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6 LEGISLATION ADDRESSING NEW SOURCE REVIEW

7 PERMITTING REFORM

8 WEDNESDAY, MAY 16, 2018

9 House of Representatives,

10 Subcommittee on Environment,

11 Committee on Energy and Commerce,

12 Washington, D.C.

13  
14  
15  
16 The subcommittee met, pursuant to call, at 10:15 a.m., in  
17 Room 2322 Rayburn House Office Building, Hon. John Shimkus  
18 [chairman of the subcommittee] presiding.

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

23 Also present: Representative Griffith.

24 Staff present: Samantha Bopp, Staff Assistant; Daniel  
25 Butler, Staff Assistant; Kelly Collins, Legislative Clerk, Energy

26 and Environment; Wyatt Ellertson, Professional Staff Member,  
27 Energy and Environment; Margaret Tucker Fogarty, Staff Assistant;  
28 Jordan Haverly, Policy Coordinator, Environment; Mary Martin,  
29 Chief Counsel, Energy and Environment; Drew McDowell, Executive  
30 Assistant; Peter Spencer, Senior Professional Staff Member,  
31 Energy; Austin Stonebraker, Press Assistant; Hamlin Wade, Special  
32 Advisor, External Affairs; Jeff Carroll, Minority Staff Director;  
33 Jean Fruci, Minority Energy and Environment Policy Advisor;  
34 Caitlin Haberman, Minority Professional Staff Member; Rick  
35 Kessler, Minority Senior Advisor and Staff Director, Energy and  
36 Environment; Jourdan Lewis, Minority Staff Assistant; Alexander  
37 Ratner, Minority Policy Analyst; C.J. Young, Minority Press  
38 Secretary; and Catherine Zander, Minority Environment Fellow.

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

42 At today's hearing, we are examining a discussion draft led  
43 by Mr. Griffith with reforms and new sources review program.

44 The goal of this discussion draft is to add greater certainty  
45 to the New Source Review permitting process, making it easier  
46 for industry to modernize existing facilities and carry out  
47 environmentally beneficial projects.

48 At a February hearing in this subcommittee, we learned that  
49 the uncertainty, complexity, and burdens associated with New  
50 Source Review permitting programs are deterring companies from  
51 properly maintaining and upgrading existing manufacturing  
52 plants, power plants, refineries, and industrial facilities.

53 This is disappointment because it means we are missing out  
54 on opportunities to increase the nation's industrial capacity  
55 to create more American jobs and to improve our environment.

56 The discussion draft before us today reforms the New Source  
57 Review program by clarifying which types of facility upgrades  
58 require an owner to obtain a New Source Review permit.

59 Historically, there has been a great deal of controversy  
60 and uncertainty surrounding this very issue.

61 The main reason for this controversy is due to the fact that  
62 the New Source Review program uses a complicated annual emissions  
63 projection approach to determine whether a project triggers New

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64 Source Review.

65           Projecting future annual emissions is a difficult and  
66 confusing process requiring the consideration of many complex  
67 factors such as future demand of the product being produced and  
68 a facility's future hours of operation.

69           Because of this complexity, it is difficult for companies  
70 to know whether they are correctly projecting a facility's future  
71 annual emissions and in many instances companies are being  
72 targeted by EPA enforcement actions for having carried out these  
73 emission projects incorrectly.

74           The end result of this regulatory confusion and enforcement  
75 risk is that many companies are choosing to no modernize and  
76 upgrade their existing facilities because they fear that these  
77 types of activities could trigger the New Source Review permitting  
78 process.

79           In contrast, the new source performance standards program  
80 under the Clean Air Act uses a much better test to determine if  
81 an emissions increase has occurred, known as the hourly emissions  
82 rate test.

83           This hourly rate test has proven to be much less  
84 controversial, much easier to carry out, and only relies upon  
85 engineering design factors, not complicated future emissions  
86 projections.

87           The hourly rate test simply looks at whether a project at  
88 an existing facility will increase the facilities ability to

89 release emissions at a higher hourly rate.

90 In order to provide more certainty to the New Source Review  
91 program, the discussion draft takes the hourly rate test used  
92 by the new source performance standard program, applies that same  
93 test to the New Source Review program.

94 I am doing that because I don't like to say NSPS and NSR  
95 all the time. This targeted reform to the New Source Review  
96 program would provide much-needed regulatory clarity and would  
97 make it easier for companies to properly maintain and modernize  
98 their facilities.

99 Lastly, the discussion draft before us today includes  
100 provisions making it easier for owners to carry out pollution  
101 control projects, energy efficiency upgrades, and projects that  
102 keep facilities in good working order.

103 The fact that the New Source Review program can be a barrier  
104 to projects that would result in better air quality is  
105 unacceptable.

106 We have to remove the red tape that is discouraging companies  
107 from doing things like installing carbon capture technology or  
108 making manufacture equipment more fuel efficient.

109 This discussion draft does exactly that. At our hearing  
110 this morning we will first hear from EPA Assistant Administrator  
111 Wehrum who will explain the agency views on this discussion draft.

112 And then we will hear from a second panel of witnesses  
113 consisting of state air regulators, industry witnesses, and Clean

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114 Air Act experts who will provide important perspectives on how  
115 this bill address New Source Review reform.

116 With that, I'd like to thank Congressman Morgan Griffith  
117 for the good work he has done on this bill and I'd like to thank  
118 our witnesses for joining us this morning.

119 And I have five minutes left so -- no -- so I yield back  
120 my time and I will yield to the ranking member of the subcommittee,  
121 Mr. Tonko, for five minutes.

122

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

124

125 \*\*\*\*\*INSERT 1\*\*\*\*\*

126 Mr. Tonko. Thank you, Mr. Chair, and we have a magic clock  
127 this morning.

128 I also want to thank EPA Assistant Administrator Wehrum and  
129 other witnesses who are joining us today for attending the  
130 hearing.

131 First, Mr. Chair, I want to congratulate you on getting the  
132 nuclear waste bill through the House last week. This  
133 subcommittee has demonstrated it can get difficult things done  
134 in a bipartisan fashion.

135 However, I am afraid the discussion draft we are considering  
136 today will not be added to that list. I am not interested in  
137 Clean Air Act amendments that will result in dirtier air.

138 EPA's New Source Review program plays an important role to  
139 ensure that new and modified major sources utilize the best  
140 available pollution controls to limit emissions of criteria  
141 pollutants.

142 But in recent months, EPA has issued a number of troubling  
143 Clean Air Act policy changes including to the NSR program by  
144 memorandum.

145 In December 2017, EPA announced that it will not second guess  
146 permit applicants' analysis on emissions projections nor enforce  
147 against applicants that provide invalid estimates.

148 In January 2018, EPA withdrew the long-standing "once in  
149 always in" policy for major source MACT standards, and in March  
150 2018 the EPA decided to change the project emissions accounting

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151 formula that will allow facilities to ignore contemporaneous  
152 emissions increases.

153           These are not new ideas. Some were tried over a decade ago  
154 by Administrator Wehrum during the Bush administration through  
155 the rulemaking process.

156           Sadly, EPA's political leadership has spent its time  
157 reviving these policies rather than taking any proactive steps  
158 to actually reduce air pollution and, make no mistake, today's  
159 discussion draft is no different.

160           The draft would make a number of changes to EPA's New Source  
161 Review program. The NSR program is probably the most important  
162 Clean Air Act program for controlling pollution from new sources.

163           It might surprise some of my colleagues to learn that was  
164 a quote from Mr. Holmstead's testimony, who will be a witness  
165 on today's second panel.

166           And to be fair to him, he also said the NSR program was not  
167 intended to be a key program for controlling emissions from  
168 existing facilities.

169           Now, if we are being honest, we also must acknowledge that  
170 in the 1970s, Congress did not intend for existing facilities  
171 to be able to avoid installing pollution control technology for  
172 40 years.

173           But that has been the case for many facilities across our  
174 country, which were grandfathered into the program until they  
175 underwent a major modification.

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176           The NSR modification rules attempted to ensure that, over  
177 time, existing sources add pollution controls when those  
178 facilities made investments and upgrades that increased  
179 emissions.

180           Among other things, the discussion draft would change the  
181 definition of modification at an existing source to consider  
182 whether it would increase the maximum achievable hourly emissions  
183 rate rather than total annual emissions.

184           This would permit facilities to make upgrades that do not  
185 increase hourly emissions but do enable the source to operate  
186 much more frequently, which will greatly increase overall  
187 pollution.

188           We will hear that the NSR program is preventing facilities  
189 from undertaking efficiency and reliability upgrades.

190           But we are failing our constituents if we do not acknowledge  
191 that operation of these facilities comes with a serious cost --  
192 harmful air pollution and oftentimes a lot of it.

193           That, frankly, could be drastically reduced with pollution  
194 controls. Today, many old coal-fired power plants are entering  
195 end of useful life unless they undertake significant capital  
196 investments.

197           Under the current NSR program, if these facilities make a  
198 major modification, the grandfathering is over and modern  
199 pollution controls would need to be installed.

200           This has caused these facilities to call the program

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201 unworkable. The reality is they just do not like how it works.  
202 The discussion draft before us today would enable those old  
203 facilities, which have put off adopting modern pollution controls  
204 for decades, to continue polluting out air indefinitely.

205 Just yesterday, the Center for Public Integrity reported  
206 that in 2017, nearly a quarter of the nation's coal-fired power  
207 plants lacked pollution controls limiting emissions of sulfur  
208 dioxide and, on average, plants without scrubbers discharged more  
209 than twice the amount of SO<sub>2</sub>.

210 One hundred and seven of the 145 coal plants without control  
211 technology for sulfur dioxide were built prior to 1978.

212 We know how to reduce harmful air pollution, and I understand  
213 that businesses need time to transition and plan for the  
214 investments needed to install pollution controls.

215 But many of these facilities have had for decades. The Clean  
216 Air Act has been successful because it is premised on making  
217 progress over time.

218 Since the 1970s, we have made major strides in reducing air  
219 pollution. We have demonstrated that we can grow the economy  
220 while protecting public health.

221 But allowing major polluters to extend their lives without  
222 -- excuse me, while avoiding installation of avoidable technology  
223 to prevent unnecessary pollution is unacceptable and runs counter  
224 to the bipartisan intent of the Clean Air Act. I believe we will  
225 not be able to find common ground based on the discussion draft

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226 under consideration today.

227           Moving forward, I hope this subcommittee and EPA will abandon  
228 these notions and policy memos and get back to considering  
229 policies that will actually reduce air pollution and improve  
230 public health in our country.

231           With that, Mr. Chair, I thank you and yield back.

232           Mr. Shimkus. Gentleman yields back his time.

233           The chair now recognizes the chairman of the full committee,  
234 Congressman Walden, for five minutes.

235           The Chairman. Thank you very much, Mr. Chairman, and to  
236 everyone just thank you for being here today.

237           Today's legislative hearing represents another important  
238 step in this committee's work to advance reasonable updates to  
239 our environmental laws.

240           Our goal has always been to ensure more effective  
241 environmental programs and also a more productive economy. A  
242 clean environment and a strong economy are not mutually exclusive.

243           The draft legislation being developed under the leadership  
244 of Representative Morgan Griffith aims to address problems that  
245 have been identified in the Clear Air Act's New Source Review  
246 program, and I know he has a very specific example that he shared  
247 with us about how we need to modernize these laws.

248           This legislation reflects the committee's goal to implement  
249 reforms that will more efficiently preserve and improve air  
250 quality.

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251 It'll also help responsibly reduce barriers to increasing  
252 productivity of manufacturers in industries and communities  
253 around our country.

254 New Source Review was initially developed some 40 years ago.  
255 It's well past time for reform. Over the past several decades,  
256 the program has evolved in regulatory complexity, leading to  
257 time-consuming permit decisions, expensive regulatory  
258 requirements, and, frankly, litigation.

259 We learned in testimony three months ago how costly and  
260 lengthy reviews associated with NSR permitting can lead  
261 businesses to forego making beneficial investments in existing  
262 facilities and these investments can include efficiency upgrades,  
263 pollution control projects and other environmentally beneficial  
264 changes to operations.

265 This does not make sense. Decisions to not make such  
266 investments deprive communities of the benefits gained from  
267 environmental improvements in addition to the increased jobs and  
268 economic activity that flow from the activity.

269 We learned that even when facilities choose to run the NSR  
270 gauntlet with efficiency projects the result is unnecessary  
271 expense and costly delay with the required bureaucracy providing  
272 no additional environmental benefit.

273 In addition, state and local permit authorities are tied  
274 up on the NSR matters instead of working on more pressing  
275 environmental reviews.

276 I mentioned before the needless costs of poorly administered  
277 environmental regulations and the example of a proposed data  
278 center expansion in my district in Prineville, Oregon.

279 That expansion ran headlong into permitting issues because  
280 of a dispute over a single air monitor, which made it unclear  
281 whether the expansion could go forward.

282 It was only after the city of Prineville persuaded the EPA  
283 to add an additional air sampling location that the issue cleared  
284 and the expansion was able to go forward.

285 That instance involved hundreds of millions of dollars in  
286 investments and hundreds of construction jobs.

287 At our NSR hearing earlier this year, we learned of a case  
288 in the pulp and paper and packaging industry in which a facility  
289 was forced to make more than \$100,000 in additional assessments  
290 and incurred substantial delay for a project that would actually  
291 reduce pollution.

292 In another project, a paper mill sought to shut down two  
293 older and inefficient boilers and upgrade a large boiler to meet  
294 the same power needs more efficiently.

295 But due to EPA NSR interpretations that ignored the replaced  
296 boilers, this project was subject to 18 months in costly red tape  
297 and scope adjustments, again, for a project that would not  
298 increase emissions.

299 We should have an NSR program that presents clear standards  
300 for when reviews are necessary. This will lead to more efficient

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301 business decisions, more efficient permitting decisions, and more  
302 environmentally beneficial operations.

303 We should have a program that works within the broader  
304 framework of state decision making concerning permitting and  
305 meeting clear air standards.

306 I am looking forward to hearing from EPA's assistant  
307 administrator for air and from our second panel, which includes  
308 state, industry, and legal perspectives, these discussions will  
309 go a long way in helping us perfect the discussion draft.

310 So I want to thank Mr. Griffith. Morgan, thank you for your  
311 hard work on this specific piece of legislation. I think we are  
312 taking really important steps to both grow America's economy and  
313 improve our air quality and the environment.

314 Doing this will ultimately benefit American workers,  
315 consumers, and others around the country.

316 With that, Mr. Chairman, unless someone wants the remainder  
317 of my time, Mr. Griffith, do you want to make any comments? With  
318 the remaining minute I would so yield.

319 [The prepared statement of Chairman Walden follows:]

320

321 \*\*\*\*\*INSERT 2\*\*\*\*\*

322 Mr. Griffith. I thank you, Mr. Chairman, and I appreciate  
323 the kinds words. I will be discussing this but I think one thing  
324 we have to remember, as everybody else has pointed out, this is  
325 not just about the big businesses or the big electric plants.

326

327 It's about small businesses as well, and I will detail how  
328 a medium-sized business in my district has been impacted on this  
329 and how silly it is when you're trying to deal with issues that  
330 have nothing to do with air pollution. You're just trying to  
331 make your factory better.

332 Also, we sometimes ignore, and I thought it was interesting  
333 in Mr. Tonko's opening statement, he said, you know, nobody  
334 intended for this to last for 40 years without people doing  
335 upgrades.

336 The problem is the rule itself forced people not to do  
337 upgrades because they couldn't afford to completely redo the  
338 facility.

339 How much cleaner would the air be if we'd have had reasonable  
340 rules in place from the get-go that would have let them slowly  
341 move forward a little bit at a time instead of having to bite  
342 off the whole apple -- eat the whole apple in one swallow?

343 I yield back.

344 Mr. Shimkus. The gentleman --

345 The Chairman. And I yield back as well.

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

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347 The chair recognizes the ranking member of the full  
348 committee, Congressman Pallone from New Jersey, for five minutes.

349 Mr. Pallone. Thank you, Mr. Chairman.

350 We are here this morning to discuss draft legislation to  
351 amend the New Source Review permitting program of the Clean Air  
352 Act and I am pleased that Paul Baldauf, the assistant commissioner  
353 for air quality, energy, and sustainability at New Jersey's  
354 Department of Environmental Protection, is here as a witness.

355 Good to see you.

356 The NSR program has existed since the 1970s but it's not  
357 been as effective in reducing air pollution as Congress hoped.

358

359 Lax enforcement and the ability to exploit legal loopholes  
360 have helped or have allowed old facilities to game the system,  
361 and too often these facilities have been able to avoid installing  
362 modern pollution controls, which has left neighboring communities  
363 exposed to tons of dangerous pollution.

364 And these pollution problems are not only local; they also  
365 impact downwind states like New Jersey. With all the pollution  
366 control technology development over the past 40 years, there is  
367 no reason for any facility to operate without modern pollution  
368 control equipment.

369 The ultimate test for any legislation to reform the NSR  
370 program is simply this -- will it reduce air pollution -- and  
371 by that test, this bill fails.

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372           There is no doubt this bill will increase pollution.  
373       Republicans are simply resurrecting previously rejected ideas  
374       promoted during the Bush administration by two of today's  
375       witnesses -- Assistant Administrator Wehrum and Mr. Holmstead.

376           Together, they have worked for years to undermine the NSR  
377       program. And when we enacted the NSR program, Congress  
378       recognized that existing facilities would need time to plan for  
379       and install pollution controls and that's why existing facilities  
380       were required to install new equipment when undergoing capital  
381       improvements, expansions, and life-extending renovations.

382           But industries have spent years employing legions of  
383       attorneys with the sole mission of creating carve-outs in the  
384       NSR program for their clients just to avoid controlling their  
385       pollution.

386           And so what happened? We ended up with the situation  
387       Congress tried to avoid -- new facilities disadvantaged to the  
388       benefit of old polluting ones that have remained around well past  
389       their design life.

390           The proponents of this bill claim it will fix this problem  
391       but it will not. Without a firm requirement that facilities  
392       reduce the levels of all the dangerous pollution they emit, they  
393       simply will be allowed to pollute more and that's what the language  
394       in this bill on maximum achievable hourly emissions rate is all  
395       about.

396           Rather than closing loopholes in the NSR program, this draft

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397 bill expands them. It continues to disadvantage new facilities  
398 by allowing old facilities to operate without modern pollution  
399 controls.

400 If these changes go forward, air pollution will only  
401 increase. Communities that have fought to reduce toxic air  
402 pollutants including benzene, mercury, and other dangerous  
403 chemicals will see pollution and their health problems increase,  
404 and that means more asthma attacks and more people getting cancer  
405 and heart disease and lung disease.

406 And Congress never intended to grant a permanent license  
407 to pollute to any facility. But that is exactly what this  
408 legislation would achieve.

409 The provisions in this bill will guarantee that no existing  
410 facility will be subject to the NSR program when it's modernized  
411 or expanded and it will ensure the public will be subject to  
412 greater pollution from these plants after they are modified.

413 And no one has a choice about breathing. Each of us does  
414 it between 17,000 and 23,000 times every day.

415 However, we can choose to limit air pollution so that each  
416 breath delivers the clean and healthy air we need. The NSR  
417 program can certainly be improved but not with this bill.

418 It's long past time for old coal-fired generation and  
419 refineries to reduce their emissions and do their fair share to  
420 keep the air clean and safe to breathe.

421 I don't know if anyone wants my minute or so. If not, Mr.

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422 Chairman, I will yield back.

423 Mr. Shimkus. The chair thanks the gentleman and the  
424 gentleman yields back his time.

425 We now conclude with members' opening statements. The chair  
426 would like to remind members that pursuant to committee rules,  
427 all members' opening statements will be made part of the record.

428

429 We want to thank all of our witnesses for being here today  
430 and taking the time to testify before this subcommittee.

431 Today's witnesses will have the opportunity to give opening  
432 statements followed by a round of questions from members.

433 Our first witness panel for today's hearing includes the  
434 Honorable William Wehrum, assistant administrator for the Office  
435 of Air and Radiation, U.S. Environmental Protection Agency.

436 We appreciate you all being here today. We will begin the  
437 panel and, Mr. Wehrum, you're now recognized for five minutes  
438 for your opening statement. Your full statement has been  
439 submitted for the record.

440 STATEMENT OF THE HONORABLE WILLIAM WEHRUM, ASSISTANT  
441 ADMINISTRATOR FOR THE OFFICE OF AIR AND RADIATION, U.S.  
442 ENVIRONMENTAL PROTECTION AGENCY  
443

444 Mr. Wehrum. Thank you, Chairman Shimkus, Ranking Member  
445 Tonko, and members of the subcommittee.

446 I appreciate the opportunity to testify today on the New  
447 Source Review permitting program. Although the administration  
448 does not have an official position on the draft, I am very  
449 supportive of the committee's efforts to improve the NSR  
450 permitting program.

451 I have long believed that the NSR permitting program stands  
452 as a significant barrier to the implementation of many projects  
453 that would improve facility and performance, enhance efficiency,  
454 and protect the environment.

455 In addition, the program is unnecessarily complicated and  
456 confusing. The program can and should be improved.

457 In accordance with the administration wide priorities for  
458 streamlining permitting requirements for manufacturing, we have  
459 undertaken an assessment of the agency's implementation of the  
460 NSR program.

461 We quickly and, I would have to say, predictably identified  
462 several areas that are ripe for improvement.

463 In December 2017 and March of 2018, Administrator Pruitt  
464 issued memoranda to EPA's regional offices to provide greater

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465 clarity as to how certain NSR rules should be interpreted.

466           The December memo focused on NSR permitting applicability  
467 provisions. That memo set forth EPA's interpretation of the  
468 procedures contained in the NSR rules for sources that intend  
469 to use projected actual emissions in determining NSR  
470 applicability and the associated pre- and post-project source  
471 obligations.

472           The March memo set forth EPA's interpretation that in  
473 determining whether a proposed project will result in a  
474 significant emissions increase, which is the initial step that  
475 a source must take in determining whether the project will result  
476 in an overall significant net emissions increase, that any  
477 emissions decreases that are projected to occur as a result of  
478 the project also should be taken into account in this first NSR  
479 applicability step.

480           We have done other things as well. In April of 2018, we  
481 issued a memoranda on so-called significant emissions levels,  
482 which are common sense provisions intended to simplify and  
483 expedite the permitting process and the analysis that's necessary  
484 to go along with the permitting process focus on air quality.

485

486           In January of 2018, although this is not strictly an NSR  
487 issue, as has been mentioned already we issued clarifying guidance  
488 on the so-called "once in always in" policy under our air toxics  
489 programs.

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490           Regarding the subcommittee's discussion draft, the  
491 administration does not have an official position on the bill.

492           But as I've said before, I personally strongly support the  
493 overall goals of the discussion draft.

494           The principal focus of the discussion draft is on refining  
495 the definition of modification in the Clean Air Act, and that  
496 would go a long way towards simplifying application of the NSR  
497 program.

498           It would make clear that a project undertaken in the existing  
499 stationary source will trigger NSR only when that project would  
500 result in an increase in the source's maximum design capacity  
501 to emit.

502           That is, the project would result in an increase in a source's  
503 hourly emissions rate, which is how emissions increases have been  
504 determined under the new source performance standard program  
505 since its inception.

506           The bill would also resolve long-standing and unfortunate  
507 anomaly in the NSR program, which is that the installation of  
508 pollution control equipment at existing sources by itself can  
509 trigger the onerous New Source Review program.

510           I appreciate the opportunity to testify today. I support  
511 the committee's effort to provide clarity for the regulated  
512 community that can finally allow the private sector to invest  
513 in more efficient manufacturing in this country and I welcome  
514 any questions you may have regarding the discussion draft for

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515 the agency efforts to improve the NSR program.

516 Thank you again.

517 [The prepared statement of Mr. Wehrum follows:]

518

519 \*\*\*\*\*INSERT 3\*\*\*\*\*

520 Mr. Shimkus. The gentleman yields back the time and the  
521 chair thanks you and I'll now begin with the round of questioning  
522 with myself and I recognize myself five minutes for questioning.

523 Mr. Wehrum, aside from your current role as assistant  
524 administrator for Air at EPA, you have a lot of experience with  
525 the New Source Review program both as a regulatory lawyer and  
526 working for EPA in past administrations.

527 Given your experience, let me ask, from a big picture  
528 perspective, what is the role of the New Source Review in improving  
529 air quality?

530 Mr. Wehrum. New Source Review program is one but only one  
531 of many tools that we have under the Clean Air Act to protect  
532 air quality.

533 The NSR is different than many of the other programs that  
534 we implement because, you know, it doesn't apply to you just  
535 because you exist, as many of our ambient air quality programs  
536 or air toxic standards do.

537 It applies to you depending on what you do and that creates  
538 the real problems under the NSR program and as has been pointed  
539 -- as I pointed out in my testimony and as several of the members  
540 here including yourself, Mr. Chairman, pointed out, you know,  
541 because the applicability is based on what you do, then the program  
542 has an effect on decisions affected facilities make as to what  
543 projects they implement and which ones they don't, and in many  
544 cases I firmly believe -- and I've been doing this for a long,

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545 long time now and I've seen it -- that facilities choose not to  
546 implement common sense improvements to their facility that would  
547 improve efficiency, would improve productivity, in a lot of cases  
548 would improve environmental performance because those projects  
549 stand the possibility of triggering the NSR permitting program.

550 So they just don't do them. That makes no sense whatsoever.

551 Mr. Shimkus. We are talking today about the New Source  
552 Review permitting reforms that make it easier for existing sources  
553 to carry out efficiency improvements and other measures that would  
554 provide environmental benefits.

555 Do you see the discussion draft reform approach as creating  
556 a large loophole that will lead to unhealthy emission increases?

557 Mr. Wehrum. No, Mr. Chairman, not at all. I see the  
558 discussion draft as significantly improving the program and how  
559 it operates right now.

560 As I pointed out in my testimony, you know, primarily what  
561 the discussion draft would do is align the applicability process  
562 under New Source Review with the applicability process under the  
563 new source performance standard program.

564 They are closely aligned. They are both programs that apply  
565 to new modified sources and, interestingly, they both rely on  
566 the very same statutory definition of modification and yet, for  
567 the past 30, 40 years the agency has used different definitions  
568 under the new source performance standard program versus the New  
569 Source Review program to determine how emissions -- you know,

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570 whether an emissions increase has occurred as a result of a  
571 project.

572           So the primary benefit of the discussion draft is it would  
573 align the programs, make them simpler to implement, and I think  
574 significantly improve their implementation.

575           Mr. Shimkus. The discussion draft's most significant  
576 policy change concerns a switch from the annual emissions  
577 projection test to an hourly emission rate test used under the  
578 new source performance standards program to determine if a project  
579 will cause an emission increase.

580           Would you speak to the benefits of reforming the New Source  
581 Review program to use an hourly emissions rate test? You kind  
582 of already did mention it but can you restate that?

583           Mr. Wehrum. Yes, Mr. Chairman. I certainly will.

584           I mentioned it in passing in my testimony, but the other  
585 significant problem with the New Source Review program is it's  
586 just confusing.

587           It's very complicated. It's very confusing. It says  
588 something that, you know, very sophisticated operators --  
589 refinery operators, power plant operators, big companies that  
590 have a lot of resources on staff and available -- have to hire  
591 people like me when I was in private practice to help them figure  
592 out how the program applies.

593           That speaks volumes. So, you know, in addition to  
594 eliminating the barriers to common sense projects I described

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595 before, I think a real value of the discussion draft would be  
596 it simplifies the program and gets people like me, you know, a  
597 lawyer in private practice, you know, before I rejoined the EPA,  
598 out of the equation and lets, you know, people on the plant floor  
599 do this.

600 And I am sorry, I don't want to take up too much of your  
601 time, Mr. Chairman, but I started my career as a chemical engineer.

602 I worked in chemical plants and I was responsible for  
603 implementing this permitting program.

604 And I can tell you it's impenetrable to somebody like that  
605 and that's part of why I went into law, part of why I came to  
606 EPA because fixing this program is a very high priority.

607 Mr. Shimkus. We are going to hear from two states in the  
608 second panel. Do you think this change will undermine states'  
609 efforts to ensure air quality?

610 Mr. Wehrum. I do not, not one bit, Mr. Chairman.

611 Mr. Shimkus. And why?

612 Mr. Wehrum. Because this is but one of many, many elements  
613 of the Clean Air Act and all of these elements work together in  
614 concert. They each serve a purpose and the totality of the Clean  
615 Air Act requirements is what should be measured and not the  
616 function of each individual piece.

617 So this is not going to result, in my judgment, in any  
618 significant reduction in the overall effectiveness of the act.

619 Mr. Shimkus. I thank the gentleman, and now I yield back

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620 my time.

621 The chair recognizes the gentleman from New York, Mr. Tonko,  
622 for five minutes.

623 Mr. Tonko. Thank you, Mr. Chair, and Administrator Wehrum,  
624 thank you again for being here today.

625 As I mentioned, many members have concerns about a number  
626 of EPA rulemakings, memos, and other regulatory actions that will  
627 consequence for the Air Office.

628 I particularly want to highlight the recently proposed  
629 strengthening transparency and regulatory science rulemaking,  
630 which will have significant impact on Clean Air Act regulations,  
631 including NAAQS.

632 And a few days ago, the chair of the Science Advisory Board  
633 working group on EPA planned actions for SAB consideration issued  
634 a memo recommending that this proposal merits further review by  
635 the board.

636 Obviously, you oversee a number of programs that rely on  
637 epidemiological studies and private health data so you are more  
638 than qualified to weigh in on this.

639 Do you believe the Science Advisory Board should have  
640 conducted a review of the proposal before it was published in  
641 the Federal Register?

642 Mr. Wehrum. No, Mr. Ranking Member, I don't think that's  
643 necessary at all.

644 Mr. Tonko. Do you believe the Science Advisory Board should

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645 be asked to conduct the review now?

646 Mr. Wehrum. Mr. Ranking Member, taking a step back, I think  
647 the overall concept and the goal of the transparency proposal  
648 I think is indisputable, which is to make sure that the science  
649 the agency relies upon is replicable and --

650 Mr. Tonko. I understand that, but do you believe the Science  
651 Advisory Board should be asked to conduct a review now?

652 Mr. Wehrum. And Mr. Ranking Member, the --

653 Mr. Tonko. Yes or no.

654 Mr. Wehrum. The importance of making sure --

655 Mr. Tonko. Yes or no, sir.

656 Mr. Wehrum. -- the science is replicable -- well, it's  
657 important to put this in context, Mr. Ranking Member, because  
658 you're -- it's a basic scientific principle that science that  
659 -- studies that scientists create, part of science is the ability  
660 of other scientists to replicate their work and either confirm  
661 the findings that were made or possibly refute --

662 Mr. Tonko. Well, I am not hearing a yes that the advisory  
663 board should be asked to conduct a review now so I'll move on.

664 Do you believe the Office of Air and Radiation should have  
665 been involved in the review of the proposals through a formal  
666 intra agency review process before it was published?

667 Mr. Wehrum. Yes, and in fact, we were. I mean, we had a  
668 copy of the draft before it was --

669 Mr. Tonko. Did --

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670 Mr. Wehrum. -- before it was proposed. We circulated it  
671 to our office directors and key staff and we had an opportunity  
672 to review and provide input.

673 Mr. Tonko. Was that amongst political appointees only?

674 Mr. Wehrum. No. No.

675 Mr. Tonko. There were career staff involved?

676 Mr. Wehrum. Yes.

677 Mr. Tonko. Would you share the Air Office's comments on  
678 the rule with this subcommittee and the committee?

679 Mr. Wehrum. I don't know what form they take but I'd be  
680 happy to do that.

681 Mr. Tonko. Well, we'd ask that you share those comments  
682 with us, please. So that's a yes, you'll offer them?

683 Mr. Wehrum. Yes, Mr. Ranking Member.

684 Mr. Tonko. The SAB working group's memo notes the proposed  
685 rule appears to have been developed without a public process for  
686 soliciting input from the scientific community.

687 A number of scientific organizations, state attorneys  
688 general, and members of Congress have called for an extension  
689 of the public comment period in order to more fully consider the  
690 impacts of the proposal.

691 This is particularly important since the proposal sought  
692 comment on issues fundamentally related to its design.

693 Do you believe this proposal warrants an extended public  
694 comment period in public hearings similar to what has been done

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695 for other consequential rulemakings?

696 Mr. Wehrum. Well, OAR is responsible for lots of things  
697 but this rulemaking is not one that's actually in my office and  
698 I believe Administrator Pruitt is prepared to speak to that  
699 question in the hearing that he's participating in as we speak.

700 Mr. Tonko. So would he support extended public comment  
701 periods and public hearings?

702 Mr. Wehrum. I believe the administrator will speak to the  
703 issue and he'll speak for himself.

704 Mr. Tonko. Do you have a sense that he would want to see  
705 more comment period and more public hearings?

706 Mr. Wehrum. Well, what I would say is we have nothing to  
707 hide, I mean, which is a bit redundant. This is all about  
708 transparency. So it's important.

709 I mean, I'll just speak for myself. The rulemaking process  
710 is enormously important. When we put out rules for public  
711 comment, that's a meaningful thing.

712 It allows for us to get input and data and thoughts from  
713 affected folks and people who are knowledgeable on the issues.

714 And so --

715 Mr. Tonko. Thank you.

716 Mr. Wehrum. -- you know, I know the administrator shares  
717 those views.

718 Mr. Tonko. Thank you. Last week, Administrator Pruitt  
719 issued a memorandum on the NAAQS standard-setting process.

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720 Moving forward, EPA intends to act the Clean Air Scientific  
721 Advisory Committee to address several issues, including any  
722 adverse public health, welfare, social, economic, or energy  
723 effects.

724 Did EPA consider soliciting feedback from the public SAB  
725 or the CASAC before this memo was released?

726 Mr. Wehrum. We received input on a continuous basis in a  
727 variety of ways on how we do NAAQS reviews, on the NAAQS decisions  
728 that we make and the implementation decisions that we make. So  
729 --

730 Mr. Tonko. Would that include soliciting comments from the  
731 public?

732 Mr. Wehrum. We always solicit comments from the program  
733 -- public when we set NAAQS standards and do implementation rules.

734 Mr. Tonko. Mr. Chair, I yield back.

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

736 And Mr. Wehrum, can you pull your mic a little bit closer?  
737 I think --

738 Mr. Wehrum. Yes.

739 Mr. Shimkus. Okay. And the chair now recognizes the  
740 gentleman from Texas, Congressman Barton, for five minutes.

741 Mr. Barton. Mr. Chairman, could I pass and let you go to  
742 some members who've been here while I --

743 Mr. Shimkus. That would be great.

744 The chair recognizes the gentleman from West Virginia, Mr.

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745 McKinley, for five minutes.

746 Mr. McKinley. Thank you, Mr. Chairman, and thank you, Mr.  
747 Wehrum, for being here.

748 Mr. Shimkus. Come sit next to me. Get closer. It's okay.

749 Mr. McKinley. Yes, I've heard that before.

750 [Laughter.]

751 The -- so if I could -- and now they've already run off half  
752 a minute on me on this thing. Thank you. Thank you. Yes, there  
753 we go.

754 I want to focus -- I know a lot of the discussion is going  
755 to be about some of the other matters on NSR but I want to stay  
756 as focused as I could on energy and the coal-fired power plants  
757 and gas-powered power plants.

758 And I am trying to -- I am trying to reconcile the differences  
759 or the questions about the NSR versus -- and grid reliability  
760 and ability of our electric grid, because we have had so many  
761 hearings about grid reliability, and over a dozen hearings we  
762 have had about grid reliability and the concerns we have,  
763 particularly when we hear from FERC -- their comments about the  
764 concern of whether we are going to have enough power plants.

765 So as a result of this uncertainty that I am trying to  
766 reconcile the differences between the two, I see how that many  
767 of our power plants are just simply saying because of the  
768 uncertainty that you referred to and our chairman has referred  
769 to, are just prematurely shutting down the power plant because

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770 they don't want to go through the process of upgrading a facility  
771 that may not be used for 12 months and be faced with something  
772 that would cost hundreds of millions of dollars.

773           So they are concerned. I want to get -- I want to get to  
774 one issue here, if I could, just quickly with you. Would you  
775 agree that if a power plant replaced a part in maintenance with,  
776 essentially, the original part maybe 40 years ago, would it fall  
777 -- would it not be exempt from the NSR ruling if they are just  
778 going to replace in maintenance a part that was the original part  
779 that had just worn out?

780           Mr. Wehrum. Congressman, there are a couple questions that  
781 would have to be asked and answered about that. One is would  
782 that project represent so-called routine maintenance and the very  
783 first part of the applicability process is if you're doing  
784 something --

785           Mr. McKinley. I am just saying, Mr. Wehrum, it's a worn-out  
786 part that they are just -- it's routine maintenance -- we are  
787 going to replace that part.

788           Mr. Wehrum. Right. So --

789           Mr. McKinley. It may be a 40-year-old part.

790           Mr. Wehrum. So what you described very well could be  
791 considered routine maintenance and that may be the beginning and  
792 the end of the applicability determination.

793           Mr. McKinley. Thank you.

794           So I want people to understand that what we are saying if

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795 you -- if Tonko is correct that 25 percent of our power plants  
796 don't have fundamental SOCs and NOx air controls, here the plant  
797 now wants to upgrade -- wants to do some work on their plant to  
798 do that.

799 They are going to go through a delay process that might be  
800 a year or more and the uncertainty that perhaps it might cost  
801 \$100 million to \$200 million dollars to do something when they  
802 just simply want to put in some new control devices.

803 So, again, I am trying to understand. If you do nothing  
804 -- if you don't improve your air quality, you don't follow the  
805 NSR, because if I am just doing routine maintenance, I am okay.

806 But if I try to improve the efficiency and the operation  
807 and the emissions of my plant, then I fall into something else.

808 Does that make sense to you?

809 Mr. Wehrum. Absolutely not, and you put your finger on one  
810 of the two key problems as I see with the New Source Review, which  
811 is it very much stands as a barrier to the implementation of  
812 projects that are necessary to maintain facilities, improve  
813 efficiency and, as I said earlier, in many cases improve  
814 environmental performance.

815 And, as you pointed out, relatively minor projects in this  
816 -- in the grand scheme of the facility, you know, an expansive  
817 view of NSR applicability could trigger the program and trigger  
818 the obligation to spend hundreds of millions of dollars on air  
819 pollution controls and as a result -- I've seen it real live,

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820 first hand -- companies decide not to go forward with those  
821 projects and they leave plants in a dilapidated condition and  
822 in a condition that's worse for the environment than it would  
823 be if they were able to continue to maintain it.

824 Mr. McKinley. Not only worse, but doesn't it put us in a  
825 concern for reliability of the grid when we don't have these power  
826 plants available for implementation?

827 Mr. Wehrum. Yes. So I think it's really important for EPA  
828 to stay in its lane. I am not a grid guy. I am an air guy, and  
829 I think part of the problem in the past with the EPA is it's tried  
830 to assume responsibility for things it's not responsible for.

831 So I am going to take off my AA hat and put on my -- you  
832 know, maybe my engineer hat and my common sense guy and just say  
833 yeah, grid reliability is enormously important and there is a  
834 real live debate going on right now about all the coal plant  
835 retirements which are resilient.

836 They have fuel onsite. They can operate for days and  
837 sometimes weeks without additional fuel delivery and that's very  
838 different than a natural gas-fired plant that if the pipeline  
839 delivery is disrupted for whatever reason there is no onsite  
840 storage and there is no generation.

841 So there is a real live debate going on right now about the  
842 issues that you raise. I am not the expert but I think it's  
843 important to run that to ground.

844 Mr. McKinley. Perhaps on the next panel. I want to

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845 continue that line of reasoning, questioning. So thank you.

846 I yield back.

847 Mr. Shimkus. Gentleman's time has expired.

848 The chair recognizes the gentleman from Texas, Mr. Green,  
849 for five minutes.

850 Mr. Green. Thank you, Mr. Chairman, and welcome to our  
851 subcommittee.

852 The New Source Review program has been an important program  
853 for protecting air quality in districts like I have. I have a  
854 very urban district in east Houston that -- we have lots of  
855 industry in the district that brings in many high-paying jobs  
856 for our constituents.

857 But Houston also struggles with meeting attainment levels  
858 under the Clean Air Act and I am worried that some of the EPA's  
859 recent moves would threaten many of the gains we have made in  
860 recent years in improving the air quality in Houston.

861 Again, thank you for being here today. It's not always easy  
862 to get officials from our administration here to talk about  
863 legislation and I appreciate your involvement.

864 In 1995, the EPA created the "once in always in" policy for  
865 regulation of hazardous air pollution, or HAPs. Many of these  
866 HAPs, like benzene, are produced by numerous plants in our  
867 district.

868 Only "once in always in" industrial facilities that were  
869 determined to be major sources of HAPs were required to employ

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870 strong pollution controls under the maximum achievable control  
871 technology measure, or MACT.

872 Under the previous policy, sources must apply MACT if they  
873 are emitting more than 10 tons per year for a single hazardous  
874 chemical or 25 tons per year for combined hazardous chemicals.

875 And your January 25th guidance changed this policy now for  
876 major sources to be classified as area sources under the Clean  
877 Air Act if they were below this threshold.

878 While I understand that many facilities have done a great  
879 job of reducing their emissions through upgrades and would not  
880 now fall under the major source classification when "once in  
881 always in" was created in the tonnage decision or was based on  
882 defining a major source not on what level of emissions were  
883 necessarily safe.

884 Under the new policy, our district will see as much of 200  
885 more tons a year in emissions. Has the EPA done any of the new  
886 studies on what a safe level of emission is for the HAPs that  
887 prompted this decision?

888 Mr. Wehrum. Well, thank you for your question, Mr.  
889 Congressman. There is a lot packed into what you just said.

890 Mr. Green. I know. Well --

891 Mr. Wehrum. So let me just --

892 Mr. Green. -- we all represent our districts.

893 Mr. Wehrum. Oh, absolutely. So let me take a shot and you  
894 can tell me if I get to the point that you want.

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895           So the "once in always in" policy is a very important policy.  
896           We issued the memo that we did because, like the NSR program,  
897 we think that policy stood in the way of people doing common sense  
898 things to reduce emissions.

899           So, for instance, prior to issuance of the policy, there  
900 was absolutely no incentive for any industrial facility to reduce  
901 emissions to lower the major source thresholds because, you know,  
902 they -- it's nothing but additional cost and expense for them  
903 and produces nothing in the way of regulatory benefit.

904           So under the "once in always in" policy, if they take  
905 voluntary measures to reduce emissions further than the law  
906 requires and they take limits to below major source thresholds,  
907 then we will see emissions reductions and they see real regulatory  
908 relief and it's a win-win situation.

909           Now, there are those who say look at -- you know, so what  
910 I just offered is the glass half full perspective, which I think  
911 is absolutely right. But there is a glass half empty perspective  
912 and there are those who say, oh no, there is going to be huge  
913 emissions increases associated with these people who are going  
914 to, you know, shuck off the standards that apply to them and then,  
915 you know, intentionally increase emissions all the way up to just  
916 under the major source thresholds.

917           You know, the studies that purport to show that are basically  
918 -- they are just shoddy, and I'll tell you, if we try to rely  
919 on those kind of studies in a rulemaking, we'd get laughed out

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920 of court.

921 Mr. Green. Well, I only have a very short time. Has the  
922 EPA done any new studies on what a safe level of emissions for  
923 these HAPs that prompted the decision? Has the EPA done that  
924 study?

925 Mr. Wehrum. You know, part and parcel of the program this  
926 toxics program that the policy applies to is a two-step program.  
927 Step one says we have to apply technology standards and step  
928 two says we have to follow up after a period of years with a risk  
929 assessment to make sure that there is no unacceptable remaining  
930 risk. So we are --

931 Mr. Green. Okay. The emissions from HAPs from these  
932 facilities are they classified as area sources considered a safe  
933 level, that you know of?

934 Mr. Wehrum. I am not -- I am sorry, Mr. Congressman. I  
935 don't understand the question.

936 Mr. Green. Okay. Well, you can get back.

937 Have you done any estimates on the potential increase in  
938 emissions that this guidance will allow that --

939 Mr. Wehrum. Yes. We took a very hard look and, as was  
940 pointed out earlier in this hearing, in my prior tenure at EPA  
941 during the Bush administration this is an issue we talked about  
942 and actually proposed a rule to make a change in the regulations  
943 to accomplish what we did in the memo just a couple months ago.

944 And so we have abundant public comments that were received

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945 when that rule was proposed and we have taken a hard look at those  
946 public comments.

947           There, honestly, is no way to comprehensively analyze  
948 because of the broad, broad applicability of these programs.  
949 But what we have done is looked at very targeted sectors based  
950 on comments that we have received and what we have seen is a  
951 preponderance of information indicating that we think ultimately  
952 this policy is going to produce emissions reductions and is not  
953 going to result in the hypothetical increases that many people  
954 are worried about.

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

956           Mr. Green. Mr. Chairman, I'll submit the rest of the  
957 questions. Thank you.

958           Mr. Shimkus. And the chair now recognizes the gentleman  
959 from Texas, Mr. Barton, for five minutes.

960           Mr. Barton. Thank you. Thank you, Mr. Chairman.

961           Thank you, sir, for testifying. This is a very complicated  
962 issue. The average person doesn't understand the difference,  
963 you know, between a New Source Review or whatever else we are  
964 talking about here.

965           But it's an important issue. So I am going to ask some  
966 questions, and I am not sure I understand myself what I am asking.

967           But, hopefully, you will.

968           Under current law, if an hourly emission per unit of output  
969 stays the same or goes down, is it possible to have an annual

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970 increase in emissions? So you change your process. You have  
971 -- you have equal or less emissions.

972 But on this annual standard, would it be possible in such  
973 a case for the annual standard to be violated? I would think  
974 the answer would be no.

975 Mr. Wehrum. Well, it is theoretically possible to not have  
976 an increase in hourly emissions but to have an increase in annual  
977 emissions. So that's theoretically possible.

978 Mr. Barton. It is.

979 Mr. Wehrum. And one of the primary criticisms of the  
980 discussion draft is that it may allow that to -- you may not see  
981 a short term -- the hourly measured short-term emissions. You  
982 may not see a short-term increase in emissions.

983 But there is a possibility -- a hypothetical possibility  
984 to see a long-term in annual emissions.

985 Mr. Barton. I would think it's not possible unless you  
986 increase the output.

987 Mr. Wehrum. That's exactly right. That -- Mr.  
988 Congressman, that is exactly right. You put your finger on it,  
989 and I think it's important to point out, and this must be kept  
990 in mind as work on the discussion draft goes forward, this is  
991 only one of many, many tools we have in the Clean Air Act toolbox.

992 So I have said hypothetical possibility and I use that word  
993 intentionally because I believe it is just hypothetical and so  
994 let's just talk about power plants, and this program applies to

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995 way more than just power plants.

996 So just look at power plants. There is the acid rain  
997 program. There are interstate transport requirements that  
998 apply. There are, in some cases, nonattainment requirements that  
999 apply.

1000 There is state-level requirements that apply. There are  
1001 air toxic standards that apply. There is a plethora of emissions  
1002 limitations that apply to these standards.

1003 So is it hypothetically possible you'll see an emissions  
1004 increase with an hourly emissions test? Yeah. But in reality,  
1005 you can see that --

1006 Mr. Barton. Let's --

1007 Mr. Wehrum. -- but it's hard to see because we are not  
1008 operating in a vacuum. We are operating in a heavily, heavily  
1009 regulated --

1010 Mr. Barton. Let's use a real-world example. ERCOT, down  
1011 in Texas, is predicting that there could be -- there is a  
1012 possibility of rolling power outages this summer in Texas because  
1013 the maximum generation for electricity, if you had the worst case  
1014 scenario -- 105 in Houston, 105 in Dallas, 105 in Austin -- I  
1015 mean, just a hellacious hot summer all over the state -- that  
1016 we might not have the ability to handle that.

1017 So we try to get more -- get existing plants to generate  
1018 electricity to expand so they can generate more electricity.  
1019 Okay. But their emission per unit of output, since they are going

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1020 to use newer technology, you get more output than the old  
1021 technology.

1022 But the overall emissions are going to go up because they  
1023 are going to generate a lot more electricity. Would that -- would  
1024 that trigger a New Source Review under existing law?

1025 You've got -- you've got a shortage. You're trying to --  
1026 a potential shortage. You're trying to plan for that. You don't  
1027 have time to build a brand new power plant so you're going to  
1028 expand and existing one but use new technology.

1029 You get more output for the same level of emissions but the  
1030 overall level of emissions will go up because you're going to  
1031 generate 25 or 30 percent more output. So that would trigger  
1032 a New Source Review?

1033 Mr. Wehrum. It could.

1034 Mr. Barton. Under new --

1035 Mr. Wehrum. Under current law, and one of the -- one of  
1036 the real benefits of the discussion draft is it would allow for  
1037 the use of a so-called output-based measure of emissions  
1038 increases.

1039 And so it would solve the problem you just described because  
1040 it would recognize that in the situation you described we all  
1041 want plants to run more and be more efficient because that is  
1042 better for the environment.

1043 Mr. Barton. So my time is about to go out.

1044 Does the Trump administration support the discussion draft

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1045 as it's currently drafted?

1046 Mr. Wehrum. The administration has not taken a position  
1047 on the draft but, in my capacity -- as I said, in my testimony,  
1048 I strongly support what you're --

1049 Mr. Barton. You would recommend my support?

1050 Mr. Wehrum. Yes, Mr. Congressman.

1051 Mr. Barton. Thank you, Mr. Chair.

1052 Mr. Shimkus. The gentleman's time has expired.

1053 The chair now recognizes the gentlelady from Michigan, Mrs.  
1054 Dingell, for five minutes.

1055 Mrs. Dingell. Thank you, Mr. Chairman.

1056 Chairman, I've got a number of questions for you today on  
1057 ongoing policy changes at the EPA. Before I get -- I am going  
1058 build on what my colleague, Mr. Green, was asking you.

1059 But I care very deeply about one of the activities that you  
1060 were doing and that is the mid-cycle review on the fuel economy  
1061 standards.

1062 First, given recent press reports, I thought there was a  
1063 good meeting at the White House on Friday. But yesterday  
1064 afternoon's Post made me think that that was not the case.

1065 Mr. Wehrum, I understand that Administrator Pruitt sat down  
1066 with the president and a number of the auto -- CEO automakers  
1067 last Friday to discuss automotive fuel economy and GHG emission  
1068 standards.

1069 In that meeting, I understand the president directed

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1070 Administrator Pruitt and Transportation Secretary Chao to reach  
1071 out and negotiate a possible deal with California to ensure that  
1072 we have one national program in this country for fuel economy  
1073 and that GHG standards are maintained.

1074 I was happy to hear that. That's what the autos say that  
1075 they need. California has said that they will work with  
1076 everybody.

1077 But I am concerned that yesterday I heard that that was not  
1078 the case -- that you were not going to work with California,  
1079 signaling the exact opposite of what we heard on Friday.

1080 It's troubling, because the auto industry needs stability.  
1081 They need to know where they are going. Can you tell me what  
1082 EPA is doing on this, please?

1083 Mr. Wehrum. Yes, Mrs. Congresswoman.

1084 I wasn't in the meeting with the president so I can't speak  
1085 to what was said or what was not said. Like you and like everyone  
1086 else, I got no reports about it. So I am not going to do a he  
1087 said, she said about that.

1088 But I can tell you we are working very hard on a proposed  
1089 rule. You know the administrator issued the determination not  
1090 long ago saying he thinks a change needs to be made to the current  
1091 standards in the 2021 and 2025 time frame, and we are hard at  
1092 work on that in conjunction with NHTSA on a proposed rule that  
1093 would suggest some possible changes based on the administrator's  
1094 findings and Secretary Chao's similar concerns.

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1095 Mrs. Dingell. But does EPA understand the importance to  
1096 the auto industry of one national standard and that the importance  
1097 of what was originally negotiated was having all players at one  
1098 table and that if you care about jobs having two sets of standards  
1099 so that they are producing one car for 14 states and another is  
1100 not going to give the companies the certainty they need?

1101 Mr. Wehrum. I'll speak for myself and say absolutely. I  
1102 understand the importance of that and what I would say is it's  
1103 a priority of, you know, my office and I believe a priority of  
1104 the administration to try to maintain one national program.

1105 And so I think to the degree the press reports are saying  
1106 that's not a goal I would say that's wrong.

1107 But what I would say is we think changes need to be made  
1108 and we have started a dialogue with the state of California.  
1109 I've personally been involved in those conversations.

1110 We plan to continue that dialogue consistent with what the  
1111 president said in last week's meeting and, in fact, as we speak  
1112 are trying to set up the next discussion with our colleagues at  
1113 CARB for Wednesday.

1114 They are going to be here this week for meetings and we are  
1115 hoping to get together with them while they are here in town.

1116 So we have the dialogue underway.

1117 We intend to continue that dialogue and if we can find a  
1118 way to maintain one national program we certainly want to do that.

1119

1120 I know California wants to do it. I know the OEMs want to  
1121 do it and we are going to try.

1122 Mrs. Dingell. I find that reassuring. I would love your  
1123 personal commitment to keep trying to make that happen because  
1124 we all care about the health of the auto industry.

1125 Mr. Wehrum. We are going to keep trying.

1126 Mrs. Dingell. Let me go quickly, because I am going to run  
1127 out of time, and build on what my colleague, Mr. Green, was asking  
1128 about in "once in always in."

1129 Is it -- when Administrator Pruitt testified at a Senate  
1130 Oversight hearing, he said that the decision to end "once in always  
1131 in" policy was made outside of your office.

1132 Is that accurate? Was the decision to rescind the "once  
1133 in always in" policy made outside of your office? What was your  
1134 role, if any, in the decision to rescind this policy?

1135 Mr. Wehrum. Well, I signed the memo. But anything I do  
1136 is based on the authority of the administrator.

1137 So I can tell you that he was highly involved in the vetting.  
1138 He was highly involved in setting the policy and I ultimately  
1139 issued the memo. But it's a reflection of the agency's position.

1140 Mrs. Dingell. So I've got 25 seconds left and I'll probably  
1141 ask you to do more of this for the record. But you were talking  
1142 that you did do do studies -- studied the issue but we haven't  
1143 seen anything and we need to have more transparency about what  
1144 the impact was going to be about when it was conducted, is it

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1145 publicly available.

1146           You know, we have got the Union of Concerned Scientists  
1147 saying that there'll be an additional 155 tons of hazardous air  
1148 pollutants per year. Can we make that data available that you've  
1149 analyzed?

1150           Mr. Wehrum. Well, an important part of what we said when  
1151 the memo came out is we intend to follow up the memo with the  
1152 rulemaking so we can lock in our new policy as actually part of  
1153 the codified regulations.

1154           So that will be an opportunity for everyone with an interest  
1155 to look at our assessment, to look at our analysis, and to give  
1156 us their comments as to whether they think it's right or not.

1157           Mrs. Dingell. Thank you.

1158           Mr. Shimkus. Gentlelady's time has expired.

1159           The chair recognizes the gentleman from Ohio, Mr. Johnson,  
1160 for five minutes.

1161           Mr. Johnson of Ohio. Thank you, Mr. Chairman, and I'd like  
1162 to start out by thanking you and Representative Griffith for your  
1163 work on this really important bill and for holding this  
1164 legislative hearing today.

1165           I am also appreciative of the EPA's work to date to inject  
1166 some certainty and common sense into NSR permitting.

1167           It's now incumbent on Congress to further that certainty  
1168 through advancing this discussion draft. As Mr. Johnson, with  
1169 America's Electric Cooperatives, who will testify in the second

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1170 panel, explains in his testimony, innovative technologies and  
1171 systems to improve facilities are being left on the shelf because  
1172 of current NSR processes, essentially undermining the goals and  
1173 intent of the Clean Air Act.

1174 I think everyone here can agree that's an issue. The  
1175 discussion draft we are looking at and discussing today will  
1176 rectify that issue while addressing much-needed other reforms  
1177 and I am supportive of these efforts.

1178 So, Mr. Wehrum, seeing that there is only one definition  
1179 for the term modification in the Clean Air Act, why has the EPA  
1180 interpreted this definition differently for the NSR program than  
1181 it did for the NSPS program?

1182 Mr. Wehrum. That's hard to answer, Mr. Congressman. That  
1183 decision was made a long, long time ago. The NSR program was  
1184 first put in place just by regulation in the mid-70s and then  
1185 followed up with, you know, a revised program after the law was  
1186 changed in 1977.

1187 But the fact is there has been a differently regulatory  
1188 definition for a long, long time now and the idea of creating  
1189 consistency between the two programs makes perfect sense.

1190 As I said earlier, there is a lot of overlap between the  
1191 two programs. They are intended to accomplish a lot of same thing  
1192 and creating that kind of consistency would improve  
1193 understandability and implementation.

1194 Mr. Johnson of Ohio. Well, it seems to me that if Congress

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1195 wanted the definition to be different it would have provided a  
1196 separate definition for each program. That's the way I look at  
1197 it.

1198 Mr. Wehrum. That seems logical, Mr. Congressman.

1199 Mr. Johnson of Ohio. Okay. Thank you.

1200 State regulators and the EPA both play an important role  
1201 in administering the NSR permitting program. In what ways are  
1202 you seeking to improve this federal-state interaction related  
1203 to the NSR program?

1204 Mr. Wehrum. Well, you're right. I mean, the Clean Air Act,  
1205 in many respects, is an exercise in cooperative federalism. We,  
1206 at the federal government level, have a lot of responsibility.

1207

1208 But Congress intended states to take a lot of responsibility  
1209 themselves and, in fact right at the beginning of the Clean Air  
1210 Act it says air pollution control at its source is the  
1211 responsibility of the states under the Clean Air Act.

1212 So Administrator Pruitt takes that very seriously. I take  
1213 that very seriously. Part of our concern with the program is  
1214 it has been too federal heavy, as a lot of what we do has been  
1215 federal heavy.

1216 And so in addition to improving the federal program. Our  
1217 intention is to make sure the states understand they have  
1218 flexibility in what they do and how they do it under the NSR  
1219 program.

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1220           The things we do we think make good sense and would be real  
1221 improvements and we hope states pick up those ideas. But if they  
1222 have other ideas they want to implement we are going to be flexible  
1223 because we should be flexible. That's how the law was intended  
1224 to be implemented.

1225           Mr. Johnson of Ohio. Well, I -- you know, while it's not  
1226 perfect I certainly applaud the efforts of the EPA to engage the  
1227 states across the spectrum in policy making because I agree with  
1228 you -- I think that's important.

1229           Can you talk about the role of the policy office and  
1230 enforcement offices at the EPA? Specifically, should the policy  
1231 office or the enforcement office determine what defines a  
1232 modification under NSR?

1233           Mr. Wehrum. As I like to say, they is us. I mean, the EPA  
1234 is an entity and the EPA is part of a larger entity, which is  
1235 the executive.

1236           So, you know, as things currently stand, the responsibility  
1237 of rulemaking sits with my office. But a responsibility for  
1238 interpretation and implementation, you know, in some cases,  
1239 including NSR, sits in other offices -- in the enforcement office.

1240           So we -- in a lot of ways -- you know, that was done  
1241 intentionally during the Clinton administration for reasons but  
1242 for a lot of reasons that doesn't make a lot of sense and, you  
1243 know, we have had a conversation in the way as to whether those  
1244 delegations should be reassigned because a lot of people think

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1245 and, frankly, I believe that people who write the rules should  
1246 be the people who interpret the rules.

1247 Mr. Johnson of Ohio. In the last 30 seconds I've got, what  
1248 are you doing to ensure that there is clear up-front guidance,  
1249 which will reduce uncertainty about future enforcement penalties?

1250 Mr. Wehrum. Oh, boy. Well, I said earlier I need to stay  
1251 in my lane. So enforcement penalties is not in my lane. That's  
1252 a question that's best asked to the enforcement office assistant  
1253 administrator.

1254 Mr. Johnson of Ohio. Okay. All right.

1255 Mr. Chair -- Mr. Chairman, I yield back.

1256 Mr. Shimkus. Gentleman yields back his time.

1257 Chair recognizes the gentleman from California, Mr. Peters,  
1258 for five minutes.

1259 Mr. Peters. Thank you, Mr. Chairman. Thank you, sir, for  
1260 being here.

1261 As you well know, in 2011 the EPA entered into an agreement  
1262 to settle a lawsuit brought by states and environmental groups  
1263 in which EPA agreed to set standards for GHG emissions from new  
1264 and existing fossil fuel-powered fired power plants under Section  
1265 111 of the Clean Air Act.

1266 The Supreme Court ruled that EPA must regulate greenhouse  
1267 gases if EPA finds that they endanger the health and welfare of  
1268 current and future generations.

1269 Following the Supreme Court's decision, EPA issued what is

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1270 known as an endangerment finding. That finding requires the EPA  
1271 to take regulatory action under the Clean Air Act to curb emissions  
1272 of carbon dioxide, methane, and four other heat-trapping air  
1273 pollutants from vehicles, power plants, and other industries.

1274 That ruling allows the EPA to regulate greenhouse gases as  
1275 air pollutants covered by the Clean Air Act.

1276 This led to the clean power plan and essentially the  
1277 endangerment finding gave EPA its mandate to regulate fuel economy  
1278 standards for vehicles, permitting requirements for new  
1279 construction, or the GHG regulation of vehicles and new stationary  
1280 sources.

1281 So now that you're on the job, I wanted to ask you  
1282 specifically do you believe that greenhouse gas emissions  
1283 endanger the public health?

1284 Mr. Wehrum. Well, as I said in my confirmation hearing,  
1285 there is a progression you need to go through to kind of get to  
1286 where you are and one question is, is the climate changing and  
1287 I think the answer is, clearly, yes.

1288 The second question is do manmade emissions contribute to  
1289 that and I think the answer is, clearly, yes.

1290 The third question is, how much do manmade emissions  
1291 contribute to that, and what I said in my confirmation hearing  
1292 and what I continue to believe is I am not sure.

1293 And what I said then was, you know, in -- for the last 10  
1294 years before coming here I was an attorney in private practice

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1295 and nobody every hired me to go dive into the mountain of data  
1296 that exists on climate and so there is a lot I had to learn and  
1297 that's what I said six months ago.

1298 Mr. Peters. So right now, you have no opinion on whether  
1299 greenhouse gas is a danger to the public health?

1300 Mr. Wehrum. Well, where I was going was I said I have a  
1301 lot to learn and, you know, I am putting my money where my mouth  
1302 is and the climate protection division is, you know, one of the  
1303 divisions within my office and what I asked them, you know,  
1304 beginning a few months ago is to do a series of briefings on the  
1305 state of climate science to help me better understand, you know,  
1306 what science is out there --

1307 Mr. Peters. Have you taken those briefings yet?

1308 Mr. Wehrum. We are in the process. I've done several and  
1309 we have more to go. There is a mountain. There is a lot out  
1310 there and --

1311 Mr. Peters. Has the staff indicated that they've changed  
1312 their conclusions about this at all?

1313 Mr. Wehrum. Well, the endangerment -- I mean, all decisions  
1314 like that flow from the administrator. So that wasn't a staff  
1315 decision. That was a decision by the administrator at the time.

1316 Mr. Peters. Has the administrator expressed to you whether  
1317 he has an opinion on whether greenhouse gases endanger the public  
1318 health?

1319 Mr. Wehrum. He has a process concern, at a minimum. His

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1320 concern is the endangerment finding you describe was made without  
1321 consideration of alterative views.

1322 Mr. Peters. I want to get to that in a minute. But I am  
1323 asking his particular opinion on the -- whether --

1324 Mr. Wehrum. Well --

1325 Mr. Peters. -- what's the opinion of the administrator  
1326 of whether greenhouse gases endanger the public health? Has he  
1327 expressed that to you?

1328 Mr. Wehrum. Well, I am not going to speak for the  
1329 administrator. But, again, I just -- to complete the thought,  
1330 he -- he's very concerned about process and, you know, believes  
1331 -- the way he talks about I think is the way to talk about it  
1332 is, you know, people with a different view haven't had a voice  
1333 so far in this process and, you know, he's been trying to find  
1334 a way to allow them to have some voice and --

1335 Mr. Peters. What's the schedule for that process? Do you  
1336 know what his process is going to be?

1337 Mr. Wehrum. Well, there is no process in place and there  
1338 is no schedule right now. So we have talked about it but we are  
1339 not --

1340 Mr. Peters. Is it your intention or do you understand it  
1341 to be the administrator to revisit the endangerment finding with  
1342 respect to the greenhouse gases?

1343 Mr. Wehrum. We don't have any plans right now. As I said,  
1344 we have talked a lot about the integrity of the process that led

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1345 to that determination and so far we are focused on process and  
1346 integrity and we haven't talked about outcome.

1347 Mr. Peters. I am totally willing to accept your answer  
1348 except there is no process either. There is no answer on whether  
1349 the administration believes that greenhouse gases pose a threat  
1350 to human health and the environment.

1351 There is no answer. I don't get it from the administrator.  
1352 I don't get it from you. Apparently, you haven't gotten it yet  
1353 from your staff.

1354 And then everyone talks about a process, but there is no  
1355 process either. There is no process for these voiceless oil and  
1356 gas companies to get their voices heard.

1357 So I am just -- I am just expressing a little bit -- I mean,  
1358 I am uncomfortable staying where we are but I am suspicious that  
1359 that's not where you want to be.

1360 Mr. Wehrum. Well, what I would say is it's important to  
1361 look at the broader context. So we -- well, what I mean by that  
1362 is Congresswoman Dingell asked me a question a second ago about  
1363 car and truck standards that exist at least from an EPA standpoint  
1364 because of greenhouse gas emissions.

1365 And, you know, my answer was we will work on a proposed rule  
1366 to maybe change those standards. I didn't say we are working  
1367 on a proposed rule to eliminate those standards and, you know,  
1368 we are not going to do that.

1369 Mr. Peters. Just to conclude, there is no -- there is no

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1370 action right now to revisit the endangerment finding pursuant  
1371 to greenhouse gas. Is that correct?

1372 Mr. Wehrum. There is -- that's correct.

1373 Mr. Peters. Thank you. I yield back.

1374 Mr. Shimkus. Gentleman yields back his time.

1375 The chair recognizes the gentleman from Texas, Mr. Olson,  
1376 for five minutes.

1377 Mr. Olson. I thank the chair, and welcome, Mr. Wehrum.

1378 As you know, many projects we see being undertaken at large  
1379 sites are designed to improve emissions. One of the best examples  
1380 is from home, Texas 22.

1381 It's called the Petra Nova Project. That's a power plant  
1382 owned by NRG. They have four coal generators and four natural  
1383 gas generators.

1384 On their own, they had a goal to reduce greenhouse gas  
1385 emissions. Their solution was to capture carbon emissions from  
1386 the coal production and use those captured CO2 to increase oil  
1387 production.

1388 Their capture right now the equivalent of 350,000 emissions  
1389 daily from automobiles -- a big amount of carbon captured by this  
1390 one power plant.

1391 Its NRG -- the capture system was designed by JX Nippon and  
1392 the oil companies, Hilcorp, that has an old oil field that's about  
1393 75 miles southwest with a pipeline in existence that would get  
1394 rid of that.

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1395 I invite you to come down there, all my colleagues, to see  
1396 what's working. It's the only one in the whole world that's  
1397 actually viable for carbon capture.

1398 But that's unique. Can you talk about some of the other  
1399 types of large-scale projects like Petra Nova that you have seen  
1400 that make our air cleaner and what are you doing to clear the  
1401 pathway for those guys to get through this bureaucracy and help  
1402 us make our air cleaner?

1403 Mr. Wehrum. Mr. Chairman, I am not aware of any other  
1404 ongoing projects like Petra Nova. I think it's a very unique  
1405 facility -- at least in the United States. I think there are  
1406 some internationally.

1407 But I think enormous strides continue to be made in  
1408 controlling air emissions generally and CO2 emissions, more  
1409 specifically.

1410 So that's a very unique technology doing a very unique thing.

1411 But when you set that aside and look at -- just thinking about  
1412 the world of power generation, tremendous progress has been made  
1413 and continues to be made.

1414 And we have talked a little bit about the shift away from  
1415 coal power into natural gas-fired and that's happening for a  
1416 variety of reasons. But as a result of that alone there have  
1417 been substantial reductions in emissions from the power sector  
1418 nationwide over the past few years.

1419 So think substantial progress has been made. Substantial

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1420 progress will continue to be made and our job as an agency is  
1421 to be smart about how we implement our program so that we  
1422 accomplish good results but don't accomplish adverse results at  
1423 the same time.

1424 Mr. Olson. Again, Petra Nova is just one example of what  
1425 we can do with our technology right now.

1426 My question is are there other projects out there, big ones,  
1427 that you're looking at that you can help them get through this  
1428 bureaucracy, get that project online and make our air cleaner  
1429 like Petra Novas? Doing anything else out there in the country  
1430 as a model that you're working on?

1431 Mr. Wehrum. And, again, the Petra Nova technology is very,  
1432 very specific. But the answer to your broader question is on  
1433 a daily basis we work with individual facilities who come to us  
1434 seeking help and understanding how to interpret and apply our  
1435 regulations.

1436 So we do applicability determinations. We do interpretive  
1437 memos of the sort that we have been talking about. So we put  
1438 a tremendous amount of time and effort into helping affected  
1439 facilities, understand how the program applies and help them  
1440 navigate or, you know, as you said, navigate the complex programs  
1441 that do apply.

1442 Mr. Olson. Thank you.

1443 Final question -- you commented that the New Source Review  
1444 process can be very complex and time consuming. It hurts my

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1445 brain, it's so time consuming.

1446 Can you talk about why reducing complexity does not mean  
1447 necessarily improving air quality? If we have reduced  
1448 complexity, can we have reduced air quality? Or is it -- is it  
1449 direct tie? How does it work? No complexity -- have to get more  
1450 complex or can we do less complexity cleaner air?

1451 Mr. Wehrum. Oh, I think we can have it all. You bet.

1452 Mr. Olson. There we go. I've got 52 seconds -- a colleague  
1453 want my time?

1454 Mr. Shimkus. Yield back.

1455 Mr. Olson. The chair will yield back.

1456 Mr. Shimkus. The gentleman yields back the time.

1457 The chair recognizes the gentleman from -- the other  
1458 gentleman from Texas, Mr. Flores, for five minutes.

1459 Mr. Flores. Thank you, Mr. Chair, and I appreciate the  
1460 witness for being here today.

1461 We talked through several of the concerns about the NSR  
1462 program this morning and one of the ones we haven't talked about  
1463 is the penalties for lack of compliance.

1464 And it's my understanding that by statute the EPA may impose  
1465 fines of more than \$95,000 per day for Clean Air Act violations.

1466 Is that correct?

1467 Mr. Wehrum. I believe that's true.

1468 Mr. Flores. Okay. So if the EPA believes that a facility  
1469 should have gone through an NSR for a change at the facility it

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1470 could threaten to fine that facility \$95,000 for every day that  
1471 the facility operated since that change was made? Is that also  
1472 correct?

1473 Mr. Wehrum. That's correct, Congressman.

1474 Mr. Flores. Okay. So in this case, just hypothetically,  
1475 if the EPA identifies a change more than three years after the  
1476 fact, this could be a potential -- could involve fines of more  
1477 than \$100 million.

1478 Would you agree that this type of penalty and the uncertainty  
1479 driven by the penalty serves as a disincentive for companies to  
1480 carry out efficiency improvements?

1481 Mr. Wehrum. Well, Mr. Congressman, let me take a step back.

1482 Mr. Flores. Sure.

1483 Mr. Wehrum. I've said a couple times in this hearing it's  
1484 really important for me to stay in my lane and, you know, I am  
1485 responsible for program development and implementation but not  
1486 for enforcement.

1487 So I have personal views on the questions you're asking but  
1488 I think from an institutional standpoint they are best directed  
1489 to the assistant administrator for the enforcement.

1490 Mr. Flores. But if you put yourself into the shoes of a  
1491 company that's trying to improve their efficiency and they  
1492 determine that they -- they make a determination that they didn't  
1493 need to do an NSR because they are trying to improve efficiency  
1494 and to reduce their emissions, but then the EPA comes in after

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1495 the fact and says, oh, here's a \$100 million penalty, then the  
1496 folks making the decision about whether or not to invest may elect  
1497 to not invest at all because of the uncertainty regarding the  
1498 fines that could happen to them.

1499 Mr. Wehrum. Mr. Congressman, so notwithstanding what I just  
1500 said --

1501 Mr. Flores. I understand.

1502 Mr. Wehrum. -- the point you're raising is, is there  
1503 significant liability associated with possible violations with  
1504 New Source Review, the answer is absolutely yes.

1505 You've been focusing in penalties, but penalties are one  
1506 piece of the overall picture if there is an enforcement action.

1507 They can add up, as you say, over a period of years to a big  
1508 number. But they are also -- often the bigger number in the  
1509 enforcement cases is the injunctive relief, which is the order  
1510 to install air pollution controls and take other mitigation  
1511 measures.

1512 So all of that together can turn into a very big number for,  
1513 you know, a typical power plant, and your point is do affected  
1514 facilities think about that as they are making decisions about  
1515 how to implement projects and the risks that may come with that,  
1516 and the answer is absolutely positively yes.

1517 Mr. Flores. Right. And that sort of leads to the next  
1518 question is does it make sense that a company making a small  
1519 investment or a change in an existing facility should be required

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1520 by the NSR program to spend hundreds of millions of dollars on  
1521 a new study of their pollution control equipment if they were  
1522 just trying to improve efficiency, reduce emissions already.

1523 Mr. Wehrum. Right. And that doesn't make sense at all.

1524 Mr. Flores. Okay. Also, some equipment manufacturers  
1525 report that there is little demand for energy efficiency products  
1526 that they are selling because companies are unwilling to retrofit  
1527 old equipment with newer technologies due to the concern about  
1528 triggering an NSR.

1529 This is the whole purpose of the hearing and that is how  
1530 can we reform the NSR program so that companies can be -- certainly  
1531 won't be penalized for doing activities that actually reduce  
1532 pollution.

1533 And that gets us into the discussion draft and I think you've  
1534 said that you support the direction we are going in the discussion  
1535 draft.

1536 Mr. Wehrum. Yes, Mr. Congressman. I think it would mark  
1537 real improvement.

1538 Mr. Flores. Okay. Thank you. I yield back.

1539 Mr. Shimkus. Gentleman yields back the time.

1540 The chair now recognizes the gentleman from Georgia, Mr.  
1541 Carter, for five minutes.

1542 Mr. Carter. Thank you, Mr. Chairman.

1543 Thank you, Mr. Wehrum, for being here. I appreciate you  
1544 being here.

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1545 I wanted to change our focus. I know we are here to talk  
1546 about NSR but there is the subject that is very important to me  
1547 that I brought up in a number of meetings with Secretary Pruitt  
1548 that I'd like to ask you about.

1549 And not only -- and that is about marine engine waivers for  
1550 pilot boats. That's something that's very important. I have  
1551 two major seaports in my district. They are struggling with this  
1552 issue.

1553 I brought it up, as I said, to EPA staff and to Secretary  
1554 Pruitt when he's been before our committee. Not only do I want  
1555 to change the subject but I want to change the tone because I  
1556 want to say thank you. You've responded, and I would ask that  
1557 you convey my thanks to Secretary Pruitt as well.

1558 He committed, last time he was here, that he would personally  
1559 look into this, and he did, and I want to thank you for that.

1560 And my confidence has been restored and I appreciate it very  
1561 much, so kudos to EPA for this.

1562 I want to ask you, because what happened is that three staff  
1563 members were sent out to one of the -- one of the engine  
1564 manufacturers to look at this and to study in and see what a problem  
1565 it was and, particularly, for the high-speed commercial vessels  
1566 between 45 and 80 feet, which is what we use in the Savannah Harbor  
1567 and what is very important to us.

1568 And this is -- we feel like we are the tip of the spear here  
1569 because we are kind of the first ones that have had to deal with

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1570 this.

1571           So we are trying to get it resolved as quickly as we can  
1572 and it's very important because if we don't have those harbor  
1573 boats out there -- those pilot boats out there, business stops  
1574 and commerce is business for us down there.

1575           And I wanted to ask you, the staff that visited the boat  
1576 manufacturer indicated that they were going to be putting together  
1577 a report.

1578           Have they come back with any initial findings yet or any  
1579 feedback that you might be able to share with us?

1580           Mr. Wehrum. They have not, but they were just out there  
1581 last Thursday. So they haven't had much time to --

1582           Mr. Carter. I understand. Any idea -- I hate to be  
1583 impatient but, you know, I got -- they are bearing down on me  
1584 and this has, in all honesty, been going on a while -- any idea  
1585 about -- because we have heard that it may take up to two years  
1586 and that is simply not acceptable. That's just not going to work.

1587           Mr. Wehrum. Well, we are moving expeditiously,  
1588 Congressman. I've talked with my staff on a number of occasions  
1589 about this issue. I understand exactly what's going on.

1590           Mr. Carter. Thank you.

1591           Mr. Wehrum. You know, it was important for our folks to  
1592 get some boots on the ground out at the engine manufacturers.

1593           So we were happy to have that opportunity and we plan to press  
1594 forward as quickly as we can.

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1595           And, I think as you know, it may not be a few weeks kind  
1596 of thing. It may be a few months kind of thing just because we  
1597 may have to revise our rules to accommodate what's going on.

1598           Mr. Carter. Well, let me ask you this.

1599           Mr. Wehrum. May was the key word there --

1600           Mr. Carter. Okay. I understand.

1601           Do you not normally put waivers in your rules like that with  
1602 anticipation that there will be, you know, exceptions to those  
1603 rules?

1604           Mr. Wehrum. We do sometimes. But usually when we know  
1605 there is an issue to be resolved. This was something we didn't  
1606 see coming. So there is nothing in the rule that says, you know,  
1607 there is a way to -- well, there may not -- again, may is the  
1608 key word.

1609           Mr. Carter. I understand.

1610           Mr. Wehrum. We are trying to find a way.

1611           Mr. Carter. Well, two more things real quick. First of  
1612 all, I just -- I would just ask your commitment to keep this on  
1613 the front burner and to please, you know, go back and if you can  
1614 provide my staff with any information we would certainly  
1615 appreciate it.

1616           Mr. Wehrum. Absolutely.

1617           Mr. Carter. And secondly, do you know of -- if you see any  
1618 other regulatory hurdles that we are going to have to overcome  
1619 if you'll please let us know about those as well.

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1620 Mr. Wehrum. Will do.

1621 Mr. Carter. And then, finally -- and I'll yield after this  
1622 -- again, please convey my sincere thanks to the secretary for  
1623 acting on this and fulfilling his commitment.

1624 Mr. Wehrum. We will do that.

1625 Mr. Carter. Thank you, and I yield back, Mr. Chair.

1626 Mr. Shimkus. Gentleman yields back his time.

1627 The chair recognizes the gentleman from South Carolina, Mr.  
1628 Duncan, for five minutes.

1629 Mr. Duncan. Thank you, Mr. Chairman.

1630 I want to begin by saying that I am supportive of Mr.  
1631 Griffith's efforts to improve and reform the NSR permitting  
1632 program.

1633 In my opinion, the NSR program in its current seems like  
1634 a counterproductive policy that disincentivizes companies from  
1635 pursuing projects that would increase efficiency and mitigate  
1636 environmental pollution.

1637 And I would say that frustration with the American people  
1638 and federal bureaucracies and the speed of permitting, whether  
1639 it's this or whether it's getting a Class III license with ATF,  
1640 it permeates the whole government the frustration of the American  
1641 people.

1642 They expect our government to be more efficient and I think  
1643 that's what the purpose of Mr. Griffith's efforts are -- to make  
1644 government and at least the EPA and its permitting process a little

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1645 more efficient.

1646           So I agree with your remarks, Administrator Wehrum, that  
1647 we need to simplify the program and provide clarity to companies  
1648 regulated by this.

1649           I want to talk about some of the confusion on how much  
1650 construction companies are allowed to do prior to obtaining an  
1651 NSR permit. I do not believe that this is addressed in the  
1652 discussion draft.

1653           Can you speak to this a little bit? What can construction  
1654 companies do prior to getting approval?

1655           Mr. Wehrum. This is another example of why the NSR program  
1656 drives people crazy. So it's a preconstruction permit program,  
1657 which means, you know, you need to have the permit in hand before  
1658 you begin the permitted activity -- begin constructing the  
1659 permitted activity.

1660           So that sounds simple but it's complicated in practice  
1661 because what is the permitted facility? You go out and pour a  
1662 foundation -- is that part of the facility? You go out and, you  
1663 know, if you build roads, security gates, is that part of the  
1664 permitted facility?

1665           You go out -- if you're building a boiler, wouldn't you buy  
1666 the boiler and put it in place? So a judgement has to be made  
1667 as to what point in the physical construction process is the point  
1668 that you can, you know, that marks the beginning of the regulatory  
1669 process.

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1670           The EPA has spoken to that many times in the past but it's  
1671 a subjective thing, not an objective and there is no bright line  
1672 here and, you know, EPA has made several case-specific  
1673 determinations.

1674           I said in my opening remarks and in my written testimony,  
1675 you know, we have begun what I believe to be an aggressive process  
1676 of identifying problems with rules and opportunities for  
1677 improvement in the rules and the issue that you've raised is one  
1678 of those things that's on our radar right now.

1679           You know, what we want to do is encourage investment in  
1680 facilities, allow for projects to go forward in anticipation of,  
1681 you know, getting the permits that are necessary.

1682           So the permits shouldn't stand as an unnecessary obstacle  
1683 to common sense activity. And I think there -- you know, I think  
1684 we could put a finer point on this issue and it's something that  
1685 we intend to do, going forward.

1686           Mr. Duncan. And I appreciate that. Let me ask, how much  
1687 technology is used? I applied for a big game permit for my son  
1688 online. Got a notification we got accepted. I can dial up a  
1689 buoy in the Charleston Harbor and find out what the weather  
1690 conditions are.

1691           Is the agency using the technology to find out what the air  
1692 quality emissions are at a plant in Easley, South Carolina, and  
1693 whether they are in attainment or not, or a construction project  
1694 that may be expanding an operation there, looking at current air

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1695 quality and I guess the whole application process online with  
1696 feedback from the agency.

1697 How are you guys using technology and what can you do better?

1698 Mr. Wehrum. We are trying very hard to keep up. Technology  
1699 and the air quality monitoring and information management areas  
1700 is growing by leaps and bounds. So substantial improvement is  
1701 being --

1702 Mr. Duncan. Are all these monitors transmitting to  
1703 Washington or wherever the field office is our is somebody having  
1704 to drive their pickup truck out there and pull that data?

1705 Mr. Wehrum. A little bit of both. A little bit of both.

1706 Mr. Duncan. Little bit of both?

1707 Mr. Wehrum. Yes. So, you know, the answer to your question  
1708 is we have room for improvement and we are trying -- I have a  
1709 whole office down in North Carolina that's focused on emissions  
1710 measurement technology and I can tell you this is very much a  
1711 focus of ours.

1712 Mr. Duncan. What do you need from Congress to help make  
1713 that happen? To help make the technology into the 21st century?

1714 Mr. Wehrum. You know, I don't think there are barriers under  
1715 the law for us right now. You know, I think what we need to do  
1716 just as an institution is be smart about using our resources and  
1717 be smart about keeping up with the technologies and we are  
1718 committed to doing that.

1719 Mr. Duncan. Okay.

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1720 Mr. Chairman, I don't have anything further. I yield back.

1721 Mr. Shimkus. The gentleman yields back his time. The chair  
1722 now recognizes the gentleman from Virginia, Mr. Griffith, who's  
1723 been patiently waiting, for five minutes.

1724 Mr. Griffith. Thank you very much, Mr. Chairman. I greatly  
1725 appreciate it and I want to thank you, the E and C staff and  
1726 everyone who has helped get this bill to this critical point in  
1727 the process and I do appreciate it.

1728 And I appreciate you, Administrator Wehrum, for being here  
1729 as well today. The current EPA has made New Source Review reform  
1730 a priority. I share this priority and appreciate your comments  
1731 on my legislation today.

1732 I've heard from folks in my district as well as industries  
1733 here and in the previous hearing how complicated and burdensome  
1734 this program is and it was singled out multiple times in the  
1735 Department of Commerce's report on regulatory burdens for  
1736 domestic manufacturing.

1737 That being said, I have a story in my own district which  
1738 I think brings home the need for this reform. It doesn't cause  
1739 a lot of pollution nor any pollution at all.

1740 What we have is a manufacturer of furniture, and when touring  
1741 that manufacturer of furniture who was -- it was Vaughan-Bassett  
1742 Company that was the subject of "Factory Man," the fight of John  
1743 Bassett to keep American furniture going when it looked like China  
1744 and the Asians were going to chase us out of the marketplace and

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1745 he did a great job.

1746 But I am touring his factory and there is a conveyer belt  
1747 that runs down and runs back and there is nothing out there, and  
1748 they built ramps to get over -- get back over it again on the  
1749 other side.

1750 And I said to him at the time, five or six years ago when  
1751 I was first touring, and I said, "What's this here for?" "Oh,  
1752 we got some regulation. If we change it, we have to redo  
1753 everything. So we have this conveyor belt that goes out to  
1754 nowhere and comes back. And it's not efficient, but we don't  
1755 want to deal with it."

1756 In checking to make sure it was New Source Review before  
1757 I came to this hearing, we checked on this last week. They had  
1758 to check with their regulatory guy who handles all this because  
1759 they are not really sure. They just know they can't touch it.  
1760 Goes to nowhere. Adds time to the production of the pieces of  
1761 furniture.

1762 They don't use what the original purpose was but they have  
1763 to keep the conveyor belt going. That affects their factory,  
1764 and let me detail from the book how I know it affects their factory.

1765 So he's getting heavy competition from the Chinese and he's  
1766 going to have to do something about it. He's taken apart one  
1767 of the pieces they are doing to see what they are doing more  
1768 efficiently than what he's doing in his factory, and it states  
1769 in this book by Beth Macy, "In his sweat-stained golf hat, John

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1770 Bassett stood atop a conveyor belt and told his workers he had  
1771 no intention of closing the factory. Bassett asked his workers  
1772 to not only work faster but also suggest ideas for factory floor  
1773 improvements. What he didn't want to hear, what he never wants  
1774 to hear, was the phrase, 'It can't be done.' If something was  
1775 wrong with a machine and it was slowing production down, the  
1776 workers should personally let him know."

1777 That conveyor belt is slowing down that process. That  
1778 conveyor belt means his factory is less efficient. He gets fewer  
1779 pieces of furniture out every day than it might otherwise be able  
1780 to do.

1781 That conveyor belt is a part of the problem and the New Source  
1782 Review keeps him from changing that conveyor belt because they  
1783 are afraid that they will -- EPA will whisk in on changing that  
1784 conveyor belt and make them comply with every new standard that's  
1785 come about since whenever it was they put their process in place.

1786 Instead of being able to make small improvements along the  
1787 way or even change this conveyor belt, they can't get it done  
1788 because this regulation is too burdensome, so burdensome they  
1789 had to even go check with the regulatory guy to find out for sure  
1790 that that was the rule that caused the problem, and it was.

1791 I am not going to tell Mr. Bassett it can't be done. We  
1792 need to change this rule and I appreciate your help in that regard.

1793 So you disagree with anything I've just said?

1794 Mr. Wehrum. I do not.

1795 Mr. Griffith. And I appreciate that.

1796 You know, we have heard a lot about electric generation and  
1797 other things today, and I've just told you this story.

1798 But, you know, whatever it is, can you speak to what the  
1799 EPA is doing on its own? I mean, I think the bill is the best  
1800 way to do it but what's the EPA doing on its own to try to reform  
1801 the NSR?

1802 Mr. Wehrum. So a couple comments.

1803 First of all, thank you very much for what you're doing,  
1804 Mr. Congressman. As you know, I've spent a lot of time on this  
1805 program in my career. It's a very high priority of mine to make  
1806 it better and I appreciate your efforts.

1807 I think your example highlights an important aspect of NSR,  
1808 which is it applies to everybody who emits stuff, not just power  
1809 plants, not just petroleum refineries.

1810 So a big reason why we need to improve the program is for  
1811 the furniture makers of the world and the brick plants of the  
1812 world and the small businesses and the small entities and  
1813 facilities that grapple with this on a daily basis.

1814 We, at EPA, are working very hard, you know, within the  
1815 authority we have to improve the program through rule changes  
1816 and interpretations and policy memos and we are going to continue  
1817 to try as long as I am here.

1818 Mr. Griffith. Well, and I am glad that we agree that narrow  
1819 and targeted NSR is necessary but that we need to make some

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1820 reforms.

1821 And with that, I yield back.

1822 Mr. Shimkus. Gentleman's time has expired.

1823 The chair thanks Mr. Wehrum for being here and being patient  
1824 and answering our questions, and seeing that there is no other  
1825 members wishing to ask you questions, we will dismiss you and  
1826 impanel the second group.

1827 [Pause.]

1828 Okay. Thank you all for being here. You all saw the first  
1829 panel so we will recognize each one of your for five minutes for  
1830 an opening statement.

1831 Your full record is -- testimony is submitted for the record  
1832 and we will start with Mr. Sean Alteri, director, Division of  
1833 Air Quality, Kentucky Department of Environmental Protection.

1834 Sir, you are recognized for five minutes.

1835 And I think there is a button on there and make sure -- you  
1836 kind of pull the mic a little bit close to you.

1837 STATEMENTS OF SEAN ALTERI, DIRECTOR, DIVISION OF AIR EQUALITY,  
1838 KENTUCKY DEPARTMENT OF ENVIRONMENTAL PROTECTION; PAUL BALDAUF,  
1839 P.E., ASSISTANT COMMISSIONER, AIR QUALITY, ENERGY, AND  
1840 SUSTAINABILITY, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL  
1841 PROTECTION; ROSS E. EISENBERG, VICE PRESIDENT, ENERGY AND  
1842 RESOURCES POLICY, NATIONAL ASSOCIATION OF MANUFACTURERS; KIRK  
1843 JOHNSON, SENIOR VICE PRESIDENT, GOVERNMENT RELATIONS, NATIONAL  
1844 RURAL ELECTRIC COOPERATIVE ASSOCIATION; BRUCE BUCKHEIT, ANALYST  
1845 AND CONSULTANT; JEFFREY R. HOLMSTEAD, PARTNER, BRACEWELL LLP

1846

1847 STATEMENT OF SEAN ALTERI

1848

1849 Mr. Alteri. Thank you.

1850

1851 Good morning, Chair Shimkus, Ranking Member Tonko, and  
1852 members of the subcommittee.

1853

1854 My name is Sean Alteri and I currently serve as the director  
1855 of the Division for Air Quality in Kentucky. I am honored to  
1856 testify today and share a state's perspective relative to New  
1857 Source Review.

1858

1859 As an air quality regulator, I applaud your efforts to  
1860 address elements of the New Source Review permit program.

1861

1862 The New Source Review permit program is necessary to protect  
1863 public health and carry out the congressional declaration of  
1864 purpose, which is to ensure that economic growth will occur in  
1865 a manner consistent with the preservation of existing clean air

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1862 resources.

1863           To effectively administer the New Source Review program,  
1864 permitting authorities must be provided with regulatory  
1865 certainty. During this -- during this February's New Source  
1866 Review hearing, Chair Shimkus correctly noted that there are over  
1867 700 guidance memos and documents related to New Source Review.

1868           Under Kentucky law, unlike the federal government, the  
1869 cabinet is prohibited from regulating by policy and guidance.

1870           Codification of EPA's New Source Review guidance memos will  
1871 provide regulatory certainty to the permitting authorities as  
1872 well as the regulated community.

1873           Regarding the proposed reform legislative discussion paper  
1874 included with this hearing, the narrow scope of the language  
1875 further defined modification highlights issues related to routine  
1876 maintenance, repair, and replacement.

1877           Pursuant to Section 111 of the Clean Air Act, a physical  
1878 change to an emissions unit or a change in the method of operation  
1879 constitutes a modification and it may subject the facility to  
1880 New Source Review.

1881           Due to potential New Source Review requirements and the  
1882 applicability of new source performance standards, facilities  
1883 have, unfortunately, foregone efficiency improvements that could  
1884 provide significant environmental benefits.

1885           In an effort to reduce significant delays in permitting,  
1886 the proposed amendment to the definition of modification does

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1887 not apply to projects that implement the efficiency measures.

1888           The proposed amendment also addresses projects that are  
1889 designed to restore, maintain, or improve the reliability or  
1890 safety of the source and limits the emissions increases to the  
1891 maximum achievable hourly emission rate demonstrated in the last  
1892 10 years.

1893           These proposed amendments will provide the timely issuance  
1894 of permits. Permitting energy efficiency projects effectively  
1895 will be critical when EPA issues a clean power plant replacement  
1896 rule and states are mandated to reduce its CO2 emission rates  
1897 from its existing electric-generating units.

1898           In addition, the proposed legislative text also clarifies  
1899 the term construction under the New Source Review program and  
1900 when a modification should be subject to New Source Review as  
1901 a major modification.

1902           The proposed statutory text clarification eliminates  
1903 confusion as to when NSR applies. Currently, the most difficult  
1904 aspect of permitting a major emitting facility under NSR is the  
1905 air dispersion modeling.

1906           Last March, I testified before this subcommittee and  
1907 expressed the need for EPA to fully develop and codify  
1908 implementation requirements at the same time the EPA revises a  
1909 national ambient air quality standard.

1910           H.R. 806 proposed to extend the review time of a NAAQS to  
1911 a period of 10 years, which would allow EPA to resolve the

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1912 technical deficiencies of the NAAQS evaluation and provide  
1913 regulatory certainty to permitting authorities.

1914           Specifically, air dispersion modeling requirements  
1915 necessary to evaluate the consequences of any decision to permit  
1916 increased pollution in an area must be promulgated at the same  
1917 time the EPA revises a national ambient air quality standard.

1918           As an example, EPA revised the national ambient air quality  
1919 standard for particulate matter less than 2.5 microns in July  
1920 of 1997.

1921           However, due to technical issues and limitations associated  
1922 with the inventories as well as the modeling techniques, EPA  
1923 applied the PM 10 surrogate policy until March 23rd, 2010.

1924           EPA's inability to promulgate clear regulatory requirements  
1925 unnecessarily led to several Title V permit objections.

1926           And to reiterate, EPA must promulgate implementation  
1927 requirements at the same time it promulgates a new or revised  
1928 national ambient air quality standard to avoid costly unnecessary  
1929 delays.

1930           Another example is the 2010 revision to the SO2 standard.

1931           Although the sulfur dioxide standard was revised in 2010, the  
1932 EPA promulgated amendments to the modeling techniques in February  
1933 of 2017.

1934           These amendments addressed significant unresolved technical  
1935 limitations of the models. As a result of the regulatory  
1936 uncertainty, several projects were not able to conduct the

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1937 necessary evaluations required by the New Source Review program  
1938 and thus limiting the potential for economic growth and  
1939 development.

1940 In closing, state, tribal, and local permitting authorities  
1941 must be provided with regulatory certainty throughout the New  
1942 Source Review permitting process.

1943 The regulatory certainty is necessary to carry out our  
1944 statutory obligations, which include providing for economic  
1945 growth and development.

1946 And thank you for the opportunity to participate in today's  
1947 hearing and I look forward to any questions you may have regarding  
1948 my testimony.

1949 [The prepared statement of Mr. Alteri follows:]

1950

1951 \*\*\*\*\*INSERT 4\*\*\*\*\*

1952 Mr. Shimkus. Thank you.

1953 The chair now recognizes Mr. Paul Baldauf, professional  
1954 engineer, assistant commissioner, Air Quality, Energy, and  
1955 Sustainability, New Jersey Department of Environmental  
1956 Protection.

1957 Sir, you're recognized for five minutes.

1958 STATEMENT OF PAUL BALDAUF

1959

1960 Mr. Baldauf. Thank you, Chairman Shimkus, Ranking Member  
1961 Tonko, and members of the committee for the opportunity to testify  
1962 today.

1963 My name is Paul Baldauf. I am the assistant commissioner  
1964 for Air Quality, Energy, and Sustainability at the New Jersey  
1965 Department of Environmental Protection.

1966 I have 30 years of engineering and management experience  
1967 related to environmental protection. I would like to take the  
1968 opportunity today to provide a state perspective on the regulatory  
1969 challenges associated with our mission to protect and improve  
1970 air quality.

1971 As we all understand, air pollution has no respect for state  
1972 borders. Individual states with effect and robust regulatory  
1973 programs have little influence to encourage upwind states to  
1974 similarly control their emissions.

1975 The Environmental Protection Agency must lead to ensure a  
1976 level playing field with all entities held to the same emission  
1977 standards. Any discussion of New Source Review permitting reform  
1978 must focus on emissions reduction.

1979 Amendments to the NSR process that have the potential the  
1980 increase emissions cannot be tolerated and these amendments will  
1981 cause New Jersey to fall out of attainment to the National Ambient  
1982 Air Quality Standards.

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1983 New Jersey is the most densely populated state in the nation  
1984 with a long history of air quality challenges. New Jersey has  
1985 made major improvements in air quality over the last two decades.

1986 Today, New Jersey is attaining all the NAAQS except the 70  
1987 parts per billion ozone. About half of the air pollution  
1988 responsible for causing ozone in New Jersey comes from outside  
1989 of New Jersey.

1990 The NSR program and the cost-effective control technologies  
1991 that exist to reduce emissions have been critical to the  
1992 improvements of New Jersey's air quality.

1993 If the proposed changes are adopted, emissions from  
1994 out-of-state sources are likely to increase, not only for ozone  
1995 but for other air pollutants including particulates and air  
1996 toxics.

1997 Governor Murphy has set numerous ambitious climate change  
1998 goals such as 100 percent clean energy by 2050 in New Jersey.

1999 States will be unable to attain the air quality benefits from  
2000 clean energy if upwind states continue their current levels of  
2001 emissions.

2002 Adverse health effects -- adverse health impacts can come  
2003 from both short-term and long-term exposure to air pollution.

2004 Maintaining the current NSR program and its associated  
2005 requirements to reduce emissions with plant upgrades will not  
2006 only improve the ability of states to attain or maintain NAAQS  
2007 but will result in greater air toxic reductions.

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2008 Co-benefit reductions are frequently called out in  
2009 rulemaking as a secondary benefit. Annual emissions of mercury  
2010 and hexavalent chromium, a known neurotoxin and a known  
2011 carcinogen, respectively, both of which are trace elements in  
2012 coal, would also increase with associated ton per year increases  
2013 of other pollutants.

2014 Mercury and hexavalent chromium are closely associated with  
2015 coal power plants and any increase, short term or long term, will  
2016 have detrimental effects on the environment and public health.

2017 The proposed amendments would alter when a source would be  
2018 subject to NSR in two key ways -- first, a project that increases  
2019 the efficiency of a unit, regardless of whether the project also  
2020 increases the annual emissions of the unit, would be exempted  
2021 from NSR and its associated emission reductions.

2022 While increasing efficiency may be desirable, the increase  
2023 in emissions associated with the change should be evaluated for  
2024 their impacts.

2025 Second, the proposal would eliminate the requirement to  
2026 evaluate the project for increases in annual emissions. This  
2027 could result in major sources expanding the annual capacity of  
2028 a plant, increasing the number of hours it operates each year  
2029 without the inclusion of modern air pollution controls or the  
2030 replacement of older equipment with modern, more efficient  
2031 equipment and associated lower air pollution.

2032 These amendments would allow it to continue to keep operating

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2033 at the same level of hourly emissions indefinitely, even though  
2034 cost-effective technologies exist to reduce emissions, undermine  
2035 the continuous emissions reductions we've achieved over the last  
2036 40 years.

2037 Without the required air quality evaluation, there would  
2038 be no way of knowing if the existing source operation was having  
2039 adverse effects to the airshed and a source's useful life could  
2040 be extended indefinitely with no consideration for reducing air  
2041 pollution leading to continued operation with old and inefficient  
2042 equipment.

2043 These annual emission increases would negatively impact  
2044 annual air quality standards. Such states as New Jersey to find  
2045 it challenging to remain in attainment within NAAQS if the NSR  
2046 program eliminated the requirement to evaluate a project for  
2047 increases in annual emissions.

2048 NSR amendments as proposed could result in extension of the  
2049 life of older power plants with modifications that result in small  
2050 improvements to energy efficiency while causing significant  
2051 increases in annual emissions of air contaminants, including  
2052 carbon dioxide, sulfur dioxide, nitrogen oxide, particulates,  
2053 mercury, and other hazardous air pollutants.

2054 That would be inconsistent with the Clean Air Act, which  
2055 requires its sources to install best available control  
2056 technology, lowest achievable emission rate, and maximum  
2057 achievable control technology when modifying equipment

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2058 facilities including energy efficiency modifications that would  
2059 increase emissions of applicable air contaminants.

2060 Thank you again for the opportunity to appear today and to  
2061 convey New Jersey's perspective on the importance of the NSR  
2062 program.

2063 I welcome any questions you may have.

2064 [The prepared statement of Mr. Baldauf follows:]

2065

2066 \*\*\*\*\*INSERT 5\*\*\*\*\*

2067 Mr. Shimkus. Thank you very much.

2068 The chair now recognizes Mr. Ross Eisenberg, vice president,  
2069 energy and resources policy, National Association of  
2070 Manufacturers.

2071 You're recognized for five minutes.

2072 STATEMENT OF ROSS EISENBERG

2073

2074 Mr. Eisenberg. Thank you, and good morning, Chairman  
2075 Shimkus, Ranking Member Tonko, members of the subcommittee.

2076 Thank you for the opportunity to be here today to talk about  
2077 manufacturers' continued dedication to reducing air emissions.

2078 The manufacturing sector is cleaner, more efficient, and,  
2079 frankly, more responsible than we have ever been. This is not  
2080 merely lip service.

2081 About 94 percent of the manufacturers listed on the Fortune  
2082 500 have in place a sustainability plan and they are keeping to  
2083 it.

2084 Now, this commitment has yielded extremely positive results  
2085 in terms of air emissions. Since 1970, the manufacturing sector  
2086 has reduced its emissions of nitrogen oxides by 53 percent, carbon  
2087 monoxide by 70 percent, sulfur dioxide by 90 percent, coarse  
2088 particulate matter by 83 percent, and VOCs by 47 percent.

2089 Fine particulate matter, PM 2.5, is down by 23 percent since  
2090 its peak for manufacturers in 1999 and greenhouse gases are down  
2091 by 10 percent over the past decade.

2092 The industrial sector actually produces less greenhouse gas  
2093 emissions than it did in 1990, which is considerably different  
2094 than the broader economy.

2095 We appreciate the opportunity to testify today on a draft  
2096 bill that would clarify the degree of physical or operational

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2097 change to an emissions source that would constitute a modification  
2098 under NSR.

2099           The NAM supports this bill because it would remove barriers  
2100 that have prevented manufacturers from investing in efficiency  
2101 projects and installing modern pollution control equipment at  
2102 their facilities.

2103           The purpose of NSRs for requiring industrial facilities to  
2104 install modern pollution control equipment when they are built  
2105 or when they're making a change that it results in significant  
2106 increase of emissions.

2107           In practice, however, NSR does stand in the way of the  
2108 technologies that the statute was supposed to promote. I realize  
2109 this is well-worn territory here and one that EPA has four years  
2110 tried to fix.

2111           But I believe the need today is even greater than it was  
2112 before. First of all, there is near universal adoption, as I  
2113 said, across the manufacturing sector -- the sustainability plans  
2114 that are driving continued targets and continued progress. It's  
2115 spurring a continuing need on shop floors to do things differently  
2116 and make those technology upgrades.

2117           Secondly, there is the recently enacted tax reform package  
2118 which, because of things like full expensing and other things,  
2119 now provides an interesting little window for manufacturers to  
2120 justify making these investments in more efficient  
2121 emissions-friendly technologies.

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2122           And then, finally, there's, honestly, the regulatory reality  
2123 -- that there are significant new laws like MATS and boiler MACT  
2124 that require -- requiring and demanding cleaner and more efficient  
2125 electricity generation.

2126           And if you believe, as we do at the NAM, that the EPA should  
2127 fill the void left by a repeal of the Clean Power Plan with a  
2128 replacement regulation, you're still going to need to fix NSR  
2129 at some point to make that work.

2130           A significant portion of the existing gas turbine and steam  
2131 turbine fleet could benefit from equipment upgrades to improve  
2132 their efficiency and operational flexibility, particularly given  
2133 that many are now being used in a different fashion because of  
2134 the onset of renewable energy and the way that the grid operates.

2135           These upgrades for gas and steam turbines will ensure higher  
2136 grade efficiency and lower emissions in supporting renewable  
2137 energy use.

2138           However, NSR has stood in the way of customer adoption of  
2139 these technologies. For example, an NAM member company that  
2140 manufactures gas turbine upgrade technology could improve the  
2141 vast majority of those in-service turbines by 22 percent and  
2142 reduce their total CO2 emissions by 62 percent. They report their  
2143 customers are choosing not to install this equipment simply  
2144 because it triggers NSR.

2145           An inability to define what is routine maintenance has  
2146 resulted in NSR notices of violation being issued for

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2147 environmentally beneficial projects.

2148           The Utility Air Regulatory Group has cited more than 400  
2149 instances in which a regulated entity took on a project to improve  
2150 the efficiency of a power plant only to face notices of violation  
2151 or citizen suits over violating NSR.

2152           Same thing happens at industrial facilities. Our members  
2153 have had trouble with projects involving switching from coal to  
2154 gas or from number six fuel oil to low-sulfur distillate oil.

2155           Despite the obvious emission benefits of this, these  
2156 projects have periodically triggered NSR because they -- because  
2157 of collateral emissions for carbon monoxide and VOCs, which  
2158 becomes a barrier to undertaking the project.

2159           One of our members estimates that there's 100 million tons  
2160 of CO2 that could be possibly reduced by deploying the full suite  
2161 of available turbine upgrades into power plants.

2162           If these were to happen, we are talking about the equivalent  
2163 of more than 20 million cars being taken off the road. That's  
2164 10 percent of the entire automobile fleet.

2165           And that's just for the power plant sector. The same  
2166 technologies would work for turbines and industrial facilities  
2167 as well. Many of these upgrades have been impeded because they  
2168 may, honestly, potentially trigger an NSR.

2169           The draft legislation that is the subject of the hearing  
2170 today would create flexibility in the definition of modifications  
2171 so that these heat rate improvements and efficiency upgrades would

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2172 not be deterred by NSR.

2173           It would eliminate a situation where a piece of this new  
2174 modern equipment would trigger it because it generates collateral  
2175 emissions of another pollutant and, most importantly, it would  
2176 unlock a potentially massive market for the installation of energy  
2177 efficient technologies that would drive our already impressive  
2178 emissions down even further -- emissions reductions down even  
2179 further.

2180           No matter our political, personal, or employment background,  
2181 we all share the same goal, which is to permanently reduce  
2182 pollution. We believe this bill will get us to that end goal  
2183 by reducing barriers to the installation of efficient and  
2184 environmentally beneficial technologies.

2185           Thank you.

2186           [The prepared statement of Mr. Eisenberg follows:]

2187

2188 \*\*\*\*\*INSERT 6\*\*\*\*\*

2189 Mr. Shimkus. The chair thanks the gentleman.

2190 The chair now recognizes Mr. Kirk Johnson, senior vice  
2191 president, government relations, National Rural Electric  
2192 Cooperative Association.

2193 You're recognized for five minutes. Thank you.

2194 STATEMENT OF KIRK JOHNSON

2195

2196 Mr. Johnson. Thank you, Chairman Shimkus, Ranking Member  
2197 Tonko, members of the subcommittee. It's a pleasure to be with  
2198 you here. Thank you very much for the invitation.

2199 I am here representing 900 rural electric cooperatives,  
2200 representing 47 states across the country. We, collectively,  
2201 power rural America but we do much, much more than that.

2202 We are the engines of economic development across much of  
2203 rural America and we are very proud of our history of doing that,  
2204 doing things that other companies would not do.

2205 Mr. Eisenberg referenced Fortune 500 companies. We are not  
2206 Fortune 500. We are purely Main Street and that's who we  
2207 represent. Being consumer owned means we have our consumers'  
2208 best interests at heart 24 hours a day, seven days a week, 365  
2209 days a year.

2210 We employ 71,000 people across the country. We serve 88  
2211 percent of the counties across the country. One of every eight  
2212 people gets their electricity from a rural electric cooperative  
2213 nationwide. That's 42 million Americans.

2214 We have a different generation portfolio than much of the  
2215 rest of the industry at retail. Overall, 41 percent of our power  
2216 comes from coal, 26 percent comes from natural gas, 17 percent  
2217 comes from wind, hydropower, solar, and other renewable  
2218 resources, and 15 percent comes from nuclear. But we generate

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2219 just 5 percent of the power generated in the country and we sell  
2220 at retail 13 percent.

2221 So the remaining balance of the power that we provide at  
2222 retail comes from other sources. But of the power that we  
2223 self-generate, 61 percent comes from coal -- that's down from  
2224 80 percent in 2003 -- 26 percent comes from natural gas -- up  
2225 from 7 percent in 2003 -- 10 percent from nuclear.

2226 We don't self-generate much by way of renewables because  
2227 the tax credits to incentivize those renewables are available  
2228 to the taxpaying utilities, the investor-owned utilities, but  
2229 not to -- not to us. So we generally get that power through  
2230 purchase power agreements.

2231 We've made significant reductions in our emissions profile  
2232 over the past 15 years. Between 2009 and 2016, SO2 emissions  
2233 are down 66 percent, NOx emissions are down 24 percent, and CO2  
2234 emissions are down 8 percent.

2235 Let's talk about New Source Review, the subject of this  
2236 hearing. We have been seeking reforms to the NSR program for  
2237 two decades now and we think the time is now to act.

2238 Representative Barton said this is a complicated issue.  
2239 He's absolutely right. When I first heard about New Source  
2240 Review, I thought it was a one-hit wonder 1990s boy band name.  
2241 But it certainly is not that. It's something that actually  
2242 impedes our ability to make progress on running our power plants  
2243 as efficiently as we can and it certainly has a role in protecting

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2244 the air quality of the country.

2245 Well, we need to remember that the goal of the Clean Air  
2246 Act is not to ensure that power plant X or power plant Y has a  
2247 piece of equipment X or piece of equipment Y on it.

2248 The goal and purpose of the Clean Air Act is to protect the  
2249 air quality of this country so that people can breathe well.

2250 As a child, I had asthma. I know what it -- I know what  
2251 it feels like not to be able to breathe and none of us want that  
2252 situation in our country anywhere in our country, and that's why  
2253 we continue to make these reforms.

2254 But the driving forces behind the emissions reductions  
2255 coming from the electric cooperative sector and the electric  
2256 utility sector overall don't just come from the NSR program.  
2257 In fact, that's probably a very limited role.

2258 Under the other rules we have to follow, under the MATS rule,  
2259 the CSPAR rule, our Title V permits, all of those are what keep  
2260 our emissions on a downward trajectory, coupled with changes in  
2261 the economy.

2262 So we should not and must not look at NSR in a vacuum and  
2263 we must look at the overall effort that is under the Clean Air  
2264 Act and whether we are making that progress or not.

2265 On NSR reform, we see NSR as a barrier to making common sense  
2266 efficiency improvements in our power plants and there are  
2267 circumstances in today's power sector that are changing that are  
2268 making it even more difficult for us to do that.

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2269 Coal-based power plants didn't used to cycle up and down.  
2270 Now they're being required to cycle up and down to follow  
2271 renewable resources, especially in the Great Plains, and I know  
2272 great examples in my home state of North Dakota.

2273 That cycling up and down puts more wear and tear on those  
2274 power plants and the need to maintain those power plants then  
2275 is even more central to keep that power flowing to the places  
2276 that they're going, even as we are building up more renewables  
2277 in those areas.

2278 So being able to address that in today's world. What was  
2279 considered routine maintenance maybe 20 years ago may be different  
2280 than what is routine today because of some of those changes in  
2281 the power sector and the rules of the road need to recognize that.

2282 So we are seeking those common sense reforms such as those  
2283 contained in Congressman Griffith's draft bill. All we are  
2284 asking and all we've ever asked is for clear rules of the road.

2285 We will follow them. We will make sure that we accomplish  
2286 the objectives that are laid out in the Clean Air Act.

2287 But if we don't have clear rules of the road, we become very  
2288 risk averse and we leave opportunities on the shelf that can  
2289 improve the performance of the electric power sector, keep our  
2290 consumers' costs down while continuing to meet all the clean air  
2291 goals of this country.

2292 Thank you for the opportunity to be here, Mr. Chairman, and  
2293 I look forward to your questions.

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2294

[The prepared statement of Mr. Johnson follows:]

2295

2296

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

2297 Mr. Shimkus. Thank you very much.

2298 Now I would like to recognize Mr. Bruce Buckheit, and the  
2299 title is analyst and consultant. Maybe I can have that title  
2300 someday. That sounds pretty cool. Simple.

2301 You're recognized for five minutes.

2302 STATEMENT OF MR. BUCKHEIT

2303

2304 Mr. Buckheit. Chairman Shimkus, Ranking Member Tonko, and  
2305 distinguished members of the subcommittee. Yes, that's an easy  
2306 title to come by when you work out of your house.

2307 As senior counsel for the Department of Justice and then  
2308 as director of EPA's Air Enforcement Division, I've investigated  
2309 and enforced and, most important, settled NSR cases starting in  
2310 1984 including leading the enforcement initiative against the  
2311 coal-fired power plants for their NSR violations.

2312 And so my view of the world is not the 50,000-foot high  
2313 altitude overview. My experience is in the trenches, working  
2314 with the plant managers and their counsel and others to parse  
2315 the difference between these sort of theoretical arguments and  
2316 the real world realities of what they need to do to keep their  
2317 plants going and how these programs actually work on the ground.

2318 And so that's my focus over the next couple of minutes is  
2319 how do these things actually work on the ground. Before I got  
2320 there, I just want to touch on one point and that is that Congress  
2321 did intend in the 1977 amendments that over time, gradually, the  
2322 existing sources that were grandfathered would lose that  
2323 grandfathered status.

2324 They expected plants to modify and have to put on controls  
2325 and that would end a competitive advantage that those old  
2326 uncontrolled plants would have over new plants that have to spend

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2327 hundreds of millions of dollars to put on controls and those  
2328 controls add operating costs that continue thereafter.

2329           So the overall intent was to level the playing field over  
2330 time. Let me touch on some of these arguments that are floating  
2331 at the 50,000-foot level that aren't true on the ground.

2332           First of all, it's been said that the NSR rules prevent  
2333 operators from making repairs needed to improve safety. That  
2334 is not true.

2335           Ongoing maintenance occurs all the time. There is no plant  
2336 manager that I ever came in contact with who would tell you that  
2337 he would defer a project needed for safety because of some  
2338 potential Clean Air Act rule.

2339           The current rules actually encourage ongoing maintenance  
2340 because if you let your plant decline hugely and then you do a  
2341 project, you have a risk of liability.

2342           If you do your ongoing maintenance year in year out to  
2343 maintain your plant in a good state, you don't trigger NSR.

2344           The issues respecting the complexity in the NSR permitting  
2345 process -- first of all, NSR permitting for existing sources is  
2346 extremely rare. Other than a handful of plant expansions in some  
2347 industrial settings, these permits are simply not needed with  
2348 any frequency and so don't pose a substantial burden.

2349           I am not aware of any power plant that has ever gone through  
2350 an NSR permitting process, okay, for anything other than expanding  
2351 the size of the unit.

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2352           The reason for this is simple. If you don't increase  
2353 emissions, you don't need an NSR permit. You have a number of  
2354 other options rather than going through the full NSR permitting  
2355 process.

2356           It includes incorporating a limit in your operating permit  
2357 so that you do the project but your emissions are capped.

2358           You can also avoid NSR by decreasing emissions elsewhere  
2359 in your facility to offset the emissions from the project.

2360           And thirdly, you can do incremental pollution controls, such  
2361 as the use of slightly lower sulfur coal to offset any minor  
2362 increases without having to go, you know, the route of the \$100  
2363 million pollution controls.

2364           And further -- last point here -- is that if a project  
2365 actually improves the efficiency of a unit, emissions go down.  
2366 You burn less coal to make the same amount of electricity or  
2367 the same number of widgets.

2368           And so all of this focus on energy efficiency, I think, is  
2369 overblown. With the power plants, the issue is life extension  
2370 programs -- programs where not routine maintenance but replacing  
2371 large chunks of the plant -- an equivalent to replacing the engine  
2372 in the car, not just changing the spark plugs, and it was those  
2373 sorts of projects and case law that stems from 1988 that got us  
2374 at EPA involved in the forcing of these provisions.

2375           Today, roughly, half of the existing coal-fired plants don't  
2376 have state-of-the-art controls for SO2 and three-quarters of them

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2377 don't have full controls for NOx.

2378 This is the best most economic place to get your emissions  
2379 reductions, not the small factories and not from individuals.

2380 I see I am out of time so I will say thank you to the chair.

2381

2382 [The prepared statement of Mr. Buckheit follows:]

2383

2384 \*\*\*\*\*INSERT 8\*\*\*\*\*

2385 Mr. Shimkus. Thank you very much.

2386 And then I will turn to Mr. Jeffrey Holmstead, partner of  
2387 Bracewell LLP -- testified numerous times before this committee  
2388 -- recognized for five minutes.

2389 STATEMENT OF MR. HOLMSTEAD

2390

2391 Mr. Holmstead. Thank you very much for giving me the chance  
2392 to be here today. I hope, during the questions, I can maybe  
2393 address a couple of things.

2394 Where I don't necessarily agree with my friend, Bruce, and  
2395 explained why -- and EPA's theory by which they prevent energy  
2396 efficiency projects and a rather strange theory about how you  
2397 calculate emissions increases, but I want to focus on something  
2398 different during my oral statement. I just have a minute.

2399 Look, we are talking about just one of the many programs  
2400 that regulate emissions from manufacturing plants and power  
2401 plants. New Source Review, and despite the name we are not  
2402 talking about how it applies to new sources. We are only talking  
2403 about how it applies to existing sources.

2404 In their testimony, Mr. Buckheit and Mr. Baldauf both focused  
2405 primarily on power plants and how they believe the NSR program  
2406 should work to reduce SO2 and NOx emissions from these plants.

2407 The problem is that the NSR program has been in place for  
2408 more than 40 years and it has never worked that way. As Bruce  
2409 said, very few power plants -- in fact, unless they expand their  
2410 capacity, they don't voluntarily go through NSR and even if the  
2411 program worked the way that they want it to, you would not get  
2412 overall reductions in power emissions because we have cap and  
2413 trade programs in place.

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2414           So if one facility goes through NSR and installs controls,  
2415 that doesn't reduce the total number of allowances that plants  
2416 are allowed to emit.

2417           You might be surprised to hear that there are actually 14  
2418 different Clean Air Act programs that regulate these very same  
2419 emissions that we are talking about -- SO2 and NOx emissions from  
2420 power plants.

2421           Thankfully, although the NSR program has essentially done  
2422 very little to reduce emissions from these plants, other programs  
2423 have been very effective.

2424           My friend Bruce, Mr. Baldauf, did not discuss any of these  
2425 other 14 programs. Based on their testimony, you might be left  
2426 with the misimpression that the NSR program is the only way to  
2427 require power plants to reduce their emissions. They appear to  
2428 believe that if we just leave the NSR program alone, all power  
2429 plants will be forced to install what Mr. Buckheit calls the full  
2430 modern suite of controls that he would like them to have.

2431           So even though all these plants have been covered by the  
2432 NSR program for decades, in some cases more than 40 years, we  
2433 just need to give the NSR program a little more time.

2434           But when Congress passed the 1990 Clean Air Act amendments,  
2435 it gave EPA much more effective programs that were specifically  
2436 designed to reduce emissions from power plants and these programs  
2437 have been remarkably effective.

2438           One of these programs, the acid rain program, as some of

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2439 you remember, was the centerpiece of the 1990 amendments. It  
2440 was specifically designed to reduce SO2 and NOx emissions from  
2441 power plants and it seems odd that if Congress expected the NSR  
2442 program would force all those plants to install emission controls,  
2443 it seems odd that it would have spent so much time and effort  
2444 developing the acid rain program.

2445 Here are just a few things that I hope you will keep in mind.  
2446 The Clean Air Act was passed in 1970. The NSR program came into  
2447 place a few years later.

2448 Between 1970 and 1990 when the amendments were passed, SO2  
2449 emissions from U.S. power plants decreased by about 9 percent.  
2450 NOx, during that same period when they were covered by NSR and  
2451 only NSR, NOx emissions actually increased by 30 percent.

2452 Now, since 1990 when Congress passed the acid rain program  
2453 to reduce emissions from power plants and also gave EPA authority  
2454 to impose other cap and trade programs when further reductions  
2455 were needed, here is what has happened.

2456 Since 1990, SO2 emissions from power plants have been reduced  
2457 by more than 92 percent -- more than 92 percent from almost 15  
2458 -- almost 16 million tons to 1.3 million tons.

2459 Since 1990, NOx emissions from power plants have fallen by  
2460 about 83 percent. What regulatory programs have been responsible  
2461 for these reductions?

2462 Well, according to EPA's own analysis, it's not the NSR  
2463 program. EPA itself says that these reductions have come because

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2464 of a series of cap and trade programs, and I don't have time to  
2465 go through them but there's been four that have been put in place  
2466 by successive administrations, a Democrat and Republican.

2467 The NSR program does make it harder and more expensive for  
2468 facilities to maintain their plants and make them more efficient.

2469 The NSR program is long and can often be very costly.

2470 I know of several companies that have teams of engineers  
2471 and lawyers who devote their time to figuring out how they can  
2472 maintain their plants without triggering NSR.

2473 I have said in rooms where companies have evaluated projects  
2474 that would make their plants more efficient and then decided not  
2475 to do them because of concerns that they would trigger NSR.

2476 Look, these policies are very complicated and I am grateful  
2477 that we are having this discussion. I sincerely hope that this  
2478 committee will show that Republicans and Democrats can work  
2479 together to remove unnecessary regulatory burdens.

2480 The bill being considered today would do just that and I  
2481 hope that you will give it serious consideration.

2482 Thank you.

2483 [The prepared statement of Mr. Holmstead follows:]

2484

2485 \*\*\*\*\*COMMITTEE INSERT 9\*\*\*\*\*

2486 Mr. Shimkus. Thank you very much.

2487 I will now recognize myself for the round of questions.

2488 I recognize myself for five minutes and I want to start with Mr.  
2489 Alteri.

2490 The discussion draft seeks to make it easier for companies  
2491 to carry out energy efficiency and pollution control projects.

2492  
2493 Would accelerating efficiency improvements and pollution  
2494 control adoption even on just existing sources be a net benefit  
2495 for meeting clean air standards?

2496 Mr. Alteri. Yes.

2497 Mr. Shimkus. Let me go to Mr. Eisenberg. In your testimony  
2498 you described how the National Association of Manufacturers'  
2499 member companies are struggling to sell gas turbine upgrade  
2500 technologies because customers are not willing to buy and install  
2501 equipment that would trigger New Source Review permitting.

2502 That being the case, would you agree that New Source Review  
2503 is slowing innovation and the adoption of newer technologies?

2504 Mr. Eisenberg. I would agree.

2505 Mr. Shimkus. Very simple answers.

2506 Would today's discussion -- same person -- would today's  
2507 discussion draft make it easier for companies to install newer  
2508 and cleaner equipment at existing facilities?

2509 Mr. Eisenberg. We believe it would, and it's a massive  
2510 potential market. I mean, as I said during my oral remarks, that

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2511 one particular manufacturer, just looking at its own turbine,  
2512 said it could be somewhere on the order of over a 100 million  
2513 tons of CO2 potential reduced if everyone were to upgrade the  
2514 steam turbine and gas turbine efficiency upgrades that they make  
2515 available.

2516 Mr. Shimkus. And I think you made a good point with our  
2517 tax bill that was passed -- the expending provision. We are  
2518 seeing it throughout, really, the country -- a great increase  
2519 in capital for new development and expansion and stuff like that.  
2520 So this would segue very well into the ability of modernizing,  
2521 retrofitting facilities, refineries and even small furniture  
2522 makers.

2523 Mr. Eisenberg. That's absolutely true and the idea wasn't  
2524 mine. It came from a member of ours who said hey, just change  
2525 the internal rate of return on a project we were thinking about  
2526 undertaking, and now we can do it and it's beneficial to the  
2527 environment. So we are going to look more into that ourselves,  
2528 too.

2529 Mr. Shimkus. Great. Thank you.

2530 Mr. Holmstead, concerning -- concerns have been raised that  
2531 the discussion draft reforms would enable existing facilities  
2532 to collectively produce higher annual emissions.

2533 Even if hourly emission rate at the facility goes down, how  
2534 do you respond to this concern?

2535 Mr. Holmstead. It's just not true. These facilities are

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2536 covered by many, many other different programs that would -- that  
2537 would assure that emissions continue to decrease over time.

2538 So anybody who claims that this bill would increase emissions  
2539 is just wrong.

2540 Mr. Shimkus. Yes. We have a pretty good record, I think,  
2541 on the subcommittee of trying to find that middle ground. This  
2542 one's going to be a little bit tougher, I assume.

2543 And it's really over this debate about the question that  
2544 I just posed is I think there can -- that my friend's concerns  
2545 are that emissions are going to go up.

2546 I think you make a good point -- there's a lot of other air  
2547 standards out there that are going to make sure that that doesn't  
2548 happen.

2549 Mr. Buckheit, riddle this for me, will you? Is there a lot  
2550 of other clean air rules and regs that'll prohibit that from  
2551 increasing?

2552 Mr. Buckheit. With all due respect with my good friend Jeff,  
2553 we've had these debates for decades. There are a lot of other  
2554 programs about there, none that would specifically address this  
2555 issue.

2556 It is only the NSR program that will prevent each of these  
2557 plants that we've been talking about from increasing annual  
2558 emissions, and this is -- it's not all about power plants but  
2559 it's mostly about power plants.

2560 Refineries and the like -- they tend to run 87/60 full time

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2561 year round and so the hours of operation are not the issue for  
2562 them so much. But and so reducing it -- there's already an  
2563 embedded hourly test for them.

2564 If you increase your hourly emissions you're going to  
2565 increase your annual emissions. This is more about the power  
2566 sector where because of forced outages they can't run for, you  
2567 know, three weeks a year and then they make the plant more reliable  
2568 and they run those three weeks a year.

2569 Mr. Shimkus. Well, let me claim -- my time's almost expired.  
2570 I want to go to Mr. Alteri.

2571 Do states and other permitting authorities have other tools  
2572 besides New Source Review to control existing facilities' annual  
2573 emissions?

2574 Mr. Alteri. We do, and I think you really have to look at  
2575 the nexus between the National Ambient Air Quality Standards.  
2576 Previously, the standards were on an annual basis.

2577 Now they're hourly basis, and really, it is comparative that  
2578 the maximum hourly emission rate is limited and not allowed to  
2579 exceed -- to violate those standards.

2580 Mr. Shimkus. And that's what Congressman Griffith in his  
2581 bill is attempting to do -- marry a successful standard with what  
2582 is viewed out there as an unsuccessful. Would you agree?

2583 Mr. Alteri. I would, and you have the new source performance  
2584 standards also that play a role.

2585 Mr. Shimkus. Great. Thank you very much. My time is

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2586 expired.

2587 The chair now recognizes the ranking member, Mr. Tonko, for  
2588 five minutes.

2589 Mr. Tonko. Thank you, Mr. Chair.

2590 It's been suggested that short-term such as hourly emission  
2591 rates are more meaningful from an environmental perspective,  
2592 since the number of NAAQS are based on short time frames.

2593 Mr. Buckheit, I want to ask you what you think about that  
2594 assertion and let me perhaps put it in the context of communities  
2595 that are in that range of those facilities.

2596 Do these communities located near these facilities, which  
2597 may be dealing with unsafe levels of particulates or other  
2598 pollutants, benefit from maintaining an hourly emissions rate  
2599 even if it causes a significant increase in overall pollution?

2600 Mr. Buckheit. It's kind of both, Congressman. There are  
2601 some local impacts, particularly for the one-hour SO2 standard  
2602 where if you're near a power plant such as the facility in  
2603 Alexandria here, you can have certain weather conditions where  
2604 you will get an exceedance -- unhealthy levels on a short-term  
2605 basis.

2606 The larger public health issue is chronic exposure to PM  
2607 2.5, which is annual or multi-year exposures to lower levels.

2608 That is the more consequential form of air pollution -- most  
2609 consequential form of air pollution in this country.

2610 Mr. Tonko. Thank you.

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2611 And Mr. Buckheit, you said that NSR permits for existing  
2612 power plants are very rare. I believe that was the term you used.

2613 Why do you think that permits are rare? Is it because  
2614 they're costly, over burdensome, or easily avoided?

2615 Mr. Buckheit. They're -- I would say easily avoided is the  
2616 right answer.

2617 Mr. Tonko. And your testimony mentioned that the courts  
2618 have weighed in on the so-called routine maintenance exemption  
2619 in the past, and to make it clear, it was only for legitimate  
2620 maintenance and not large capital projects.

2621 Is it fair to say there's been a strategy over the years  
2622 by these facilities to find loopholes that might enable them to  
2623 make modifications without needed to undergo NSR program  
2624 requirements?

2625 Mr. Buckheit. Yes. The case you're referring to,  
2626 Congressman, is the Webco case back in 1988, which the courts  
2627 enforced a decision under the Bush I administration where  
2628 replacing these large projects would not be considered routine  
2629 maintenance.

2630 Thereafter, a number of those lobbying law firms in town  
2631 continue to press the notion that you could do anything or almost  
2632 anything and call it routine maintenance and the number of the  
2633 large utilities followed that advice, did projects without  
2634 offsetting, without, you know, any of the other legal routes to  
2635 avoid NSR permitting and without going through NSR permitting

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2636 and that was the basis of our enforcement initiative back 10 years  
2637 -- 1998 and thereafter.

2638 Mr. Tonko. Thank you.

2639 Can you give us a sense of the current operating status at  
2640 facilities that have been putting off these major modifications?

2641 Generally speaking, are they in need of significant investments  
2642 in order to keep running?

2643 Mr. Buckheit. Well, our fleet is getting pretty old -- our  
2644 coal fleet. Most of the coal-fired power plants came online in  
2645 1972 and before, and more and more the maintenance budgets have  
2646 been cut at the plants as cost becomes an issue and competition  
2647 in the electric market with natural gas and others become an issue.

2648 So I can forecast that as these plants -- they're, you know,  
2649 now 60 years old, then coming on 70 years old and then coming  
2650 on 80 years old.

2651 There's going to be a time when engineering is going to force  
2652 them to replace these components all over again.

2653 Mr. Tonko. So if the modification definition is expanded  
2654 to allow projects designed to, and I quote, restore, maintain,  
2655 or improve the reliability or safety of the source, would that  
2656 essentially cover any investment needed for life extension  
2657 projects?

2658 Mr. Buckheit. Yes. You could fundamentally replace the  
2659 plant.

2660 Well, you can't go all the way there because then you might

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2661 trigger some part of the NSPS rule. But you could spent 20, 30,  
2662 40 percent of the cost of the new plant replacing these very large  
2663 components without having to put on controls.

2664 Mr. Tonko. And, finally, do you believe this discussion  
2665 draft is just the latest attempt to create new loopholes to enable  
2666 these sources to avoid some of the NSR program's requirements  
2667 such as installing pollution controls?

2668 Mr. Buckheit. This is the current wave. It happens every  
2669 eight years or so.

2670 Mr. Tonko. Okay. Thank you for your response and, Mr.  
2671 Chair, I yield back.

2672 Mr. Shimkus. Gentleman yields back his time.

2673 The chair now recognizes the gentleman from West Virginia,  
2674 Mr. McKinley, for five minutes.

2675 Mr. McKinley. Thank you, Mr. Chairman.

2676 Mr. Holmstead, if I could direct perhaps my comments to you.

2677 Earlier, you were in the room when you -- I think you were  
2678 in the room when we were asking the previous speaker whether this  
2679 idea of maintenance -- routine maintenance, and what we were going  
2680 -- because I had had conversations with some utility companies  
2681 that have considered replacing the fins on their boiler as routine  
2682 maintenance and that's apparently been deemed that's an -- that  
2683 is a routine maintenance type of work.

2684 So if that's -- if that's the case that they can maintain  
2685 their existing boiler, which is probably inefficient because it's

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2686 40 or 50 years old, and then I go back to what Congressman Tonko  
2687 and I have been -- we've been working on now for three or four  
2688 years getting research money to upgrade our and improve our  
2689 turbine efficiency, here we have an opportunity to replace --  
2690 we can either replace the fins due to turbidity or erosion or  
2691 whatever that might have caused and keep the efficiency low or  
2692 we can use the research that we've paid for to implement a new  
2693 technology, a new boiler, in that and improve the efficiency --  
2694 the operation of that plant.

2695 But in so doing, that potentially triggers and likely  
2696 triggers an NSR, and then you have to keep into consideration  
2697 that from the February testimony we had here that you can go --  
2698 you can go back as long as -- there's 700 -- I think, Mr. Allen,  
2699 you said this, 700 documents that we have to -- have to be filed  
2700 to comply. But in Region 9 -- Region 9, the average approval  
2701 is 777 days to get that approval.

2702 You may find it -- you may not -- it's over two years to  
2703 get an answer of whether or not you're going to be in compliance  
2704 with the NSR.

2705 How would you react to that? Is that -- am I reasonable  
2706 about what -- what's the incentive for people to improve the  
2707 efficiency of their -- of their plant if it may take two and a  
2708 half years to get the approval?

2709 Mr. Holmstead. Well, you have highlighted a big problem,  
2710 that in a series of cases EPA has argued that if you improve the

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2711 efficiency of a power plant you trigger NSR.

2712           So it might be in your interest to invest in something that  
2713 would reduce your CO2 emission rate. It would reduce the emission  
2714 rate of other pollutants.

2715           But here's the theory that Bruce has propounded in several  
2716 cases. If you make your plant more efficient you will reduce  
2717 the operating costs. So the cost of producing a megawatt hour  
2718 will go down.

2719           That will make you more competitive than other plans so your  
2720 plant will run more often, will run more hours. So the claim  
2721 is that if you make your plant a little bit more efficient you  
2722 might have a lower operating cost.

2723           Therefore, you would run more hours. Therefore, you can't  
2724 make your efficiency improvement unless you go through this NSR  
2725 process that can take, for a coal-fired power plant, two years.

2726           It would be -- would be the blink of an eye, and you might have  
2727 to install brand new controls that would cost several hundred  
2728 million dollars.

2729           So how many companies are actually going to make a decision  
2730 to become more efficient if those are the consequences?

2731           Mr. McKinley. Thank you.

2732           I yield back.

2733           Mr. Shimkus. Gentleman yields back his time.

2734           The chair now recognizes the gentleman from Michigan, Mr.  
2735 Walberg, for five minutes.

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2736 Mr. Walberg. Thank you, Mr. Chairman. Thanks to the panel  
2737 for being here.

2738 Mr. Eisenberg and Mr. Johnson, I've got a couple question  
2739 -- a question I would like to ask you here.

2740 Due to the positive impacts of the recently enacted tax  
2741 reform bill, many companies are looking to make greater  
2742 investments in new construction projects and facility upgrades.

2743 I've seen it in my district in plenty of sites. What effect  
2744 does NSR have on a company's ability and willingness to pursue  
2745 new projects or upgrade existing facilities?

2746 I will go with Mr. Eisenberg first.

2747 Mr. Eisenberg. Thank you, Congressman.

2748 So it's a barrier. It's a barrier that is in the way of  
2749 a pretty amazing window that we now have to -- that we are seeing  
2750 on the ground in real time -- manufacturers taking on new projects  
2751 because of tax reform.

2752 I appreciate that this has been a coal-dominant discussion.

2753 But for us, I want to make clear that it is very much about  
2754 manufacturing.

2755 The industry -- we asked our members at the beginning of  
2756 last year, you know, tell us what you care about in the regulatory  
2757 space that we should be working on, and this issue was number  
2758 one in the environmental space.

2759 So, you know, when I -- when I talk about NSR I hear from  
2760 aerospace and defense and steel and aluminum and cement and pulp

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2761 and paper and chemicals.

2762           These are the folks that are doing those things on the ground  
2763 that you just mentioned because of tax reform and other things  
2764 that need -- that real or perceived have to deal with NSR and  
2765 need a clear signal that NSR is a problem.

2766           You know, to borrow a phrase from another context, the first  
2767 step to solving a problem is admitting you have a problem.

2768           Mr. Walberg. Yes.

2769           Mr. Eisenberg. We have a problem, and we really hope that  
2770 Congress and EPA will help us fix it.

2771           Mr. Walberg. Mr. Johnson. Thank you.

2772           Mr. Johnson. Thank you, Congressman.

2773           In the not for profit sector, the tax bill has not had as  
2774 big of an impact on us but we are constantly looking for ways  
2775 to improve the economics and the efficiency of the power plants  
2776 that we run to generate electricity to keep our costs down for  
2777 the electricity in much of rural America and that's just a constant  
2778 effort by all of our generation and transmission cooperatives  
2779 to do that, and NSR is a barrier.

2780           We have had a number of our member cooperatives who's  
2781 indicated they've considered undertaking projects and have  
2782 decided not to do that because of the uncertainty of the NSR  
2783 permitting program.

2784           But they have taken other projects. We've installed lots  
2785 of pollution control equipment and Mr. Buckheit's testimony

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2786 implied that older units have not added pollution control  
2787 equipment.

2788           That is just not the case. The utility industry has invested  
2789 over \$100 billion on pollution control equipment to reduce those  
2790 emissions and make the accomplishments that have been documented  
2791 here.

2792           So we are constantly looking for those opportunities this  
2793 is in fact a barrier and the bill would help remove that barrier.

2794           Mr. Walberg. And, of course, you have that symbiotic  
2795 relationship with business and industry -- manufacturing that  
2796 goes with it. You have to be prepared for it and I've seen --  
2797 I've seen those upgrades at a great expense in my district as  
2798 well in the utilities.

2799           Mr. Johnson. A big part of what we do is try to make sure  
2800 the economies of our communities are strong and that we are  
2801 investing in businesses and bringing those jobs to our  
2802 communities.

2803           Mr. Walberg. Okay. Let me -- let me follow up with both  
2804 of you. Does the NSR program create an incentive for  
2805 manufacturers and utilities to operate their plants exactly as  
2806 they were built, and secondarily, if -- so what challenges is  
2807 this creating?

2808           Mr. Eisenberg. So yes, I mean, and not every time but by  
2809 and large it does create a perverse sort of incentive that --  
2810 to only replace your equipment with the vintage of the equipment

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2811 that was from when it was first manufactured.

2812 It doesn't really make any sense in the grand scheme of  
2813 things. Certainly, technology develops and gets better and  
2814 manufacturers have an interest in installing that.

2815 NSR is a barrier and, you know, I've had, you know, countless  
2816 companies say, look, the time line that we needed to get through  
2817 to upgrade this boiler or do this or do that, NSR -- you know,  
2818 my fear of waiting two years to get a permit and maybe having  
2819 to litigate it isn't worth that expense. I can't justify it to  
2820 my board and my CEO.

2821 So it is a barrier. It is not the only barrier but it is  
2822 one that we hope we can fix.

2823 Mr. Johnson. And Congressman, the utility sector -- not  
2824 to be evasive, but there are lots of things we have to consider  
2825 when making determinations about how to improve plants, what to  
2826 go through.

2827 This is -- this is but one of those, but it is one that slows  
2828 things down, doesn't speed things up.

2829 Mr. Walberg. Yes. To have a drag on your process is just  
2830 that and we take as many drags away from it then it works better.

2831 So thank you. I yield back.

2832 Mr. Shimkus. The gentleman yields back his time.

2833 The chair recognized the gentleman from Georgia, Mr. Carter,  
2834 for five minutes.

2835 Mr. Carter. Thank you, Mr. Chairman, and thank all of you

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2836 for being here. We appreciate your presence here today and the  
2837 work that you're doing.

2838 Mr. Johnson, I will start with you. In your testimony, you  
2839 talked about the current system and how flawed it is for companies  
2840 and organizations that are wanting to do the right thing and trying  
2841 to do the right thing and how easy it is for them to receive  
2842 enforcement actions.

2843 How important is it for us to change the metric that's used  
2844 to determine emissions from the annual emissions rate to an hourly  
2845 rate?

2846 Mr. Johnson. Going to the hourly emissions rate would  
2847 harmonize the rules between the NSR and the NSPS programs.

2848 So it would make some internal consistency. It would give  
2849 our members much more clarity about what the rules of the road  
2850 are and then they can make informed decisions about what they  
2851 would to do to improve the efficiency of their power plants or  
2852 do other maintenance activities because they would know what that  
2853 clear line is between routine maintenance and what a major  
2854 modification is.

2855 Giving them that clarity would speed their processes, cut  
2856 our costs, while maintaining the environmental performance of  
2857 the plant --

2858 Mr. Carter. Have you communicated that to the EPA? I mean,  
2859 do they ever ask for any input or --

2860 Mr. Johnson. We went through a process during Bush II

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2861 administration. Mr. Holmstead was at EPA at the time, trying  
2862 to clarify rules of the road on New Source Review.

2863 Ultimately, that was -- that was not successful. We've  
2864 asked for legislative clarifications, as I've testified, for --  
2865 we've been looking for some clarity in this program for two decades  
2866 and, you know, now is a good a time to act as any.

2867 Mr. Carter. Wow. Have you ever -- do you have any examples  
2868 of any plants were just -- it was no longer feasible and they  
2869 -- and they just, you know, had to shut down as a result of the  
2870 NSR being triggered?

2871 Mr. Johnson. I can't point to a this moment a particular  
2872 plant that closed because of NSR, per se. But where we've had  
2873 plants that have closed or reduced their operations has been due  
2874 to a multitude of factors and there have been times when plants  
2875 have considered making, say, turbine upgrade projects or other  
2876 improvements that improved the efficiency of the plant, that,  
2877 as I said, they declined to do because of the uncertainty of the  
2878 NSR process, its time line, the litigation that would follow from  
2879 that, and ultimately our members tend to operate in a small C  
2880 conservative business manner to try to keep those costs down and  
2881 avoid risks when possible.

2882 Mr. Carter. Okay. Thank you.

2883 Mr. Alteri, I want to ask you -- Chairman Shimkus has  
2884 mentioned in our February meeting that -- and when we were talking  
2885 about the New Source Review that were over 700 guidance memos.

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2886           How do you -- how do you sieve through all that? I mean,  
2887 that's got to be unbelievable.

2888           Mr. Alteri. It surely is. EPA does a nice job in -- out  
2889 of Region 7 of trying to capture all of those applicability  
2890 determination through an index. But there's also ongoing  
2891 litigation that we have to be aware of because, ultimately, they  
2892 decide.

2893           But, again, in Kentucky we are prohibited from regulating  
2894 by policy and guidance and it should be noted that kind of the  
2895 basis for what all NSR permitting actions are taken are through  
2896 the 1990 puzzle book and it is still in draft form.

2897           And so we just want EPA to give us the certainty that when  
2898 we make a decision that it's a final decision and then the  
2899 companies can make the adjustments and the changes without fear  
2900 of ongoing litigation.

2901           Mr. Carter. Let me ask you, from your perspective, if we  
2902 were to shift to an hourly emissions rate would that help? I  
2903 mean --

2904           Mr. Alteri. Well, again, the idea is that you're going to  
2905 make that unit as efficient as possible and, you know, to Mr.  
2906 Buckheit's point is that it would be utilized more in increased  
2907 emissions.

2908           But now with the 2010 standards for NOx and SOCS, they're  
2909 one-hour standards and that's what the health-based standards  
2910 are. They're not annual-based standards any longer.

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2911           So I think it makes sense to focus on the hourly emission  
2912 rates.

2913           Mr. Carter. Good. Good.

2914           Thank you all, again, for being here and, you know, I hope  
2915 you will not be discouraged. I hope you will continue work.  
2916 I want to think it's a new day at EPA and that they're more  
2917 receptive and more input from you. So thank you for what you're  
2918 doing.

2919           Mr. Chairman, I will yield back.

2920           Mr. Shimkus. The gentleman yields back his time.

2921           The chair now recognizes again the very patient author of  
2922 the legislation, Mr. Griffith from Virginia, for five minutes.

2923           Mr. Griffith. Thank you very much. If we could get the  
2924 map put up on the board.

2925           Mr. Eisenberg, I've told the story earlier about the conveyor  
2926 belt to nowhere because they didn't want to mess with the conveyor  
2927 belt because -- and maybe their wrong.

2928           But the confusion and the concern about NSR is a problem.

2929           In response, we heard from Mr. Baldauf that they were concerned  
2930 about New Jersey's mercury and other chemicals going up, and I  
2931 knew I had this map somewhere in the back and if you can read  
2932 it -- and if we need the bigger one we can bring it out -- I got  
2933 it on foam board -- but that's a listing of the mercury deposited  
2934 in the United States from foreign sources and you can see New  
2935 Jersey is in the 40 to 45 to 50 percent range of foreign sources.

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2936 Am I not correct that a large amount of that comes from  
2937 manufacturing and electrical generation in Asia and other -- I  
2938 see Florida's got a high percentage so I would assume some of  
2939 it may be from Central America, too.

2940 Wouldn't that be correct, yes or no?

2941 Mr. Eisenberg. That would be correct, and not just on  
2942 mercury but other pollutants as well.

2943 Mr. Griffith. And so when we have situations where the  
2944 confusion in the United States is a manufacturer of furniture  
2945 can't change the conveyor to nowhere because he's no longer  
2946 putting the lacquer on at that end of the conveyer belt, that  
2947 tends to make our Asian competitors more competitive, does it  
2948 not, when they're manufacturing goods?

2949 Mr. Eisenberg. It does.

2950 Mr. Griffith. And in fact, I would submit -- and I want  
2951 to know if you agree -- that in some ways, by having rules that  
2952 don't make sense we actually might increase the mercury being  
2953 deposited from foreign sources in New Jersey that Mr. Baldauf  
2954 is worried about, aren't we?

2955 Mr. Eisenberg. Well, certainly, if we are not promoting  
2956 more efficient generation and more efficient technologies, yes.  
2957 It would only exacerbate the problem.

2958 Mr. Griffith. But usually we are trying to be more efficient  
2959 but we've got this rule in the way.

2960 Mr. Holmstead, I don't know if you can answer this question

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2961 or not, and if not if you can get back to me later -- I think  
2962 it's interesting, as I've been listening to the discussion.

2963 My understanding is is that the Obama administration EPA,  
2964 which was very aggressive on a lot of these issues -- a lot of  
2965 these issues never tried to take the New Source Review rule and  
2966 implant that into the new source performance standards. Am I  
2967 not correct on that?

2968 Mr. Holmstead. No, that is right.

2969 Mr. Griffith. And if the New Source Review rule was so much  
2970 better, because we heard from Mr. Johnson earlier, the language  
2971 is the same in the bill but it's been interpreted differently.

2972 And if that was so much better, I would have thought they would  
2973 have done that.

2974 Now, the hourly emissions rate test utilized by the new  
2975 source performance standards program and included in this  
2976 legislation provides an objective measure based on the facility's  
2977 design and we've heard that it's easily determined by facility  
2978 operators.

2979 Why is it easier to calculate and what is so complicated  
2980 about the current emission project process?

2981 Mr. Holmstead. So the hourly emission rate is really the  
2982 capacity of the plant and people who design the plant, people  
2983 who buy that equipment, that's what they care about.

2984 That's an objective number, and I am not aware that there's  
2985 ever been an issue whether that was triggered under the NSPS.

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2986 People do trigger it sometimes which means that they have  
2987 to meet more efficient standards. With the annual test, Mr.  
2988 Buckheit said something that's very revealing.

2989 So if you have a plant that in some time over the last five  
2990 years had a forced outage, so you had a part that broke down and  
2991 you had to shut down your plant for a day, even half a day, if  
2992 you replace that part, then under the theory of -- that EPA has  
2993 taken in these cases, you increase your emissions because it was  
2994 shut down for 24 hours or eight hours, you know, during some period  
2995 and now that that part's not going to break down, the theory is  
2996 well, you're going to increase your annual emissions.

2997 Some courts, but not all, have accepted that, and that's  
2998 one of the other problems. We have different NSR rules around  
2999 the country based on decisions by circuit courts on some of these  
3000 theories.

3001 Mr. Griffith. So, basically, if you're more efficient,  
3002 that's bad from the viewpoint of those that don't want to --

3003 Mr. Holmstead. Or --

3004 Mr. Griffith. -- or if you're just not closed down some  
3005 --

3006 Mr. Holmstead. Or more reliable.

3007 Mr. Griffith. Or more reliable.

3008 Mr. Holmstead. Right. So if you're more reliable then you  
3009 can operate more hours and that should trigger NSR.

3010 Mr. Griffith. And whether we are dealing with manufacturing

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3011 or we are dealing with electric generation or refining, we  
3012 actually want those people to be more reliable, don't we?

3013 Mr. Holmstead. I would -- I would think so. But we also  
3014 want them to reduce their pollution where we can and we have all  
3015 these other tools.

3016 We are not waiting for them to trigger some program. We  
3017 are saying, here's how you need to reduce your pollution and we  
3018 are going to focus on it.

3019 Mr. Griffith. I think you pointed out earlier there are  
3020 14 overlapping programs with the NSR -- is that accurate?

3021 Mr. Holmstead. Well, there's -- for the power sector  
3022 there's at least 14 other programs that regulate the very same  
3023 pollutants from the same plans.

3024 Mr. Griffith. Kind of makes it hard for folks to comply  
3025 when you have got all these overlapping and sometimes confusing  
3026 regulations, isn't it?

3027 Mr. Holmstead. Well, it's good for Clean Air Act lawyers.

3028 Mr. Griffith. Yes, sir. I can appreciate that. As a  
3029 lawyer, I am not sure I would be upset about that part of it but  
3030 I hate it for the American people.

3031 I yield back.

3032 Mr. Shimkus. The gentleman yields back his time.

3033 Before I do the closing document, I was asked by the minority  
3034 -- I am going to ask unanimous consent to allow Mr. Baldauf to  
3035 at least respond to the air transport issue, if you would like,

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3036 since the state of New Jersey was mentioned in my colleague's  
3037 comment.

3038 Is that correct? Is that what you wish.

3039 Mr. Baldauf. Sure. So, generally, the transport issue just  
3040 has to do with the simple fact that, you know, as a state we are  
3041 probably almost in the top couple cleanest energy-generating  
3042 states in the country.

3043 But the reality is no matter how clean your in-state  
3044 generation is, if there's no control on the upwind states, you  
3045 have the same amount of pollution, unfortunately, for your  
3046 citizens as the other states do.

3047 One of our focus is on NSR. There's been talk about all  
3048 the tools in the toolbox. Well, at the end of the day, these  
3049 grandfathered facilities have remained unchanged for 40 years.  
3050 So those other tools don't seem to be helping.

3051 I agree that the NSR rules are flawed. They're complicated,  
3052 and I do think they need revised. But they need revised in such  
3053 a way to make sure these grandfathered facilities reduce emissions  
3054 and not increase emissions.

3055 Mr. Shimkus. Well, I thank you very much and you're welcome  
3056 to give us some input on -- I mean, we do try to get to some type  
3057 of compromise.

3058 We'd sure like to get this fixed. This might be a bridge  
3059 too far but we could give it a try, right, Congressman Griffith?

3060 Mr. Griffith. Absolutely.

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3061 Mr. Shimkus. So with that, seeing no other further members  
3062 wishing to ask questions, I would like to thank you all for being  
3063 here again today.

3064 Before we conclude, I would like to ask unanimous consent  
3065 to submit the filing documents for the record: a joint letter  
3066 from the American Forest and Paper Association and the American  
3067 Wood Council.

3068 We also have a letter from the -- what did I do with it --  
3069 from the National Parks Conservation Association. Without  
3070 objection, so ordered.

3071 [The information follows:]

3072

3073 \*\*\*\*\*COMMITTEE INSERT 10\*\*\*\*\*

3074 Mr. Shimkus. In pursuant to committee rules, I remind members  
3075 that they have 10 business days to submit additional questions  
3076 for the record and I ask that witnesses submit their responses  
3077 within 10 business days upon receipt of the questions.

3078 Without objection, the subcommittee is adjourned.

3079 [Whereupon, at 12:48 p.m., the committee was adjourned.]

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