unscrupulous manufacturer -- who is no longer in business, but other ones could arrive.

So EPA has to retain that authority. It is absolutely critical. Or we are going to have, sort of, you know, do-it-yourself VW scandals.

Mr. Shimkus. The gentleman's time --

Mr. Cardenas. Thank you.

I yield back. Thank you, Mr. Chairman.

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

The chair now recognizes the gentleman from Georgia, Mr. Carter, for 5 years.

Mr. Carter. Thank you, Mr. Chairman.

I am juggling subcommittee meetings, and my notes are upstairs, so I am going to go by memory.

Mr. Page, I am going to start with you. First of all, I represent south Georgia. We are NASCAR, we are racetracks, we are all about it. And one of the things that I am concerned with is how EPA has come and has essentially taken and incorporated you into something that originally you weren't intended to be included into.

Mr. Page. Well, that is the point I have been trying to make. And I would actually like to address Ms. Teitz's point --

Mr. Carter. Please do, but very quickly.

Mr. Page. -- because I think it helps to illustrate our case.

We fully support the EPA's aggressive enforcement of standards for cars that are driven on the road. And when manufacturers like the one she has identified are stopped from selling these kinds of parts to cars that are driven on the street, then we are fully supportive of it.

This simply clarifies that cars that are exclusively used on the track are not subject to that requirement. And I think this is an

example that the EPA can enforce it.

Mr. Carter. Absolutely. And this impacts you. It impacts the small speedways in my district, of which I have very many, and they add a lot to the economy. And something like this could have a devastating effect on them, and does have a devastating effect on them.

And I have a piece of legislation right now dealing with tractor trailers, that the interpretation of the engine on the truck is impacting the tractor trailers now. That is why we need to codify it. And that is what my legislation does to keep the overreach of EPA from impacting these companies like that.

But thank you, Mr. Page. I appreciate that.

Mr. Page. Thank you.

Mr. Carter. Mr. Brisini, I want to talk to you for a second because I am very interested in what you are talking about with the coal refuse and what you are doing with that.

I want to ask you, what are your byproducts from that? What are your waste products that you get out of that as a result of what you do?

Mr. Brisini. Well, the vast majority of the material is not determined to be waste. It is actually a beneficial-use material under the -- for example, in Pennsylvania, we have regulations --

Mr. Carter. I am not talking about your initial product. I am talking about after you are finished. Do you have coal ash?

Mr. Brisini. No. It all becomes part of this beneficial-use ash. It actually is a material that has the ash, it has the unreacted

limestone, it has pozzolanic characteristics, which is a technical way of saying it acts like cement. So when it goes back to the areas for reclamation, it would be mixed with whatever is left behind, and then it sets basically into cement.

Mr. Carter. And so you don't have any residual material at all after your process?

Mr. Brisini. Pretty much no. And the Department of Environmental Protection just produced a presentation -- in fact, in our testimony, there is a link to that presentation -- that identifies the reclamation of areas with beneficial-use ash. And it shows the reduced loadings from the area, and it shows the leachate. And it shows that this is absolutely the only permanent way to address the coal refuse pile issues in terms of fire or water pollution --

Mr. Carter. Okay. The reason I am going here and the reason I am asking this question is, in my district, they are trying to increase the amount of coal ash that is being shipped down there and put into the fills there, into the waste fills there. And I am wondering if the coal ash -- you could be using this?

Mr. Brisini. The ash from those areas, we don't use that. We produce our own. I can assure you, none of the ash from a coal-refuse-to-energy facility would go to Georgia, because it is too valuable in its use in West Virginia and Pennsylvania in reclaiming abandoned mine lands.

Understand that these coal refuse piles, unless they are burning and creating a safety and risk hazard from the emissions or there is

subsidence of the pile -- and these are right on the edge of towns. People's backyards back right up into a coal refuse pile. Unless you have an imminent danger, these are called a low-priority pile. None of the abandoned mine land --

Mr. Carter. Okay. I understand what you are saying, but my interest lies with coal ash, in particular. Because, you know, we have some fills down there that they are wanting to dump that into. And, obviously, there are environmental concerns about it getting into the water table, about it polluting our environment down there, and that is of major concern to us.

Mr. Brisini. I understand that, and it should be a major concern to everybody. And that is why in my previous life with a previous company we had lined landfills for all of our disposal sites.

But, now, in terms of the SENSE Act, it is a very different kind of material than fly ash. In fact, you wouldn't see much bottom ash from power plants because they use that to create under-drain systems and other efforts in their own disposal sites.

Mr. Shimkus. The gentleman's --

Mr. Brisini. But our area, we have --

Mr. Carter. I may follow up with some questions for you, if that is okay.

Mr. Brisini. Sure. We would be happy to --

Mr. Carter. Thank you, Mr. Chairman.

Mr. Shimkus. The gentleman can talk to me too. We will talk about coal ash and fly ash and all those good things.

The chair recognizes the gentleman from California, Mr. Ruiz, for 5 minutes.

Mr. Ruiz. Thank you very much, Mr. Chairman.

As you all know, I am a physician, emergency medicine doctor, public health expert. So I understand very clearly the importance of the Clean Air Act and to having clear air to breathe, the direct relation from pollutants in the air to increase in asthma, COPD exacerbations, as well as morbidities that can -- I have treated them in the emergency department. They come in gasping for air because of some worsening conditions in the air and the haze and pollutants and allergens and all that other stuff.

So that is why it is so very important that we monitor and get the data needed to determine what are things that pollute the air and that we also inform the public for behavioral changes and help protect the common good, which is clean air.

So I want to talk about the RPM. And, of course, the biggest concern here are those that want racecars and, you know, change their emissions and drive them in the streets. My understanding is that this RPM bill will clearly define that if you modify the car, then that car is to be used for racing, and that if they want to drive that car in the street, that they still have to comply with current emissions.

So, Mr. Page, in terms of the owners of these street cars that modify their cars, is your sense -- do they have a problem with giving up their license plate for street driving?

RPTR TELL

EDTR HOFSTAD

[12:00 p.m.]

Mr. Page. The intent of this bill is to focus purely on cars that are used on the track. So that is the intent. It would certainly seem like a reasonable stipulation that someone should give up their license plate if they are modifying the exhaust.

Mr. Ruiz. In your opinion, would they be willing to?

Mr. Page. I can't speak for the individual drivers, but, as a representative of the industry, it certainly seems like a reasonable stipulation.

Mr. Ruiz. Yeah. And is this bill for if a car then wants to be a racecar -- right? Is it for cars that only are for racecars?

Mr. Page. Correct.

Mr. Ruiz. Correct.

Mr. Page. This --

Mr. Ruiz. So you are not encouraging dual use --

Mr. Page. No.

Mr. Ruiz. -- with this bill, correct?

Mr. Page. This is for cars that are used 100 percent on a racetrack.

Mr. Ruiz. A hundred percent.

Mr. Page. There is nothing to remove the restrictions for cars that are used on the public roads.

Mr. Ruiz. Okay. So the cars on public roads still have to comply with all the emissions --

Mr. Page. Absolutely.

Mr. Ruiz. -- tests and everything.

Mr. Page. Absolutely.

Mr. Ruiz. So my next question then, Ms. Teitz, is, you know, how do you regulate -- or how does the EPA regulate emissions for any car? And is there any special things that you do for cars that are used for racing?

Ms. Teitz. That is such a good question, Congressman.

I think we are really having a divide here between what everybody thinks would make sense, which is having provisions that apply to cars that are actually only used for racing, versus the way the bill is actually written, which is, unfortunately, far broader.

And it really is much less of an issue of car by car, because the EPA has never, to my knowledge, and won't be going out car-by-car enforcing against, you know, you didn't race this car or you didn't race this car. The issue is whether --

Mr. Ruiz. Well, let me ask you the same question differently, because I only have a minute left, mind you.

Currently, there is illegal street car racing. It happens, you know? They zoom at, you know, 2:00 in the morning, you know, in some rural area. How do we enforce that those cars are compliant and that that doesn't happen?

Ms. Teitz. California, places that have vehicle emissions

inspection maintenance programs can enforce that. Other States that don't have that don't have any practical way to enforce that most of the time.

The key here is that what EPA is really concerned about is not the individual cars. They are concerned about manufacturers that are selling in bulk, like 80,000 units or 100,000 units, of defeat devices over the internet to people to put on their cars and then they drive them. And there is absolutely no provision in the bill to turn in your license. There is no provision in the bill to stop people from driving once they have done that.

The bill's language turns on the purpose. If the purpose of the manufacturer is that it be used for racing, then it is fine to sell it. And if the individuals then do something entirely different with it, they are totally free to do that under this bill. And that is the problem here.

Mr. Ruiz. Well, the manufacturers could sell to anybody, correct?

Ms. Teitz. That is right.

Mr. Ruiz. So, really, the onus is on the drivers of the car.

Ms. Teitz. But there is no enforcement against that.

So the only way EPA has historically been able to enforce this, which they have enforced, is when people are -- when you have manufacturers of these devices that make it cheap and easy -- I mean, if someone wants to do it themselves, there is no way we can stop that.

But when you sell in bulk 100,000 units of a defeat device, as

recently happened, you know, EPA can go after that manufacturer and say, you are enabling people to break the law, and that is illegal. They can do that under the current Clean Air Act. Under this bill, I don't think they could enforce that.

Mr. Ruiz. I have more questions.

Mr. Shimkus. Your time has expired.

Mr. Ruiz. I know.

Mr. Shimkus. We appreciate your attendance and your focus on this issue.

All time has expired. Seeing no further members wishing to ask questions for the first panel, I would like to -- first of all, I want to say this was a very good hearing, and appreciate your participation. There were good questions, a good dialogue.

And for those who are supporters of these bills, I think the testimony of those who are opposed might give us an idea of how we might be able to look at that legislative language and try to get a little bit closer, and I would encourage that to happen.

I would like to thank you for being here today.

Before we conclude, I would like to ask unanimous consent to submit the following documents for the record.

One is a letter from the Hearth Patio and Barbecue Association to leaders of the committee regarding H.R. 453; a letter from the Special Equipment Marketing Association and other organizations to leaders of the committee regarding H.R. 350; a letter from the Motor and Equipment Manufacturers Association to committee leaders regarding

H.R. 350; a letter from the Western Pennsylvania Coalition for Abandoned Mine Reclamation to Congressman Rothfus regarding H.R. 1119, the SENSE Act; a letter from the Eastern Pennsylvania Coalition for Abandoned Mine Reclamation to Congressman Rothfus regarding H.R. 1119, the SENSE Act; testimony from Davis Henry, president of Henry Brick; statement for the record from Administrator Scott Pruitt; statement for the record from the U.S. Representative Keith Rothfus of Pennsylvania.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Shimkus. And I think there are some additional letters from the minority.

Mr. Tonko. Mr. Chair, we ask unanimous consent that these also be included in the record, please.

Mr. Shimkus. The National Association of Clean Air Agencies. This is the American Council for an Energy-Efficient Economy; International Council of Clean Transportation. And it is a -- written comments of the Manufacturers of Emission Controls Association on the U.S. EPA's agencies noticed -- da-da, da-da, da-da. You have given it to us.

National States for Coordinated Air Use Management; and two letters dated September 12th from the Center for Biological Diversity, Earthjustice, Environment America, League of Conservation Voters, League of Women Voters of the United States, Natural Resources Defense Council, and Sierra Club; two letters from the same -- oh, there is more on this one. Center for Biological Diversity, Earthjustice, Environment America, Environmental Defense Fund, Green Latinos, Hip Hop Caucus -- I still don't know what hip-hop is, so -- League of Conservation Voters, the League of Women Voters for the United States, National Parks Conservation Association, Natural Resources Defense Council, and the Sierra Club.

Without objection, so ordered.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Tonko. Thank you very much.

Mr. Shimkus. Pursuant to committee rules, I remind members that they have 10 business days to submit additional questions for the record. And I ask that witnesses submit their responses within 10 business days upon receipt of the questions, if you can.

Without objection, the subcommittee is adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]