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5
6 MARKUP OF H.R. 3128, TO AMEND SECTION 111 OF
7 THE CLEAN AIR ACT TO CLARIFY WHEN A PHYSICAL
8 CHANGE IN, OR CHANGE IN THE METHOD OF
9 OPERATION OF, A STATIONARY SOURCE
10 CONSTITUTES A MODIFICATION, AND FOR OTHER
11 PURPOSES

12 TUESDAY, JULY 17, 2018

13 House of Representatives

14 Subcommittee on Environment

15 Committee on Energy and Commerce

16 Washington, D.C.

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19
20 The subcommittee met, pursuant to call, at 1:00 p.m., in
21 Room 2322 Rayburn House Office Building, Hon. John Shimkus
22 [chairman of the subcommittee] presiding.

23 Members present: Representatives Shimkus, McKinley, Barton,
24 Harper, Olson, Johnson, Flores, Hudson, Cramer, Walberg, Carter,
25 Duncan, Walden (ex officio), Tonko, Ruiz, Peters, Green, DeGette,

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26 McNerney, Dingell, Matsui, and Pallone (ex officio).

27 Staff present: Mike Bloomquist, Deputy Staff Director;
28 Samantha Bopp, Staff Assistant; Daniel Butler, Staff Assistant;
29 Karen Christian, General Counsel; Kelly Collins, Staff Assistant;
30 Wyatt Ellertson, Research Associate, Energy/Environment;
31 Margaret Tucker Fogarty, Staff Assistant; Adam Fromm, Director
32 of Outreach and Coalitions; Ali Fulling, Legislative Clerk,
33 Oversight & Investigations, Digital Commerce and Consumer
34 Protection; Jordan Haverly, Policy Coordinator, Environment;
35 Peter Kielty, Deputy General Counsel; Ryan Long, Deputy Staff
36 Director; Mary Martin, Deputy Chief Counsel, Energy &
37 Environment; Sarah Matthews, Press Secretary, Energy &
38 Environment; Drew McDowell, Executive Assistant; Brandon Mooney,
39 Deputy Chief Energy Advisor; Brannon Rains, Staff Assistant;
40 Peter Spencer, Professional Staff Member, Energy; Austin
41 Stonebraker, Press Assistant; Evan Viau, Legislative Clerk,
42 Communications & Technology; Hamlin Wade, Special Advisor,
43 External Affairs; Jeff Carroll, Minority Staff Director;
44 Elizabeth Ertel, Minority Deputy Clerk; Jean Fruci, Minority
45 Energy and Environment Policy Advisor; Caitlin Haberman, Minority
46 Professional Staff Member; Rick Kessler, Minority Senior Advisor
47 and Staff Director, Energy and Environment; Jourdan Lewis,
48 Minority Staff Assistant; Alexander Ratner, Minority Policy
49 Analyst; Tuley Wright, Minority Energy and Environment Policy
50 Advisor; and Catherine Zander, Minority Environment Fellow.

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51 Mr. Shimkus. The subcommittee will come to order. The
52 chair recognizes himself for an opening statement.

53 Kind of before we do that, we are going to do the opening
54 statements and then the schedule is that votes should be called
55 around 1:20. Then we will go vote and then we will come back
56 and we will probably at that time deal with the amendments.

57 Secondly, I want to embarrass my son, who's in the front
58 row on the right with the short-sleeved white shirt. So that's
59 a to-do list and I got that done.

60 Mr. Tonko. Are we going to share his name?

61 Mr. Shimkus. Oh. What is his name? I don't know.

62 [Laughter.]

63 Mr. Duncan. I'd like to introduce my son in the pink tie
64 on the front there, too.

65 Mr. Shimkus. Daniel Shimkus is my son's name. Yes. Yes.

66 So good afternoon, and welcome to today's subcommittee
67 markup of H.R. 3128, a bill introduced by Mr. Griffith last year
68 which clarifies when changes at stationary sources should be
69 subject to New Source Review preconstruction permitting.

70 The legislative text we consider today is substantially
71 similar to the discussion draft we examined in our May legislative
72 hearing, reflecting the technical feedback from EPA and
73 stakeholders.

74 It will be offered as an amendment in the nature of a
75 substitute to H.R. 3128 upon which the text is based. The New

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76 Source Review program is desperately in need of reform.

77 Witnesses have testified that the New Source Review program
78 is overly complex and is discouraging companies from doing things
79 that we all want them to do like improving energy efficiency,
80 making incremental pollution control upgrades, and keeping
81 facilities in good working order.

82 Perhaps the most frustrating aspect of the New Source Review
83 program is that the regulated community and even the regulator
84 themselves are confused about what types of facility upgrades
85 require a company to obtain a New Source Review permit.

86 In theory, only projects that result in an emissions increase
87 require a New Source Review permit. However, in practice, we
88 have seen examples where the EPA has issued enforcement actions
89 against companies for making facility upgrades that actually
90 resulted in an emissions decrease, which doesn't make any sense.

91 An environmental program to discourage these companies from
92 carrying out environmentally beneficial projects is an
93 environmental program that needs to be reformed and that is
94 exactly what Mr. Griffith's legislation does.

95 Today's bill makes the New Source Review program work better
96 by clarifying that the only types of facility changes that require
97 a New Source Review permit are changes that increase a facilities
98 capacity to emit pollutants at the higher hourly rate.

99 Opponents of New Source Review will claim that this
100 legislation will result in massive pollution increases. This

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101 is simply not true.

102 The legislation applies solely to stationary sources and
103 actually removes hurdles to installing pollution control projects
104 and devices.

105 Most important, it does not affect operating permits and
106 other regulatory tools used to study emission limits at major
107 facilities.

108 Two state air regulators testified before this subcommittee
109 that the Clean Air Act currently provides a range of effective
110 tools and programs to successfully control emissions from
111 existing sources and that nothing in this legislation will change
112 that.

113 This bill's clarification in the law will make it easier
114 for companies to invest in, modernize in existing facilities,
115 leading to a stronger economy and more jobs.

116 For these reasons, a wide range of stakeholders have sent
117 letters in support for New Source Review reform, including
118 multiple labor unions representing the building trades, the
119 National Association of Manufacturing, National Rural Electric
120 Cooperative Association, American Public Power Association,
121 American Forest and Paper Association, Portland Cement
122 Association, American Iron and Steel Institute, National Mining
123 Association, U.S. Chamber, Pennsylvania Chamber of Business and
124 Industry, American Energy Alliance, and Citizens for Responsible
125 Energy Solutions.

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126 I look forward to voting in favor of this legislation and
127 urge my colleagues on both sides of the aisle to do the same.

128

129 I now recognize my friend from New York, Mr. Tonko, for three
130 minutes for an opening statement.

131 Mr. Tonko. Thank you, Mr. Chair, and today we are here to
132 consider H.R. 3128, which would make a number of significant
133 changes to EPA's New Source Review program for existing sources
134 of emissions.

135 Over the last half century we have gained a better
136 understanding of how dangerous airpollution can be and how --
137 and have developed impressive technologies to reduce it.

138 During our oversight and legislative hearings on New Source
139 Review, we heard how important the program is to reducing harmful
140 air pollution.

141 But this bill would ultimately enable some polluters, many
142 of which were initially grandfathered into the NSR program and
143 have avoided installing pollution controls for decades, to
144 continue operating without taking any steps to clean up their
145 facilities.

146 Today, many old coal-fired power plants are entering the
147 end of useful life unless they undertake significant capital
148 investments.

149 Under the current NSR program, if these facilities make a
150 major modification, the grandfathering is over and modern

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151 pollution controls would be required to be installed.

152 The discussion draft before us today would create new
153 loopholes to enable those old facilities, which have put off
154 adopting pollution reduction technologies for decades to continue
155 polluting our air indefinitely and I do not think that is fair.

156 It is not fair to the facilities that have made the
157 investments to clean up their pollution and it is not fair to
158 the people that live and work near these sites.

159 I understand that businesses need time to transition and
160 plan for the investments needed to install pollution controls.

161 But now we have four decades of evidence of facilities going
162 to great lengths to avoid triggering the major modification
163 requirement and turning to Congress is just the latest attempt.

164 Allowing major polluters to extend their lives while
165 avoiding installation of available technology to prevent
166 unnecessary pollution is unacceptable and runs counter to the
167 bipartisan intent of the Clean Air Act.

168 I want facilities to be able to invest in efficiency and
169 reliability upgrades and I want United States businesses to be
170 as competitive as possible.

171 But it cannot come at the expense of their neighbors' health.
172 This bill will result in dirtier air and I urge members to oppose
173 it.

174 With that, Mr. Chair, I yield back.

175 Mr. Shimkus. The gentleman yields back his time and I thank

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176 him.

177 The chair looks for the chairman of the full committee.
178 He has not arrived yet. The chair would like to now recognize,
179 if he is ready, the ranking member of the full committee, Mr.
180 Pallone, for three minutes.

181 Mr. Pallone. Thank you, Mr. Chairman.

182 The bill before us today is a bad bill that puts polluters
183 before people. If Republicans on this committee were serious
184 about protecting the environment and human health, they would
185 have never brought this bill up for a markup, and that's, of
186 course, not the case.

187 We are here, and, as I said at the legislative hearing in
188 May, the threshold test for any legislation to reform the Clean
189 Air Act is whether it will reduce air pollution and protect public
190 health.

191 The amendment in the nature of a substitute is far more likely
192 to increase air pollution substantially and put the health of
193 the American public at great risk in the process.

194 This bill exacerbates existing loopholes in the New Source
195 Review program to the benefit of old polluting facilities that
196 have avoided complying with modern pollution control standards.

197 These bad actors have been able to game the system to change
198 operations and expand without ever reducing emissions, and this
199 bill only makes this problem worse.

200 In ensures that anyone downwind of these plants will be

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201 forced to continue breathing polluted unhealthy air every day.

202 Neighboring communities will get no relief from the many
203 health problems associated with chronic exposure to pollution,
204 asthma attacks, heart and lung disease, and, of course, cancer.

205 This bill amounts to a pro-polluter wish list that is so
206 egregious it would be virtually impossible to compel dirty
207 facilities to clean up their act.

208 The legislation essentially grants a permanent amnesty to
209 bad actors, getting some of the oldest and least economical
210 facilities in the country the green light to pollute without
211 consequence.

212 And it's safe to try to avoid overall increases in pollution
213 using other Clean Air Act authorities, as some have suggested.

214 These reductions will have to come from businesses and other
215 economic sectors.

216 So this creates a very unfair situation where some businesses
217 have no obligation to clean up pollution and others are left
218 footing the bill.

219 The Trump administration has spent its time undermining
220 public health protections and diverting the mission of the
221 Environmental Protection Agency away from protecting public
222 health to protecting polluters.

223 This bill continues that pattern of prioritizing the needs
224 of polluters over people. It codifies the administration's plans
225 to forego enforcement of the Clean Air Act and lets polluters

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226 of the hook.

227 I urge my colleagues to oppose it because the American public
228 deserves better from Congress. It's just another handout to the
229 special interests and not worthy of debate in this subcommittee.

230 In fact, this time could have been better used getting
231 answers from HHS on the progress, or lack thereof, that is being
232 made to reunify more than 2,500 children who were forcibly
233 stripped away from their parents by the Trump administration's
234 inhumane immigration policies.

235 And I yield back, Mr. Chairman.

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

237 The chair now recognizes the chairman of the full committee,
238 Mr. Walden, for three minutes.

239 The Chairman. Thank you, Mr. Chairman. Thanks for your
240 leadership on this and so many other issues.

241 Today, we take an important step in this committee's work
242 to advance reasonable updates to our environmental laws to ensure
243 more effective environmental programs as well as a more
244 productive economy.

245 Now, H.R. 3128 was developed by Congressman Griffith and
246 it addresses a problem that has been identified in a clear Clean
247 Air Act's New Source Review program, and that is the controversy
248 surrounding when a change in a major source of emissions, be it
249 an efficiency improvement, and emission control improvement, or
250 basic upkeep in parts replacement is sufficient to trigger a

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251 preconstruction permitting.

252 The uncertainty over this costly time-consuming process
253 creates powerful incentives to avoid making beneficial
254 improvements to manufacturing and other facilities.

255 Now, this deprives communities benefits for the environment
256 and for efficient operations at helping increase jobs and economic
257 activity.

258 So this bill simply adds much needed clarification into the
259 law to say that a change at a facility that warrants this NSR
260 review should be based on a maximum hourly emissions rate -- a
261 clear and objective measure which, by the way, is consistent with
262 similar provisions in the Clean Air Act.

263 This will greatly accelerate decision making at regulated
264 facilities around the nation.

265 So I want to thank our colleague from Virginia, Mr. Griffith,
266 for his efforts on this legislation. I urge my colleagues to
267 support this common sense bill.

268 And I would be happy to yield or yield back.

269 I'll yield back the balance of my time.

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

271 The chair looks to see if anyone wants to speak on the bill.

272

273 If not, without objection, the chair calls up H.R. 3128 and
274 asks the clerk to report.

275 [The Bill H.R. 3128 follows:]

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276

277

*****INSERT 1*****

278 The Clerk. H.R. 3128, to amend Section 111 of the Clean
279 Air Act to clarify when a physical change in or change in the
280 method of operation of a stationary source constitutes a
281 modification and for other purposes.

282 Mr. Shimkus. Without objection, the first reading of the
283 bill is dispensed with and the bill will be open for amendment
284 at any point. So ordered.

285 The chair recognizes himself to offer an amendment in the
286 nature of a substitute and the clerk will report the amendment.

287 [The Amendment offered by Mr. Shimkus follows:]

288

289 *****INSERT 2*****

290 The Clerk. Amendment in the nature of a substitute to H.R.
291 3128, offered by Mr. Shimkus.

292 Mr. Shimkus. Without objection, the reading of the
293 amendment is dispensed with and the chair is recognized for five
294 minutes in support of the amendment.

295 This amendment in the nature of a substitute is substantially
296 similar to the New Source Review and discussion draft that this
297 subcommittee examined in May.

298 The amendment makes some clarifications based on the
299 legislative hearing as well as feedback from EPA and stakeholders
300 on the discussion draft.

301 As with the base bill, it seeks to reduce the complexity
302 and uncertainty that discourage owners from modernizing and
303 maintaining existing facilities by clarifying when a change in
304 an existing facility requires a New Source Review permit.

305 To illustrate why this legislation is needed, one hearing
306 witness told us about a project to switch a manufacturing facility
307 to a cleaner-burning fuel that was canceled because the current
308 New Source Review emissions accounting methodology incorrectly
309 showed that the paper -- on paper that the project would cause
310 an emissions increase.

311 Yet, the project would have resulted in improved air quality.

312 In another example a witness described how customers are choosing
313 to not buy and install a particular gas turbine of great technology
314 that is capable of improving turbine performance by 2.6 percent

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315 while lowering carbon dioxide emissions per megawatt hour by 6.5
316 percent because doing so might trigger the NSR -- New Source Review
317 -- permitting process.

318 These examples highlight how New Source Review hinders
319 investments that actually lead to environmental benefits. The
320 main reason for this is because the New Source Review program
321 measures future emissions using a complicated annual emissions
322 projection approach projecting future annual emissions is a
323 difficult and confusing process that requires the consideration
324 of many complex factors, which frequently overestimates the
325 facility's future emissions.

326 Rather than go to this costly process, companies commonly
327 choose to forego incremental improvements to their facilities.

328

329 The base bill improves the new resource review process by
330 specifying the use of an hourly emissions rate test for
331 determining whether an upgrade at an existing facility causes
332 an emission increase, thereby requiring an owner to obtain a New
333 Source Review permit.

334 This amendment further clarifies how to implement that test.

335 An hourly rate test is a straightforward to carry out because
336 it only relies upon engineering design factors, not complicated
337 future emission projections and assessments.

338 A separate program under the Clean Air Act, the new source
339 performance standard, has successfully used an hourly rate test

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340 with little to no controversy for over 40 years, and I think that's
341 the basic point of our argument and debate.

342 The amendment also specifies more clearly the circumstances
343 by which air pollution control, efficiency, and equipment repairs
344 do or do not trigger New Source Review.

345 This amendment clarifies the base bill and makes target
346 improvements to how the New Source Review program works and I
347 urge my colleagues to vote in support of the amendment in nature
348 of a substitute.

349 Votes have been called. We would like to recess and return
350 to consider the amendments to the substitute amendment after the
351 last vote in the series if that's okay with my ranking member.

352 This markup is recessed.

353 [Recess.]

354 Mr. Shimkus. The chairman calls the markup back to order
355 and we are on the amendment in the nature of the substitute.
356 Are there any -- are there any bipartisan -- I hate to ask --
357 any bipartisan amendments to the amendment -- none.

358 Seeing none, are there any amendments to the amendment in
359 the nature of a substitute?

360 Mr. Tonko. Mr. Chair, I have an amendment at the desk.
361 I believe it's amendment number one.

362 Mr. Shimkus. The clerk will report the amendment.

363 [The Amendment offered by Mr. Tonko follows:]

364

365

*****INSERT 3*****

366 The Clerk. Amendment to the amendment in the nature of a
367 substitute to H.R. 3128, offered by Mr. Tonko.

368 Mr. Shimkus. The gentleman from New York is recognized five
369 minutes in support of his amendment.

370 Mr. Tonko. Thank you, Mr. Chair.

371 As I said earlier, I have a real concern that the bill before
372 us today is going to result in more air pollution.

373 The New Source Review program was intended to ensure that
374 when a facility made modifications to expand capacity or extend
375 design life by replacing major equipment that the facility would
376 also upgrade its pollution control equipment to meet modern
377 standards.

378 This bill will allow facilities to make these modifications
379 without having to install modern pollution control equipment or
380 make any adjustments to reduce their emissions.

381 There are still many communities across our country where
382 air quality is not healthy and pollution levels are too high.

383 Regulatory relief for facilities in these areas means poor
384 air quality and more health problems for neighboring communities.

385 My amendment would exclude facilities that are within five
386 miles of a school, hospital, veterans health care facility, or
387 a nursing home from the NSR loopholes of this bill.

388 Children, veterans, the elderly, and people being treated
389 in a hospital are already more vulnerable to air pollution than
390 adults in good health.

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391 Shifting the threshold test for whether a modification will
392 trigger a review of a proposed project to a change in the maximum
393 hourly emission rate of a pollutant virtually assures the
394 requirements of the NSR program will never apply.

395 It is unlikely that any construction project including one
396 that would expand a facility's capacity and increase its overall
397 pollution output substantially would alter the maximum hourly
398 rate of pollution produced by the plant.

399 At a minimum, a facility in close proximity to schools, to
400 nursing homes, to hospitals and veterans' health centers should
401 face a threshold for evaluation that ensures pollution levels
402 will not increase.

403 My amendment will not fix all of the problems this
404 legislation creates. It will not limit all of the pollution
405 increases it will allow.

406 But it will offer some protection to those who are the most
407 vulnerable to the diseases worsened or caused by air pollution.

408 With that, I urge my colleagues to support this amendment.

409 Ms. DeGette. Will the gentleman yield?

410 Mr. Tonko. I will yield.

411 Ms. DeGette. Mr. Chairman, thank you, and I speak in favor
412 of this amendment. It really highlights the fundamental problems
413 with the bill, which is it'll make it easier for polluters to
414 increase their emissions and harm vulnerable populations.

415 I am a representative for a nonattainment area under the

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416 Clean Air Act so this is not an abstract issue for my constituents.

417 The northern front range of Denver is already plagued by
418 a rise in ozone, which is associated with a wide range of public
419 health harms including an elevated risk of asthma and
420 cardiovascular disease.

421 We know the polluters are already pushing to take advantage
422 of every loophole they can find. For example, Succor Energy has
423 a refinery just outside my district that's in the midst of seeking
424 dozens of permit modifications.

425 They are evading undergoing a New Source Review by claiming
426 all the modifications are below the significance level.
427 Residents of the Swansea Elyria neighborhood, which is right next
428 to this refinery, have expressed grave concerns about these
429 modifications and the facility's ongoing operations.

430 Earth Justice found that the refinery has filed at least
431 40 malfunction reports and 21 permit deviation reports since
432 January 2013.

433 Meanwhile, the Department of Public Health and Environment
434 of Denver has reported that residents from this neighborhood and
435 Globeville increasingly suffer from several diseases associated
436 with elevated air pollution including asthma, cancer,
437 cardiovascular diseases, diabetes, and obesity.

438 As is so often the case for neighborhoods near industrial
439 facilities, these communities have lower median incomes and a
440 higher proportion of minority residents than other areas of my

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441 district.

442 That's what's happening today under current law. The bill
443 before us today only will open up further loopholes. Polluters
444 will spew more toxins in the air and vulnerable populations, low
445 income areas, and communities of color will suffer the health
446 consequences.

447 I urge my colleague to support the amendment and to oppose
448 the underlying bill. I thank the gentleman for yielding, and
449 I yield back.

450 Mr. Tonko. Thank you. Anyone else wishing to use 45
451 seconds?

452 Mr. Green. Will the gentleman yield?

453 Mr. Tonko. I yield to Representative Green.

454 Mr. Green. Thank you.

455 Mr. Chairman, members, if this bill passes, the district
456 I represent will have 200 more tons a year in emissions. I have
457 a very industrial area with refineries, chemical plants, and we
458 are challenged on our air emissions already and this bill would
459 make it even worse.

460 And I want to thank my New York colleague for yielding to
461 me. Just wanted to let you know that this is not going to help
462 air quality in my community.

463 Mr. Tonko. The gentleman yields and I yield back, Mr. Chair.

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

465 The chair recognizes -- for what purpose does the gentleman

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466 from Ohio seek recognition?

467 Mr. Johnson. Mr. Chairman, I rise in opposition to this
468 amendment.

469 Mr. Shimkus. The gentleman is recognized for five minutes.

470 Mr. Johnson. Mr. Chairman, I'd like to note that in earlier
471 subcommittee hearings, two state air regulators testified that
472 H.R. 3128 does not reduce the ability of air regulators to
473 successfully control emissions from existing sources and that
474 H.R. 3128 would not allow a facility to operate in a way that
475 would violate any emission limits or air quality conditions
476 specified in the facility's operating permit.

477 We are trying to improve the NSR permitting process so that
478 companies are better able to modernize and maintain existing
479 facilities.

480 Moreover, the bill makes it easier for companies to carry
481 out projects at existing facilities that actually will reduce
482 emissions like incremental pollution control upgrades and energy
483 efficiency improvements.

484 This bill is about providing greater clarity and certainty
485 to the NSR process so that companies can confidently name needed
486 investments and improvements to our nation's existing industrial
487 facilities, which will lead to a stronger economy and more
488 American jobs.

489 And lastly, in no way does this bill allow existing
490 facilities to increase emissions levels beyond currently

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491 established operating permit limits.

492 So, Mr. Chairman, this amendment is unnecessary and I urge
493 a no vote on this amendment.

494 Mr. Shimkus. Would the gentleman yield to me?

495 Mr. Johnson. Yes, I will yield.

496 Mr. Shimkus. Thank you. I want to just follow up on my
497 colleague from Ohio. I appreciate him taking the time.

498 The bill, basically, goes from a yearly calculation to the
499 hourly calculation. It's the same standard that we use under
500 the National Ambient Air Quality Standard.

501 I think it's instructive in that we -- for 40 years we have
502 used it under that program and I don't think any of us have heard
503 complaints on either side on how the environmental rule and
504 regulations implied in that instance.

505 So we are just trying to take a successful regulatory look
506 at in moving the New Source Review program to that type of
507 standard.

508 I would also just add that -- and I could read the list of
509 all the environmental rules and regs that comply with stationary
510 facilities and there is about 12 -- this law does not reduce any
511 of the current laws that deal with power plants.

512 So those laws stay in effect. And with that, I would then
513 yield back to the gentleman from Ohio.

514 Mr. Johnson. Mr. Chairman, unless anyone else needs time,
515 I yield back.

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

517 For what purpose does the gentleman from New Jersey seek
518 recognition?

519 Mr. Pallone. Strike the last word in support of Mr. Tonko.

520 Mr. Shimkus. The gentleman is recognized for five minutes.

521 Mr. Pallone. Thank you, Mr. Chairman.

522 Schools, hospitals, veterans health facilities, and nursing
523 home care for those most vulnerable to health problems created
524 are exacerbated by air pollution and some of these facilities
525 already are in areas of unhealthy air quality.

526 So we should not allow additional pollution in these areas
527 and this bill puts public health at risk. These facilities
528 produce multiple pollutants that are extremely harmful to public
529 health like sulfur dioxide, nitrogen oxide, carbon monoxide, and
530 particulate matter, and air pollution around schools is linked
531 to poor student health and academic performance. We should be
532 working harder to improve air quality, not helping polluters to
533 degrade it.

534 Many elderly patients have reduced lung function and weaker
535 immune systems. Air pollutants irritate their conditions and,
536 in some cases, contribute to their premature death.

537 Many of the facilities that will benefit from this rollback
538 of the NSR program have already avoided controlling their
539 pollution for decades.

540 When they expand their output and fail to install modern

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541 pollution control equipment they will add tons of additional
542 pollutants to the air every year.

543 So Mr. Tonko's amendment will not fix all of the serious
544 problems with this bill but it will at least prevent facilities
545 in areas that serve our most vulnerable citizens from continuing
546 to avoid doing their fair share to clean up the air that we all
547 have to breathe.

548 So I would urge support for his amendment.

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

550 The chair recognizes himself for five minutes in opposition
551 just to -- I saw Gene looking over at me saying Shimkus doesn't
552 know what he's talking about.

553 I think the standard was New Source Performance Standards
554 as what -- and when I noticed that I go -- I said something that
555 was incorrect.

556 So the hourly standard is applying to the New Source
557 Performance Standards, part of the other regulation. The other
558 thing that I'd like to highlight is that nothing -- and we believe
559 this -- nothing in this bill will negatively impact air quality,
560 and under the law, if a change at a facility would adversely affect
561 public health as this amendment is purporting to assume, then
562 the project must go through the full New Source Review permitting
563 process as specified in Section 2 of the bill.

564 All we want to do is to allow our facilities to be able to
565 update and modernize, either become more energy efficient or,

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566 obviously, have a lower profile on emissions by upgrading, and
567 I think it's been stated that there has been folks slow in
568 responding and I think the way the new source program is currently
569 implemented that's the reason why we haven't had updating to the
570 system.

571 So with that, anyone else seeking time? Seeing none, I yield
572 back the balance of my time.

573 Anyone seek time? Seeing none, the vote now occurs on
574 Amendment 1.

575 All those in favor say aye.

576 All those opposed, no.

577 In the opinion of the chair, the noes have it. The noes
578 have it. A roll call vote has been asked for and then is accepted.

579 So the clerk will record the roll.

580 The Clerk. Mr. McKinley.

581 Mr. McKinley. No.

582 The Clerk. Mr. McKinley votes no.

583 Mr. Barton.

584 [No response.]

585 Mrs. Blackburn.

586 [No response.]

587 Mr. Harper.

588 Mr. Harper. No.

589 The Clerk. Mr. Harper votes no.

590 Mr. Olson.

591 Mr. Olson. No.
592 The Clerk. Mr. Olson votes no.
593 Mr. Johnson.
594 Mr. Johnson. No.
595 The Clerk. Mr. Johnson votes no.
596 Mr. Flores.
597 Mr. Flores. No.
598 The Clerk. Mr. Flores votes no.
599 Mr. Hudson.
600 Mr. Hudson. No.
601 The Clerk. Mr. Hudson votes no.
602 Mr. Cramer.
603 Mr. Cramer. No.
604 The Clerk. Mr. Cramer votes no.
605 Mr. Walberg.
606 Mr. Walberg. No.
607 The Clerk. Mr. Walberg votes no.
608 Mr. Carter.
609 Mr. Carter. No.
610 The Clerk. Mr. Carter votes no.
611 Mr. Duncan.
612 Mr. Duncan. No.
613 The Clerk. Mr. Duncan votes no.
614 Chairman Walden.
615 [No response.]

616 Mr. Tonko.
617 Mr. Tonko. Yes.
618 The Clerk. Mr. Tonko votes aye.
619 Mr. Ruiz.
620 Mr. Ruiz. Aye.
621 The Clerk. Mr. Ruiz votes aye.
622 Mr. Peters.
623 Mr. Peters. Aye.
624 The Clerk. Mr. Peters votes aye.
625 Mr. Green.
626 Mr. Green. Aye.
627 The Clerk. Mr. Green votes aye.
628 Ms. DeGette.
629 Ms. DeGette. Aye.
630 The Clerk. Ms. DeGette votes aye.
631 Mr. McNerney.
632 Mr. McNerney. Aye.
633 The Clerk. Mr. McNerney votes aye.
634 Mr. Cardenas.
635 [No response.]
636 Mrs. Dingell.
637 Mrs. Dingell. Aye.
638 The Clerk. Mrs. Dingell votes aye.
639 Ms. Matsui.
640 Ms. Matsui. Aye.

641 The Clerk. Ms. Matsui votes aye.

642 Mr. Pallone.

643 Mr. Pallone. Aye.

644 The Clerk. Mr. Pallone votes aye.

645 Chairman Shimkus.

646 Mr. Shimkus. Shimkus votes no.

647 The Clerk. Chairman Shimkus votes no.

648 Mr. Shimkus. Anyone else seeking to be recorded?

649 Seeing none, the clerk will report.

650 The Clerk. Mr. Chairman, on that vote, there were 11 ayes
651 and nine noes.

652 Mr. Chairman, on that vote, there were nine ayes and 11 noes.

653 Mr. Shimkus. Nine ayes, 11 noes. The amendment is not
654 agreed to.

655 Is there any other amendments to the amendment in the nature
656 of a substitute?

657 All right. Someone has one.

658 For what purpose does the gentlelady from Michigan rise?

659 Mrs. Dingell. I have an amendment, Mr. Chair.

660 Mr. Shimkus. The clerk will report the amendment.

661 [The Amendment offered by Mrs. Dingell follows:]

662

663 *****INSERT 4*****

664 The Clerk. Amendment to the amendment in the nature of a
665 substitute to H.R. 3128, offered by Mrs. Dingell.

666 Mr. Shimkus. The gentlelady is recognized five minutes in
667 support of her amendment.

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

669 My amendment proposes to make what I believe is a very simple
670 change to the underlying bill -- to exempt any source of lead
671 in air emissions from the provisions of this act.

672 Lead is a dangerous and pervasive substance. Once in our
673 bodies, lead is absorbed into and stored in our bones, blood,
674 and tissues.

675 Even exposure to small amounts of lead can have long-lasting
676 and devastating health effects. Lead-poisoned children have
677 decreased neurological function and behavioral issues.

678 Exposures to pregnant women cause irreversible damage to
679 a baby's developing systems and, potentially, stillbirths or
680 miscarriages, and even low levels of exposure in adults have been
681 linked to adverse health effects like high blood pressure, heart
682 disease, kidney disease, reduced fertility, and violent or
683 criminal behavior.

684 Sources of lead emissions vary from one area to another.

685 At the national level, major sources of lead in the air are metal
686 processing, particularly lead smelters and other sources are
687 waste incinerators, copper smelting, utilities, and lead acid
688 battery manufacturers.

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689 The highest air concentrations of lead are usually found
690 near lead smelters. Historically, lead gasoline was also a major
691 source of pollution. We have made great progress and lead
692 emissions sharply declined after it was eliminated from gasoline
693 and remained low.

694 But the provisions of the bill before us could undo all of
695 that good work. Major stationary sources of lead emissions like
696 lead acid battery manufacturers or lead smelters would be given
697 the green light to expand and ramp up their operations without
698 control or consequence.

699 As long as they maintain a consistent rate of emissions,
700 these polluters would be able to increase the frequency and
701 intensity of their operations, triggering an exponential surge
702 in their emissions.

703 And where do you think all of that new lead pollution goes?
704 Into the surrounding and downwind communities. It will be
705 inhaled while still in the air by children on the playground and
706 it'll be ingested after it settles in water or on land by families
707 sitting down for dinner.

708 The people of Michigan can't afford the victims of more lead
709 -- for there to be more victims of more lead poisoning, and we
710 are not alone.

711 We should be working together to advance policies that help
712 protect the people who live in the communities that represent
713 not the polluters who have been championed by this administration.

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714 In the spirit of putting people over polluters, my amendment
715 would ensure any facility that emits lead into the air is barred
716 from the loophole provisions of this act.

717 I urge my colleagues to support this amendment and I yield
718 back the balance of my time.

719 Mr. Shimkus. The gentlelady yields back the balance of her
720 time.

721 Anyone seek time in opposition?

722 The chair recognizes the gentleman, Mr. Harper, for what
723 purposes?

724 Mr. Harper. Move to strike the last word.

725 Mr. Shimkus. The gentleman is recognized for five minutes.

726 Mr. Harper. Thank you, Mr. Chairman. This amendment is
727 really unnecessary. Under the bill, the EPA administrator is
728 given explicit authority to deal with any situation in which an
729 increase in hourly emissions would cause an adverse effect on
730 human health or the environment.

731 Moreover, this legislation does not affect the very
732 stringent National Ambient Air Quality Standards, or NAAQS,
733 requirement that govern the levels of lead in the air.

734 In cases where a facility does emit lead, this bill does
735 not affect operating permit requirements to relate to emissions
736 levels of lead.

737 Put plainly, NSR reform in no way, shape, or form alters
738 NAAQS or a state's obligation to attain and maintain NAAQS, and

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739 NAAQS are set at levels deemed protective of public health.

740 These standards have been tremendously successful. In
741 point of fact, lead levels are down 99 percent from 1990 and
742 facilities in communities that presently do not meet the lead
743 standards are subject to requirements that are completely
744 unaffected by this bill.

745 This amendment would place an unnecessary restraint on
746 certain facilities from seeking to make reasonable changes that
747 would include incremental air pollution controls, efficiency
748 improvements, and other changes that ensure more effective
749 operations to the benefit of the communities they serve.

750 This bill, H.R. 3128, makes it easier for owners to carry
751 out pollution control projects, energy-efficient projects, and
752 equipment reliability and safety improvements.

753 I urge a no vote on this amendment, and with that, I yield
754 back.

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

756 Anyone seeking time?

757 The chair recognizes the gentleman from New York for what
758 purpose?

759 Mr. Tonko. Mr. Chairman, I want to strike the last word.

760 Mr. Shimkus. The gentleman is recognized five minutes.

761 Mr. Tonko. Thank you.

762 I speak in support of Representative Dingell's amendment.

763 Lead is a very serious issue that affects everyone and in

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764 particular I am very much concerned about the impact on children.

765 At the request of Member Pallone, our ranking member of the
766 standing committee and myself as ranker on the Environment
767 Subcommittee and the Democrats as members of this committee, we
768 ask that the GAO conduct a report -- assemble a report.

769 And just today, I believe around 2:00 o'clock, they issued
770 that report that addresses lead in drinking water in our schools.

771 Now, the findings are very troubling. Forty-one percent
772 of schools serving some 12 million students have not tested for
773 lead recently. Of the schools that did test, elevated levels
774 were found 37 percent of the time. Sixteen percent of schools
775 did not even know whether or not they did test for lead.

776 Now, we need to continue to think about the best ways to
777 reduce the risk of lead. Yes, we can do that very well by testing
778 drinking water and addressing it that way.

779 But it's also part of air pollution and that should be a
780 concern also. So given the serious nature of lead contamination,
781 I, again, support the amendment offered by Mrs. Dingell. I
782 believe it makes the bill stronger and ask that my colleagues
783 support her amendment.

784 With that, I yield back. I'll yield to Mr. Pallone, please.
785 Mr. Pallone. Thank you.

786 I wanted to also express support for Mrs. Dingell's
787 amendment. One source category of lead emissions is coal-fired
788 power plants.

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789 Under the current New Source Review program any existing
790 coal-fired power plant that wants to modify its facilities or
791 operations must obtain permits to ensure the changes won't worsen
792 air pollution and they also must use up to date pollution controls.

793 However, an existing loophole in the Clean Air Act, which
794 allowed facilities built before 1978, to run without new controls
795 until they retired or did construction that triggered New Source
796 Review has been misused, letting dirtier plants operate longer
797 at the expense of public health.

798 A recent independent investigation found that last year 145
799 coal plants without control technology collectively put out
800 nearly 580,000 tons of sulfur dioxide. Of these, 107 were built
801 prior to 1978, meaning they directly benefitted from this
802 loophole.

803 And while this investigation did not focus on the lead
804 emissions from these facilities, it is certainly relevant to the
805 debate we are having today.

806 The bill before us seems to exacerbate this very loophole
807 in the NSR program using fuzzy math to virtually guarantee that
808 existing sources will never have to reduce their air pollution.

809 And Congress never intended for existing sources of harmful
810 air pollution to be grandfathered forever. But these zombie
811 facilities have been able to game the system for 40 years.

812 So-called NSR reform is just the latest iteration of their
813 mission to avoid ever cleaning up their act and with that reality

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814 in mind Mrs. Dingell's amendment ensures that these dirty
815 facilities do not get a free pass on their lead emissions and
816 C&C's perpetual grandfathered facilities are also a source of
817 lead air pollution, they would not be able to take advantage of
818 the provision of the act.

819 So I believe it is eminently reasonable to pass this
820 amendment. It would vastly improve the bill and I would urge
821 all members to vote yes on her amendment.

822 And I yield back to Mr. Tonko.

823 Mr. Tonko. Mr. McNerney, do you want to --

824 Mr. McNerney. I thank the ranking member for yielding.

825 My congressional district has poor air quality, which has
826 caused a variety of illnesses for my constituents. California
827 has been working to improve the New Source Review and should be
828 an example on how to improve this program where this bill weakens
829 the Clean Air Act and would put the public health at risk and
830 is in historic opposition to the public's overwhelming support
831 of the Clean Air Act.

832 Now, the Clean Air Act was passed on a bipartisan basis.

833 It was signed by a Republican president. It's worked, so this
834 bill looks like an ideological run at eliminating regulations.

835 Let's work together instead of pushing through a partisan
836 message bill. I support the amendment and oppose H.R. 3128.

837 Mr. Tonko. Anyone else choosing to use 30 seconds?

838 If not, Mr. Chair, I yield back.

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839 Mr. Shimkus. The gentleman yields back his time. The chair
840 recognizes himself for five minutes in opposition to the
841 amendment.

842 So the air regulation that deals with lead is the National
843 Ambient Air Quality Standards, and this New Source Review bill
844 does not affect that standard.

845 So the standard for lead in the air is left unchanged. The
846 premise of the bill is to make it easier for owners to carry out
847 pollution control projects, energy efficiency projects, and
848 equipment reliability to safety improvements, and I urge a no
849 vote on this amendment and I yield back my time.

850 Anyone else seeking time to speak on the amendment?

851 Seeing none, the vote now occurs on the amendment offered
852 by the gentlelady from Michigan.

853 All those in favor say aye.

854 Those opposed, say no.

855 The noes have it. In the opinion of the chair the noes have
856 it. The noes have it.

857 The gentlelady from Michigan.

858 The gentlelady requests a record of the vote.

859 The record of the vote will be called. The clerk will call
860 the vote.

861 The Clerk. Mr. McKinley.

862 Mr. McKinley. No.

863 The Clerk. Mr. McKinley votes no.

864 Mr. Barton.

865 Mr. Barton. No.

866 The Clerk. Mr. Barton votes no.

867 Mrs. Blackburn.

868 [No response.]

869 Mr. Harper.

870 Mr. Harper. No.

871 The Clerk. Mr. Harper votes no.

872 Mr. Olson.

873 Mr. Olson. No.

874 The Clerk. Mr. Olson votes no.

875 Mr. Johnson.

876 Mr. Johnson. No.

877 The Clerk. Mr. Johnson votes no.

878 Mr. Flores.

879 Mr. Flores. No.

880 The Clerk. Mr. Flores votes no.

881 Mr. Hudson.

882 Mr. Hudson. No.

883 The Clerk. Mr. Hudson votes no.

884 Mr. Cramer.

885 Mr. Cramer. No.

886 The Clerk. Mr. Cramer votes no.

887 Mr. Walberg.

888 Mr. Walberg. No.

889 The Clerk. Mr. Walberg votes no.
890 Mr. Carter.
891 Mr. Carter. No.
892 The Clerk. Mr. Carter votes no.
893 Mr. Duncan.
894 Mr. Duncan. No.
895 The Clerk. Mr. Duncan votes no.
896 Chairman Walden.
897 The Chairman. No.
898 The Clerk. Chairman Walden votes no.
899 Mr. Tonko.
900 Mr. Tonko. Yes.
901 The Clerk. Mr. Tonko votes aye.
902 Mr. Ruiz.
903 Mr. Ruiz. Aye.
904 The Clerk. Mr. Ruiz votes aye.
905 Mr. Peters.
906 Mr. Peters. Aye.
907 The Clerk. Mr. Peters votes aye.
908 Mr. Green.
909 Mr. Green. Aye.
910 The Clerk. Mr. Green votes aye.
911 Ms. DeGette.
912 Ms. DeGette. Aye.
913 The Clerk. Ms. DeGette votes aye.

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914 Mr. McNerney.

915 Mr. McNerney. Aye.

916 The Clerk. Mr. McNerney votes aye.

917 Mr. Cardenas.

918 [No response.]

919 Mrs. Dingell.

920 Mrs. Dingell. Aye.

921 The Clerk. Mrs. Dingell votes aye.

922 Ms. Matsui.

923 Ms. Matsui. Aye.

924 The Clerk. Ms. Matsui votes aye.

925 Mr. Pallone.

926 Mr. Pallone. Aye.

927 The Clerk. Mr. Pallone votes aye.

928 Chairman Shimkus.

929 Mr. Shimkus. Chairman Shimkus votes no.

930 The Clerk. Chairman Shimkus votes no.

931 Mr. Shimkus. Anyone else wishing to be recorded?

932 Seeing none, the clerk will report the vote.

933 The Clerk. Mr. Chairman, on that vote there were nine ayes

934 and 13 nays.

935 Mr. Shimkus. Nine ayes and 13 nays. The amendment is not
936 agreed to.

937 The question now is on -- if there are no further discussion
938 the vote occurs on the amendment in the nature of a substitute.

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939 All those in favor shall signify by saying aye.

940 Those opposed, no.

941 The ayes have it. The amendment in the nature of a
942 substitute is agreed to.

943 The question now occurs on forwarding H.R. 3128 as amended
944 to the full committee.

945 All those in favor say aye.

946 Those opposed, no.

947 The ayes have it -- appear to have it.

948 Mr. Tonko. Can we have a roll call?

949 Mr. Shimkus. A roll call is requested. The clerk will
950 report the roll.

951 The Clerk. Mr. McKinley.

952 Mr. McKinley. Aye.

953 The Clerk. Mr. McKinley votes aye.

954 Mr. Barton.

955 Mr. Barton. Aye.

956 The Clerk. Mr. Barton votes aye.

957 Mrs. Blackburn.

958 [No response.]

959 Mr. Harper.

960 Mr. Harper. Aye.

961 The Clerk. Mr. Harper votes aye.

962 Mr. Olson.

963 Mr. Olson. Aye.

964 The Clerk. Mr. Olson votes aye.
965 Mr. Johnson.
966 Mr. Johnson. Aye.
967 The Clerk. Mr. Johnson votes aye.
968 Mr. Flores.
969 Mr. Flores. Aye.
970 The Clerk. Mr. Flores votes aye.
971 Mr. Hudson.
972 Mr. Hudson. Aye.
973 The Clerk. Mr. Hudson votes aye.
974 Mr. Cramer.
975 Mr. Cramer. Aye.
976 The Clerk. Mr. Cramer votes aye.
977 Mr. Walberg.
978 Mr. Walberg. Aye.
979 The Clerk. Mr. Walberg votes aye.
980 Mr. Carter.
981 Mr. Carter. Yes.
982 The Clerk. Mr. Carter votes aye.
983 Mr. Duncan.
984 Mr. Duncan. Aye.
985 The Clerk. Mr. Duncan votes aye.
986 Chairman Walden.
987 The Chairman. Aye.
988 The Clerk. Chairman Walden votes aye.

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989 Mr. Tonko.
990 Mr. Tonko. No.
991 The Clerk. Mr. Tonko votes no.
992 Mr. Ruiz.
993 Mr. Ruiz. No.
994 The Clerk. Mr. Ruiz votes no.
995 Mr. Peters.
996 Mr. Peters. No.
997 The Clerk. Mr. Peters votes no.
998 Mr. Green.
999 Mr. Green. No.
1000 The Clerk. Mr. Green votes no.
1001 Ms. DeGette.
1002 Ms. DeGette. No.
1003 The Clerk. Ms. DeGette votes no.
1004 Mr. McNerney.
1005 Mr. McNerney. No.
1006 The Clerk. Mr. McNerney votes no.
1007 Mr. Cardenas.
1008 [No response.]
1009 Mrs. Dingell.
1010 Mrs. Dingell. No.
1011 The Clerk. Mrs. Dingell votes no.
1012 Ms. Matsui.
1013 Ms. Matsui. No.

1014 The Clerk. Ms. Matsui votes no.

1015 Mr. Pallone.

1016 Mr. Pallone. No.

1017 The Clerk. Mr. Pallone votes no.

1018 Chairman Shimkus.

1019 Mr. Shimkus. Aye.

1020 The Clerk. Chairman Shimkus votes aye.

1021 Mr. Shimkus. The clerk will report.

1022 The Clerk. Mr. Chairman, on that vote, there were 13 ayes
1023 and nine nays.

1024 Mr. Shimkus. Thirteen ayes, nine nays. The bill is
1025 reported to the full committee.

1026 Without objection, staff is authorized to make technical
1027 and conforming changes to the legislation approved by the
1028 subcommittee today. So ordered.

1029 The chairs asks unanimous consent to the following letters
1030 in support of H.R. 3128 be entered into the record: a joint letter
1031 from the Affiliates of North American Building Trade Unions --
1032 do I list all these guys?

1033 No. American Iron and Steel Institute, Portland Cement
1034 Association, American Forest and Paper Association, National
1035 Mining Association, American Public Power Association, National
1036 Rural Electric Cooperative Association, National Association of
1037 Manufacturers, U.S. Chamber, Pennsylvania Chamber of Commerce,
1038 Citizens for Responsible Energy Solutions, and American Energy

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1039 Alliance.

1040 Without objection, so ordered.

1041 [The information follows:]

1042

1043 *****COMMITTEE 5*****

1044 Mr. Shimkus. And the -- without objection, the subcommittee
1045 stands adjourned and the chair thanks the members for being
1046 present.

1047 [Whereupon, at 2:28 p.m., the committee was adjourned.]