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6 NEW SOURCE REVIEW PERMITTING CHALLENGES FOR

7 MANUFACTURING AND INFRASTRUCTURE

8 WEDNESDAY, FEBRUARY 14, 2018

9 House of Representatives

10 Subcommittee on Environment

11 Committee on Energy and Commerce

12 Washington, D.C.

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14  
15  
16 The subcommittee met, pursuant to call, at 2:00 p.m., in  
17 Room 2123 Rayburn House Office Building, Hon. John Shimkus  
18 [chairman of the subcommittee] presiding.

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

23 Staff present: Mike Bloomquist, Deputy Staff Director; Allie  
24 Bury, Legislative Clerk, Energy/Environment; Kelly Collins,  
25 Staff Assistant; Wyatt Ellertson, Research Associate,

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26 Energy/Environment; Margaret Tucker Fogarty, Staff Assistant;  
27 Jordan Haverly, Policy Coordinator, Environment; A.T. Johnston,  
28 Senior Policy Advisor, Energy; Ben Lieberman, Senior Counsel,  
29 Energy; Mary Martin, Deputy Chief Counsel, Energy & Environment;  
30 Dan Schneider, Press Secretary; Austin Stonebraker, Press  
31 Assistant; Hamlin Wade, Special Advisor, External Affairs; Jean  
32 Fruci, Minority Energy and Environment Policy Advisor; Caitlin  
33 Haberman, Minority Professional Staff Member; Rick Kessler,  
34 Minority Senior Advisor and Staff Director, Energy and  
35 Environment; Alexander Ratner, Minority Policy Analyst; Andrew  
36 Souvall, Minority Director of Communications, Outreach and Member  
37 Services; C.J. Young, Minority Press Secretary; and Catherine  
38 Zander, Minority Environment Fellow.

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39 Mr. Shimkus. The Subcommittee on the Environment will now  
40 come to order. The chair recognizes himself for five minutes  
41 for an opening statement.

42 Today=s hearing examines the impact of the EPA=s new source  
43 review air permitting program, commonly referred to as NSR.

44 Congress created this preconstruction permitting program  
45 with the goal of protecting air quality by ensuring that the use  
46 of appropriate pollution control devices on new and modified  
47 source of emissions such as power plants, factories, and  
48 industrial facilities.

49 As you can imagine, the NSR permitting program reaches across  
50 several industry sectors and has far-reaching impacts on  
51 America=s economy and global competitiveness. For these  
52 reasons, it is incredibly important for us to ensure that the  
53 preconstruction permitting program is working effectively and  
54 efficiently.

55 Unfortunately, history shows that there are too many  
56 instances where New Source Review Program is anything but  
57 effective and efficient.

58 As we will hear from many of our witnesses today, over time  
59 the NSR program has become more costly and time consuming which  
60 not only slows economic growth but also hinders the nation=s  
61 ability to modernize infrastructure.

62 Under the existing NSR program, it can take multiple years  
63 and millions of dollars to obtain the preconstruction air permits

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64 required to begin construction on a new facility. This  
65 significant time delay and cost burden makes it more difficult  
66 and less likely for owners to invest in new projects and  
67 facilities.

68 Not only is the NSR process costly and time consuming, it  
69 is also complex and uncertain. Right now, on the EPA=s website  
70 there are nearly 700 posted guidance documents that an applicant  
71 may need to be aware of when seeking a preconstruction permit.

72 Companies must hire teams of lawyers just understand the  
73 requirements and processes established under the NSR program.

74 The end result of this complexity is that companies are afraid  
75 of incorrectly interpreting NSR requirements and violating the  
76 rules that they are hesitant to pursue projects that require an  
77 NSR preconstruction permit.

78 In other words, the NSR program is holding back needed  
79 investment in the nation=s infrastructure, industrial capacity,  
80 and manufacturing capabilities.

81 One particularly frustrating effect of the NSR program is  
82 that it discourages owners from carrying out projects that would  
83 improve the environmental performance of their facilities.

84 For example, if a company wants to perform efficiency  
85 upgrades to install new pollution control technology, they  
86 typically have to obtain a preconstruction permit through the  
87 NSR program.

88 However, because the NSR program is so burdensome, many

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89 owners are choosing to avoid the NSR process and facility upgrades  
90 altogether and are instead continuing to operate older, less  
91 efficient, and dirtier facilities.

92 Clearly, there are significant problems and shortcomings  
93 with how the NSR program is being carried out today. The goal  
94 of this hearing is to identify and understand the challenges  
95 connected to the NSR program so that we can begin considering  
96 potential reforms to improve the program.

97 To assist our work, we will hear today from witnesses who  
98 can explain the challenges faced by manufacturers and industry  
99 seeking to expand operations.

100 We will hear from a state regulator who can explain the role  
101 NSR program plays in protecting local air quality and we will  
102 also hear from NSR policy experts who can discuss options for  
103 how to reduce unnecessary NSR permitting burdens.

104 I am confident that through targeted changes to the NSR  
105 program we can not only reduce the unnecessary burden imposed  
106 upon industry but also maintain and enhance the NSR program=s  
107 important protections for the environment and public health.

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

109

110 \*\*\*\*\*INSERT 1\*\*\*\*\*

111 And with that, I=d like to yield -- so I will turn to the  
112 minority -- are you ready to go? I would like to recognize the  
113 ranking member of the subcommittee, Mr. Tonko, for five minutes.

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114 Mr. Tonko. Thank you, Mr. Chair, and thank you to our  
115 witnesses for being here today.

116 Today=s hearing will examine EPA=s new source review  
117 permitting program. As we have discussed on many occasions in  
118 this subcommittee, under the Clean Air Act, EPA is required to  
119 set health-based national ambient air quality standards, or  
120 NAAQS, for six criteria pollutants.

121 As more medical and scientific evidence has come to light,  
122 NAAQS have been adjusted accordingly to ensure they continue to  
123 be protective of our health.

124 Since the passage of the Clean Air Act, our nation has  
125 experienced the drastic reduction in these air pollutants, all  
126 while our economy has grown tremendously.

127 It is beyond dispute that air pollution has serious health  
128 and economic consequences. When people are sick, hospitalized,  
129 and miss school or work we are a less productive society.

130 The new source review program plays an important role to  
131 ensure that new and modified major sources use the appropriate  
132 pollution controls to limit emissions of criteria pollutants.

133 This includes the best available controlled technology and  
134 locations with relatively clean air known as prevention of  
135 significant deterioration to ensure these areas continue to  
136 maintain healthy levels of air quality.

137 For areas in nonattainment of a NAAQS this includes the  
138 lowest achievement emissions rate along with appropriate offsets

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139 from other existing sources. This is known as nonattainment new  
140 source review.

141 The Clean Air Act has been successful because it is premised  
142 on making progress over time. We have made major strides in  
143 reducing pollution as our understanding of the health risks posed  
144 by dirty air has become more sophisticated.

145 That is why I was pleased to see EPA=s website recognized  
146 February as American Heart Month. EPA has some useful heart  
147 health statistics such as heart disease and stroke are the first  
148 and fourth leading causes of death in the United States.

149 Air pollution can affect heart health and can trigger heart  
150 attacks and strokes that cause disability and death. One in three  
151 American adults has heart or blood vessel disease and is at higher  
152 risk from air pollution.

153 It is critical that we acknowledge and educate people on  
154 the role air pollution plays in exacerbating heart disease,  
155 asthma, and other respiratory illnesses.

156 So while EPA=s website has taken steps to connect the dots  
157 between air pollution and threats to Americans= health, the  
158 actions by Administrator Pruitt and Assistant Administrator  
159 Wehrum have been troubling.

160 On December 7th, Administrator Pruitt issued a memorandum  
161 with a new approach to implementation and enforcement of the new  
162 source review program.

163 EPA will no longer review the permanent applicant=s

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164 emissions projections nor will the agency enforce against an  
165 applicant that provides invalid estimates.

166 In some cases, this lax attitude on enforcement will have  
167 consequences in downwind states, far away from the original  
168 permitting authority.

169 And while not the subject of today=s hearing, another data  
170 point from January 25th, Assistant Administrator Wehrum reversed  
171 EPA=s longstanding once in always in policy for major source MACT  
172 requirements.

173 Both decisions will review -- will result, rather, in greater  
174 air pollution, and the new source review task force seems to be  
175 little more than a brainstorming session on how to evade air  
176 pollution controls rather than actually building a public record  
177 on how the program might be improved.

178 Progress over time means ensuring we don=t backslide and,  
179 sadly, I believe the direction of this EPA will cause us to do  
180 just that.

181 My district and many great towns and cities across this  
182 country were built by manufacturers. But when many of those  
183 facilities were built, we didn=t fully understand the  
184 consequences of dirty air. We didn=t know that one in three  
185 American adults has heart or blood vessel disease and is at higher  
186 risk from air pollution.

187 We know better today. Our health and environmental  
188 safeguards should reflect that. We shouldn=t have to ask our

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189 constituents to bear all the costs of air pollution, especially  
190 not when they are -- when there are effective and well understood  
191 pollution controls.

192 I would urge EPA=s leadership to stop going down this path  
193 and consider how the -- how to best improve and preserve air  
194 quality.

195 So again, I thank you. I thank the witnesses for being here  
196 and helping us better understand some of the potential changes  
197 to the new source review program.

198 And with that, Mr. Chair, I yield back.

199 Mr. Shimkus. Gentleman yields back his time.

200 The chair now recognizes the chairman of the full committee,  
201 Mr. Walden for Oregon, for five minutes.

202 The Chairman. I thank the gentleman and appreciate the  
203 witnesses being here today. We look forward to your testimony.

204 As we all know, the purpose of the Clean Air Act is, and  
205 I quote, to protect and enhance the quality of the nation=s air  
206 resources, to promote the public health and welfare and the  
207 productive capacity of its population, closed quote.

208 So in today=s hearing, we will highlight the necessity to  
209 ensure the rules to protect and improve air quality, promote both  
210 of these core objectives.

211 Effective clean air regulations should allow the nation to  
212 continue to expand its manufacturing and industrial capacity.

213 But these goals are undermined when regulatory requirements no

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214 longer reflect practical reality.

215 As a result, American communities are deprived of both  
216 continued environmental improvements and economic prosperity.  
217 The new source review permitting process serves as a case in point.

218  
219 Permitting requirements under EPA=s NSR program have evolved  
220 in complexity and confusions as the program began in the 1970s  
221 and as a result complex preconstruction planning requirements  
222 present unnecessary delays and impediments to the expansion of  
223 manufacturing and industrial facilities.

224 As we will hear in the testimony today, the complexity of  
225 the NSR process permitting time delays and regulatory uncertainty  
226 create powerful incentives to forego needed project upgrades even  
227 in areas that meet current air quality standards.

228 And for other communities NSR complexity raises costs and  
229 otherwise harms the prospects for economic expansion and  
230 increased environmental benefits.

231 In fact, the burdens associated with NSR can lead to  
232 communities losing the emissions benefits offered by more  
233 efficient modern technologies.

234 Prineville, Oregon -- that=s in my district. Home to data  
235 centers for Facebook and Apple. Recently, a proposed data center  
236 expansion ran headlong into a permitting issue because of  
237 potential backup generator emissions.

238 A single air sampling location, just one, and restrictive

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239 air quality rules made it unclear whether or not the expansion  
240 could go forward. It was only after the city persuaded the EPA  
241 to add an additional sampling location that they were then able  
242 to resolve the issue.

243 That instance involved hundreds of millions of dollars in  
244 investments and hundreds of construction jobs. Multiply that  
245 by the thousands of projects waiting to take off around the nation  
246 -- around the nation in response to our reformed tax structure  
247 and the urgency of addressing NSR problems becomes apparent.

248 I would also say that when you're dealing with companies  
249 the capital and intellectual capacity of Facebook and Apple they  
250 are probably better positioned to challenge some of these issues.

251 The witnesses today, you all bring a range of perspectives  
252 on the NSR permitting process. We appreciate your willingness  
253 to help us understand the challenges of the current process and  
254 what we can do to improve upon it.

255 Our goal is to develop responsible targeted reforms that  
256 will provide for economic growth while maintaining the  
257 environmental protections we all agree are important. Doing this  
258 will ultimately benefit all American workers and consumers.

259 [The prepared statement of Mr. Walden follows:]

260

261 \*\*\*\*\*INSERT 2\*\*\*\*\*

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262 I know Mrs. Blackburn is hoping to have a little time but  
263 she is not here. So with that, I will yield back.

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

265 The chair now recognizes the ranking member of the full  
266 committee, the chairman -- the gentleman from New Jersey for five  
267 minutes.

268 Mr. Pallone. Thank you, Mr. Chairman.

269 We are here today to discuss one of the Clean Air Act=s oldest  
270 and most debated programs, the New Source Review program. It=s  
271 based on a simple principle -- any new facility that emits  
272 pollutants should not increase local air pollution above levels  
273 that are safe to breathe.

274 The NSR program ensures that we have growth in the economy  
275 and not in pollution. In December, Administrator Pruitt issued  
276 a memorandum altering longstanding NSR policy using an active  
277 case as justification for the change.

278 The case was U.S. vs. DTF Energy Company, or DTE Energy  
279 Company, and the December memo actually reads as if it were  
280 prepared by DTE=s legal team. I can=t say that comes as a complete  
281 shock to me since Bill Wehrum, the man Administrator Pruitt put  
282 in charge of the office that drafted the memo, was previously  
283 part of DTE=s legal team.

284 The new policy is as suspect as the process used to initiate  
285 it. It will gut enforcement of the NSR program to the benefit  
286 of certain companies at the expense of the public health and

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287 companies that have cleaned up their act. The eight-page memo  
288 lays out a policy that invites polluters to skirt the law and  
289 dump tons of harmful pollution on our communities.

290 Essentially, it=s a recipe instructing polluters how to cook  
291 the books and get out from under the need for a permit under the  
292 NSR program.

293 And this is certainly not a perfect program, but it has helped  
294 reduce harmful air pollution and improve public health,  
295 especially for people living in the communities close to these  
296 facilities. All of these gains will erode rapidly if we stay  
297 on the course this administration is following.

298 Too many old facilities have already used loopholes to game  
299 the system and avoid cleaning up the pollution. Certainly there  
300 are challenges to those existing facilities. But the Clean Air  
301 Act never intended for them to be exempt from the NSR program  
302 forever.

303 Also, it=s important to remember that pollution control is  
304 zero sum game. Therefore, under Administrator Pruitt=s NSR  
305 scheme, states and localities will have to make those that have  
306 played by the rules achieve greater pollution reduction in order  
307 to offset the excess pollution created by businesses that EPA  
308 is essentially allowing to go unregulated.

309 And that=s particularly outrageous to those of us who  
310 represent downwind states. We are tired of having to compensate  
311 for the lack of pollution control in neighboring states.

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312           The EPA should not be making life easier for polluters.  
313   The agency should do its job and ensure that lax implementation  
314   and enforcement in one state doesn=t burden others.

315           Now, Republicans argue that we need to ease the NSR program  
316   to expand manufacturing and infrastructure. But new  
317   manufacturing facilities aren=t being held back by clean air  
318   requirements.

319           Weakening the Clean Air Act is not going to create jobs.  
320   The fact is that the so-called NSR program improvements being  
321   suggested today by my Republican friends are not new ideas. They  
322   are just a bunch of toxic old policies bundled up in a heart-shaped  
323   box as a Valentine=s Day present to polluters.

324           Industry has been trying to get out from under this program  
325   for a long time and it looks like Scott Pruitt and the Republicans  
326   are working hard to try to grant their wish.

327           But make no mistake, the Valentine=s Day gift from Pruitt  
328   and Republicans gives polluters all the roses and sticks the  
329   public with the thorns. We would reject these policies that will  
330   harm the public health.

331           Unless someone else wants my time on my side, I=ll yield  
332   back, Mr. Chairman.

333           Mr. Shimkus. The gentleman yields back the balance of his  
334   time.

335           Do you have a new writer?

336           Mr. Pallone. I don=t know. I --

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337 Mr. Shimkus. That was pretty good.

338 [Laughter.]

339 Mr. Pallone. -- I thought it was pretty good, myself.

340 We now conclude with members= opening statements. The chair  
341 would like to remind members that pursuant to committee rules,  
342 all members= opening statements will be made part of the record.

343

344 We want to thank all our witnesses for being here today and  
345 taking the time to testify before the subcommittee. Today=s  
346 witnesses will have the opportunity to give opening statements  
347 followed by a round of questions from the members.

348 Our witnesses -- panelists for today=s hearing will include,  
349 from my left to right, Mr. Stuart Spencer, who is associate  
350 director, Office of Air Quality, Arkansas Department of  
351 Environmental Quality, testifying on behalf of the Association  
352 of Air Pollution Control Agencies; Mr. Kevin Sunday, director  
353 of government affairs, Pennsylvania Chamber of Commerce Business  
354 and Industry; Mr. Paul Noe, vice president, public policy,  
355 American Forest and Paper Association and American Wood Council;  
356 Emily Hammond, Glen Earl Weston research professor of law, the  
357 George Washington University Law School; John Walke, clean air  
358 director, Natural Resources Defense Council; and a friend of ours  
359 from years past, Jeffrey Holmstead, who is a partner at Bracewell.

360 So with that, we=d like to begin our testimony and we will  
361 begin with Mr. Spencer. Your entire record is in the file. You

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362

have five minutes and you are -- you can begin.



STATEMENTS OF STUART SPENCER, ASSOCIATE DIRECTOR, ARKANSAS  
DEPARTMENT OF ENVIRONMENTAL QUALITY, OFFICE OF AIR QUALITY, ON  
BEHALF OF THE ASSOCIATION OF AIR POLLUTION CONTROL AGENCIES; KEVIN  
SUNDAY, DIRECTOR OF GOVERNMENT AFFAIRS, PENNSYLVANIA CHAMBER OF  
BUSINESS AND INDUSTRY; PAUL NOE, VICE PRESIDENT PUBLIC POLICY,  
AMERICAN FOREST AND PAPER ASSOCIATION AND AMERICAN WOOD COUNCIL;  
EMILY HAMMOND, GLEN EARL WESTON RESEARCH PROFESSOR OF LAW, THE  
GEORGE WASHINGTON UNIVERSITY LAW SCHOOL; JOHN D. WALKE, CLEAN  
AIR DIRECTOR, NATURAL RESOURCES DEFENSE COUNCIL; JEFFREY R.  
HOLMSTEAD, PARTNER, BRACEWELL LLP

STATEMENT OF MR. SPENCER

Mr. Spencer. Thank you.

Good afternoon, Chairman Shimkus, Ranking Member Tonko, and  
distinguished members of the subcommittee. I appreciate the  
invitation to join you today to discuss the important issue of  
New Source Review reform.

I am here in two capacities. First, I am here as an associate  
director of the Arkansas Department of Environmental Quality.

Our Office of Air Quality staff includes epidemiologists,  
engineers, ecologists, chemists, biologists, a meteorologist,  
and a lawyer in the primary branches of compliance, permits,  
policy, and planning in asbestos and enforcement.

Our primary mission is to protect and improve air quality  
in Arkansas while fostering responsible economic expansion

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388 opportunities.

389         Second, I am here as the president of the Association of  
390 Air Pollution Control Agencies, or AAPCA. AAPCA is a  
391 consensus-driven organization comprised of 45 state and local  
392 air agencies.

393         The AAPCA board of directors is made up of the air directors  
394 from our 20 geographically diverse member states including states  
395 with representation on this subcommittee.

396         As AAPCA's president, I serve on the board of the directors  
397 along with air directors from states as diverse as Wyoming, Maine,  
398 South Carolina, and Arizona, and despite the miles between our  
399 state borders, we have common goals and missions.

400         Today, I will be addressing a few common themes in regard  
401 to NSR reform. The first thing is practical application.

402         Environmental regulations should encourage necessary repair  
403 in replacement projects and should incentivize projects that  
404 improve the safety of operations increase energy efficiency or  
405 reduce the emissions of regulated air pollutants.

406         The second theme is clarity. This includes removing  
407 undefined terms and exemptions such as routine maintenance and  
408 nonroutine modification from the NSR rules and guidance and  
409 replacing them with clear definitions.

410         A prime example would also be refining the term modification  
411 to truly mean a substantial change. An ambiguous or muddy rule  
412 inhibits planning due to its lack of certainty and therefore

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413 stifles growth and innovation.

414       This leads me to my final theme, modernization. NSR is  
415 outdated and cumbersome. The documents that comprise the NSR  
416 rules in the guidance take up at least two file boxes if printed  
417 out in hard copy form.

418       The time to reform was yesterday so I am glad we are having  
419 this conversation today.

420       With those themes in mind, I will speak first as the associate  
421 director of ADEQ. The Office of Air Quality implements all  
422 programs delegated by EPA Region 6 to the state of Arkansas.

423       Under the leadership of one of your former colleagues and  
424 now governor of Arkansas, Asa Hutchinson, and ADEQ Director Becky  
425 Keogh, Arkansas has committed to protective permitting.

426       This practice is essential to achieving our goals of  
427 maintaining our status as the natural state, protecting public  
428 health and the environment in our communities and promoting and  
429 sustaining economic growth.

430       The Arkansas NSR program follows the federal program. ADEQ  
431 believes that the NSR rules should be clear and concise to allow  
432 companies to achieve compliance and ensure that both ADEQ and  
433 our regulated community have a well-defined understanding of what  
434 is required by the program.

435       Arkansas believes that changes to the NSR program would  
436 support its efforts to ensure that our regulated community and  
437 the companies in our communities are in compliance with the rules

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438 and do not become subject to enforcement actions based on rule  
439 interpretations that are either not well defined or continue to  
440 evolve.

441 For these reasons, we appreciate that EPA intends to tackle  
442 NSR reform again. The 2002 NSR reform rule was helpful but it  
443 did not go far enough to clarify the program and provide certainty  
444 to regulators and the regulated community.

445 So based on these points that I've made, any efforts to  
446 modernize and reform NSR reform -- NSR, particularly the upcoming  
447 EPA-directed NSR task forum discussions should address the  
448 following issues.

449 Number one; revise the emission increase test under NSR to  
450 match the hourly test under New Source Performance Standards --  
451 our NSPS program.

452 This would eliminate and streamline many of the issues with  
453 the current program. Many of the other changes could be avoided  
454 or simplified if NSR applicability was based on an increase in  
455 maximum achievable emission rates rather than annual tons.

456 Next, clarify the factors to be considered in determining  
457 whether a project is a routine maintenance repair or replacement  
458 activity.

459 Next, create an exemption from NSR for efficiency projects.  
460 The current program is a disincentive to companies undertaking  
461 projects to make their operations more efficient.

462 Next, codify the information in EPA Administrator Scott

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463 Pruitt=s December 7th, 2018 memo that EPA will not second guess  
464 a facility=s emissions projections and clearly identify the  
465 circumstances when an emissions projection will be subject to  
466 review.

467       Next, clarify the definition of a source in order to ensure  
468 that geographically separate sources are not artificially  
469 combined or aggregated to create a single major source for NSR  
470 purposes.

471       And finally, clearly identify what types of projects should  
472 be considered as changes in the method of operation.

473       Thank you for your time again today and I am available to  
474 answer any questions upon request.

475       Thank you.

476       [The statement of Mr. Spencer follows:]

477

478 \*\*\*\*\*INSERT 3\*\*\*\*\*

479 Mr. Shimkus. Thank you. Excellent.

480 I now turn to Mr. Kevin Sunday. You are recognized for five

481 minutes.

482 STATEMENT OF MR. SUNDAY

483

484 Mr. Sunday. Good afternoon, Mr. Shimkus, Mr. Tonko, and  
485 members of the committee.

486 My name is Kevin Sunday, director of government affairs with  
487 the Pennsylvania Chamber of Business and Industry. It's an honor  
488 to appear before you today to discuss the challenges our members  
489 have had when it comes to complying with New Source Review  
490 requirements.

491 Our nearly 10,000 member companies are of all sizes and  
492 across all industry sectors. We, as an organization, seek  
493 stewardship of our nation's land, air, and water and we seek to  
494 provide thoughtful and balanced ways in which we can continue  
495 to reduce our environmental impacts and grow the economy.

496 Thanks to tax reform and the prolific supply of our natural  
497 resources in nuclear, coal, gas, oil, and renewables we have  
498 before us a generational opportunity to invest in our workforces,  
499 our infrastructure, and our future.

500 And we applaud the members of the House of Representatives  
501 and the United States Senate who took a bold stand for growth  
502 and sent the Tax Cut and Jobs Act to the president's desk for  
503 his signature last year, and we thank our senator, Pat Toomey,  
504 for his leadership in getting that bill through the Senate.

505 In the short time since that bill was enacted, employers  
506 across the country have announced plans to increase hiring and

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507 wages, and it is expected that in the near term consumer spending  
508 and economic growth will increase considerably, as much as 4  
509 percent on an annualized basis according to the Atlanta Fed.

510 As the economy grows, capital is going to be repatriated  
511 and rates on employers come down. Manufacturers and businesses  
512 have a generational opportunity to secure global competitive  
513 advantage by reinvesting into their facilities, enhancing their  
514 sustainability profiles, and expand to capture a share of the  
515 growing economy, provided, of course, that regulatory obligations  
516 do not present unnecessary hurdles.

517 What energy means to Pennsylvania and the region is  
518 significant. We are part of an endeavor called Forge the Future,  
519 which forecasts \$60 billion in state GDP and 100,000 new jobs  
520 because of energy assets.

521 The Appalachian region at large including Pennsylvania,  
522 Ohio, West Virginia, and Kentucky could become a petrochemical  
523 and plastics manufacturing hub and, according to the American  
524 Chemistry Council, more than \$28 billion in economic expansion  
525 and more than 100,000 new jobs could be created should the region  
526 capitalize on an ethane storage project and secure the  
527 construction and operation of several petrochemical plants.

528 However, these projects too must wind through the permitting  
529 process to become reality. Our manufacturers in Pennsylvania  
530 have reported that the current NSR process is an impediment to  
531 investing in the efficiency of their operations and improve their

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532 ability to compete abroad.

533           Because of the costs associated with crossing NSR  
534 thresholds, companies have shelved projects that would have  
535 reduced their emissions and their operating costs.

536           Disputes between state and federal regulators over the  
537 interpretation and application of regulatory criteria have  
538 resulted in sizeable legal and engineering costs and left projects  
539 in limbo for months if not years.

540           Lenders will not sign off on financing until the revolving  
541 door of lawsuits from third party groups over the perpetually  
542 changing universe of BACT and LAER control stops spinning.

543           Economic growth and environmental progress depend upon a  
544 well functioning and rational regulatory system and the NSR  
545 program as it is being administered show signs of being neither.

546           From a land use perspective alone, it=s illogical that we  
547 would have a regulatory program that would encourage building  
548 entirely new facilities, oftentimes outside the U.S., when  
549 existing mothballs -- when existing plants are being mothballed  
550 and retired that could have been upgraded. And how much has the  
551 closure of large-scale manufacturers in this country led to the  
552 flat electricity demand that has so troubled the power generation  
553 and utilities sectors.

554           So that=s why we applaud EPA Administrator Scott Pruitt and  
555 his team at EPA for the December 7th memo that clarifies how NSR  
556 requirements should be interpreted and applied.

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557           That=s a crucial first step to reform of the program and  
558 we look forward to additional progress on that front.

559           The National Federation of Independent Businesses yesterday  
560 came out and said a record number of small businesses believe  
561 now is a good time to expand.

562           We believe we can ill afford to waste this opportunity in  
563 front of us by leaving up barriers to growth. We have the  
564 opportunity to make our regulatory process more efficient, allow  
565 our companies to invest, and reduce their environmental footprint  
566 and waste less of our natural resources.

567           And if we don=t capitalize on that opportunity, that=s a  
568 failure. It=s bad for business and it=s bad for the environment.

569  
570           Instead, let us pursue stewardship of our natural resources  
571 and secure economic growth in a thoughtful responsible manner  
572 and that starts with NSR reform.

573           Thank you.

574           [The statement of Mr. Sunday follows:]

575 \*\*\*\*\*INSERT 4\*\*\*\*\*

576 Mr. Shimkus. The chair thanks you.

577 The chair now recognizes Mr. Paul Noe. You're recognized

578 for five minutes.

579 STATEMENT OF MR. NOE

580

581 Mr. Noe. Chairman Shimkus, Ranking Member Tonko, and  
582 distinguished members of the committee, on behalf of the American  
583 Forest and Paper Association and the American Wood Council, I  
584 want to thank you for the opportunity to be here to discuss the  
585 challenges posed by EPA=s NSR program for the forest products  
586 industry and to provide our perspectives on how it can be improved.

587 This is consistent with the twin purposes of the Clean Air  
588 Act, which is to promote public health and welfare as well as  
589 the productive capacity of our nation.

590 Unfortunately, NSR is an outdated, inefficient, and slow  
591 regulatory approach that currently just doesn=t work very well  
592 for existing sources and it=s impeding modernization and growth  
593 in the U.S. manufacturing sector.

594 It just doesn=t make sense to discourage upgrading plants  
595 already subject to a myriad of other regulatory requirements or  
596 to block beneficial projects using best controls simply due to  
597 unrealistic air quality modelling and assumptions.

598 Our country has made great strides in improving air quality,  
599 largely under other programs. To borrow from my friend and former  
600 EPA general counsel Don Elliott when he testified before Congress  
601 15 years ago on the need for NSR reform, quote, ANSR is slow,  
602 costly, and ineffective, and those are the kindest things that  
603 one can say about it. It is the least successful of all the

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604 programs under the Clean Air Act."

605       The reality is that energy efficiency and modernization  
606 projects for existing sources are delayed, modified, or thwarted  
607 by complex NSR interpretations that have accumulated and evolved  
608 over time.

609       The program requires expensive but unrealistic air modelling  
610 that frequently delays projects and can cost \$100,000 or more  
611 to complete. Unreasonable permitting delays tie up investment  
612 capital and undermine the economic benefits from expansion  
613 projects.

614       There are many ways EPA could improve the permit process  
615 but let me focus on two key points. First, consistent with this  
616 statute, EPA should focus the NSR program on larger projects that  
617 really have a greater potential to impact air quality.

618       Changing the NSR applicability criteria could reduce  
619 unnecessary workload on permitting agencies and create business  
620 certainty and positive incentives without jeopardizing air  
621 quality.

622       For example, currently the NSR regulations use a two-step  
623 calculation process to determine if a project is subject to NSR.

624       The emissions increases from a project are calculated first to  
625 see if they are significant before any decreases are subtracted.

626

627       This step one then step two analysis is complicated,  
628 expensive, and time consuming. By simply allowing increases and

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629 decreases to be netted projects with emissions below significant  
630 levels could proceed.

631         Second, once a project truly does trigger a higher level  
632 of scrutiny, EPA ought to use realistic assumptions and analytic  
633 tools, including probabilistic air quality modelling approaches.

634         This is needed now more than ever because there is little  
635 room for error. This is because in recent years EPA has lowered  
636 the national ambient air quality standards close to background  
637 levels.

638         This has left little room for permits, even in attainment  
639 areas. In the past, when NAAQS for PM or SO<sub>2</sub> or nitrogen dioxide  
640 were higher, if you looked at that versus the ambient level in  
641 emissions from the nearby sources and the facilities exposures,  
642 there was enough room or head room, as we call it, for a permit.

643  
644         The problem seriously exacerbated by many of EPA=s current  
645 policy approaches and modelling tools which significantly over  
646 predict impacts from facilities, especially when a series of  
647 unrealistic assumptions are compounded.

648         So it=s critical that the modelling results reflect the  
649 reality of local air quality.

650         For example, EPA=s current modelling guidelines have an  
651 expansive interpretation of where the general public must be  
652 protected from nearby plant emissions.

653         Rather than focussing on where people actually are, it is

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654 assumed that ambient air is anywhere a person theoretically could  
655 be such as by illegally trespassing at the facility or where the  
656 general public in reality could not be, such as standing on a  
657 railroad or a road that runs through the facility.

658         Overly conservative modelling analysis can lead to  
659 unverifiable and nonexistent concentration estimates that cause  
660 costly changes or cancellations of beneficial projects, even  
661 though real-world exposure to the general public around these  
662 locations is minimal, improbable, or even impossible.

663         Therefore, EPA should issue new guidance to update its  
664 policies for placing receptors considering natural, manmade, or  
665 jurisdictional barriers.

666         Although forest products mills typically are located in  
667 attainment areas with better quality, they face problems as soon  
668 as NAAQS are issued because they're immediately effective and  
669 EPA has compounded the confusion and delay by not providing  
670 implementation and modelling guidance until after the NAAQS are  
671 issued.

672         I don't believe Congress intended this confusion and delay  
673 when it enacted the act and I believe the U.S. is the best place  
674 in the world for a robust manufacturing sector. We have the best  
675 workers in the world.

676         We have created entrepreneurs and innovators. We have  
677 abundant resources. We have a strong free-market democracy and  
678 we have regulatory agencies that are capable of leading the world

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679 on sustainable regulation.

680 Thank you, Mr. Chairman.

681 [The statement of Mr. Noe follows:]

682

683 \*\*\*\*\*INSERT 5\*\*\*\*\*



684 Mr. Shimkus. The gentleman's time is expired.

685 The chair now recognizes Emily Hammond. You're recognized

686 for five minutes.

687 STATEMENT OF MS. HAMMOND

688

689 Ms. Hammond. Thank you, Chairman Shimkus, Ranking Member  
690 Tonko, and distinguished members of the subcommittee.

691 One year ago almost to the day, I testified before this  
692 subcommittee about the many health and environmental benefits  
693 of clean air protections and I cautioned against efforts to roll  
694 back progress achieved over decades of hard work.

695 Today, I urge you to scrutinize recent actions by EPA that  
696 amount to nothing short of an abnegation of the agency=s statutory  
697 responsibilities and I emphasize once more that human lives and  
698 our economy are at stake.

699 The Clean Air Act is a technical and complex statute but  
700 two of its basic policies are straightforward. First, it is meant  
701 to clean up dirty air.

702 Second, it aims to keep clean air clean. By keeping in mind  
703 these first principles, it=s easy to see what=s wrong with EPA=s  
704 current approach.

705 New Source Review makes sure that new or modified sources  
706 of air pollution use the right technology so that in areas where  
707 poor air quality harms human health, we can improve over time.

708

709 And in areas where air quality meets human health standards,  
710 New Source Review guards against creating a new public health  
711 problem with new uncontrolled air pollution.

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712 But on December 7th of this past year, the same day that  
713 EPA Administrator Scott Pruitt testified to this subcommittee  
714 that EPA should not issue guidance documents, he issued a guidance  
715 document that promises to polluters that EPA won't check the work  
716 of those major polluters when they decide whether New Source  
717 Review is necessary.

718 This approach opens a gaping hole in the statutory design  
719 and it violates fundamental principles of good governance and  
720 legitimacy.

721 The president, Administrator Pruitt, and members of Congress  
722 have all spoken against the perils of overreach when agencies  
723 make major policies through nondemocratic procedures.

724 Yet, the December 7th guidance does just that. When an  
725 agency adopts a policy so blatantly contrary to its mandate and  
726 does so without any public input, that action lacks legitimacy.

727 In the words of the Supreme Court in Heckler v. Chaney, the  
728 agency has consciously and expressly adopted a general policy  
729 that is so extreme as to amount to an abdication of its statutory  
730 responsibilities.

731 This institution should hold EPA to task, not give it cover  
732 to make our air dirtier. And what is at stake? The lives of  
733 people across our country and the benefits of economic growth.

734 You will hear a lot from industry about the costs of clean  
735 air protections and the supposed impediments clean air poses to  
736 economic growth. But they won't tell you about the attendant

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737 benefits because the numbers are so compelling.

738           Between 1970 and 2011, aggregate emissions of air pollutants  
739 dropped 68 percent while the U.S. gross domestic product increased  
740 212 percent.

741           During that same period, private sector jobs increased by  
742 88 percent. Our population has increased. We have used more  
743 energy. We have built more infrastructure, all while improving  
744 our environment.

745           Consider as well that major regulations issued by EPA undergo  
746 a rigorous cost-benefit analysis. EPA is required to follow  
747 Office of Management and Budget accounting principles and assess  
748 both the costs and the benefits of regulations.

749           Many researchers have concluded that these constrained  
750 analyses vastly understate the benefits of environmental  
751 regulations. So the values I am about to describe should be  
752 understood as very conservative.

753           Even with this caveat, the results are compelling. A 2011  
754 peer-reviewed study showed that the benefits of the 1990 Clean  
755 Air Act amendments and implementing regulations exceed the costs  
756 by a factor of more than 30 to 1.

757           The 2011 study also revealed that EPA=s Clean Air Act rules  
758 saved over 164,000 lives in 2010 and are projected to save 237,000  
759 lives in 2020.

760           These same rules saved millions of days of lost work and  
761 missed school and will continue to do so. Further, since EPA

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762 began regulating lead as a criteria pollutant under the NAAQS  
763 program, the median concentration of lead in the blood of children  
764 between one and five years old has decreased 93 percent.

765         These numbers speak for themselves and they demonstrate that  
766 those who would roll back clean air protections have set up a  
767 false choice. Clean air and economic growth do indeed go hand  
768 in hand.

769         Thank you.

770         [The statement of Ms. Hammond follows:]

771

772 \*\*\*\*\*INSERT 6\*\*\*\*\*

773 Mr. Shimkus. The chair thanks the gentlelady.

774 And now the chair recognizes, and I mispronounce the last

775 name -- Mr. Walke. You're recognized for five minutes. I

776 apologize for that.

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777 STATEMENT OF MR. WALKE

778

779 Mr. Walke. You got my first name right so that=s good.

780 Thank you.

781 Thank you, Chairman Shimkus, Ranking Member Tonko, and  
782 distinguished members. My name is John Walke and I am clean air  
783 director and a senior attorney for the Natural Resources Defense  
784 Council.

785 Any so-called reform to the Clean Air Act=s New Source Review  
786 program first should answer one simple question -- will it let  
787 industry pollute more.

788 In my experience, unfortunately, the answer to that question  
789 is usually yes. That is the case for changes to New Source Review  
790 safeguards that industries comment -- that industry commenters  
791 are seeking from the Trump administration.

792 That is also the case for changes sought in testimony by  
793 other witnesses at today=s hearing apart from Professor  
794 Hammond=s. Many of the requested changes would let industry  
795 pollute more by significantly higher amounts and in the process  
796 evade pollution controls and pollution offsets.

797 Insufficient political attention and concern are being given  
798 to the problems with a tax on clean air safeguards. In a 2017  
799 Gallup poll, 67 percent of Americans favor setting higher emission  
800 standards for industry. In that same poll, 69 percent of  
801 Americans favor stronger enforcement of federal environmental

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802 regulations.

803 New Source Review is a Clean Air Act preconstruction  
804 permitting program that imposes cleanup requirements only when  
805 industries -- industrial facilities significantly increase air  
806 pollution.

807 I urge you to remember that pollution increase trigger during  
808 today=s hearing. Attempts to evade NSR applicability translate  
809 into the ability to increase air pollution significantly without  
810 control.

811 Taking evasion that would allow huge air pollution increase  
812 is reflected in two bills referred to this committee -- H.R. 3127  
813 and H.R. 3128.

814 Several witnesses endorse the bill and the approach  
815 contained therein, which would allow huge air pollution increases  
816 so long as a source did not increase its capacity to pollute only  
817 by exceeding an extraordinarily high maximum hourly emissions  
818 rate plucked from its past history.

819 One of the problems here is comparable to saying police  
820 should never fine drivers to be speeding if they don=t exceed  
821 the maximum speed they have ever driven.

822 The second problem is even worse. By weakening the law so  
823 extremely, to ask only whether a polluting facility exceeded its  
824 maximum capacity to pollute, this concept would allow massive  
825 enormous increases in actual emissions of harmful air pollution  
826 in the real world.

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827 Americans care about increases in actual pollution that  
828 worsens air quality and harms their health, not whether a plant  
829 exceeds its polluting capacity.

830 For the parents of a child being rushed to the ER due to  
831 an asthma attack caused by massive pollution increases from a  
832 nearby plant, it is not solace to tell them that the higher  
833 pollution levels that choked their daughter=s breathing did not  
834 result from the plant exceeding its maximum hourly emission rate.

835 How bad could these pollution increases be? Well, under  
836 the Bush administration when Mr. Holmstead worked there, EPA=s  
837 enforcement office calculated the weakening effect of a maximum  
838 hourly emissions rate approach.

839 In just one power plant example, the plant increased its  
840 toxic sulfur dioxide pollution by 13,000 tons per year without  
841 exceeding this maximum rate. That is 327 times higher than the  
842 level that the law considers significant and subject to control  
843 today.

844 My testimony identifies an astonishing number of  
845 coal-burning power plants that still lack air pollution -- modern  
846 air pollution controls today or that are uncontrolled and these  
847 two bills and the approaches sought by some of the members of  
848 this panel would make that even worse by allowing emissions  
849 increases of thousands and even increases in excess of 10,000  
850 tons.

851 No acceptable NSR reform should give an affirmative answer

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852 to the question posed at the top of this testimony -- will it  
853 let industry pollute more.

854 This committee should reject any appeals for reform that  
855 would let industries pollute more by significantly higher amounts  
856 and in the process evade are pollution controls and pollution  
857 offsets in areas already experiencing unsafe air quality.

858 Americans deserve better.

859 Thank you.

860 [The statement of Mr. Walke follows:]

861

862 \*\*\*\*\*INSERT 7\*\*\*\*\*

863 Mr. Shimkus. The chair thanks the gentleman.  
864 The chair now recognizes Mr. Holmstead for five minutes.  
865 Welcome back.

866 STATEMENT OF MR. HOLMSTEAD

867

868 Mr. Holmstead. Thank you. Thank you for inviting me to  
869 be here today.

870 As some of you know, for almost 30 years I've focused my  
871 professional career on the Clean Air Act as a White House staffer,  
872 as head of the EPA Air Office, and as an attorney in private  
873 practice.

874 I think even that my good friend John Walke here would concede  
875 that I know a lot about the various programs that apply to major  
876 manufacturing and energy facilities.

877 But some of you may not be quite so aware -- you might be  
878 surprised to know that there are many different Clean Air Act  
879 programs that regulate the very same pollutants from the very  
880 same facilities.

881 For example, SO<sub>2</sub> and NO<sub>x</sub> emissions from coal-fired power  
882 plants would seem to be the pollutants of greatest concern. These  
883 pollutants from these plants are regulated under at least 14  
884 different Clean Air Act programs -- yes, 14 -- the acid rain  
885 program, the NO<sub>x</sub> SIP Call, MATS, NSPS, regional haze program,  
886 the 110(a)(2)(d) good neighbor provision, Section 126, CSAPR,  
887 BART, the SO<sub>2</sub> NAAQS, the NO<sub>2</sub> NAAQS, the Ozone NAAQS, the PM<sub>2.5</sub>  
888 NAAQS, and NSR.

889 If I had said the full names of these programs instead of  
890 the acronyms, I would have used up all of my time. Over the last

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891 25 years, serious regulators and researchers have learned that  
892 good regulatory design makes an enormous difference and they will  
893 tell you that of these programs, some of them are much more  
894 effective than others.

895 Because of all of the overlapping regulatory programs, our  
896 society -- you and I and all the people you represent -- are paying  
897 much more than we need to pay for preserving and improving air  
898 quality.

899 If we take advantage of the lessons that we have learned  
900 over the last 25 years and we use the most effective approaches  
901 for reducing air pollution, we can achieve the same air quality  
902 goals that we have today at a much lower cost.

903 Today, we are talking about just one Clean Air Act program.  
904 As the name implies, New Source Review, this is an important  
905 program for regulating emissions from new sources.

906 But over the last 20 years as EPA has tried to expand it  
907 to capture as many existing sources as possible, NSR has become  
908 a convoluted, burdensome, and completely unnecessary mess.

909 As someone who has worked on Clean Air Act policy for almost  
910 three decades, I can say with confidence that the NSR program  
911 as it applies to existing facilities is the least successful and  
912 most counterproductive of the dozens of programs created under  
913 the Clean Air Act.

914 To the extent it provides environmental benefits, those same  
915 benefits can be preserved by reforming the program in a thoughtful

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916 way and by relying on other much more effective programs that  
917 regulate the same pollutants from the same facilities.

918 The critique offered by my friend here from NRDC is more  
919 than a bit over the top. I did a Word search last night and found  
920 10 different places in his testimony where he says that the reforms  
921 being proposed by Congressman Griffith would allow, quote,  
922 A massive or enormous increases in harmful air pollution," 15  
923 places where he says the bills would allow facilities to evade  
924 pollution controls, and 11 places where he used the words reckless  
925 or irresponsible to refer to the proposed reforms.

926 Statements like this are just plain silly and they are  
927 demonstrably untrue. They ignore the fact that every single  
928 existing facility that is covered by the NSR program is also  
929 regulated by multiple other Clean Air Act programs -- in the case  
930 of coal-fired power plants by as many as 13 other programs that  
931 regulate the very same pollutants.

932 Even -- and I can guarantee you this -- even if the NSR program  
933 disappeared completely tomorrow, there would not be a massive  
934 increase in air pollution.

935 In fact, there would not be any increase in air pollution  
936 at all and we would see, because of the many other programs that  
937 regulate the same pollutants from the same facilities, air  
938 pollution would continue to decrease as it has since 1990.

939 As I explain in my written statement, the reforms being  
940 proposed by Mr. Griffith would simply reintroduce some common

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941 sense into the NSR program and make sure that it does what it  
942 was intended to do -- ensure that when a new industrial facility  
943 is built or an existing facility is significantly expanded, modern  
944 pollution controls will be used to minimize its emissions and,  
945 two, ensure that the NSR program does not make it hard for  
946 companies to keep their facilities in good working order and where  
947 possible to reduce the operating costs of these facilities by  
948 making them more efficient.

949         Again, I thank you for inviting me here today. I hope we  
950 can have a serious discussion about Clean Air Act policy and I  
951 look forward to answering any questions that you might have.

952         [The statement of Mr. Holmstead follows:]

953

954 \*\*\*\*\*INSERT 8\*\*\*\*\*

955 Mr. Shimkus. And I thank the gentleman for his testimony  
956 and thank you all, and you all were very punctual to the -- to  
957 the dot almost and that=s going to be helpful.

958 I recognize myself five minutes for the -- for the opening  
959 round of questions, and Mr. Holmstead, you answered by question  
960 about how many different tools are there out there. So I don=t  
961 need to ask that one.

962 Mr. Spencer, first, just to clarify your role for the record,  
963 you are -- you are the responsible authority in your state for  
964 implementing air quality standards which includes New Source  
965 Review permitting. Is that correct?

966 Mr. Spencer. Correct. Yes.

967 Mr. Shimkus. And to perform your job you rely upon  
968 engineers, scientists, and an attorney, I think you said in your  
969 --

970 Mr. Spencer. I wanted to clarify. Yes, we do have one  
971 in-house in the Office of Air Quality.

972 Mr. Shimkus. But you also have engineers and scientists  
973 and --

974 Mr. Spencer. Epidemiologists, meteorologists, chemists,  
975 biologists.

976 Mr. Shimkus. Given your experience, do you believe the New  
977 Source Review reforms you describe in your testimony will create  
978 a gap in protection or will result in declining air quality  
979 standards for your state, and let me add one other -- will it

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980 allow industry to pollute more?

981 Mr. Spencer. No and no, and I would like to acknowledge  
982 something that Mr. Holmstead said. It's important to recognize  
983 the projects or the programs that are working in tandem with each  
984 other. We have several different -- we have our NAAQS SIPs that  
985 are state implementation plans that we prepare and submit to EPA  
986 that are -- that indicate and acknowledge that we'll be protective  
987 of those individual criteria pollutants.

988 We have our regional haze plans that we submit and, as Mr.  
989 Holmstead indicated, those are specific to controlling  
990 particularly NOx, SO2, and PM 2.5.

991 So there are a number of different programs which we  
992 implement that stack up on each other to ensure that we have  
993 protective programs.

994 Mr. Shimkus. So let me go to Mr. Noe. I was struck by the  
995 example you shared where it took -- and I use this many times,  
996 this example, when I've talked about this program for 20 years  
997 now -- the -- when it took a paper mill owner 18 months to obtain  
998 a New Source Review preconstruction permit for a project to  
999 replace two older inefficient boilers with a single larger energy  
1000 efficient boiler, which uses less energy, and I want to underline  
1001 this because it's in response to one of the other panellist's  
1002 statements -- did not result in an emissions increase.

1003 So to you, Mr. Noe, does it really make sense that an owner  
1004 has to receive a preconstruction permit just to install newer

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1005 more environmentally beneficial technology, especially  
1006 considering how long it takes to obtain a permit?

1007 Mr. Noe. What we would like, Mr. Chairman, is for projects  
1008 that are going to have decreases associated as well as increases,  
1009 just net the increases and decreases at the start.

1010 So if there=s not really a significant net increase, why  
1011 go through this onerous process and delay? If I could, I would  
1012 like to give you another example where a company was going to  
1013 do something that would decrease emissions but because of this  
1014 way in which EPA does the math, this two-step process, it was  
1015 slowed down and you basically took a longer time to get less  
1016 emissions.

1017 This was a wood products facility that essentially wanted  
1018 to use better emissions control, reroute its exhaust from a unit  
1019 to better emissions control. It had to do a \$100,000 study.

1020 There was months of delay. The agency ultimately concluded  
1021 this was a good thing. But there was a delay in getting a  
1022 beneficial project done and more emissions because of the delay  
1023 from NSR.

1024 Mr. Shimkus. And I think your response was following up  
1025 on my second question about affecting the development of and  
1026 implementation of newer and cleaner technologies. So I don=t=  
1027 need to ask that.

1028 Let me go to you all, if I have time. A report conducted  
1029 by Resources for the Future showed that from 2002 to 2014 the

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1030 average time to obtain a prevention of significant deterioration  
1031 -- an NSR permit -- throughout the country was 420 days.

1032 More specifically, in certain states, during that time  
1033 period the average permit time was 770 days. Do you think --  
1034 and if you can get yes or no or as short as possible -- do you  
1035 think that is reasonable for an owner to wait one or two years  
1036 on average just to obtain a preconstruction permit?

1037 Mr. Spencer.

1038 Mr. Spencer. No. I can say that the permit backlog and  
1039 permit issuance time frames were very important to our  
1040 administration -- to this current administration and we've seen  
1041 that --

1042 Mr. Shimkus. Quickly. Quickly. Quickly.

1043 Mr. Spencer. Yes. So no, that's not a reasonable time  
1044 frame.

1045 Mr. Shimkus. Thank you.

1046 Mr. Sunday?

1047 Mr. Sunday. No.

1048 Mr. Shimkus. Mr. Noe?

1049 Mr. Noe. Agreed.

1050 Mr. Shimkus. Ms. Hammond?

1051 Ms. Hammond. I agree that efficiency is important to an  
1052 agency but I think taking the time is worth it to do it right.

1053 Mr. Shimkus. Okay.

1054 Mr. Walke?

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1055 Mr. Walke. I am not here defending delays. I am opposing  
1056 pollution increases. So no.

1057 Mr. Shimkus. Okay.

1058 Mr. Holmstead?

1059 Mr. Holmstead. There=s no reason for it to take that long.

1060 Mr. Shimkus. Thank you very much.

1061 My time is expired. The chair now recognizes the ranking  
1062 member of the subcommittee, Mr. Tonko, for five minutes.

1063 Mr. Tonko. Thank you, Mr. Chair.

1064 New York has done a lot to clean up air pollution in our  
1065 state but we are still facing problems that blow in from the West.  
1066 We need the New Source Review program to work.

1067 We have to make progress on air quality together as a nation  
1068 because cleaning up the air is a common responsibility and we  
1069 all have to do our part.

1070 Mr. Walke, I am very concerned about the implications of  
1071 Administrator Pruitt=s December 7th memo for state enforcement  
1072 of the New Source Review program.

1073 I have a number of questions for you related to that memo.

1074 In your experience both as an EPA employee and as a representative  
1075 for various interests on clean air issues, would you say that  
1076 it is usual or unusual for the administrator of EPA to issue a  
1077 memo that announces the agency=s intent not to enforce a statute,  
1078 regulation, or other legal requirement?

1079 Mr. Walke. Extraordinary, and I=ve never seen it before.

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1080 Mr. Tonko. So we go with unusual there.

1081 I have the 1984 enforcement office=s memo related to issuance  
1082 of assurances of no enforcement that you mentioned in your  
1083 testimony.

1084 To your knowledge, has the policy in this 1984 memo issued  
1085 during President Reagan=s administration ever been rescinded or  
1086 replaced?

1087 Mr. Walke. No, it has not.

1088 Mr. Tonko. Are there provisions of the Clean Air Act or  
1089 within the NSR regulations that expressly provide EPA with  
1090 discretion to not enforce the requirement for a facility to  
1091 provide credible estimates of their projected actual emissions  
1092 in the NSR program?

1093 Mr. Walke. No, and to the contrary, Mr. Pruitt contravened  
1094 the EPA regulations.

1095 Mr. Tonko. Is there any credible argument that loosening  
1096 the criteria for estimating projected actual emissions or  
1097 foregoing enforcement of this NSR regulation would be in the  
1098 public interest and therefore justify issuing an assurance of  
1099 no enforcement as discussed in this memo?

1100 Mr. Walke. None whatsoever. Those emissions increases are  
1101 what harm the public and Mr. Pruitt has granted amnesty to  
1102 industries that get it wrong including badly wrong.

1103 Mr. Tonko. Administrator Pruitt has made much of his  
1104 dedication to cooperative federalism. But this memo appears to

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1105 do the opposite.

1106           Doesn't EPA's declaration that the agency will not pursue  
1107 enforcement in these situations undercut states that want to  
1108 enforce New Source Review standards?

1109           Mr. Walke. Yes. Many states will choose not to grant  
1110 amnesty and the last paragraph of the memo is really coercive  
1111 federalism -- threatening states that don't buckle under to  
1112 withdraw their program approval. Again, it's very unusual.

1113           Mr. Tonko. Thank you.

1114           Your written testimony refers to a cryptic warning in the  
1115 memo to states that -- to states to toe the line. Would you  
1116 elaborate on that, please?

1117           Mr. Walke. Sure. So states administer the NSR program  
1118 approved by EPA and states don't have to follow EPA's decisions  
1119 to grant enforcement discretion or, in this case, outright amnesty  
1120 across the board.

1121           Mr. Pruitt's memo seems to anticipate that and says in the  
1122 very final paragraph in what's not even a very subtle veiled threat  
1123 that EPA has the ability to withdraw its approval from states  
1124 that don't conform to the understanding of the program that EPA  
1125 has.

1126           And a memo like this, this is clearly a threat of coercive  
1127 federalism to remove approval from states that don't follow this  
1128 amnesty approach.

1129           Mr. Tonko. Thank you.

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1130 As administrator of this agency, Mr. Pruitt is supposed to  
1131 uphold and enforce the law, not subvert it. This program is  
1132 supposed to clean up the air and bring older facilities up to  
1133 modern pollution standards.

1134 The people that I represent need a functioning program.  
1135 For us, cooperative federalism means that EPA is a partner in  
1136 enforcement, not a partner in sidestepping the law and creating  
1137 more pollution.

1138 Ms. Hammond, is there anything you want to add about the  
1139 December 7th memo? Do you think if a polluter believes EPA will  
1140 not check their work it incentivizes applicants to underestimate  
1141 their emissions projections?

1142 Ms. Hammond. Absolutely. It incentivizes the kind of  
1143 gaming that we've seen throughout the entire history of this  
1144 program. Over and over again we see polluting industries,  
1145 especially old dirty coal, looking for loopholes and this just  
1146 opens that wider.

1147 Mr. Tonko. EPA=s leaders often speak about the rule of law.  
1148 That phrase takes an outsized role in the EPA=s latest budget  
1149 request.

1150 For Mr. Walke or Ms. Hammond, can you help us understand  
1151 how EPA is upholding its rule of law commitment by shirking its  
1152 responsibilities to enforce the Clean Air Act as outlined in the  
1153 administrator=s December 7th memo?

1154 Mr. Walke. Well, the president=s budget now twice has

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1155 proposed historically high cuts to EPA=s enforcement program.

1156 Thankfully, Congress did not follow suit the first time.

1157 I hope they will not this time. But what we have seen is  
1158 an enforcement amnesty memo issued by the administrator himself  
1159 that does not contain the name of any enforcement official on  
1160 it, and as I detail in my testimony there=s some very serious  
1161 concerns about the process that resulted in that amnesty.

1162 Mr. Tonko. Ms. Hammond, anything?

1163 Ms. Hammond. Yes. Just the further point that when an  
1164 agency uses a guidance document to set binding policy, that evades  
1165 the rule of law set forth in the Administrative Procedure Act.  
1166 So we have that further problem as well.

1167 Mr. Tonko. Thank you.

1168 Mr. Chair, I yield back and thank you for your --

1169 Mr. Shimkus. Gentleman yields back his time.

1170 The chair now recognizes the vice chair of the subcommittee,  
1171 Mr. McKinley, for five minutes.

1172 Mr. McKinley. Thank you, Mr. Chairman.

1173 I=ve been listening to testimony about this for now seven  
1174 years in Congress and I think one of the conclusions I am hoping  
1175 we will come to is that the -- something=s broken, because we  
1176 are hearing some strong push back from both sides.

1177 But I am -- I feel like a couple of you up there are unwilling  
1178 to recognize that the system may need some modification. Is that  
1179 fair to say, Mr. Walke?

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1180 Mr. Walke. No, sir.

1181 Mr. McKinley. You don=t think it needs modification?

1182 Mr. Walke. We are happy to discuss modifications that don=t  
1183 result in pollution increases. But that=s what=s before this  
1184 committee.

1185 Mr. McKinley. Well, no one=s talking about increasing  
1186 pollution --

1187 Mr. Walke. I was answering your question, Congressman.

1188 Mr. McKinley. That=s what I just -- and thank you on that.  
1189 But, you know, I just feel that in many respects the previous  
1190 administrations have used -- have weaponized the EPA=s rule on  
1191 NSR and it=s delayed, cost grief and -- I spent my career in the  
1192 engineering field and many of them in power plants getting these  
1193 permits and I saw the delay, the delay and delay and the costs  
1194 that were associated with those, and it was unnecessary. But  
1195 I believe their -- the intent was to try to slow walk the project  
1196 so it didn=t happen.

1197 So I am first trying to recognize or get people to -- the  
1198 system, it=s broken. It needs modification. Been talking  
1199 about, I think, Mr. Holmstead, you said 15 years ago they were  
1200 talking about making modifications to it.

1201 I don=t know why we haven=t during this -- is this just  
1202 because we=ve got people with their head in the sand? There=s  
1203 a problem here associated with this issue and we need to have  
1204 an adult conversation instead of saying no and trying to focus

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1205 on a distraction that none of us in the engineering field or in  
1206 the energy generation want to have this problem or increased  
1207 emissions.

1208 But I am afraid that what=s going to happen is that we are  
1209 going to close down more and more of our power plants and as a  
1210 result -- with this delay and the fear of the unknown of our power  
1211 plants and we are going to reach into that issue that we=ve been  
1212 talking about for now the last two years has been about grid  
1213 reliability and resiliency.

1214 When we have more and more -- since the Polar Vortex of 2014,  
1215 we=ve had 82 coal-fired power plants shut down. I know during  
1216 this last winter that many of our gas and coal-fired power plants  
1217 were under advisory about that there was maybe a shut down because  
1218 of the lack of supply, particularly in gas.

1219 So I am very concerned that we are continuing to focus on  
1220 something where we should be able to cooperate and get something  
1221 accomplished.

1222 So, Mr. Holmstead, I=ve seen you just be very frustrated  
1223 with this. You and I have had numbers of conversations about  
1224 this.

1225 Can you give us some direction or advice? Because I applaud  
1226 what Morgan Griffith is trying to do is to have an adult  
1227 conversation and address this issue.

1228 So, Mr. Holmstead, do you have some thoughts about how?  
1229 Because I thought Mr. Spencer laid out a good plan. I thought

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1230 Sunday did as well on that. But what=s your perspective? What  
1231 should we be doing to resolve the differences?

1232 Mr. Holmstead. I think we should just be having an honest  
1233 conversation about how all of the Clean Air Act programs work  
1234 together. I can=t tell you how many times someone who=s  
1235 criticized a reform says that, you know, you=re tearing at the  
1236 heart of the Clean Air Act.

1237 As far as I know, the Clean Air Act must have 30 different  
1238 hearts because no matter you try to reform, you know, you=re  
1239 tearing at the heart of the Clean Air Act.

1240 Look, there are -- air pollution control is enormously  
1241 important. The benefits of controlling air pollution are very  
1242 significant.

1243 No one is talking about increasing pollution. There=s no  
1244 such thing as a massive increase that would occur even if we  
1245 eliminated it.

1246 Come on, let=s have a serious conversation about this and  
1247 that=s the frustrating part. Let=s be honest with each other  
1248 about how these programs work and how some of them don=t.

1249 Mr. McKinley. Thank you.

1250 Speaker -- Chairman, I yield back.

1251 Mr. Shimkus. Gentleman yields back his time.

1252 The chair now recognizes the ranking member of the full  
1253 committee, Mr. Pallone, for five minutes.

1254 Mr. Pallone. Thank you, Mr. Chairman.

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1255 My questions are of Mr. Walke and I am going to continue  
1256 where my colleague, Representative Tonko, left off. I have also  
1257 serious concerns about Administrator Pruitt=s December 7th memo.

1258 In your written testimony, you discuss a number of concerns  
1259 with the memo and I want to explore that you did not mention in  
1260 your written testimony.

1261 I understand that several circuit courts have now rendered  
1262 decisions that limit EPA=s authority to enforce New Source Review  
1263 violations by upholding a statute of limitation of five years  
1264 from the time the first violation occurs.

1265 Is that correct? Yes or no.

1266 Mr. Walke. Yes.

1267 Mr. Pallone. The December 7th memo states that EPA will  
1268 not take enforcement actions against any facility operator in  
1269 relation to preconstruction permit requirements under the New  
1270 Source Review program and these requirements include estimating  
1271 projected actual emissions, determining whether they need a  
1272 permit or not, and any other actions that are required before  
1273 a construction project is initiated and completed.

1274 Administrator Druitt justifies this in part by initiating  
1275 a policy that defers consideration of enforcement actions until  
1276 the agency sees the actual emissions, quote, Aduring the five-  
1277 or 10-year record keeping or reporting period after," unquote,  
1278 the project in question has been completed and the facility  
1279 resumes operation.

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1280           So, Mr. Walke, am I correct in my concern that deferring  
1281 enforcement to this post-construction period places any  
1282 enforcement action past the five-year statute of limitations  
1283 being upheld by the circuit courts? Again, yes or no.

1284           Mr. Walke. Absolutely. Yes, you are -- have a right to  
1285 be concerned.

1286           Mr. Pallone. Thank you.

1287           So it appears that Administrator Pruitt has ensured that  
1288 the agency will never act because the time period for action  
1289 designated in the memo will always be beyond the statute of  
1290 limitations.

1291           Any action taken by the agency deferred until this time  
1292 period would very likely be overturned by the courts. So Mr.  
1293 Walke, again, do I have that right, yes or no?

1294           Mr. Walke. One hundred percent right.

1295           Mr. Pallone. Okay. It doesn't seem likely to me that these  
1296 circuit court decisions would be unknown or overlooked by the  
1297 administrator or by Mr. Wehrum, the Air Office chief who came  
1298 on board at the agency about one month before this memo appeared.  
1299 What do you think about that? That's not a yes or no.

1300           Mr. Walke. I can guarantee you Mr. Wehrum is aware of those  
1301 cases.

1302           Mr. Pallone. Okay. So the next thing is, look, the bottom  
1303 line is the policy Mr. Pruitt is pushing in the December 7th memo  
1304 is inconsistent with the law, in my opinion, and clearly will

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1305 allow any facility owner that wants to get around the NSR program  
1306 to do so and that=s terrible public policy and will commit us  
1307 to many more tons of harmful pollution and, in my opinion, it  
1308 should be rescinded immediately.

1309 So I just have a few more questions on this memo and its  
1310 relationship to the policy memo from the Reagan administration  
1311 mentioned by Mr. Tonko.

1312 Hasn=t it been longstanding established EPA policy and  
1313 direction to all agency personnel not to give either written or  
1314 oral assurances to regulated parties that EPA will not take an  
1315 enforcement action if a violation occurs?

1316 Mr. Walke. Yes, and Mr. Pruitt=s memo directly contradicts  
1317 a memo dating to the Reagan administration that lays out very  
1318 specific criteria for no action assurances that he did not follow.

1319 Mr. Pallone. Okay. However, I am aware that there are  
1320 cases in which EPA has provided assurances of no action to  
1321 regulated parties.

1322 But these are in special narrowly-tailored circumstances  
1323 and with limited time periods often associated with emergencies  
1324 such as in the aftermath of a catastrophic storm like Hurricane  
1325 Maria, for example.

1326 So is that correct?

1327 Mr. Walke. Yes. They are very short lived, directed to  
1328 specific companies, and not broad grants of amnesty like Mr.  
1329 Pruitt=s memo.

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1330 Mr. Pallone. All right.

1331 So does the DTE Energy case or any other situation described  
1332 in this memo fit within the narrow circumstances that warrant  
1333 an enforcement holiday?

1334 Mr. Walke. It does not fit within EPA=s policy.

1335 Mr. Pallone. All right. So Mr. Walke, I have another  
1336 question related to the administrator December 7th memo. The  
1337 memo appears to create a new exclusion for emissions increases  
1338 based on a facility operator=s intent to manage emissions  
1339 increases once a project is completed.

1340 Now, how is such emissions management to be measured, if  
1341 that=s the case?

1342 Mr. Walke. We never know because they don=t have to  
1343 self-report. If it=s done after five years, EPA cannot enforce.  
1344 It=s completely trusting the source with a promise that EPA will  
1345 not second guess whatever they decide.

1346 Mr. Pallone. So if a facility operator intends to manage  
1347 emissions but then does not manage them, how would this failure  
1348 be documented? Could EPA enforce this policy?

1349 Mr. Walke. EPA would never know about it. It won=t be  
1350 documented because the memo doesn=t require it and, indeed, the  
1351 EPA will probably never find out about it and the emissions  
1352 increases will go uncontrolled.

1353 Mr. Pallone. All right.

1354 Thank you so much. Thank you, Mr. Chairman.

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1355 Mr. Shimkus. Gentleman yields back his time.

1356 The chair recognizes the gentleman from Texas, Mr. Flores,  
1357 for five minutes.

1358 Mr. Flores. Thank you, Mr. Chairman. I appreciate the  
1359 panel and their enlightened testimony today.

1360 Mr. Spencer, I am going to start with you. You support the  
1361 administration=s recent guideline memo on NSR permitting which  
1362 clarifies that the EPA will not second guess a facility  
1363 reconstruction emissions analysis.

1364 And so explain for me -- for the committee what was the  
1365 problem with the second guessing and why this memo is helpful  
1366 for states= work on NSR permitting.

1367 Mr. Holmstead, I will follow up with you on this as well.

1368 Mr. Spencer. I think that the clarification was needed and  
1369 it doesn=t necessarily create a blanket exemption from the  
1370 responsibility that facilities have.

1371 I think that there should be some accountability such as  
1372 if there is an error in a calculation that=s clear if their  
1373 companies use a wrong significant emissions threshold. And so  
1374 there are backstops for that kind of empirical data to be provided  
1375 that would ensure that the calculations that have been submitted  
1376 by the company are in fact accurate.

1377 Mr. Flores. Okay.

1378 Mr. Holmstead, do you have any additional comments?

1379 Mr. Holmstead. Yes. This whole situation shows that --

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1380 why this -- why this program is so broken. Here=s what happened.

1381       The company used a very sophisticated modelling technique  
1382 that has been approved by, you know, other regulators to estimate  
1383 its future emissions and it showed that there wouldn=t be an  
1384 emissions increase.

1385       EPA brought an enforcement action and they said you didn=t  
1386 do it right -- you should use this methodology. Methodology that  
1387 EPA enforcement officials wanted to use always showed every  
1388 project would cause an emissions increase.

1389       So you have these two different ways of projecting out five  
1390 years into the future and it=s so subjective and we have so much  
1391 litigation over it that=s why we just need to use the simple  
1392 engineering technique of saying look, what is your -- what is  
1393 your hourly emission rate.

1394       That=s what we do in other programs. That=s knowable,  
1395 that=s ascertainable, and instead we have these kind of ridiculous  
1396 fights, and what makes this particularly ridiculous is that case  
1397 was brought more than five years ago.

1398       So we now have five years of data showing that the plant  
1399 actually decreased its emissions. But EPA is insisting that they  
1400 should have predicted an increase and we know that whatever EPA  
1401 was -- turned out to be wrong because emissions have actually  
1402 gone down.

1403       Mr. Flores. Okay. That leads me to into my next -- a  
1404 follow-up question for you and Mr. Noe and Mr. Sunday.

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1405           An important component of the NSR program focuses on how  
1406 an owner must calculate the anticipated emissions increase  
1407 associated with the potential project which determines whether  
1408 or not an owner is required to obtain an NSR reconstruction permit.

1409           So my questions are this. Did the NSR program=s rules on  
1410 emission accounting typically result in a calculated emissions  
1411 value that accurately reflects the true emissions increase?

1412           Do you want -- do you want to waive off to somebody else?

1413           Mr. Holmstead. No. I would just say there is not an  
1414 approved EPA method for predicting and that=s one of the  
1415 problems.

1416           And because every circumstance is so different and because  
1417 future emissions depends so much on things that are completely  
1418 out of the control of the plant owner it=s kind of a fool=s errand  
1419 to be saying that you can predict with accuracy what your emissions  
1420 are going to be next year and year after.

1421           And we ought not to be putting people in the position to  
1422 do that and one of the problems is there is no approved method  
1423 for doing this.

1424           Mr. Flores. Now, does -- do you think that the current NSR  
1425 emissions projections are overestimating the actual change in  
1426 emissions?

1427           Mr. Holmstead. Certainly, the current approach is better  
1428 than the way it used to work. But, again, it creates all kind  
1429 of uncertainty and problems and it ought to be fixed.

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1430 Mr. Flores. Okay.

1431 Mr. Noe, do the NSR program=s rules on emissions accounting  
1432 typically result in a calculated emissions value that accurately  
1433 reflects a true emissions increase?

1434 Mr. Noe. My sense is not and --

1435 Mr. Flores. Oh, microphone. I am sorry. Yes.

1436 Mr. Noe. My sense, Congressman, is no and we=d like a  
1437 simpler way to do the math that allows you to move quickly if  
1438 you don=t have a significant emissions increase.

1439 Mr. Flores. Okay.

1440 Mr. Sunday, same question.

1441 Mr. Sunday. No. In general, our facilities are obligated  
1442 to account for emissions that they=re never going to produce.

1443 Mr. Flores. Okay. All right.

1444 I yield back the balance of my time. Thank you.

1445 Mr. Shimkus. Gentleman yields back his time.

1446 The chair now recognizes the gentleman from California, Mr.  
1447 McNerney, for five minutes.

1448 Mr. McNerney. Well, I thank the chairman.

1449 Mr. Walke, sometimes it=s hard to see the negative  
1450 consequences of deregulation, especially if they sound  
1451 reasonable.

1452 In this case, industry recommended that to improve the NSR  
1453 program, we should allow owners of a facility to avoid the  
1454 requirements of the NSR program if they improve facility energy

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1455 efficiency or if they invest in a project for pollution prevention  
1456 or pollution control simply on those bases.

1457 What=s wrong with that argument?

1458 Mr. Walke. Congressman, you have to look behind the labels.  
1459 We all support energy efficiency projects that decrease  
1460 emissions. Mr. McKinley said so.

1461 But these energy efficiency projects, the way the label is  
1462 misused will allow and result in emissions increases. That=s  
1463 the only way that the New Source Review requirements apply.

1464 The same is true for the pollution control project label.  
1465 If they just reduced emissions, NSR requirements would not apply.  
1466 Instead, they increase emissions.

1467 So the labels are very important and the requirements only  
1468 apply when pollution increases. They do so in both examples that  
1469 you provided as used by industry.

1470 Mr. McNerney. I think that was pretty clear. Thank you.

1471 Mr. Walke. Thank you.

1472 Mr. McNerney. Ms. Hammond, it=s clear that the Clean Air  
1473 Act has driven innovation and the U.S. economy has continued to  
1474 grow and innovation has continued to thrive.

1475 Is there any evidence that the cost of pollution controls  
1476 are so high that we=ve seen massive layoffs and loss of revenue?

1477 Ms. Hammond. The studies that I am aware of suggest that  
1478 do the extent companies do have to change their business plans  
1479 because of Clean Air Act controls, it=s not that.

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1480           It=s market conditions that they=re responding to and,  
1481 indeed, that=s the case with coal, most certainly. And in fact,  
1482 with New Source Review we are often talking about these very old,  
1483 very dirty coal-fired power plants and what you don=t hear is  
1484 that in most jurisdictions these power plants can recover the  
1485 cost of pollution control technology from their ratepayers. So  
1486 they=re not even asking shareholders to bear those costs.

1487           Mr. McNerney. So is there any evidence that current  
1488 regulations have caused a reduction in economic growth?

1489           Ms. Hammond. No, and in fact, the opposite is true.

1490           Mr. McNerney. Well, industry claims that the NSR program  
1491 has stifled innovation and discouraged investment in  
1492 technologies, new factories, and renovations that would deliver  
1493 significant benefits.

1494           Is there any evidence for that claim?

1495           Ms. Hammond. No, and in fact, pollution control technology  
1496 is itself a business and there are many small businesses that  
1497 benefit from developing those technologies.

1498           So you can also add that to the list of more generalized  
1499 economic benefits that we see.

1500           Mr. McNerney. Geez, you=re getting ahead of me. I was  
1501 going to bring that up.

1502           Manufacturing gets left out of the conversation. American  
1503 domestic manufacturing does get left out of the conversation --  
1504 manufacturers that produce pollution control equipment.

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1505 And a report from 2013 states that the market for these  
1506 systems was expected to grow to \$78 billion a year by 2019 and  
1507 a 2017 report expects the market to grow to \$92 billion by 2022,  
1508 and more than 75 percent of that growth is overseas and continues  
1509 to grow as other countries invest in pollution control equipment,  
1510 and these are medium to small-sized private businesses located  
1511 throughout the country.

1512 Would you anticipate the economic impact of these companies  
1513 and their employees to be if the air quality protections are  
1514 deregulated and unenforced?

1515 Ms. Hammond. Indeed, they will suffer in that case.

1516 Mr. McNerney. So do you believe, based on facts and economic  
1517 realities, that there is a choice between environmental control  
1518 and regulation on the one hand and economic prosperity on the  
1519 other hand?

1520 Ms. Hammond. No. It=s a false choice. They go together.  
1521 We see over and over again the clean air is good for the economy.  
1522 It=s good for health. People can go to school. They can work.  
1523 We prosper with clean air.

1524 Mr. McNerney. Okay.

1525 Mr. Holmstead, I am going to throw you a bone here. You  
1526 talked about good regulatory design. What do you mean by that?

1527 Mr. Holmstead. I mean trying to find the most effective,  
1528 the most cost-effective ways of reaching our air pollution goals.

1529 Mr. McNerney. Is there an academic model for good

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1530 regulatory --

1531 Mr. Holmstead. Yes. There are academic studies that look  
1532 at all kinds of regulatory programs and in particular -- I will  
1533 say this. The way we have regulated cars and fuels has been very  
1534 successful. That=s probably been the most successful part of  
1535 the Clean Air Act.

1536 But if you look at these so-called stationary sources, the  
1537 programs that have been most cost effective, where we have the  
1538 highest rates of compliance, are these cap and trade programs  
1539 where an overall cap is set.

1540 That really started with the acid rain program. There=s  
1541 been a number of programs that are built upon that -- the NOx  
1542 SIP Call, the Care Program, CSAPR, state programs, and those  
1543 programs are very cost effective and very effective at reducing  
1544 pollution.

1545 Mr. McNerney. So we shouldn=t just deregulate everything?

1546 Mr. Holmstead. No, no, no. No one=s --

1547 Mr. McNerney. And that=s what I -- what I hear a lot.

1548 Mr. Holmstead. No, no, no. No.

1549 Mr. McNerney. Not from you, necessarily.

1550 Mr. Holmstead. So I think what we need to do is just let=s  
1551 figure out the most cost effective ways of achieving our air  
1552 pollution goals. That=s what I -- I mean, I agree about all the  
1553 benefits of reducing air pollution. Let=s just do it in the most  
1554 cost effective way.

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1555 Mr. McNerney. Okay. Thank you.

1556 I yield back, Mr. Chairman.

1557 Mr. Shimkus. I apologize to my Republican colleagues for  
1558 letting my Democratic colleague go so long.

1559 But the chair now recognizes the gentleman from Michigan,  
1560 Mr. Walberg, for five minutes.

1561 Mr. Walberg. Thank you, Mr. Chairman. Thanks to the  
1562 witness team here as well. Appreciate your involvement.

1563 Mr. Noe, you have highlighted a couple of improvements to  
1564 the NSR and PSD programs in your testimony. Given your  
1565 description of how broken the program is, are there any other  
1566 reforms you think are critical to streamlining the permitting  
1567 process while protecting the environment, which we all agree on?

1568 Mr. Noe. Thank you, Congressman.

1569 I think there=s a couple I want to mention quickly. First  
1570 of all, EPA presumes that emissions from multiple projects at  
1571 a plant over several years should be aggregated when determining  
1572 significance for NSR applicability.

1573 They believe the projects are connected economically if they  
1574 serve the basic purpose of the plant even if they incur many years  
1575 apart or undertaken for very different business reasons and by  
1576 themselves are minor.

1577 Once those emissions are added together, NSR can potentially  
1578 be triggered with its heavy burdens and delays and we believe  
1579 the EPA should only add together emissions from projects that

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1580 are truly linked. So that=s one example.

1581 A second is EPA=s PSD modelling guidelines historically have  
1582 required excessively conservative assumptions about dispersion  
1583 model inputs that frequently result in gross over estimates of  
1584 a project=s air quality impacts and regulatory air quality models  
1585 have the capability to calculate ambient air concentrations based  
1586 on variable emissions background and modern probabilistic tools  
1587 and meteorological conditions.

1588 So rather than assuming, for example, that the facility is  
1589 going to be running at maximum levels, all the other nearby sources  
1590 are going to be running 24/7 at maximum potential level and that  
1591 they ought to look at the distributions of the emissions in a  
1592 probabilistic way.

1593 And EPA can address this rapidly-developing permit gridlock  
1594 by having more flexible policies that actually reflect the  
1595 realistic emissions and the realistic modelling.

1596 Mr. Walberg. Rather than always the worst case scenario?

1597 Mr. Noe. Yes, sir.

1598 Mr. Walberg. What other Clean Air Act obligations does the  
1599 forest products industry face?

1600 Mr. Noe. You know, we have a whole bunch of regulations  
1601 that we are covered by. Jeff gave you some examples with power  
1602 plants.

1603 For us, let me just give you some of the major ones. So  
1604 for hazardous air pollutants, EPA=s MACT program has targeted

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1605 pulp and paper operations, wood product driers and presses,  
1606 industrial boilers and coating operations where emissions have  
1607 reduced as much as 92 percent.

1608 For criteria pollutants that are regulated by the NAAQS,  
1609 those criteria pollutants have been dramatically reduced through  
1610 a regulatory action such as the NOx SIP Call regional haze program  
1611 and state efforts to implement the NAAQS through state  
1612 implementation plans.

1613 For example, our SO2 emissions are down by over 50 percent  
1614 since the year 2000.

1615 Mr. Walberg. Okay. Thank you.

1616 Mr. Holmstead, you were involved at the EPA in the early  
1617 2000s, have, as you said, three decades of experience on NSR  
1618 reform.

1619 As a former EPA official, speaking from that experience,  
1620 why has EPA over the past 28 years had so much difficulty  
1621 finalizing NSR guidance documents?

1622 Mr. Holmstead. Well, I think some of the controversy you  
1623 have seen here gives you a hint at why that is.

1624 Mr. Walberg. I am not egging you on. I am just --

1625 Mr. Holmstead. No. But, you know, part of the problem here  
1626 is that this NSR program has become primarily an enforcement  
1627 program. We refer to it as a permitting program but when it comes  
1628 to existing sources, it=s become the program where EPA puts almost  
1629 all of its money when it comes to enforcement. A huge percentage

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1630 of the budget for EPA enforcement and DOJ enforcement goes to  
1631 NSR.

1632           They love this program because they believe that if they  
1633 just look long enough they can find NSR violations wherever they  
1634 look and they don=t want to give up that weapon because if we  
1635 actually made the program more sensible so it really was a fair  
1636 and predictable regulatory program you wouldn=t be able to bring  
1637 all these lawsuits.

1638           And that -- I mean, I am being pretty candid here but that  
1639 I think is the main reason why we haven=t been able to reform  
1640 the program.

1641           Mr. Walberg. Kind of target rich.

1642           To the extent court decisions and litigation have  
1643 contributed to this, what=s the cure to ensure regulatory  
1644 certainty?

1645           Mr. Holmstead. Boy, if we could just have some narrow  
1646 thoughtful legislative reforms, I mean, that=s the best way to  
1647 take care of it.

1648           Mr. Walberg. To get the job done and do it in the least  
1649 restrictive but most efficient way?

1650           Mr. Holmstead. Yes, sir.

1651           Mr. Walberg. Okay. Thank you. I yield back.

1652           Mr. Shimkus. Gentleman=s time is expired.

1653           The chair now recognizes the gentleman from Texas, Mr. Olson,  
1654 for five minutes.

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1655 Mr. Olson. I thank the chair, and welcome to our six  
1656 witnesses. A special welcome to you, Mr. Noe. I am a fellow  
1657 paper guy. My dad got a Ph.D. in paper chemistry from the  
1658 Institute of Paper Chemistry when it was in Appleton, Wisconsin  
1659 in 1967 -- a long, long time ago.

1660 He spent over 30 years working for Champion International,  
1661 now became International Paper. He worked at mills in Ohio, North  
1662 Carolina, Alabama, and Texas.

1663 And your association has members all across America. As  
1664 to the members of Region 6 -- Texas, Arkansas, New Mexico,  
1665 Oklahoma, and Louisiana by their new regional administrator, Ann  
1666 Idsal, and she has already said that she sees major differences  
1667 between the regions in terms of enforcement of some of these things  
1668 involving the NSR.

1669 My question is, as you deal with EPA=s regional differences  
1670 in the offices, do you see these differences and how they impact  
1671 your members of your association?

1672 Mr. Noe. Yes, Congressman. We -- our members do see these  
1673 differences and, you know, there is, unfortunately, a lot of  
1674 confusion with the NSR program.

1675 I can=t tell you how complicated it is and, honestly, I=ve  
1676 literally been in discussions with some of the best lawyers you  
1677 could find anywhere and people get into debates and I=ve seen  
1678 examples where none of them can figure it out and they maybe defer  
1679 to one in the room.

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1680 I mean, this is just not how our government should work where  
1681 things are that complicated and where the law might be different  
1682 based not only on what region in the country you're in but who  
1683 actually is the person dealing with your permit. That's just  
1684 not the way a democracy ought to work. That's not the way a good  
1685 regulatory process should work.

1686 Mr. Olson. So there's lots of uncertainty in that process,  
1687 correct?

1688 Mr. Noe. Yes, sir.

1689 Mr. Olson. Another question -- a crucial step in any  
1690 construction project, probably the most crucial step is to obtain  
1691 necessary financing -- the money.

1692 Have you members had a hard time getting project financing  
1693 due to uncertainty like multiple standards in multiple regions  
1694 of the EPA and time delays caused by the NSR process?

1695 Mr. Noe. I think any time there's regulatory uncertainty  
1696 that creates business uncertainty. It creates risk. So it does  
1697 impede projects from going forward.

1698 Mr. Olson. Mr. Sunday, how about you? Difficulty getting  
1699 permitting process with all the financial stuff as well?

1700 Mr. Sunday. Yes. If you're going into the debt markets  
1701 or to do private financing, the lender is not going to give the  
1702 revenue or capital until all appeals are settled.

1703 And so what we've seen is perpetual litigation by third party  
1704 groups where the permit goes through the process. There's a

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1705 challenge. They go through the court. Now the universe of  
1706 controls is different. Lender is still not giving the capital.  
1707 We go through the litigation again. So it really hangs up the  
1708 process because we can't get that clear path to yes.

1709 Mr. Olson. One question for you, Mr. Spencer. In your  
1710 testimony, you describe some of the issues with the NSR in terms  
1711 of enforcement.

1712 Specifically, you said, and I quote this, "It's important  
1713 to reorient policies toward pursuit of actual violations that  
1714 create emissions increases," end quote.

1715 I assume the NSR was involved with pursuing actual violations  
1716 and you say we have to reorient that process. Can you explain  
1717 that more -- elaborate on why you made that statement?

1718 Mr. Spencer. Yes. Thank you, Congressman.

1719 I have been dying to say bizarre NSR all day long. So I  
1720 got that into the record.

1721 I wrote down a few phrases here -- unintended consequences,  
1722 perverse incentives, absurd results -- and those are terms I've  
1723 heard more in my practice with Clean Air Act regulations and  
1724 enforcement than I've heard in my entire career.

1725 And so I think what you're looking at is something that Mr.  
1726 Holmstead alluded to earlier. When you have a facility that has  
1727 engaged in an emissions projection but the reality of the  
1728 situation is that time had advanced since that projection was  
1729 made and there has been no actual increase.

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1730 And so as a state regulator, when we exercise our enforcement  
1731 ability, we are looking for actual events -- actual emission  
1732 violation events.

1733 Mr. Olson. One final question. From your perspectives,  
1734 does EPA=s memo of December 7th improve the reorientation of the  
1735 NSR? Is that what you tried to do? I am sorry, the NSR.

1736 Mr. Spencer. Yes. I would agree with that.

1737 Mr. Olson. Okay.

1738 And Mr. Chairman, I yield back the balance of my time.

1739 Mr. Shimkus. The gentleman yields back.

1740 The chair now recognizes the gentleman from Georgia, Mr.  
1741 Carter, for five minutes.

1742 Mr. Carter. Thank you, Mr. Chairman.

1743 Mr. Noe, I too -- I grew up in the South where paper mills  
1744 are plentiful. In fact, my dad worked in a paper mill. He didn=t  
1745 have a degree.

1746 He was just a laborer. He worked in a paper mill for over  
1747 35 years and the best thing he ever did for me after my freshman  
1748 year in college was to put me to work on a broke beater. Do you  
1749 know what a broke beater is?

1750 Mr. Noe. I -- I am not sure.

1751 Mr. Carter. Well, it=s at the end of the process. It=s  
1752 where all the excess paper goes and you --

1753 Mr. Noe. The broke comes out. Yes.

1754 Mr. Carter. Yes, and you just take it and you assemble it

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1755 and you put it back and then you recycle it, per se. But I can  
1756 tell you that it was as close to hell as I=ve ever been.

1757 [Laughter.]

1758 I have never been that close. But it may -- I could not  
1759 get to school quick enough. I could not get back to school and  
1760 study hard quick enough, I will tell you that. It was a life  
1761 lesson.

1762 Air quality was important to us. People would visit us and  
1763 they would say, AWhat=s that smell?" And we=d say, AThat=s money  
1764 you smell," because that=s what it was for us.

1765 But it is important and I understand that. But I want to  
1766 try to understand. Tell me what project netting is. What  
1767 essentially is that?

1768 Mr. Noe. So, basically, what we want to make sure we have  
1769 is a system when we do the math and we look at a project to see  
1770 if it results in a significant emissions increase. If it does,  
1771 then by all means, let=s go through the heightened scrutiny.  
1772 Let=s put on best controls if that=s indeed the case.

1773 But when we do the math, let=s look at the increases and  
1774 decreases together so we don=t wind up getting the project gummed  
1775 up in the works, delayed, spend hundreds of thousands of dollars  
1776 on consultant studies just to get to the obvious answer that when  
1777 there=s not a real significant emission increase we should be  
1778 putting into NSR. We ought to go forward with the project because  
1779 these beneficial projects.

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1780 And one point I would like to make is, you know, I think  
1781 one thing that=s being lost is when a regulatory program inhibits  
1782 efficiency improvements at one facility. It=s doing that all  
1783 around the country for a bunch of them.

1784 So when we have demand X to meet, we are going to do it as  
1785 a nation in a more inefficient and higher-polluting way. When  
1786 we can get these efficiency improvements in by nature we are going  
1787 to have not only less CO2 but other pollutants as well.

1788 Mr. Carter. Okay. You know, I=ve heard the process. Tell  
1789 me -- tell me how we reform the process. Tell me what we=d do  
1790 differently from what we are doing now that makes it practical  
1791 and sensible because that=s what we all want to get to.

1792 Mr. Noe. Sure. And some of the things I=ve mentioned these  
1793 are things EPA can do either through guidance or through rule  
1794 making. There are some things Congress can do. Mr. Holmstead  
1795 mentioned some of them.

1796 Ones I would like to highlight is we would like to ensure  
1797 that clean units have legislative support. So, in other words,  
1798 an emission unit that=s been through the permitting process, to  
1799 have best controls put on it -- that that ought to be only an  
1800 increase in the units permitted allowable emissions would trigger  
1801 NSR.

1802 For pollution control projects, those need legislative  
1803 support and they=re excluded under the New Source Performance  
1804 Standards program. It makes sense to do the same thing in the

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1805 NSR program, we believe.

1806 Mr. Carter. Right. Right.

1807 Well, Mr. Noe, I want to -- I want to thank you and I want  
1808 to thank you for what the paper industry did for me and for my  
1809 family.

1810 It provided us a living.

1811 Mr. Noe. Well, Congressman, if I could just briefly thank  
1812 you and Mr. Olson and I am glad to hear you have a connection  
1813 to the industry. Our workers are up here visiting many of your  
1814 offices this week.

1815 Mr. Carter. Yes, they are.

1816 Mr. Noe. I hope you get to meet them. And you know these  
1817 are very proud hardworking people --

1818 Mr. Carter. Absolutely.

1819 Mr. Noe. -- and they're not asking for anything from any  
1820 of you other than the right to compete in this country. They  
1821 can beat anyone in the world as long as they are given a playing  
1822 field that's workable.

1823 No one is here asking you to take controls off projects that  
1824 ought to have emissions controls. We just don't want the delay  
1825 and the unnecessary red tape that is gumming up our modernization.

1826 Mr. Carter. Thank you, Mr. Noe.

1827 Mr. Chairman, I yield back.

1828 Mr. Shimkus. Gentleman yields back his time and the chair  
1829 now recognizes the gentleman, if he's ready, the gentleman from

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1830 Texas. Do you want me to go to -- all right. The gentleman is  
1831 recognized for five minutes.

1832 Mr. Green. Thank you, Mr. Chairman. I am thanking you and  
1833 the ranking member for holding the hearing today on the New Source  
1834 Review and I would also like to thank our panellists.

1835 I come from an area -- a very urban area in Houston. We  
1836 have issues. We have five refineries and more chemical plants  
1837 than I can count.

1838 This is a question for, I think, everyone on there. Many  
1839 stakeholders have noted that the substantial delays for air  
1840 permits under the New Source Review program delays two years or  
1841 even longer.

1842 My question is are the delays for issuing the permits the  
1843 fault or the EPA or the state agencies that are administering  
1844 the program?

1845 Mr. Spencer. Since I am with a state agency I am going to  
1846 say it=s EPA=s fault.

1847 [Laughter.]

1848 No, I think that, as we=ve indicated in our testimony,  
1849 certainty adds to the process of being able to issue timely  
1850 permits. So the more certainty we have and clearing up the  
1851 muddled guidance documents, applicability determinations, court  
1852 cases, the better, and more efficient permits we can issue.

1853 Mr. Green. Anybody else?

1854 Mr. Noe. We=d like to say, Congressman, what we=d like to

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1855 see happen to streamline the process is just make sure that we  
1856 get the -- sort the wheat from the chaff. The truly significant  
1857 projects with significant increases ought to go through NSR.  
1858 They ought to put on controls.

1859 But for these minor projects, why gum them up in the works  
1860 with these consultant studies that take all this time and money  
1861 and delaying these projects from going forward?

1862 So we=d like to streamline the process. I believe EPA could  
1863 do that.

1864 Mr. Walke. Congressman, the permits in this country are  
1865 issued primarily and overwhelmingly by the states, and it=s the  
1866 -- it=s, frankly, a lack of resources and capacity at the state  
1867 level that=s responsible for most of the permitting delays.

1868 There was a good Houston Chronicle article about a week or  
1869 two ago in which a Texas regulator said exactly that about issuing  
1870 air permits in Texas.

1871 Now, the Trump administration yesterday just proposed a 33  
1872 percent cut to the state and tribal air grants, which are the  
1873 moneys from Congress responsible for issuing permits in a timely  
1874 fashion.

1875 So we=ve got cross purposes and I expect that our friends  
1876 at AAPCA and the National Association of Clean Air Agencies would  
1877 like to see Congress fully fund them so they can issue permits  
1878 on time. We all want to see that.

1879 Mr. Green. I was involved in a permit a few years ago because

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1880 right now we are seeing in east Harris County, particularly along  
1881 the Gulf Coast, expansion of chemical plants just because of the  
1882 low price of natural gas, and the delay in the permits were a  
1883 combination. And I would call EPA and say, okay, tell me what=s  
1884 going on. It was for Exxon Mobil in Baytown -- huge expansion  
1885 of their chemical facility -- jobs and everything else.

1886 And so sometimes it=s both sides. It=s both the Feds and  
1887 the -- because at that case it delayed it a little bit because  
1888 there was -- I didn=t know the EPA, Mr. Chairman, had an appeals  
1889 process within their agency and when I was told by the deputy  
1890 EPA administrator he said, oh, we got a good result -- I mean,  
1891 we got a good brief and it=ll go to this group.

1892 I said, AWell, who are they? I want to do a letter to them."  
1893 And he said, AOh, no, they=re all EPA administrators." I said,  
1894 AWell, how long will that happen?" He said, AIt will take a few  
1895 months," and it took six months to get through that EPA appeals  
1896 board. So, you know, which didn=t do anything to it. Just  
1897 delayed it six months.

1898 Why are there long waits for air permits in industry-friendly  
1899 states like Texas? Could delays from the state agencies be a  
1900 result of the budget cuts? And I think you answered that.

1901 Earlier this week, President Trump=s 2019 budget proposed  
1902 a 25 percent cut in EPA and reduced the EPA=s workforce by over  
1903 3,000 employees and I think it=s already answered that if you  
1904 believe these cuts in EPA will improve air permitting times, I

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1905 don=t know if you can do it with less -- do it faster with less  
1906 people. Is that possible?

1907 Mr. Walke. I don=t see how it=s humanly possible, and you=re  
1908 right, that it=s EPA and states contributing and the Trump budget  
1909 proposes cuts to both.

1910 Mr. Green. Okay.

1911 Thank you, Mr. Chairman. I yield back.

1912 Mr. Shimkus. The gentleman yields back his time.

1913 The chair now recognizes the very patient, although he=s  
1914 not a member of the subcommittee, Mr. Griffith, for five minutes.

1915 Mr. Griffith. Mr. Chairman, I am just very appreciative  
1916 to be here as we discuss this issue, which is very near and dear  
1917 to my heart.

1918 I will say that I appreciated somebody saying that what we  
1919 need is narrow thoughtful regulatory reform. I believe that was  
1920 you, Mr. Holmstead, and I am attempting that with my bills and  
1921 open to suggestions and, you know, I am looking in my file here  
1922 -- all kinds of changes and rewrites and so forth, and that=s  
1923 what we are trying to do is just have a narrow thoughtful  
1924 regulatory reform that works right.

1925 And it comes about because, as some people say, you know,  
1926 there=s a lot of people out there that want to see this thing  
1927 work. We all want clean air.

1928 Mr. Noe mentioned his industry. They were out in the  
1929 hallway. I had to step out right at the beginning just to say

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1930 hi because I have probably a couple thousand employees at West  
1931 Rock at two different facilities in my district and it=s  
1932 important.

1933 Likewise, I thought we=d touched on maybe part of the problem  
1934 in Ms. Hammond=s comments earlier when she was talking about  
1935 putting on controls at coal-fired power plants and she said the  
1936 plants can -- agencies or the power companies can pass -- and  
1937 I am going to -- I hope I get it right but it=s pretty close --  
1938 can pass the cost on to the ratepayers so it doesn=t cost their  
1939 shareholders anything.

1940 That=s the problem. It=s the ratepayers who get it. And  
1941 so I received -- I thought it was interesting -- exactly two weeks  
1942 ago I received a series of texts from a friend of mine in the  
1943 district and it said, AJust opened my AEP bill."

1944 She gives me the numbers and I calculated it. It=s 70  
1945 percent higher than what she said her highest bill was last year.  
1946 She goes on to say, AWe can handle it but many are suffering.  
1947 Do you think we can get it turned around?" Big subject on  
1948 Facebook. Everyone is panicking.

1949 So when we do regulations that -- you know, maybe it doesn=t  
1950 affect the shareholder. But most of my constituents in southwest  
1951 Virginia aren=t shareholders. They=re ratepayers, and it=s easy  
1952 to sit here in Washington where people have big incomes and say,  
1953 well, we are just going to pass this on to the ratepayer.

1954 But when you=re dealing with a lot of folks who have modest

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1955 means, we can handle it. I can handle it. This lady who wrote  
1956 me can handle it. But many in my district are suffering and we  
1957 have to come up with reasonable reform that makes sense, where  
1958 we don=t open up for pollution but we do make sense.

1959 And I am going to give you another example. I got a furniture  
1960 manufacturer in my district and I haven=t been there in a couple  
1961 years now so maybe they fixed it somehow.

1962 But Mr. Noe mentioned earlier about the confusion on the  
1963 law, and he had a loop in his conveyer belt that was about half  
1964 the size of this room and there was nothing there. It was just  
1965 a big loop.

1966 And he said, AI bet you wonder why we have that," and I said,  
1967 AYes, I do." And he said, AIt=s because if we change this -- this  
1968 was once a part of our paint system and if we change it, we have  
1969 to get permission from the EPA in advance. So we built these  
1970 ramps to go over it and we just leave it there and it just runs  
1971 off here into the middle of nowhere and back."

1972 That=s what we are trying to fix. It is -- you know, that=s  
1973 the one I can understand best. Some of you all can talk about  
1974 all the different controls and different improvements at the --  
1975 at the big power plants.

1976 But I know that it also deals with things like conveyer belts  
1977 and the end result if we don=t get it right, and we haven=t, is  
1978 a 70 percent increase and the people back home having to pay for  
1979 their electricity.

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1980 All right. Got that off my chest. I appreciate you all=s  
1981 patience on that.

1982 I do think that we can work together to get this done. Mr.  
1983 Holmstead, you had some concerns that you raised earlier and I  
1984 understand in the written testimony that Mr. Walke claims that  
1985 when you were head of the EPA Air Office back in 2002 the Bush  
1986 administration weakened the clean air regulations at issue here  
1987 to insert loopholes and exemptions that let industry increase  
1988 harmful air pollutants significantly and evade any modern  
1989 pollution controls. Would you like to respond?

1990 Mr. Holmstead. Thank you.

1991 What you just read indicates part of the problem here, and  
1992 just in terms of the honesty of the debate.

1993 So that was a quote from my friend=s testimony who said that  
1994 the Bush administration weakened them to insert loopholes and  
1995 exemptions that let industry increase harmful pollution  
1996 significantly and evade any modern pollution controls.

1997 I don=t know how anyone can say that. That was 2002. You  
1998 go on EPA=s website. You do a search and you see where emissions  
1999 have gone since 2002 and all of these pollutants that we are  
2000 talking about have been reduced by about 35 percent since 2002.

2001 So we did do some important reforms that I think made the  
2002 -- made the program better. We didn=t let industry increase  
2003 harmful pollution significantly.

2004 We tried to do things in a thoughtful way, and that=s part

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2005 of the problem here.

2006 Mr. Griffith. And I appreciate that and I appreciate the  
2007 opportunity to be with you all today and appreciate everybody=s  
2008 testimony.

2009 And what I appreciate most is that two of you who completely  
2010 disagree -- Mr. Holmstead and Mr. Walke -- are sitting side by  
2011 side and that=s the way it=s supposed to be in America.

2012 We can disagree. We can have battles of ideas. But we don=t  
2013 have to be completely disagreeable or get so angry that we can=t  
2014 sit at the table together.

2015 Thank you for that and appreciate your testimony. I yield  
2016 back.

2017 Mr. Shimkus. The gentleman yields back his time.

2018 Seeing no further members wishing to ask questions for the  
2019 first panel I would like to thank you for being here and joining  
2020 us today.

2021 Before we conclude, I would like to ask unanimous consent  
2022 to submit the following documents for the record.

2023 We have a letter on the EPA=s NSR program. We have this  
2024 article, AEPA=s New Source Review Program: Time for Reform?" --  
2025 Mark Fraas, John Graham, and a guy named Jeff Holmstead.

2026 [The information follows:]

2027

2028 \*\*\*\*\*INSERT 9\*\*\*\*\*

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2029           And pursuant to committee rules, I remind members they have  
2030 10 business days to submit additional questions for the record  
2031 and I ask the witnesses to submit their responses within 10  
2032 business days upon receipt of the questions.

2033           Without objection, the subcommittee is adjourned and I would  
2034 encourage my colleagues to get downstairs for our markup.

2035           [Whereupon, at 3:54 p.m., the committee was adjourned.]

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