GREG WALDEN, OREGON
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FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

MEMORANDUM

December 5, 2017

To: Committee on Energy and Commerce Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Markup of H.R. 1917, the "Blocking Regulatory Interference from Closing Kilns (BRICK) Act of 2017;" H.R. 1119, the "Satisfying Energy Needs and Saving the Environment (SENSE) Act;" H.R. 453, the "Relief from New Source Performance Standards Act of 2017;" H.R. 350, the "Recognizing the Protection of Motorsports (RPM) Act of 2017;" H.R. 1733, "To direct the Secretary of Energy to review and update a report on the energy and environmental benefits of the re-refining of used lubricating oil.;" H.R. 2872, the "Promoting Hydropower Development at Existing Nonpowered Dams Act;" H.R. 2880, the "Promoting Closed-Loop Pumped Storage Hydropower Act."

On **Wednesday, December 6, 2017, at 10:00 a.m. in room 2123 of the Rayburn House Office Building**, the full Energy and Commerce Committee will markup the following bills: H.R. 1917, the "Blocking Regulatory Interference from Closing Kilns Act of 2017;" H.R. 1119, the "Satisfying Energy Needs and Saving the Environment Act;" H.R. 453, the "Relief from New Source Performance Standards Act of 2017;" H.R. 350, the "Recognizing the Protection of Motorsports Act of 2017;" H.R. 1733, "To direct the Secretary of Energy to review and update a report on the energy and environmental benefits of the re-refining of used lubricating oil;" H.R. 2872, the "Promoting Hydropower Development at Existing Nonpowered Dams Act;" H.R. 2880, the "Promoting Closed-Loop Pumped Storage Hydropower Act." For further information on each of these bills, please see the attached background memos.

I. H.R. 1917, THE BLOCKING REGULATORY INTERFERENCE FROM CLOSING KILNS (BRICK) ACT

H.R. 1917, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act, was introduced by Representative Bill Johnson (R-OH) on April 5, 2017. The bill's proponents argue that legislation is needed to delay implementation of the Environmental Protection Agency's

(EPA's) Brick and Clay rules until all legal challenges to these rules are resolved by the courts. Courts have unilateral power to stay the effectiveness of regulations subject to court challenge. Despite the fact that legal challenges to final EPA rules are routine, no party, to date, has petitioned the court to stay the Brick and Clay rules. Accordingly, the bill moots and makes existing judicial process unnecessary: it grants a blanket extension for any compliance deadline, regardless of the strength of the merits of the legal challenge or the likely final outcome. Such extensions could encourage frivolous challenges and additional appeals in order to extend the ultimate compliance deadlines. Furthermore, the BRICK Act is unnecessary since EPA recently announced plans to reconsider the Brick and Clay rule, which is expected to be finalized by August 2019.[1] Due to these plans, EPA asked the D.C. Circuit to indefinitely postpone the industry's lawsuit on November 3, 2017.[2]

Subsection 2(b) of the bill delays implementation of the final Brick and Structural Clay Products rule and the final Clay Ceramics Manufacturing rule, or any subsequent rule, by extending all compliance deadlines based on pending judicial review. Subsection (c) establishes a uniform time period for all compliance deadline extensions, starting 60 days after the final rule appears in the Federal Register, and ending when "judgment becomes final, and no longer subject to further appeal or review."

II. H.R. 1119, THE SATISFYING ENERGY NEEDS AND SAVING THE ENVIRONMENT (SENSE) ACT

H.R. 1119, the Satisfying Energy Needs and Saving the Environment (SENSE) Act, was introduced by Representative Rothfus (R-PA) on February 16, 2017. As amended by the Environment Subcommittee, the SENSE Act seeks to provide special consideration under EPA's Mercury and Air Toxics Standards (MATS) for existing power plants that convert coal refuse into energy.

Section 2(b) relates to the treatment of coal refuse facilities under MATS. This section provides an additional compliance option for the hydrogen chloride (HCl) and sulfur dioxide (SO_2) standard, allowing coal refuse facilities – or a group of facilities – to capture and control only 93 percent of SO_2 emissions. Proponents argue that coal refuse plants are unable to meet the current HCl and SO_2 limits and need an alternative pathway to comply with the MATS rule. However, existing technology is capable of meeting the standard.[3] The D.C. Circuit already rendered a decision on this argument, rejecting the assertion that coal refuse plants are incapable

[1] Respondents' Notice of Action on Brick/Clay Rule and Unopposed Motion to Sever and Hold in Abeyance Industry Petitions, *Sierra Club, et al. v. United States Environmental Protection Agency*, D.D.C. (No. 15-1487).

[2] *See id.*

[3] U.S. Environmental Protection Agency, *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards*, at 2-8 – 2-9 (Dec. 2011) (www3.epa.gov/ttn/ecas/regdata/RIAs/matsriafinal.pdf).

of achieving these MATS requirements.[4] It is not known how many facilities would opt for the additional compliance option in section 2(b), but the end result is likely to be additional air pollution. Furthermore, this provision picks winners and losers by allowing coal refuse plants to emit higher levels of pollution, forcing other sources to cut even more emissions to make up the difference.

After EPA denied its petition to change the MATS rule for coal refuse plants, the Anthracite Region Independent Power Producers Association (ARIPPA) challenged the agency's decision in the D.C. Circuit. The case is still pending.

III. H.R. 453, THE RELIEF FROM NEW SOURCE PERFORMANCE STANDARDS ACT OF 2017

H.R. 453, the Relief from New Source Performance Standards Act of 2017 was introduced by Representative Peterson (D-MN) on January 11, 2017. The bill delays the Step 2 compliance date for three categories of wood-fueled heaters: new residential wood stoves, new residential hydronic heaters, and new forced air furnaces. The current compliance date for these appliances is 2020, which the bill extends by three years, to 2023.

Some states have already implemented laws and regulations to institute stricter standards and encourage faster transition to more efficient, cleaner burning appliances. Federal emission standards for residential wood-fueled appliances have not been updated since 1988. EPA's rule, finalized in March 2015, established new standards which incorporated "best systems of emission reduction" now available in the industry.[5] The public health benefits of the rule far exceed the cost of implementation.

There are a number of companies producing and selling wood stoves and heating appliances that are compliant with EPA's 2020 standard. Delay of the standard implementation for three years is unnecessary, and it rewards those companies that failed or chose not to invest in development of cleaner appliances at the expense of public health.

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[4] In response to questions during the February 3, 2016 hearing, John Walke from the Natural Resources Defense Council explained "when the D.C. Circuit in its decision heard the full legal arguments from the trade association for waste coal operators and looked at all the evidence they presented and the evidence in the administrative record that EPA had compiled, they squarely rejected those claims in a three to nothing decision and that decision was left untouched by the Supreme Court in that relevant Respect." House Committee on Energy and Commerce, Subcommittee on Energy and Power, *Hearing on H.R. 3797, the SENSE Act and H.R. __, the BRICK Act*, 114th Cong (Feb. 3, 2016) (democrats-energycommerce.house.gov/committee-activity/hearings/hearing-on-hr-3797-the-satisfying-energy-needs-and-saving-the-0).

[5] U.S. Environmental Protection Agency, *Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces* (Mar. 16, 2015) (80 Fed. Reg. 13672).

IV. H.R. 350, THE RECOGNIZING THE PROTECTION OF MOTORSPORTS ACT OF 2017

The Clean Air Act (CAA) requires vehicles and engines to be certified by EPA to meet specific emissions standards to control pollution. The CAA also prohibits anyone from removing or disabling these emissions control systems, and blocks anyone from selling or installing parts that would "bypass, defeat, or render inoperative" a vehicle's emissions controls.[6] Vehicles manufactured and used solely for professional competition do not have such requirements, and are subsequently not registered for driving on streets and highways.[7]

Amateur racers frequently modify their vehicles for use as race cars by installing aftermarket products to improve performance. Some of these products are emissions control defeat devices that result in increased pollution, and are prohibited under the CAA. As a practical matter, however, operation of these modified vehicles is not always limited to the race track, meaning they are also emitting illegal levels of pollution while driving on streets and highways.

On January 6, 2017, Representative McHenry (R-NC) introduced H.R. 350, the Recognizing the Protection of Motorsports (RPM) Act of 2017. The bill amends section 203 of the CAA to exempt actions for the purpose of modifying a motor vehicle into a vehicle used solely for competition, from CAA anti-tampering penalties.[8] The bill also changes the CAA definition of a motor vehicle to exclude vehicles used solely for competition, including those converted from motor vehicles.

Proponents argue that legislation is needed to protect amateur racing from EPA enforcement actions against individuals who have converted their vehicles into race cars. But, this concern is misplaced since EPA has never enforced this provision of the CAA against individual vehicle owners, and it lacks the resources or ability to do so. Enforcement cases have been initiated against manufacturers of defeat devices for use in motor vehicles that are not exclusively used for racing. Proponents also claim the intent of the legislation is to bring federal amateur racing policy in line with the California Air Resources Board's (CARB) regulations. However, CARB is currently updating its racing program due to misuse of the emissions control exemption for non-highway competition vehicles. Specifically: "evidence shows racing vehicles and certified vehicles modified with racing aftermarket parts are often used for non-racing and non-competition purposes."[9]

Ultimately, the RPM Act creates a loophole in the CAA that blocks EPA's ability to enforce against those manufacturing or selling emissions control defeat devices, regardless of

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[6] The Clean Air Act § 203(b)(3).

[7] 40 CFR § § 1042.620 and 1068.235.

[8] Penalties for altering a vehicle's design or adding or altering a device on a vehicle that results in increased emission of air pollutants.

[9] California Air Resources Board, *California Racing Vehicles*, (Jul. 18, 2017) (www.arb.ca.gov/enf/racingvehicles/racingvehicles.htm).

how they are used. At the September 13, 2017 Environment Subcommittee hearing, Alexandra Teitz testified that the bill grants immunity to manufacturers of defeat devices, so long as the manufacturer says the product is intended for racing.[10] The intent of the manufacturer has no impact on how a product is used. Once installed EPA has little ability to penalize those using a product beyond its intent. By preventing EPA from enforcing against the manufacture and sale of defeat devices, this bill takes away an important tool for stopping illegal vehicle pollution. It is important to note that this is the same authority EPA recently used to catch one company, H&S Performance that was manufacturing and selling products which resulted in nearly double the illegal NOx emissions of the Volkswagen diesel scandal.[11]

V. H.R. 1733, TO DIRECT THE SECRETARY OF ENERGY TO REVIEW AND UPDATE A REPORT ON THE ENERGY AND ENVIRONMENTAL BENEFITS OF THE RE-REFINING OF USED LUBRICATING OIL

H.R. 1733, To direct the Secretary of Energy to Review and Update a Report on the Energy and Environmental Benefits of the Re-Refining of Used Lubricating Oil was introduced by Representative Brooks (R-IN) on March 27, 2017. The bill would require the Department of Energy (DOE), in cooperation with the EPA and the Office of Management and Budget, to review and update a report required by Section 1838 of the Energy Policy Act of 2005. This new study would assess the benefits of re-refining used lubricating oils and recommend coordinated federal actions that could be taken to collect and promote the beneficial reuse of such oils.

VI. H.R. 2872, THE "PROMOTING HYDROPOWER DEVELOPMENT AT EXISTING NONPOWERED DAMS ACT"

On June 12, 2017, Representative Bucshon (R-IN) introduced H.R. 2872, the Promoting Hydropower Development at Existing Nonpowered Dams Act. The bill would allow the Federal Energy Regulatory Commission (FERC), in consultation with federal and state resource agencies and Native American tribes, to exempt any existing dam that has not previously been developed for energy production from regulation under the Federal Power Act (FPA) (including assignment of mandatory conditions).

An Amendment-in-the-Nature-of-a Substitute (AINS) will be considered. The bipartisan AINS addresses concerns raised by Democratic members about the base bill. The AINS requires FERC to issue a rule to create an expedited licensing process for hydropower projects at existing non-powered dams that meet specific criteria. It also requires FERC to establish an Interagency Task Force, comprised of relevant Federal and State agencies and tribes, to coordinate the

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[10] House Committee on Energy and Commerce, Subcommittee on Environment, Testimony of Alexandra Teitz *Hearing on Big Relief for Small Business: Legislation Reducing Regulatory Burdens on Small Manufacturers and Other Job Creators*, (Sept. 13, 2017) (democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony-Teitz-EE-Hrg-on-Big-Relief-for-Small-Business-Legislation-Reducing-Regulatory.pdf).

[11] Union of Concerned Scientists, *Is Your Representative Setting Us Up for Another Dieselgate?*, (Oct. 25, 2017) (blog.ucsusa.org/jonna-hamilton/is-your-representative-setting-us-up-for-another-dieselgate).

authorizations needed to license the facility. FERC is also directed to evaluate the safety of a non-federal dam under consideration for the hydropower project, and to require the facility to meet the Commission's dam safety requirements over the term of the license. Furthermore, the AINS requires the Commission to develop a list of existing non-powered federal dams that have the greatest potential for hydropower development. Finally, the AINS includes an amendment to the Federal Power Act specifying that annual charges for new hydropower projects will be assessed when construction of the facility begins.

VII. H.R. 2880, THE "PROMOTING CLOSED-LOOP PUMPED STORAGE HYDROPOWER ACT"

H.R. 2880, the Promoting Closed-Loop Pumped Storage Hydropower Act was introduced by Representative Griffith (R-VA) on June 12, 2017. The bill would exempt closed-looped pumped storage hydropower projects from the mandatory conditions and associated protections contained in sections 4 and 10 of the FPA. The legislation would limit conditions that are necessary to protect public safety or the environment to those that are "reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources directly caused by the construction and operation of the project." The bill would also, for the first time, allow private entities that partner with or jointly file for a license with a municipality to take advantage of the preference afforded to municipalities (municipal preference) in current law. That preference would continue for such a private-public partnership even if the municipality does not retain a majority ownership interest.

An amendment-in-the-Nature-of-a-Substitute will be considered. The bipartisan AINS requires FERC to create an expedited licensing process for closed-loop, pumped storage projects. The AINS requires FERC to establish an Interagency Task Force that includes relevant Federal and State agencies and Indian tribes to coordinate the authorizations needed to license the facility. FERC is also directed to evaluate the safety of any dam or other existing structure that would be associated with the project. The AINS authorizes FERC to grant exemptions from other provisions of the FPA after a consultation with relevant federal and state resource agencies and allows such resource agencies to apply terms and conditions to protect resources consistent with the purposes of the Fish and Wildlife Coordination Act. The AINS permits the Commission to establish fees to support the work needed to meet the terms and conditions of the license. The AINS also allows the holder of a preliminary permit that has claimed a municipal preference to enlist joint permittees and retain the municipal preference if the municipality retains majority ownership of the project. The AINS further directs FERC to hold a workshop and issue guidance to assist applicants for a license for closed-loop, pumped storage projects at abandoned mine sites. The AINS requires FERC to establish criteria that a pumped storage project must meet to qualify as a closed-loop, pumped storage project and be eligible for the expedited process. At a minimum, the project must meet two mandatory conditions: to create little change to existing water flows or uses and that do not adversely affect threatened or endangered species. Finally, the AINS includes an amendment to the FPA specifying that annual charges for new hydropower projects will be assessed when construction of the facility begins.

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MEMORANDUM

November 13, 2017

To: Subcommittee on Environment Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Markup of H.R. 1917, the "Blocking Regulatory Interference from Closing Kilns Act of 2017"; H.R. 453, the "Relief from New Source Performance Standards Act of 2017"; H.R. 350, the "Recognizing the Protection of MotorsportsAct of 2017"; and H.R. 1119, the "Satisfying Energy Needs and Saving the Environment Act"

On **Wednesday, November 15, 2017, at 10:00 a.m. in room 2123 of the Rayburn House Office Building**, the Subcommitee on Environment will markup the following bills: H.R. 1917, the "Blocking Regulatory Interference from Closing Kilns Act of 2017;" H.R. 453, the "Relief from New Source Performance Standards Act of 2017;" H.R. 350, the "Recognizing the Protection of Motorsports Act of 2017;" and H.R. 1119, the "Satisfying Energy Needs and Saving the Environment Act." These bills were the subject of an Environment Subcommittee legislative hearing on September 13, 2017.

I. H.R. 1917, THE BLOCKING REGULATORY INTERFERENCE FROM CLOSING KILNS ACT

H.R. 1917, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act, was introduced by Representative Bill Johnson (R-OH) on April 5, 2017.[1] For background information on section 112 of the Clean Air Act (CAA) and the Environmental Protection Agency's (EPA) Brick and Clay rules, please see the memo from the February 3, 2016 Energy and Power Subcommittee hearing here.

Subsection 2(b) of the bill delays implementation of the final Brick and Structural Clay Products rule and the final Clay Ceramics Manufacturing rule, or any subsequent rule, by

[1] All Democratic Committee materials for H.R. 4557, Blocking Regulatory Interference from Closing Kilns (BRICK) Act of 2016, are available here.

extending all compliance deadlines based on pending judicial review. Subsection (c) establishes a uniform time period for all compliance deadline extensions, starting 60 days after the final rule appears in the Federal Register, and ending when "judgment becomes final, and no longer subject to further appeal or review."

The bill's proponents argue that legislation is needed to delay implementation of EPA's Brick and Clay rules until all legal challenges are resolved by the courts. It has the potential to encourage frivolous challenges and additional appeals in order to extend the ultimate compliance deadlines. Legal challenges to final EPA rules are routine, and courts have the power on their own to stay the effectiveness of regulations under court challenge. Nevertheless, this bill would disregard existing judicial process by granting unconditional blanket extensions of compliance deadlines.

To date, no one has petitioned the court to stay the effectiveness of the Brick and Clay rules. However, the brick industry's legal challenge of the rule is still pending before the D.C. Circuit. On November 3, 2017, EPA asked the court to indefinitely postpone the industry's lawsuit, since the agency is reconsidering the Brick and Clay rule, which is expected to be finalized by August 2019.[2]

II. H.R. 453, THE RELIEF FROM NEW SOURCE PERFORMANCE STANDARDS ACT OF 2017

H.R. 453, the "Relief from New Source Performance Standards Act of 2017" was introduced by Representative Peterson (D-MN) on January 11, 2017. The bill delays the Step 2 compliance date for three categories of wood-fueled heaters: new residential wood stoves, new residential hydronic heaters, and new forced air furnaces. The current compliance date for these appliances is 2020, which the bill extends by three years.

As the use of these appliances has expanded, emissions associated with inefficient wood burning in older stoves and heating devices have also grown. Wood smoke contains coarse and fine particulate matter, carbon monoxide, volatile organic compounds (VOCs), and toxic pollutants such as benzene and formaldehyde. Residential wood smoke can increase fine particulate pollution to levels that cause serious public health concerns. Because wood stoves and wood heaters are very long-lived appliances, delay of standards by three years will likely result in many more inefficient appliances being installed and generating pollution for many years into the future.

The public health benefits of the EPA rule far exceed its costs of implementation and operation. Federal emission standards for residential wood-fueled appliances have not been

[2] Respondents' Notice of Action on Brick/Clay Rule and Unopposed Motion to Sever and Hold in Abeyance Industry Petitions, *Sierra Club, et al. v. United States Environmental Protection Agency*, D.D.C. (No. 15-1487).

updated since 1988. EPA's rule, finalized in March 2015, established new standards incorporating "best systems of emission reduction" that are now available in the industry.[3]

Additionally, some states have already implemented laws and regulations to institute stricter standards and encourage faster transition to more efficient, cleaner burning appliances. A number of companies are already producing and selling wood stoves and heating appliances that are compliant with EPA's 2020 standard. A three-year delay in implementing the federal rule is unnecessary, and rewards the companies that failed to invest in development of cleaner appliances at the expense of public health.

III. H.R. 350, THE RECOGNIZING THE PROTECTION OF MOTORSPORTS ACT OF 2017

The CAA requires that EPA certify that vehicles and engines meet specific emissions standards designed to control pollution. The CAA prohibits anyone from removing or disabling these emissions control systems, or from selling or installing parts that would "bypass, defeat, or render inoperative" a vehicle's emissions controls.[4] Vehicles manufactured and used solely for professional competition are exempted from such requirements.[5]

Amateur racers frequently modify their vehicles for use as race cars by installing aftermarket products to improve performance. Some of these products are emissions control defeat devices that result in increased pollution, and would be prohibited under the CAA. As a practical matter, however, operation of these modified vehicles is not always limited to the race track, meaning they are also emitting illegal levels of pollution when they are driven on streets and highways.

On January 6, 2017, Representative McHenry (R-NC) introduced H.R. 350, the Recognizing the Protection of Motorsports (RPM) Act of 2017. The bill amends section 203 of the CAA to exempt actions for the purpose of modifying a motor vehicle into a vehicle used solely for competition, from CAA anti-tampering penalties.[6] The bill also changes the CAA definition of a motor vehicle, to exclude vehices used solely for competition, including those converted from motor vehicles.

Proponents argue that legislation is needed to protect amateur racing from EPA enforcement actions against individuals who have converted their vehicles into race cars. These concerns, however, are misplaced. EPA has never enforced this provision of the CAA against individual vehicle owners, nor does it have sufficient resources to make this an enforcement

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[3] U.S. Environmental Protection Agency, *Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces* (Mar. 16, 2015) (80 Fed. Reg. 13672).

[4] CAA § 203(b)(3).

[5] 40 CFR § § 1042.620 and 1068.235.

[6] Penalties for altering a vehicle's design or adding or altering a device on a vehicle that results in increased emission of air pollutants.

priority. Enforcement cases have been initiated against manufacturers of defeat devices for use in motor vehicles that are not exclusively used for racing.

Proponents of the bill also claim the intent of the legislation is to bring federal amateur racing policy in line with the California Air Resources Board's (CARB) regulations. However, CARB is currently updating its racing program due to misuse of the emissions control exemption for non-highway competition vehicles. CARB has specifically found there is "evidence show[ing that] racing vehicles and certified vehicles modified with racing aftermarket parts are often used for non-racing and non-competition purposes."[7]

Ultimately, the RPM Act creates a loophole in the CAA that blocks EPA's ability to enforce against those manufacturing or selling emissions control defeat devices, regardless of how they are used. At the September 13 Environment Subcommittee hearing, Alexandra Teitz testified that the bill grants immunity to manufacturers of defeat devices, so long as the manufacturer says the product is intended for racing.[8] The intent of the manufacturer is not predictive of, nor does it impact how consumers will use these products. Once they are installed EPA will have little ability to penalize those using a product beyond its intent. By preventing EPA from enforcing against the manufacture and sale of defeat devices, this bill takes away an important tool for stopping illegal vehicle pollution. It is important to note that this is the same authority EPA recently used to detect that a company, H&S Performance, had been manufacturing and selling products which resulted in nearly double the illegal NOx emissions of the Volkswagen diesel scandal.[9]

IV. H.R. 1119, THE SATISFYING ENERGY NEEDS AND SAVING THE ENVIRONMENT ACT

H.R. 1119, the Satisfying Energy Needs and Saving the Environment (SENSE) Act, was introduced by Representative Rothfus (R-PA) on February 16, 2017. The SENSE Act seeks to provide special consideration under EPA's Cross-State Air Pollution Rule (CSAPR) and its Mercury and Air Toxics Standards (MATS) for existing power plants that convert coal refuse

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[7] California Air Resources Board, *California Racing Vehicles* (Jul. 18, 2017) (www.arb.ca.gov/enf/racingvehicles/racingvehicles.htm).

[8] House Committee on Energy and Commerce, Subcommittee on Environment, Testimony of Alexandra Teitz o/b/o Sierra Club *Hearing on Big Relief for Small Business: Legislation Reducing Regulatory Burdens on Small Manufacturers and Other Job Creators*, Sept. 13, 2017 (democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony-Teitz-EE-Hrg-on-Big-Relief-for-Small-Business-Legislation-Reducing-Regulatory.pdf).

[9] Union of Concerned Scientists, *Is Your Representative Setting Us Up for Another Dieselgat?* (Oct. 5, 2017) (blog.ucsusa.org/jonna-hamilton/is-your-representative-setting-us-up-for-another-dieselgate).

into energy. For background information on coal refuse and EPA's MATS and CSAPR rules, please see the memo from the February 3, 2016 Energy and Power Subcommittee hearing here. [10]

Section 2(b) relates to the treatment of coal refuse facilities under CSAPR. Power plants that use coal refuse derived from bituminous coal would maintain the same allocation of Phase 1 sulfer dioxide (SO_2) emissions allowances under Phase 2. Furthermore, the section prohibits EPA from increasing a state's overall emissions budget in Phase 2. This provision is ostensibly designed to limit pollution on downwind states; however, to do so other power plants would have to radically cut their emissions to make up the difference. This provision picks winners and losers, and makes drastic changes to the CSAPR program that would create inequities in the market. It also removes economic incentives for coal refuse plants to reduce their pollution, and impedes states' rights to determine how to best comply with the requirements of the rule.

Section 2(c) relates to the treatment of coal refuse facilities under MATS.[11] This section provides an additional compliance option for the hydrogen chloride (HCl) and sulfur dioxide (SO_2) standard, allowing coal refuse facilities – or a group of facilities – to capture and control only 93 percent of SO_2 emissions. Proponents argue that coal refuse plants are unable to meet the current HCl and SO_2 limits and need an alternative pathway to comply with the MATS rule. However, existing technology is capable of meeting the standard,[12] and the D.C. Circuit already rendered a decision on this argument, rejecting the assertion that coal refuse plants are incapable of achieving these MATS requirements.[13] It is not known how many facilities would opt for the additional compliance option in secton 2(c), but the end result is likely to be additional air pollution.

After EPA denied its petition to change the MATS rule for coal refuse plants, the Anthracite Region Independent Power Producers Association (ARIPPA) challenged the Agency's decision in the D.C. Circuit. The case is still pending. However, in April the court

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[10] All Democratic Committee materials for H.R. 3797, the Satisfying Energy Needs and Saving the Environment Act (SENSE) Act, are available here.

[11] *Note*: section 2(c) is not limited only to coal refuse units burning bituminous coal.

[12] U.S. Environmental Protection Agency, *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards*, at 2-8 – 2-9 (Dec. 2011) (www3.epa.gov/ttn/ecas/regdata/RIAs/matsriafinal.pdf).

[13] In response to questions during the Februsry 3, 2016 hearing, John Walke from the Natural Resources Defense Council explained "when the D.C. Circuit in its decision heard the full legal arguments from the trade association for waste coal operators and looked at all the evidence they presented and the evidence in the administrative record that EPA had compiled, they squarely rejected those claims in a three to nothing decision and that decision was left untouched by the Supreme Court in that relevant Respect." House Committee on Energy and Commerce, Subcommittee on Energy and Power, *Hearing on H.R. 3797, the SENSE Act and H.R. __, the BRICK Act*, 114th Cong (Feb. 3, 2016) (democrats-energycommerce.house.gov/committee-activity/hearings/hearing-on-hr-3797-the-satisfying-energy-needs-and-saving-the-0).

agreed to delay its consideration indefinitely, after the Trump Administration asked for additional time to reconsider its positon on the MATS rule.[14]

[14] *D.C. Circuit sides with Trump EPA, delays mercury litigation*, Greenwire, (Apr. 28, 2017) (www.eenews.net/greenwire/stories/1060053772/).