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Summary of H.R. 806 Section 3(d)

A Bad Deal For Manufacturing

Committee on Energy and Commerce, Democratic Staff

Supporters of H.R. 806 claim that the bill is needed to streamline implementation of the Environmental Protection Agency's (EPA) National Ambient Air Quality Standards (NAAQS), and to protect manufacturing facilities from the perceived effects of the new ozone NAAQS. But this bill does nothing to promote new manufacturing or to improve the permitting process for new and expanding manufacturing facilities. Instead, the bill weakens air quality protections, creates regulatory uncertainty and litigation hooks, and saddles existing manufacturing facilities with the burden of cleaning up air pollution at a higher cost.

The Clean Air Act preconstruction permitting process

The Clean Air Act requires major new or expanding sources of air pollution to obtain permits with pollution limits before the facilities start construction. State and local air agencies issue the majority of these permits. A permit applicant must identify the pollution controls it will install at the new or expanded facility and demonstrate that the facility's emissions will not violate a NAAQS. When EPA updates a NAAQS to reflect the latest science and protect public health, the permit applicant has to show that its emissions will not cause a violation of the updated, more protective standard. Section 3(d) of H.R. 806 creates a loophole in this process.

Section 3(d) gives new and expanded facilities "amnesty" from new science-based air quality standards

This section requires EPA to issue rules and guidance for implementing a new or revised NAAQS "concurrently" when issuing the standard. Concurrent guidance is not always needed, feasible, or advisable, and the bill is unclear about how much guidance would be sufficient to satisfy this imprecise requirement. If EPA does not meet this requirement, then a new or expanding facility only has to show that its emissions comply with the old, insufficient air quality standard, not the new, more protective one. This could allow some facilities to emit extra pollution at levels that could harm public health and increase compliance burdens on other businesses in the area.

Section 3(d) shifts the cost of air pollution control to existing manufacturing facilities

In an area with unhealthy air, pollution is a zero-sum game: an increase in pollution in one place has to be offset by a reduction elsewhere. So, if new facilities are allowed to emit more, existing facilities will have to emit less to make up for that extra pollution. That is unfair and makes it more expensive to achieve healthy air. It is generally far more efficient and cost-effective to build pollution controls into a facility up front, rather than adding them on later. But this bill takes the opposite approach. Allowing new facilities to pollute more means that existing industrial facilities will have to do more to reduce their emissions at a higher cost.

Section 3(d) increases regulatory uncertainty and could slow, rather than expedite, the permitting process

This section creates several new avenues for litigation. Industry groups could sue EPA to delay implementation of a new NAAQS, claiming that the agency failed to issue sufficient guidance. Downwind communities and nearby businesses might challenge a permit that allows a new facility to pollute more and shifts the burden of pollution reduction on to them. More litigation will lead to permitting delays.

Section 3(d) also could slow the permitting process by prohibiting state and local permitting agencies from issuing permits consistent with new, more health-protective air quality standards until EPA has issued guidance, even if the permitting agency does not think that guidance is necessary.