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4 EPA'S PROPOSED OZONE RULE: POTENTIAL IMPACTS ON

5 MANUFACTURING

6 TUESDAY, JUNE 16, 2015

7 House of Representatives,

8 Subcommittee on Commerce, Manufacturing, and Trade

9 Joint with the

10 Subcommittee on Energy and Power

11 Committee on Energy and Commerce

12 Washington, D.C.

13 The subcommittees met, pursuant to call, at 10:15 a.m.,
14 in Room 2322 of the Rayburn House Office Building, Hon. Ed
15 Whitfield [Chairman of the Subcommittee on Energy and Power]
16 presiding.

17 Members present: Representatives Whitfield, Shimkus,
18 Burgess, Blackburn, Latta, Harper, Lance, Guthrie, Olson,

19 McKinley, Kinzinger, Griffith, Bilirakis, Johnson, Ellmers,
20 Flores, Mullin, Hudson, Rush, Schakowsky, Butterfield,
21 Sarbanes, Welch, Yarmuth, Clarke, Loeb sack, Kennedy,
22 Cardenas, and Pallone (ex officio).

23 Staff present: Clay Alspach, Chief Counsel; Will
24 Batson, Legislative Clerk; Leighton Brown, Press Assistant;
25 Allison Busbee, Policy Coordinator, Energy and Power; James
26 Decker, Policy Coordinator, Commerce, Manufacturing, and
27 Trade; Melissa Froelich, Counsel, Commerce, Manufacturing,
28 and Trade; Tom Hassenboehler, Chief Counsel, Energy and
29 Power; Kirby Howard, Legislative Clerk; A.T. Johnston, Senior
30 Policy Advisor; Peter Kielty, Deputy General Counsel; Paul
31 Nagle, Chief Counsel, Commerce, Manufacturing, and Trade;
32 Mary Neumayr, Senior Energy Counsel; Dan Schneider, Press
33 Secretary; Lisa Goldman, Democratic Counsel; Michael Goo,
34 Democratic Chief Counsel, Energy and Environment; Tiffany
35 Guarascio, Democratic Deputy Staff Director and Chief Health
36 Advisor; Caitlin Haberman, Democratic Professional Staff
37 Member; Ashley Jones, Democratic Director of Communications,
38 Member Services and Outreach; Adam Lowenstein, Democratic
39 Policy Analyst; John Marshall, Democratic Policy Coordinator;
40 and Alexander Ratner, Democratic Policy Analyst.

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41 Mr. {Whitfield.} I would like to call the hearing to
42 order this morning and certainly want to thank our panel of
43 witnesses. We appreciate your being here with us this
44 morning to discuss the proposed ozone rule. As you know, we
45 have had a number of hearings on this subject matter, and
46 today we are doing a joint hearing with the Subcommittee on
47 Commerce, Manufacturing, and Trade. And each one of us that
48 will be giving opening statements will be given 3 minutes,
49 and then I am going to introduce each one of you individually
50 right before you give your opening statement, and you will be
51 give 5 minutes. We get 3, you get 5. But then we will have
52 the opportunity to question you as well. So thanks for being
53 with us. And at this time I would like to recognize myself
54 for an opening statement.

55 We have watched the Obama Administration propose and
56 finalize a litany of rules for more than 6 years now, and I
57 can't tell you now how many hearings we have held. I and
58 many others have come to the conclusion that EPA is no longer
59 an independent and impartial arbiter of our environmental
60 laws but has become a politicized extension of the White
61 House to implement the President's Clean Energy Plan.

62 When EPA testifies, they always refer to the EPA's
63 Scientific Advisory Committee. Now this is a body appointed

64 by EPA. The public does not really have any idea who is on
65 this Advisory Committee, and truthfully, we all understand
66 the importance of science but whether or not they are
67 independent and impartial or have they also become a
68 politicized arm of the White House.

69 Now, the reason given for adopting a more stringent
70 ozone rule relates to healthcare which is vitally important.
71 To quote Ms. McCabe, a 70 parts per billion standard would
72 prevent an estimated 330,000 missed school days, 320,000
73 asthma attacks, and 710 to 1,400 premature deaths. Now, that
74 is an important statistic, all of those are, and one that we
75 all would applaud. But today it is a lot different when this
76 Clean Air Act was first administered, and it is important
77 that we understand that cost.

78 We have listened to many experts over the past 6 years
79 who have pointed out that there is a direct correlation
80 between poverty and healthy living. That also is important
81 because EPA in its Scientific Advisory Committee do not
82 consider the impact of these regulations on jobs. In April
83 of this year, the Global Market Institute, an arm of Goldman
84 Sachs, concluded a study that found for example that the
85 number of small businesses which has been the backbone of
86 America prosperity, the number of small businesses between
87 2009 and 2014 declined by 600,000. Usually after an economic

88 crisis there is a slow increase. But that is not the case in
89 small business. There are 600,000 less today than 2009 and 6
90 million fewer jobs. In fact, small business jobs have been
91 declining at roughly 700 per month the last 3 years for which
92 statistics are available. And this report goes onto say the
93 reason for this is one, the availability of credit and the
94 high interest cost, the high cost of capital because of
95 banking regulations that came out of the crisis. In
96 addition, it specifically lists other regulations relating to
97 healthcare, relating to the environmental issues throughout
98 our government.

99 And so the point is this. Yes, there is a benefit in
100 healthcare with new regulations on ozone, but we have to also
101 consider the impact of people and their families who have
102 lost jobs and the impact on their healthcare. There has got
103 to be some discussion about that as well.

104 [The prepared statement of Mr. Whitfield follows:]

105 ***** COMMITTEE INSERT *****

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106 Mr. {Whitfield.} At this time I would like to recognize
107 the gentleman from Illinois, Mr. Rush, for his 3-minute
108 opening statement. I am sorry. At this time I would like to
109 recognize the gentlelady from Illinois, Ms. Schakowsky, for 3
110 minutes.

111 Ms. {Schakowsky.} Thank you, Chairman Whitfield and
112 Chairman Burgess, for holding this hearing, and despite my
113 great affection for Chairman Whitfield, I have to say that I
114 don't agree at all that the EPA is operating in a political
115 manner. And let's make it clear: The EPA is responsible for
116 setting ozone standards based on what is considered safe from
117 a public health perspective. The compliance costs to
118 business are not to be considered in its rule-making.

119 Health experts, epidemiologists, numerous medical
120 organizations have clearly stated that the current ozone
121 standard of 75 parts per billion is not adequate to protect
122 public health, particularly for vulnerable populations such
123 as children, the elderly, outdoor workers, those with chronic
124 medical conditions like asthma. The EPA has indicated its
125 final rule due in October will likely land somewhere between
126 65 and 70 parts per billion. I strongly support EPA action
127 on this issue, although I believe a 60 part per billion
128 standard would be more effective to protect the public

129 health.

130 The existing standards are not doing enough to protect
131 public health. In my home State of Illinois, 13 percent of
132 children, 13 percent, suffer from smog-related asthma, well
133 above the national average. In response to mounting medical
134 evidence and Clean Air Act requirements, the federal courts
135 rightly directed the EPA to reconsider existing inadequate
136 health protections against smog last year. Let me repeat.
137 This rule-making is court mandated. Federal law requires the
138 EPA to maintain clean air standards, and the courts have said
139 it must do more to meet that requirement.

140 While anticipated business compliance costs have no
141 place in determining ozone standards, industry concerns about
142 the impacts of rule-making are overblown. We will hear from
143 some of our witnesses that proposed ozone standards would
144 stifle manufacturing, investment, and expansion. That
145 argument is not new but it is flawed. Since the Clean Air
146 Act was enacted into law more than 40 years ago, we have seen
147 tremendous progress in cleaning up our air and in protecting
148 thousands of communities around the country. That has been
149 done in concert with technological innovation and a growing
150 economy.

151 Doomsday predictions about the impact of EPA regulations
152 on American businesses have never been borne out by the

153 facts. From 1990 to 2010 emissions of the most common air
154 pollutants have declined by more than 40 percent while Gross
155 Domestic Product has increased by more than 65 percent.
156 These standards will save and improve American lives.

157 I look forward to the EPA finalizing the rule and to the
158 manufacturing sector to continuing its long record of success
159 and expanding while at the same time complying with EPA
160 regulations. Again, I look forward to hearing from our
161 witnesses, to gain from their perspectives on this important
162 rule-making, and I yield back the balance of my time.

163 [The prepared statement of Ms. Schakowsky follows:]

164 ***** COMMITTEE INSERT *****

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165 Mr. {Whitfield.} The gentlelady yields back the balance
166 of her time. At this time I would like to recognize the
167 gentleman from Texas, the Chairman of the Commerce
168 Subcommittee that we are having the hearing with, Mr.
169 Burgess. You are recognized for 3 minutes.

170 Mr. {Burgess.} Thank you, Chairman Whitfield, and thank
171 you for agreeing to have this joint hearing with the
172 Subcommittee on Commerce, Manufacturing, and Trade along with
173 the Energy Subcommittee. So the Environmental Protection
174 Agency's proposal to further reduce the National Ambient Air
175 Quality Standard for ozone represents perhaps one of the most
176 costly regulations the agency has ever imposed upon the
177 United States' economy, and it is a recurring theme with the
178 administration, an unprecedented and overly burdensome
179 regulatory proposal while there is still ongoing debate about
180 the science and the public health benefits in enacting such a
181 rule.

182 So again, I want to thank my counterpart on the Energy
183 and Power Subcommittee, Chairman Whitfield, and I want to
184 thank our panel of witnesses for joining us today to talk
185 about both of our subcommittees' work on the impact of EPA's
186 proposed ozone rule on manufacturing.

187 The simple fact remains that this type of regulatory

188 overreach may be injurious to America's families and jobs.
189 As a physician, the health of all of our citizens is of
190 significant importance to me as well as everyone on the
191 committee, and we know from other conversations occurring
192 throughout this committee, the cost of health care is a real
193 concern for Americans. However, I have reservations about
194 the science and the analysis utilized by the Environmental
195 Protection Agency to support the proposed rule and whether it
196 would be effective.

197 The 43,000 comments filed with the Environmental
198 Protection Agency about the proposed rule demonstrate that
199 there is a lot of interest, there is a lot of activity, and
200 there may not be a lot of certainty. There is important
201 debate that needs to occur to identify the actual benefits to
202 justify the effect on job creation.

203 I have written to the Environmental Protection Agency on
204 several occasions over the past few years on issues relating
205 to the rule, most recently regarding the Clean Air Scientific
206 Advisory Committee's evaluation of the risks and the
207 tradeoffs of the ozone proposal. I remain concerned about
208 the scientific process utilized by the Environmental
209 Protection Agency to draw a causal inference about the impact
210 of lowering the National Ambient Air Quality Standard from 75
211 parts per billion by as much as 5, 10, or 15 parts per

212 billion.

213 Given that the implementation for the regulations for
214 the 2008 standard of 75 parts per billion were only finalized
215 earlier this year, what will be the proposed rule's impact on
216 states and localities that are already dealing with non-
217 attainment including counties in my district around the
218 Washington Metropolitan Area and counties in the North Texas
219 area?

220 The National Association of Manufacturers estimates that
221 for Texas this rule could result in 300,000 lost jobs and
222 almost a \$1,500 drop in annual household consumption. When
223 there are disincentives to investment in a local economy,
224 either from businesses looking to build and expand or from
225 families trying to make ends meet, we have to pay attention.
226 We have to ask the tough questions. There are going to be a
227 lot of questions for the EPA and for our witnesses today. I
228 am focused on learning about the expected impacts of the
229 EPA's proposed rule and the effect on public health.

230 Thank you, Mr. Chairman. I will yield back the time.

231 [The prepared statement of Mr. Burgess follows:]

232 ***** COMMITTEE INSERT *****

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233 Mr. {Whitfield.} At this time the chair recognizes the
234 gentleman from Illinois, Mr. Rush, for 3 minutes.

235 Mr. {Rush.} I want to thank you, Mr. Chairman, for
236 holding this important joint hearing on EPA's proposed ozone
237 rule and its potential impact on the manufacturing sector.

238 Mr. Chairman, last week we heard from EPA's Acting
239 Assistant Administrator for air and radiation, Janet McCabe,
240 that lowering the ozone standard from 75 ppb would literally
241 save lives while also preventing hundreds of thousands of
242 missed school days and missed work days and preventing
243 hundreds of thousands of asthma attacks.

244 Today, Mr. Chairman, we will hear from industry groups
245 that lower the ozone standard will cause great job loss, will
246 damage our economy, and will lead to unprecedented costs.
247 Well, Mr. Chairman, as policymakers, we are always searching
248 to find the right balance between protecting our air and
249 water through regulations without unnecessarily saddling
250 industry with unreasonable burdens that might stifle growth.
251 And today, Mr. Chairman, we will hear about competing studies
252 with conflicting results on everything from potential health
253 benefits to economic growth to the impacts on employment.
254 However, I think it is instructive to look at how these types
255 of regulations have played out in our most recent past, and

256 if our most recent past is any indication, Mr. Chairman, then
257 I am not fully convinced that this is an either/or
258 proposition that we are confronted with, that Americans must
259 choose between either economic strength or clean air. As Ms.
260 McCabe noted in the hearing last week, Mr. Chairman, and I
261 quote her, the history of the Clean Air Act actually shows us
262 and all of those who are willing to take a look at it that
263 the two things go together, two things go together. We have
264 reduced air pollution dramatically in this country, and the
265 economy has blossomed. It has grown.

266 Mr. Chairman, this country and the businesses in this
267 country have come up with pollution control technologies that
268 employ American workers, and these new technologies have made
269 us leaders in the world through selling this kind of
270 technology.

271 So I look forward to engaging the panelists so that we
272 can both protect the public health by reducing ozone in our
273 atmosphere, and we can also create most needed jobs and
274 economic opportunities for American businesses and their
275 families.

276 And with that, Mr. Chairman, I yield back the balance of
277 my time.

278 [The prepared statement of Mr. Rush follows:]

279 ***** COMMITTEE INSERT *****

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280 Mr. {Whitfield.} The gentleman yields back. At this
281 time the Chair would recognize the Vice Chairman of the Full
282 Committee, Mrs. Blackburn, of Tennessee for 3 minutes.

283 Mrs. {Blackburn.} Thank you, Mr. Chairman, and I thank
284 all of our witnesses for the hearing today. This is indeed
285 something that we want to drill down a little deeper on and
286 look at these regulations. Everybody is for clean air and
287 clean water, and there is no argument about that. What we
288 have tremendous concerns about is when you get to the point
289 of diminishing return. And that is something you will be
290 able to help us with today. What we have found is if the EPA
291 is not given to doing cost-benefit analysis, and Dr. Burgess
292 referenced that and the injurious nature of some of these
293 regulations at times and the harm that it does to business,
294 the cost that is there, and the outcome that ends up not
295 being delivered. And you are not, if you will, getting the
296 bang for your buck when you look at these regulations.

297 So I think that we will want to look at this cost. A
298 trillion dollars? A trillion dollars is what the compliance
299 cost is for this, for industry? What does that do to
300 families? What does it do to jobs? What does it do to local
301 communities?

302 And those are questions that we are going to want to ask

303 in addition to what does it mean to the environment. If you
304 don't have jobs and if you don't have local, vibrant
305 communities, you are not going to see people who are
306 investing the time and the energy to clean up the environment
307 or to innovate to find a better way.

308 So we thank you for your participation. We look forward
309 to your questions today. Yield back.

310 [The prepared statement of Mrs. Blackburn follows:]

311 ***** COMMITTEE INSERT *****

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312 Mr. {Whitfield.} The gentlelady yields back. At this
313 time I recognize the gentleman from New Jersey, Mr. Pallone,
314 for 3 minutes.

315 Mr. {Pallone.} Thank you, Chairmen Whitfield and
316 Burgess and our Ranking Members Rush and Schakowsky, for
317 holding this hearing. I also wanted to welcome all of our
318 panelists.

319 We heard some great things about the importance of the
320 proposed ozone rule last week from EPA Acting Assistant
321 Administrator Janet McCabe. Under the proposed standard, we
322 would see tremendous public health benefits. EPA's new
323 standard will avoid nearly 1 million asthma attacks, millions
324 of missed school days, and thousands of premature deaths.

325 EPA estimates these benefits would range from \$13 to \$38
326 billion annually, outweighing the cost by approximately 3 to
327 1. In addition, it is consistent with the law and scientific
328 evidence.

329 The proposed ozone standard is part of a set of health-
330 based air-quality standards which make up the foundation of
331 the Clean Air Act. These standards are based on scientific
332 evidence alone and have been extremely effective in cleaning
333 the air and protecting public health.

334 The current 75 parts-per-billion standard is weaker than

335 the facts would allow. So EPA has proposed based on a
336 complete review of the scientific evidence to revise the
337 standard to fall within 65 to 70 parts per billion as
338 recommended. I am sure today we will hear more about the
339 cost than the benefits, yet a unanimous Supreme Court opinion
340 written by Justice Scalia made it clear that EPA's approach
341 for determining a safe level of air pollution is correct and
342 costs may not be considered.

343 During today's hearing I urge everyone to keep in mind
344 that the grossly inflated estimate of the rule's projected
345 costs failed to consider any of the benefits associated with
346 reducing ozone pollution. This ignores the real cost of poor
347 air quality that are borne by those who breathe, especially
348 children.

349 We will also be told that EPA's proposed standard will
350 have dire consequences for economic growth, but the history
351 of the Clean Air Act is one of exaggerated claims by industry
352 that have never come true. In reality, the act has produced
353 public health benefits while supporting economic growth.

354 As I said last week, EPA's ozone standard is long
355 overdue, and this rule will help put us on the path to
356 reaching the goal of the Clean Air Act, clean air for all
357 Americans. Thank you, and I yield back my time.

358 [The prepared statement of Mr. Pallone follows:]

359 ***** COMMITTEE INSERT *****

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360 Mr. {Whitfield.} The gentleman yields back, and that
361 concludes the opening statements. And at this time we will
362 get to our panel of witnesses.

363 And our first witness this morning is Mr. Ross Eisenberg
364 who is Vice President for Energy and Resource Policy at the
365 National Association of Manufacturers. And Mr. Eisenberg,
366 you are recognized for 5 minutes.

|

367 ^STATEMENTS OF ROSS E. EISENBERG, VICE PRESIDENT, ENERGY AND
 368 RESOURCES POLICY, NATIONAL ASSOCIATION OF MANUFACTURERS; ERIN
 369 MONROE WESLEY, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING
 370 OFFICER, BATON ROUGE AREA CHAMBER; ROBERT L. GLICKSMAN, J.B.
 371 AND MAURICE C. SHAPIRO PROFESSOR OF ENVIRONMENTAL LAW, GEORGE
 372 WASHINGTON UNIVERSITY SCHOOL OF LAW; GREGORY B. DIETTE, M.D.,
 373 PROFESSOR OF MEDICINE, JOHNS HOPKINS UNIVERSITY SCHOOL OF
 374 MEDICINE, ON BEHALF OF THE AMERICAN THORACIC SOCIETY; LOUIS
 375 ANTHONY COX, JR., PH.D., PRESIDENT, COX ASSOCIATES; STACEY-
 376 ANN TAYLOR, DIRECTOR, PRODUCT STEWARDSHIP, HENRY COMPANY; AND
 377 MICHAEL FREEMAN, DIVISION PRESIDENT, THE AMERICAS WD-40
 378 COMPANY

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379 ^STATEMENT OF ROSS EISENBERG

380 } Mr. {Eisenberg.} Thank you. Good morning, Chairmen,
 381 Ranking Members, members of the subcommittees. I am pleased
 382 to represent the NAM, the world's largest industrial trade
 383 association here at today's hearing.

384 Manufacturing is building communities and fueling growth
 385 all over America. The factory that our grandfathers worked
 386 in is really not what you see today. It has been transformed
 387 into a sleek, modern, technology-driven facility that

388 strengthens communities and creates jobs for us and for our
389 children. We are building cleaner and more efficient
390 automobiles. We are using cleaner fuels, and we are
391 operating better, more efficient factories. Since 1990, our
392 NOx emissions have decreased 52 percent and VOC emissions by
393 70 percent. As a country, ozone levels have fallen nearly 25
394 percent since 1990, and the air is unequivocally better.
395 This fact really has not escaped the public, either.
396 Tomorrow, the NAM will release a poll showing that over 2/3
397 of Americans rate their local air quality as excellent or
398 good.

399 Manufactures support reducing ozone, and we believe in
400 the mission of the EPA. But we come before Congress and this
401 committee today seeking help. The EPA has proposed a
402 regulation that pushes beyond the limits of what may be
403 technologically feasible resulting in what could be the most
404 expensive regulation ever. EPA has proposed new ozone
405 standards for which you can only identify about 35 percent of
406 the necessary technologies to achieve that new standard while
407 relying on so-called unknown controls for nearly 65 percent
408 of the path to compliance. This is not a balanced policy,
409 and it is not an achievable rule.

410 We surveyed our members recently, and over 66 percent of
411 manufacturers are concerned with how new ozone standards will

412 impact their business. More than half of them, 53.5 percent,
413 said they are not likely to move forward with projects in
414 ozone non-attainment areas. So--but don't just take it from
415 us. Take it from the hundreds of governors, lieutenant
416 governors, environmental agencies, air directors, attorneys
417 general, mayors, counties, cities, highway officials, state
418 representatives, Democrats, Republicans, unions, industry
419 groups, and chambers of commerce who have sent letters to the
420 EPA or the White House asking for the current standard to
421 remain in place.

422 We recently asked the experts at NERA Economic
423 Consulting to quantify the cost of this new standard set at
424 65 parts per billion. They found in fact that it would be
425 the most expensive regulation ever: \$140 billion annually in
426 lost GDP, \$1.7 trillion overall, the equivalent of 1.4
427 million jobs in jeopardy, and \$830 in annual cost to the
428 average household.

429 Now I am sure you will have questions about the study at
430 the hearing, so let me try to answer some of them now. First
431 off, NERA and EPA's assumptions in their studies are more or
432 less identical. They both assume that the same final
433 regulations will be in place going forward. They both assign
434 the same cost to the known controls. They both assume in the
435 base line that a certain amount of power plants will be

436 retired due to market conditions, and they both assume that a
437 large percentage of the technologies and strategies needed to
438 attain the stricter standard will come from what EPA calls
439 unknown controls. The primary difference between the two
440 studies really is the cost of those unknown controls. EPA
441 assumed a single, flat cost for those controls, \$15,000 per
442 ton. It is an assumption that we know based on experience
443 and logic just isn't true. As a society, as we invest in
444 controls to reduce emissions and get closer and closer to
445 zero, the cost per ton of those reductions will necessarily
446 increase.

447 So what NERA did is they relied on evidence to drive a
448 cost curve to estimate that steep incline as we start to get
449 rid of the technologies that we know about. And if they
450 can't figure out what those technologies are, then the cost
451 to scrap, modify, or shut down certain equipment. Near the
452 bottom of the cost curve is what we know the cost per ton for
453 coal-fired power plants retiring. At the top then is the
454 cost per ton for vehicle scrappage, sometimes referred to as
455 cash for clunkers. My colleague at the GW University claims
456 that no one ever really thought of vehicle scrappage as a
457 pollution control technology until we came along with our
458 study. I am very flattered by that, but it is also dead
459 wrong.

460 California has had a vehicle scrappage program in place
461 since the 1990s. It is included in the SIP, their state
462 implementation plan, for ozone. Texas also uses a vehicle
463 scrappage program for its ozone compliance tool. It is
464 called the Air Texas Drive a Clean Machine Program.

465 As Professor Glicksman notes, as a pollution compliance
466 strategy, vehicle scrappage is highly inefficient. But that
467 is kind of our point. We have been so successful in reducing
468 ozone levels that not only is the low-hanging fruit gone, the
469 high-hanging fruit is gone, too. We are playing in the
470 margins now. All that is left are the controls that are not
471 as cost-efficient, and if we can't develop new controls in
472 time, we will have to deal with the severe consequences of
473 ozone non-attainment that you are going to hear about today.

474 So this is not a sensible regulation. It is especially
475 frustrating when you consider that the implementation of the
476 current standard has just barely begun, that EPA's proposed
477 standard is approaching background ozone levels in many
478 areas, and that the dozens of other laws and regulations on
479 the books that limit NOx and VOCs will drive ozone levels
480 down 25 percent more in just the next 3 years. This doesn't
481 have to be a choice between the environment and the economy.

482 Two weeks ago the Energy and Commerce Committee worked
483 together to unanimously approve a bill to modernize TSCA. It

484 was a wonderful day. We ask that you work to find similar
485 middle ground on ozone. Manufacturers cannot cope with the
486 most expensive regulation in history, and we really hope that
487 you will work together to help us find a solution to this
488 problem. Thank you.

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

490 ***** INSERT A *****

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491 Mr. {Whitfield.} Thank you, Mr. Eisenberg. And our
492 next witness--I want you all to know that I am working the
493 clock. I am introducing the witnesses. The next witness is
494 Ms. Erin Monroe Wesley who is Executive Vice President and
495 Chief Operating Officer of the Baton Rouge Area Chamber.
496 Thanks for being with us, and you are recognized for 5
497 minutes.

|

498 ^STATEMENT OF ERIN MONROE WESLEY

499 } Ms. {Wesley.} Thank you. Good morning. Good Morning
500 Chairman Whitfield, Chairman Burgess, and Members of the
501 Joint Subcommittees. Again, my name is Erin Monroe Wesley.
502 I serve as the Executive Vice President and Chief Operating
503 Officer of the Baton Rouge Area Chamber. On behalf of BRAC's
504 1,400 investors and the region's business community, we stand
505 before you today to express our significant concern regarding
506 the proposed NAAQS rule issued by the EPA on November 25,
507 2014.

508 The Baton Rouge Area Chamber adamantly opposes the
509 proposed reductions in ambient air quality standards from the
510 current level of 75 parts per billion. Our opposition is
511 based on three main points: Number one, the proposed
512 standards have already cost our region thousands of jobs and
513 billions of dollars in capital investment. Two, the
514 standards would drive 18 of the Nation's 20 top-performing
515 metropolitan economies into non-attainment and damage U.S.
516 competitiveness for business investment, especially foreign
517 direct investment. And number three, the vast majority of
518 U.S. counties will meet the EPA's proposed standards by 2025
519 with practices already in place.

520 BRAC believes in and stands for cleaner air and
521 environmental stewardship. For roughly 10 years, BRAC has
522 supported and hosted the Baton Rouge Clean Air Coalition. On
523 April 4, 2014, thanks in large part to the Coalition's
524 efforts, the Louisiana Department of Environmental Quality
525 announced that the EPA determined that the Baton Rouge Area
526 attained the 2008 8-hour ozone standard. The region has
527 decreased ground-level ozone, improving air quality and human
528 health for its 800,000 plus residents.

529 Our successes and progress environmentally make the
530 negative effects of the proposed standards even more painful.
531 In 2014, BRAC worked with 4 chemical manufacturers that were
532 investigating major investments in the region, including 2
533 companies that executed purchase agreements on large
534 industrial sites with the intent to develop. Since the EPA
535 first proposed lowering the ozone NAAQS, all 4 of these
536 companies indicated that the proposed new standards
537 influenced their decisions to look elsewhere or to otherwise
538 not proceed.

539 In other words, the proposed standards have cost the
540 region at least 2,000 direct and indirect jobs and caused
541 more than \$7 billion in capital investment to be put on hold
542 or moved elsewhere. Let me be very clear: These projects
543 were put on hold or lost at the mere prospect of lowering

544 ozone air quality standards to the 65 to 70 parts per billion
545 range. Should these proposed standards be adopted, the Baton
546 Rouge Area will be thrust into non-attainment status.

547 Economic development professionals have projected that under
548 this scenario, the Baton Rouge Area will not even be
549 approached for these types of projects, much less compete for
550 them.

551 Baton Rouge would not be alone in suffering economically
552 should the proposed standards be adopted. If the EPA were to
553 lower the ozone standard to 65 parts per billion, all but 2
554 of the Nation's top 20 metropolitan area economies, as ranked
555 by the Brookings Institution, would be relegated to non-
556 attainment status. These proposed standards would stifle the
557 growth and investments in U.S. manufacturing, exports, and
558 development taking place in metropolitan areas that have been
559 the most successful in helping the country get back its
560 footing economically.

561 The proposed actions to lower the ozone NAAQS rule run
562 counter to the U.S. Government's interest to grow the
563 national economy, attract foreign direct investment, and
564 increase U.S. exports.

565 Clean air is a priority for the Baton Rouge Area's
566 business community. Economic development and environmental
567 stewardship do not have to be mutually exclusive goals. This

568 region's businesses are committed to both, as evidenced by
569 the efforts put forth to gain attainment status. Policies
570 that have a significant adverse effect on local economies, as
571 the proposed NAAQS rule does, should be enacted sparingly,
572 only when absolutely necessary. Unfortunately, the rule at
573 hand spares nothing, and is unnecessary.

574 Despite the EPA's own assertion that a vast majority of
575 the country will be in compliance with the regulations by
576 2025 under the current regulatory scheme, the Agency seeks to
577 enact rules that will immediately bring the punitive status
578 of non-attainment to areas around the country. We cannot
579 stand by and allow our economy to be collateral damage.

580 It is therefore the strong recommendation of the Baton
581 Rouge Area Chamber that the National Ambient Air Quality
582 Standards for ozone rule not be reduced from 75 parts per
583 billion. Thank you.

584 [The prepared statement of Ms. Wesley follows:]

585 ***** INSERT B *****

|

586 Mr. {Whitfield.} Thank you, Ms. Wesley. At this time I
587 recognize the gentleman, Mr. Robert Glicksman, who is the
588 Shapiro Professor of Environmental Law at George Washington
589 University Law School. We appreciate your being with us this
590 morning, and Mr. Glicksman, you are recognized for 5 minutes
591 for your opening statement.

|

592 ^STATEMENT OF ROBERT L. GLICKSMAN

593 } Mr. {Glicksman.} Chairmen Burgess and Whitfield,
594 Ranking Members Schakowsky and Rush and members of the
595 subcommittees, I appreciate the opportunity to testify today
596 on why strong standards to reduce ozone air pollution are
597 both necessary to fulfill the Clean Air Act's
598 congressionally-mandated public health goals and consistent
599 with a strong economy in which manufacturers can prosper and
600 thrive.

601 My written statement makes 4 key points. First, a
602 strong national ozone pollution standard that fulfills the
603 public health goals of the Clean Air Act will deliver
604 significant health and environmental benefits.

605 Second, regulations such as EPA's pending ozone standard
606 can and do provide important economic benefits for U.S.
607 businesses, including those in the manufacturing sector.

608 Three, a frequently cited study purporting to find
609 catastrophic economic effects from a strong ozone standard
610 fails to provide a reliable accounting of the rule's
611 potential impacts.

612 And finally, to the contrary, the available evidence
613 confirms that strong national standards for ozone pollution

614 are not an impediment to economic growth.

615 I will start with the first point. EPA's National
616 Ambient Air Quality Standards have provided enormous
617 benefits, but the need for more protective standards is
618 clear. Ozone pollution adversely affects people of all ages
619 including pregnant women, children, healthy young adults, and
620 the elderly. EPA's rules reduce the incidence of impaired
621 lung function and other health problems for all these
622 populations.

623 Ozone pollution control rules also strengthen the U.S.
624 economy by preventing billions of dollars of damage to
625 agricultural crops and forest products and through rubber
626 textiles and paints. Controls and ozone precursor emissions
627 also increase the productivity of America's current and
628 future workforces by cutting the number of missed work and
629 school days resulting from health problems linked to ozone
630 exposure.

631 Despite the air quality improvements achieved under
632 EPA's current ozone standards, more than 140 million
633 Americans continue to live in areas with harmful levels of
634 ozone pollution. In a recent study of the National Center
635 for Atmospheric Research projected that warming temperatures
636 could cause the number of unhealthy ozone pollution days to
637 increase 70 percent by the year 2050. As a result, the Clean

638 Air Act requires EPA to adopt more protective air quality
639 standards that would produce air quality that is safe to
640 breathe. Specifically EPA must set the standards at levels
641 sufficient to protect the public health with an adequate
642 margin of safety as well as protect the public welfare which
643 includes effects on property and economic values. The
644 current standards do not meet that requirement and therefore
645 need to be strengthened.

646 It is important to recognize that EPA's proposed
647 standard is not the product of whimsy or executive overreach.
648 EPA's proposals are a response to demands placed on it by the
649 Clean Air Act itself. That law and the specific duties it
650 imposes on the EPA was adopted in 1970 with overwhelming
651 bipartisan support and was strengthened in 1990 through
652 amendments supported and signed into law by President George
653 H. W. Bush.

654 In the 45 years since the Act's adoption, EPA's critics
655 have repeatedly argued that EPA must consider the cost of
656 controlling pollution under the National Ambient Air Quality
657 Standards. The courts have repeatedly and resoundingly
658 rejected that claim, most notably, the unanimous Supreme
659 Court opinion written by Justice Scalia. The court ruled
660 that the Clean Air Act prohibits EPA from considering cost
661 when it adopts these standards.

662 Now, it is critically important not to misunderstand
663 these rulings. They don't mean that compliance costs and
664 economic impact are irrelevant to the statute's operation.
665 Instead, the courts have recognized that the statute empowers
666 the states to take costs into account in designing and
667 implementing plans to achieve the national standards by
668 adopting adequate control strategies that meet their own
669 economic and social needs. The status therefore accommodates
670 public health concerns and economic needs through a process
671 that respects state sovereignty and discretion.

672 The economic benefits of air pollution controls are
673 significant, even if they tend to be overlooked. They
674 provide a productivity dividend by reducing work and school
675 days lost to illness-related air pollution exposure. EPA
676 estimates that its Clean Air Act regulations prevented 13
677 million lost work days in 2010 alone. These regulations also
678 can create new markets and opportunities for entrepreneurs as
679 federal and state energy efficiency regulations have done.
680 Environmental regulation can spur businesses to revolutionize
681 their production processes in ways that lead to greater
682 productivity and profitability as numerous examples under the
683 statute and other laws have shown.

684 I will be happy to answer any questions the committee
685 may have.

686 [The prepared statement of Mr. Glicksman follows:]

687 ***** INSERT C *****

|

688 Mr. {Whitfield.} Well, thank you very much, Mr.
689 Glicksman. And at this time I would like to recognize Dr.
690 Gregory Diette who is the Professor of Medicine at Johns
691 Hopkins University School of Medicine, and he is testifying
692 on behalf of the American Thoracic Society. Thanks for being
693 with us today, and Dr. Diette, you are recognized for 5
694 minutes.

|

695 ^STATEMENT OF GREGORY B. DIETTE

696 } Dr. {Diette.} Thank you, Mr. Whitfield, and thank you
697 to the other chairman and the ranking members and all the
698 members at these important subcommittees. I really
699 appreciate the opportunity to talk to you today. As you
700 said, my name is Dr. Gregory Diette, and I practice at Johns
701 Hopkins University in Baltimore, Maryland. I am a
702 pulmonologist there which means I take care of sick people
703 with lung diseases, especially people that are very sick with
704 lung diseases. These are people that have trouble breathing.

705 You have my written testimony in front of you, and I
706 just wanted to try to elaborate on a couple of points that I
707 wanted to clarify. One is and the first thing is that ozone
708 is bad for people with lung disease. That is not news. That
709 is not news to anybody on these subcommittees, but it is an
710 irritant that bothers the lungs. Multiple research studies
711 in different parts of the country, different parts of the
712 world, have shown that people with diseases like asthma,
713 COPD, and other lung diseases, when they are exposed to
714 ozone, they get sick.

715 What sick means is--sometimes it means you might need to
716 increase the amount of medicine you are taking. Sometimes it

717 means you are going to go to your doctor's office. Sometimes
718 it means staying in the hospital overnight, and sometimes it
719 means dying from an attack from COPD or from asthma.

720 The second point that I want to make is that ozone
721 pollution is bad for otherwise healthy people, too. That's
722 really important. You know, we use different ways in order
723 to try to irritate the lungs to prove if somebody has asthma.
724 Ozone does that in normal, healthy people. It is scary.

725 Third, it doesn't matter if ozone is from the next city,
726 the next county, or from a neighboring state. Ozone is
727 ozone, and it bothers the lungs whether or not it started
728 where you live or it started somewhere else.

729 The fourth point I want to make is about public health,
730 and I think public health sometimes gets sort of lost. We
731 talk about a lot of numbers, millions of people with this,
732 hundreds of thousands with that. I think what is important
733 about public health is it is actually a collection of stories
734 from all over America about people who have illnesses and
735 suffer from them sometimes. What it can mean, for example,
736 is it can mean a mom that is in the emergency department with
737 her kid hoping that he survives that asthma attack, and in
738 the back of her mind wondering, is she going to be able to
739 take off another day from work. And that is an important
740 point. She might not be able to go to work, to her job,

741 because her son is sick.

742 The issue that she will face also is how she pays for
743 the care that she gets there. You have to understand what an
744 asthma attack is, too. It is terrifying. People say they
745 can't get enough air. Some people say they can't breathe.
746 Other people say it feels like there is an elephant on my
747 chest. They think they are going to die. People feel panic.
748 They can't stop coughing. Sometimes they can't walk, and
749 their medications sometimes work and sometimes they don't.

750 I asked a patient of mine by email if she could help
751 describe for these subcommittees what the role is of ozone in
752 her particular life, and she is a 29-year-old woman who is
753 fully employed, college-educated, and she has lung damage
754 from being born prematurely and now has asthma. And she says
755 things like I am very sensitive to air quality, specifically
756 areas with large amounts of pollution on code red and code
757 orange days. She talks about those days that she is unable
758 to work, right? She is unable to work. She can't go outside
759 to do her normal-life activities. These are her words. She
760 said even stepping on the balcony of her condo can cause her
761 to have a severe flare-up of her asthma. She can't do simple
762 errands, like going to the grocery store. She can't make it
763 sometimes from the door to her car without difficulty. She
764 is very dependent on her rescue inhaler on those particular

765 days.

766 She said that she is very dependent on the forecasts
767 that are available for when there is going to be high ozone
768 days because she needs to remember to take her inhaler with
769 her, and she said unfortunately--her words, unfortunately--
770 sometimes she has to change plans with her friends and her
771 family due to the air quality.

772 The final point I want to leave you with is that the
773 science is strong and compelling. Since 2006 when the Bush
774 Administration EPA looked at the ozone standard, the American
775 Thoracic Society recommended a more protective standard of 60
776 parts per billion. We are confident of our recommendation
777 then. We are more confident now. There are additional
778 studies that have come out since that time period which have
779 strengthened our understanding of the science.

780 The EPA is not basing their proposed protective ozone
781 standard on 1 study. It is not 10 studies. It is literally
782 hundreds of studies that have helped to inform this rule. It
783 includes multiple scientific methods including animal
784 studies, mechanistic studies, human population studies,
785 natural experiment studies, and meta-analyses. What these
786 studies show is that the current ozone standard is not
787 protective of public health and that the EPA must issue a
788 more protective standard.

789 Thank you very much for inviting me here, and I
790 appreciate any questions you might have.

791 [The prepared statement of Dr. Diette follows:]

792 ***** INSERT D *****

|

793 Mr. {Whitfield.} Well, thank you, Dr. Diette. And at
794 this time I would like to recognize our next witness, Dr.
795 Louis Anthony Cox who is the president of Cox Associates and
796 the Chief Science Officer for NextHealth Technologies. Dr.
797 Cox, you are recognized for 5 minutes.

|

798 ^STATEMENT OF LOUIS ANTHONY COX, JR.

799 } Mr. {Cox.} Chairman Burgess, Chairman Whitfield, and
800 members of the subcommittees, thank you for inviting me to
801 discuss the human health aspects of EPA's proposed ozone
802 rule. I am testifying on my own behalf today, understanding
803 that well-informed policy-making must consider the likely and
804 foreseeable impacts of the proposed rule on human health, as
805 well as on economic end points. I have lived in Denver since
806 1987, so I care a lot about air pollution personally. But
807 today I want to focus on what science and data tell us about
808 how changes in ozone affect public health.

809 I have provided the committee members with a detailed CV
810 describing my academic, publishing, professional, and
811 consulting affiliations and my service as a member of the
812 National Academy of Engineering and as clinical professor of
813 Vital Statistics and Informatics at the University of
814 Colorado, School of Public Health.

815 In evaluating whether costly proposed regulations are in
816 the public interest, we should ask first, how well will a
817 regulation really work? That is, will it actually cause the
818 desired benefits that motivate it which we have been hearing
819 about? Second, how sure can we be? For how sure we can be,

820 EPA's Health Affects Risk Assessment Report for Ozone clearly
821 warns that their estimation of health impacts uses inaccurate
822 models with significant uncertainties that they have not been
823 able to quantify. Unfortunately this leaves policymakers and
824 the public uninformed about how likely it is that the
825 proposed ozone rule will really cause the substantial public
826 health benefits that EPA estimates and how likely it is to
827 instead produce other outcomes, such as no public health
828 benefits.

829 We can summarize EPA's uncertainty analysis very simply,
830 by saying that no one can tell from their published risk
831 assessment documents what the true effects of the proposed
832 rule on public health would be. Fortunately, despite this
833 important gap, it is quite easy to find out the correct
834 answer. For decades the EPA and the Centers for Disease
835 Control and Prevention have kept data on the ozone levels and
836 public health, mortality, and morbidity rates at hundreds of
837 locations across the United States. It is straightforward to
838 examine what has happened to ozone and what has happened to
839 health risks in hundreds of counties. It is also easy to
840 apply objective, statistical methods for causal analysis to
841 these data to determine how, if at all, ozone levels and
842 mortality and morbidity rates are causally related.

843 Such analyses revealed the following key points: First,

844 as reported in hundreds of studies, there are positive,
845 statistical associations between ozone levels and mortality
846 and morbidity rates in many locations. Both tend to be
847 higher in some places and at some times than others. For
848 example, both ozone levels and cardiovascular mortality rates
849 used to be higher decades ago than they are now.

850 EPA interprets such repeated findings of positive
851 associations as evidence of causation, but in fact, they are
852 only evidence for correlation. Dr. Diette says that ozone
853 bothers the lungs, but they are not bothered less at lower
854 concentrations.

855 Second, mortality and morbidity rates have fallen just
856 the same where ozone levels have increased as where they have
857 decreased. Both short-run and long-run studies that have
858 rigorously examined changes in ozone levels and changes in
859 public health risks pray possible causal relation between
860 them have not found one. How ozone changes does not help to
861 predict or explain how mortality rates will change. This
862 means that the statistical association between them is
863 coincidental, not causal.

864 These facts answer the question that EPA's Health Risk
865 Assessment for Ozone left unanswered. The human health
866 benefits that EPA and others predict from the proposed ozone
867 rule will not materialize. We know this because they have

868 not materialized in the past. Reductions in ozone much
869 larger than those now being proposed have already occurred
870 without causing any detectible improvements in public health.
871 To predict they will do so in the future is simply wishful
872 thinking and bad statistics based mainly on using uncertain
873 and inaccurate models and are confusing historical
874 correlation with future causation.

875 Current ozone levels are already low enough so the
876 further reductions should not be expected to cause
877 improvements in public health.

878 EPA's conclusions about the causal impacts of ozone
879 reductions on public health run against these empirical
880 findings, but their conclusions are based on unreliable,
881 subjective judgments of selected experts on models that they
882 conceded are inaccurate and have large but unquantified
883 uncertainties and unmistakably treating correlation as
884 causality. None of these methods produces trustworthy
885 conclusions.

886 In summary, we know from extensive real-world experience
887 that EPA's predicted health benefits from the proposed rule
888 are only artifacts of inaccurate modeling assumptions.
889 Assuming that smaller future reductions in ozone will
890 accomplish benefits the previous larger reductions have not
891 is unwarranted. There is no need to repeat the costly effort

892 to obtain better public health by further reducing ozone
893 levels. We already know from abundant historical experience
894 that doing so does not work.

895 Thank you for your attention.

896 [The prepared statement of Mr. Cox follows:]

897 ***** INSERT E *****

|

898 Mr. {Whitfield.} Well, thank you, Dr. Cox. And our
899 next witness is Ms. Stacey-Ann Taylor who is the Director for
900 Product Stewardship at Henry Company, and thanks for being
901 with us, Ms. Taylor. And you are recognized for 5 minutes.

|

902 ^STATEMENT OF STACEY-ANN TAYLOR

903 } Ms. {Taylor.} Good morning. Thank you Chairman
904 Whitfield, Chairman Burgess, Ranking Members Rush and
905 Schakowsky, and members of the subcommittees for the
906 invitation to testify regarding the EPA's proposed ozone rule
907 and the potential impacts on manufacturing.

908 My name is Stacey-Ann Taylor, and I am Director of
909 Product Stewardship at Henry Company. Henry Company is a
910 privately owned building products manufacturer based in El
911 Segundo, California, right next to LAX airport. Henry
912 Company has manufacturing facilities in 6 states and employs
913 about 450 people. We manufacture roof coatings, roofing
914 adhesives and sealants, driveway sealers, air and vapor
915 barriers, and a number of other residential and commercial
916 building products.

917 Henry Company is a very active member of the Roof
918 Coatings Manufacturers Association, RCMA, and I am also
919 pleased to represent RCMA with my testimony as well. RCMA is
920 the national trade association representing manufacturers of
921 asphaltic and solar reflective coatings and their raw
922 material suppliers.

923 Typically, legislative and regulatory discussions on the

924 impact of lowering the EPA's NAAQS for ozone focus on a few
925 key industries, especially oil and gas production, utilities,
926 and motor vehicle manufacturing. However, these discussions
927 rarely include an explanation of how lowering the NAAQS for
928 ozone will have an impact on everyday consumer and commercial
929 products.

930 In November 2014, EPA issued a proposed rule to lower
931 the NAAQS for ozone from the current 75 parts per billion to
932 70 parts per billion or possibly lower. When the EPA lowers
933 the NAAQS for ozone, this requires the states to update their
934 State Implementation Plans to try meet the EPA's new
935 regulatory requirements. These State Implementation Plans
936 have to be approved by EPA. Understandably, the states will
937 have to include a variety of air quality management methods
938 in their State Implementation Plans to meet the lower
939 standard. One of these air quality management methods is the
940 regulation of Volatile Organic Compounds, VOCs, in consumer
941 and commercial products.

942 VOCs are gases emitted from certain chemicals found in
943 consumer and commercial products. VOCs are also emitted from
944 natural sources, such as plants and trees. VOCs react
945 with nitrogen oxides and sunlight to form ground-level ozone.
946 As we all know, breathing in ground-level ozone can result in
947 adverse health effects, especially for sensitive

948 populations.

949 Therefore, it is appropriate for EPA and the states to
950 regulate VOCs. However, VOC regulation of consumer and
951 commercial products in certain air quality management
952 districts around the country are approaching the point of
953 diminishing returns in terms of actually contributing
954 significantly to air quality improvement.

955 EPA and the states should carefully consider whether
956 requiring manufacturers to achieve further drastic reductions
957 in VOC content in consumer and commercial products is
958 technically feasible at this time and also worth the time and
959 resources spent by manufacturers to comply for a low return
960 on investment in terms of improved air quality.

961 In addition, it should be noted that if manufacturers
962 can't find reasonably priced technology to achieve these
963 further VOC reductions, there will certainly be fewer
964 consumer and commercial products available in the marketplace
965 for purchase. Manufacturers will have to restrict non-
966 compliant products from sale, and if replacement products
967 can't be manufactured and sold at prices the market will
968 bear, then the result will be fewer products available for
969 people to purchase.

970 In closing, I hope that I have provided a clear
971 explanation of how EPA's lowering of the NAAQS for ozone will

972 eventually result in further regulation of VOCs in consumer
973 and commercial products that may not significantly help air
974 quality management districts achieve attainment status and
975 may actually result in less product choice in the
976 marketplace. As manufacturers of consumer and commercial
977 building products, Henry Company and its representative trade
978 association RCMA believe that EPA should not be allowed to
979 further lower the NAAQS for ozone until the vast majority of
980 the air quality management districts across the country have
981 reached attainment status under the current level of 75 parts
982 per billion.

983 The primary focus of the EPA should be to provide
984 additional support to those air quality management districts
985 currently in non-attainment status to help them reach
986 attainment status under the current level, before making the
987 goal of reaching attainment status even more difficult for
988 the states to obtain.

989 Thank you very much for your time.

990 [The prepared statement of Ms. Taylor follows:]

991 ***** INSERT F *****

|

992 Mr. {Whitfield.} Thank you, Ms. Taylor, and our next
993 witness is Mr. Michael Freeman who is the Division President
994 of The Americas for WD-40 Company. Thanks for being with us,
995 and you are recognized for 5 minutes.

|

996 ^STATEMENT OF MICHAEL FREEMAN

997 } Mr. {Freeman.} Thank you, Mr. Chairman, ranking
998 members, and members of the subcommittees. It is an honor
999 and a privilege to be sharing the views of WD-40 Company and
1000 its partner trade associations, the National Aerosol
1001 Association, or the NAA, and the Consumer Specialty Products
1002 Association, CSPA, with you today.

1003 I join you as the President of the Americas for the WD-
1004 40 Company. We have our global headquarters in San Diego,
1005 California. Our products are found under the sink, in the
1006 garage and in the toolboxes of loyal fans in over 176
1007 countries around the world. In the United States, WD-40 is
1008 in over 80 percent of U.S.A. households. We are also in over
1009 80 percent of U.S. businesses. That makes us appear a lot
1010 larger than we really are. My dentist was horrified the
1011 other day when I told him in the USA more people use WD-40
1012 every day than use dental floss. He didn't like that, but it
1013 is a true story and really, really testifies to our brand
1014 power and uses for all of our brands: WD-40, Lava, 3-IN-ONE,
1015 Spot Shot, and the other brands. Which brings me to the
1016 national ozone standard.

1017 We know from experience that lowering the national ozone

1018 standard has resulted in lower VOC state regulations that
1019 drive us to reformulate many of our products, and we are not
1020 alone. This happens with other consumer products also.

1021 What are consumer products? Well, if you go look
1022 underneath your kitchen sink, your bathroom sink, you go to
1023 your pantry, your laundry room, you can go out to the garage.
1024 All those products there that make your life better, that is
1025 us. Now, it makes us a bigger industry, and that makes us
1026 also a target for VOC emissions, even though we are one of
1027 the smallest sources of VOC emissions nationally.

1028 So in our opinion, reducing the standard right now can
1029 have a serious impact on consumer products. Household
1030 products like WD-40 could become much less effective and/or
1031 much more expensive for a consumer to buy, and that has been
1032 our experience with past regulations.

1033 Reducing the standard now could also create a confusing
1034 patchwork of compliance regulations across and within states.
1035 And that has been our experience now, too.

1036 The current regulation is not being implemented anywhere
1037 close to the same way across all 50 states, and even in the
1038 great State of California, which has over 35 air districts,
1039 we now have air districts doing something different than the
1040 State of California. So you can imagine how complex and
1041 confusing this is for everybody involved.

1042 Reducing the standard now would also add significant
1043 costs that can adversely impact the entire aerosol industry
1044 and others because it is not just your R&D product
1045 development cost, it is also the marketing cost. You are
1046 constantly changing labels where you can put label claims on
1047 for your product, changing labels out due to the evolving
1048 nature of the regulations. It also moves into your supply
1049 chain.

1050 In California there are certain plastic bottles that we
1051 like to use of a certain size, and if we use them, we have to
1052 make sure they have 25 percent recycled content. So you have
1053 a compounding of different regulations, and unfortunately, I
1054 don't have the impression that all the regulators talk to
1055 each other. And so the combined impact on business is rather
1056 amazing.

1057 All these costs can become embedding into our business
1058 going forward. Sometimes we can pass them on, sometimes we
1059 can't. But the tip of the spear is the R&D, and we know from
1060 experience that it takes years of diligent research and
1061 millions of dollars for the WD-40 company to develop products
1062 that meet the statutory regulations.

1063 Let me give you an example. WD-40 company has lowered
1064 the VOC content of its flagship brand, WD-40, from 65 percent
1065 VOC to 50 percent VOC to the current 25 percent VOC standard

1066 in California in the last 15 years. By the end of 2018,
1067 California presently requires that we get the VOC content
1068 down to 10 percent. Now, we have been working on this for
1069 years, and we have not yet discovered the way to do it that
1070 is technologically or commercially feasible. But we will
1071 keep working on it. We still have time. And all this is
1072 being done underneath the current regulation. What do you
1073 think happens if you dogpile another regulation on top of
1074 that as far as confusion and complexity?

1075 The NAA, the CSPA, the WD-40 Company, and many other
1076 consumer product companies have a long and successful history
1077 of working with the California Air Resource Board, the Ozone
1078 Transport Commission, the EPA, and several individual air
1079 districts.

1080 So our recommendations are essentially this. First off,
1081 can we celebrate the success that we have had? We have
1082 cleaned a lot of air over the last several years working
1083 together. I grew up in smoggy Southern California in the
1084 '50s, '60s, and '70s, and at the end of a lot of days I
1085 couldn't do that without having a smoker's hack. And I
1086 wasn't smoking. I was just doing water polo and swimming.
1087 So we would like to celebrate. We would like to make sure
1088 that many of the regulations that have been developed have
1089 not yet been fully implemented with known results. And we

1090 just ask, can we finish one job before we start with another?
1091 I would rather go into a regulation with actual results and
1092 facts and reality than modeling.

1093 Our final recommendation is for Congress to keep the
1094 current standard unchanged at 75 parts per billion until
1095 states have been able to fully implement that standard and
1096 learn from those regulations and results so that we can all
1097 move forward in the fact-based, more aligned and successful
1098 way to achieve our common clean air goals. Thank you.

1099 [The prepared statement of Mr. Freeman follows:]

1100 ***** INSERT G *****

|

1101 Mr. {Whitfield.} Well, thank you, Mr. Freeman, and
1102 thank all of you for your testimony and for taking time to
1103 give us your insights and thoughts on this important topic.
1104 At this time I recognize myself for 5 minutes of questions.

1105 Mr. Freeman, you touched on trying to come in compliance
1106 with these regulations, and there has been a litany of
1107 regulations, I mean, more so in this administration than at
1108 any other administration in recent memory. And you mentioned
1109 this also, Mr. Eisenberg, about the fact that unknown
1110 technology or controls--to me, unknown controls means that it
1111 is simply not there yet to meet the standard. Is that what
1112 your understanding is, Mr. Freeman?

1113 Mr. {Freeman.} Yes.

1114 Mr. {Whitfield.} Now, some people would say and many
1115 people make the argument that, well, we are so innovative in
1116 America that we come up with new solutions, and I think that
1117 is true. And you have indicated yourself that you have gone
1118 from 65 down to 25 percent of VOC, and California by 2018
1119 wants you down to 10. So more than likely you will be able
1120 to do that I assume, right?

1121 Mr. {Freeman.} Right now we don't really know. You
1122 know, life is full of ambiguity, whether it is personal life
1123 or business. But because we work together well with the

1124 California Air Resource Board, that 2018 gig was actually
1125 supposed to be in effect at the end of this year, and we were
1126 able to go back to them and say do you know we have been
1127 working hard on this? And they actually delayed it for 3
1128 years. So we have 3 more years. But that is an example of
1129 people working together.

1130 Mr. {Whitfield.} Well, you know, another frustrating
1131 thing about this is EPA came up with this standard in 2008
1132 and only a few months ago did they provide the implementing
1133 guidelines to the states. And so now the states are just
1134 getting this, and they are already moving onto a new
1135 standard.

1136 Now, we heard a lot of comments about this is good for
1137 the economy, and there is no question that since the first
1138 Clean Air Act that was adopted in '70 and the major changes
1139 in '90, the economy has grown. But I don't think we can just
1140 throw under the rug this report that came out in April from
1141 the Global Market Institute of Goldman Sachs that point-blank
1142 says, in small businesses 500 employees and less, for the
1143 first time ever after an economic crisis, as we try to come
1144 out of there, the number of small businesses has decreased by
1145 over 600,000, 600,000 less.

1146 So if you are a small businessman with this cumulative
1147 impact--and they say that the cause is regulations, banking

1148 regulations because capital is not available and costs are
1149 higher, and then other regulations, like healthcare and so
1150 forth, that cumulative impact has been responsible for 6
1151 million fewer jobs.

1152 And so I think it is I one thing to say, well, this is
1153 good for the economy, but for the first time ever, that is
1154 not proving to be the case. And so a lot of the arguments
1155 being made today, we all recognize the great success of the
1156 Clean Air Act. But at some point, you do get to diminishing
1157 returns, particularly when ozone is affected by what is going
1158 on in China, India, elsewhere. And I think you folks from
1159 California--I guess you are from California, Ms. Taylor. Los
1160 Angeles has never been in compliance. San Joaquin Valley has
1161 never been in compliance, and there are other parts of the
1162 country that have never been in compliance, and they are not
1163 going to be in compliance now, either.

1164 So let me just ask you, Mr. Eisenberg, when Ms. McCabe
1165 comes here, every time she says our rules promote economic
1166 growth. Do you agree with that?

1167 Mr. {Eisenberg.} Well, in the case of ozone, we
1168 actually did address that in the study. The 1.4 million jobs
1169 number and the \$140 billion that the study has concluded,
1170 that is actually net jobs. So they took into account, you
1171 know, the comment regulations create jobs. They create, you

1172 know, people and so on, pollution control technologies and
1173 things like that. The study actually has that in it, and we
1174 still come out as negative as it does at 1.4 million jobs
1175 lost.

1176 So, you know, yes, they do, but they are so far
1177 outweighed with this regulation from all of the jobs that
1178 would be lost overall.

1179 Mr. {Whitfield.} And you know, this whole issue raises
1180 another question. The Clean Air Act has been sort of
1181 sacrosanct, and rightfully so, because healthcare is vitally
1182 important, and we have made great strides because of what is
1183 going on with our physicians and our healthcare delivery
1184 system.

1185 But the truth of the matter is EPA cannot look at costs
1186 when setting the standard. States can look at costs when
1187 implementing under the State Implementation Plans, but maybe
1188 we should consider cost particularly when you have 6 million
1189 fewer jobs in small businesses. Isn't that a relevant
1190 factor? What is the impact on the healthcare of those
1191 families who may not have health insurance? Is that a valid
1192 point to consider?

1193 Mr. {Eisenberg.} We would certainly agree with that.
1194 We would add that a couple of weeks ago the GAO put out a
1195 report that EPA actually does have a duty to at least look at

1196 the cost through CASAC, its panel, and CASAC has never done
1197 it because EPA has never asked them to.

1198 So while it is legally correct that they are not to
1199 consider cost while considering the actual number, they
1200 should be informed and CASAC should be informed, and they
1201 didn't do it this time. We think they should go back and do
1202 it again.

1203 Mr. {Whitfield.} My time is expired. At this time, I
1204 recognize the gentleman from Illinois, Mr. Rush, for 5
1205 minutes.

1206 Mr. {Rush.} I want to thank you, Mr. Chairman. Mr.
1207 Glicksman, currently the Clean Air Act requires the EPA to
1208 issue standards based solely on consideration of the public
1209 health, and these rules must ``accurately reflect the latest
1210 scientific technology.'' What would be the impact on public
1211 health if, as the chairman has suggested, that the majority
1212 party would rewrite the Clean Air Act to make cost to
1213 industry rather than the benefits of public health the
1214 primary driver of EPA rules? And Dr. Diette, you can chime
1215 in on that. I want to ask Mr. Glicksman first. What would
1216 be the impact, in your opinion?

1217 Mr. {Glicksman.} Yes. The statute has been in effect
1218 for 45 years, and throughout that time cost has been a factor
1219 that has been irrelevant to the establishment of the national

1220 standards, as I indicated in my statement. Cost is highly
1221 relevant in the implementation phase, and it appears to me at
1222 least in my study of the statute that that has provided a
1223 good balance of attempts to achieve public health protection
1224 with cognizance of the economic impact of regulation.

1225 I think if EPA were required to consider cost at the
1226 standard promulgation stage, you would inevitably find weaker
1227 protection of the public health because cost considerations
1228 would, I think in many cases, wind up trumping public health
1229 considerations.

1230 Mr. {Rush.} Dr. Diette?

1231 Dr. {Diette.} Thank you. I think it is a great point
1232 and a great question to ask. I think, you know, one of the
1233 issues here is to consider, since there is so much focus on
1234 employment and jobs and so forth which I think is highly
1235 appropriate, that we need a well-educated healthy workforce
1236 in order to go to work, right? And so one of the benefits,
1237 and it doesn't stop at 70 or 65 parts per billion, is more
1238 work days for people who actually breathe in ozone and more
1239 children going to school, right? And so there is evidence
1240 that children who miss many school days because of asthma
1241 score worse on standardized tests.

1242 So I just want to point out if the entire focus, which
1243 it is not, was on the workforce, there is a really good

1244 argument to be made that you need to keep your workforce
1245 healthy and well-educated, and you are fighting against that
1246 when people are in the emergency department or in the
1247 hospital or otherwise not able to go to work or school.

1248 Mr. {Rush.} Thank you. Professor Glicksman, for the
1249 past 2 years we have constantly been debating the impact that
1250 regulations have on employment, and we have continuously
1251 heard from industry groups that any and all regulation will
1252 stifle economic growth and lead to job losses. However, in
1253 your testimony, you cite an ETI study that reported that few
1254 jobs are lost because of regulation. In fact, the EPA study
1255 you cited notes that extreme weather events have caused more
1256 extended mass layoffs than regulations. Additionally, the
1257 report states that the number of workers who lost their jobs
1258 because of government regulation ``pales in comparison to any
1259 accounting of the jobs lost in this period due to regulatory
1260 failures that contributed to the economy's financial
1261 crisis.''

1262 Does federal regulation always lead to economic decline
1263 and job loss or is it possible to both regulate our air and
1264 water and also grow our economy and provide jobs?

1265 Mr. {Glicksman.} Environmental regulation does not
1266 inevitably lead to job losses, and it is indeed possible to
1267 accommodate both public health and economic growth concerns.

1268 There have been many examples of situations in which the
1269 regulate community has predicted massive job losses and other
1270 adverse economic effects as a result of proposed
1271 environmental regulations. And rarely if ever have those
1272 predictions come true.

1273 One good example is the adoption in 1990 of the Clean
1274 Air Act provisions that phased out the use of ozone-depleting
1275 chemicals. At the time that the phase-out was first
1276 proposed, the manufacturers of chlorofluorocarbons predicted
1277 that there were no available substitutes, there could not be
1278 available substitutes in the foreseeable future, and that
1279 even if available substitutes became feasible, they would
1280 cost many times the cost of the products being replaced.
1281 Well, none of those predictions panned out. It turned out
1282 that when the handwriting on the wall became clear to
1283 companies like DuPont, they engaged in an intense effort to
1284 develop new technologies that would allow them to manufacture
1285 products that serve the same functions as CFC-containing
1286 products did, and not only were they able to make that shift
1287 much quicker than the statute required, they did so at a much
1288 lower cost than had been predicted, even by EPA. And
1289 finally, companies like DuPont found themselves as market
1290 leaders. They had developed these substitutes far earlier
1291 than any of the competing companies in countries abroad.

1292 They were also subject to Montreal Protocol phase-out.

1293 So the U.S. industry had a competitive advantage over
1294 foreign producers because of their response to the phase-out
1295 adopted in 1990.

1296 Mr. {Rush.} Thank you.

1297 Mr. {Whitfield.} The gentleman's time has expired. At
1298 this time I will recognize the gentleman from Texas, Dr.
1299 Burgess, for 5 minutes.

1300 Mr. {Burgess.} And thank you, Mr. Chairman. Ms.
1301 Wesley, let me ask you something. Mr. Freeman actually
1302 touched on it, but I rather suspect the Greater Baton Rouge
1303 Area is very similar to the area that I represent just north
1304 of the DFW airport. And a recent report showed in our area
1305 the 8-hour ozone levels have improved 21 percent in the last
1306 15 years during which time our population has increased by 29
1307 percent. I think that speaks to some success, in our area, I
1308 suspect your area as well. And in controlling this issue at-
1309 -had nothing been done 15 years ago, had no activity been
1310 undertaken to try to improve things with a 29 percent
1311 increase in population, I don't know. I suspect we would be
1312 in deep trouble in the North Texas area, and yet, we are not.
1313 Most of the ozone in our area actually does come from
1314 mobile sources, and I will just tell you that mobile sources
1315 have not diminished. Drive on our roads in North Texas, and

1316 that becomes painfully obvious. Mobile sources continue to
1317 be one of the main drivers, no pun intended, of air quality
1318 issues. But I wonder if you would speak to that in the Baton
1319 Rouge Area?

1320 Ms. {Wesley.} Certainly. We have done a lot of work
1321 over the last several years with the Baton Rouge Clean Air
1322 Coalition, working with other partners to really get
1323 ourselves up to the 75 parts-per-billion standard. I am
1324 looking a little bit at the Brookings Institute study and
1325 talking specifically about Texas. If you look at that study
1326 in terms of the top-performing economies, Austin, Houston,
1327 San Antonio, Dallas, and others, they are similarly faced
1328 with this ozone attainment issue.

1329 And so for us, it is about looking at our partners,
1330 learning how we can do better in terms of reaching that
1331 standard and not shooting that standard down the road. Right
1332 now we are at 75 parts per billion. We know that the EPA is
1333 shifting that standard, you know, on its own will. And so
1334 why, one, are we shifting the standard when we are still
1335 trying to get there, not only for the Baton Rouge area but
1336 certainly areas across our state? And so we are working
1337 toward that standard. We are working with partners across
1338 states who work toward that standard. But in the meantime,
1339 we are certainly opposed to what is being proposed right now

1340 by the EPA because of the costs associated with it.

1341 Mr. {Burgess.} Thank you. Dr. Diette and Dr. Cox, I
1342 want to ask each of you a question, and it is probably not
1343 fair. And as a consequence, I am prepared to also offer the
1344 question in writing and would look forward to your responses
1345 on this.

1346 But Dr. Diette, you say in your testimony, in sum, there
1347 is accumulating evidence that ozone pollution at levels
1348 permitted by the current standard is damaging to human lungs
1349 and contributes to disease. And then Dr. Cox, in your
1350 statements, you say the EPA's conclusions rely on unreliably
1351 subjective judgments of selected experts on models that they
1352 concede are inaccurate and have large but unquantified
1353 uncertainties and unmistakably treating association
1354 correlation as causality.

1355 So we seem to have a scientific standoff, if you will,
1356 as to these two competing hypotheses. And let me let each of
1357 you just take a few minutes and talk about that. But I
1358 actually would ask you to respond to that discrepancy in
1359 written form as well. Dr. Diette, you are first.

1360 Dr. {Diette.} Sure. Thank you for the question. I
1361 think it is a great one, right? I would first of all like to
1362 point out that just because there are 2 of us here
1363 representing different points of view, it doesn't mean that

1364 there is a 50/50 balance. I think the scientific community
1365 is strongly behind the evidence being strongly supportive of
1366 lowering the standard. So I don't think it is a 50/50 issue.

1367 What I would say is that the issue about associations I
1368 think can be overblown. There are association studies, but
1369 when you look at how people put together evidence to decide
1370 that there is causality, you can go back to Sir Bradford
1371 Hill. There are many criteria that fit together for
1372 assigning causality. Part of it includes the strength of
1373 association or not, but other things such as experimentation
1374 which has been available here--

1375 Mr. {Burgess.} Let me stop you there to give Dr. Cox a
1376 chance to respond.

1377 Dr. {Diette.} Thank you.

1378 Mr. {Cox.} I think we are on substantially the same
1379 page which is that many people use many criteria to make
1380 decisions about causality. But there are better, more
1381 objective methods that don't require subjective decisions.
1382 They actually get at causality from the data. Those methods
1383 unambiguously show that there is no causal relation detected
1384 between changes in ozone in changes in public health.
1385 Subjective decisions do overwhelmingly support the converse
1386 proposition.

1387 Mr. {Burgess.} Again, I would actually look forward to

1388 each of you expounding upon that a little bit in written
1389 form, and I will submit the question in writing. But Mr.
1390 Chairman, I learned something this morning from Dr. Diette.
1391 I had no earthly idea that ozone was used as a provocative
1392 test for asthma. It seems a little dicey to me as an asthma
1393 patient and as a physician.

1394 Dr. {Diette.} I either misspoke or you misheard. I am
1395 not sure which, but I didn't--my point was we use other
1396 agents as a provocative test, not ozone. But what is so
1397 powerful a message to me is where we have to try to provoke
1398 the airways in an asthmatic with other chemicals, ozone does
1399 it in a normal person. So you don't even have to be
1400 asthmatic to see an asthma-like response in a normal person.
1401 That is powerful stuff.

1402 Mr. {Burgess.} If I can interrupt you there just to
1403 briefly interject that I Googled that, and indeed, some
1404 people have used ozone as a provocative test for asthma. But
1405 it is actually in the parts-per-million range, not the parts-
1406 per-billion range. So there is a significant quantitative
1407 difference. Mr. Chairman, thank you. I will yield back.

1408 Mr. {Whitfield.} The gentleman yields back. AT this
1409 time I would like to recognize the gentlelady from Illinois,
1410 Ms. Schakowsky for 5 minutes.

1411 Ms. {Schakowsky.} So this discussion about whether

1412 ozone is involved at all in public health is interesting. I
1413 am just wondering if either one of you want to go further in
1414 talking about why this regulation is so important and the
1415 costs of health, et cetera.

1416 Dr. {Diette.} Sure. It is a great question, right? So
1417 why is it important in order to think about a lower
1418 threshold, right? And a lower threshold is meant to protect
1419 human health. And the issue is that this is a potent,
1420 oxidizing agent, right? There is no question about it. This
1421 isn't something that is in debate, right? We know that it
1422 bothers the airways of people, whether or not they have a
1423 lung disease. But when you have a lung disease, you are
1424 especially bothered by it. So what you are trying to prevent
1425 is the catastrophic chain of events which leads to somebody
1426 being in the emergency department or in the hospital, not
1427 able to work, not able to go to school, those sorts of
1428 things, and in the worst case, dying.

1429 The evidence base is expanded so that we have evidence
1430 beyond just respiratory diseases, and there is emerging
1431 evidence about whether there are neurologic conditions that
1432 may be attributable to ozone exposure. There is also other
1433 evidence, too, that goes beyond just short-term effects but
1434 looking at long-term effects, and that is starting to emerge
1435 as well.

1436 So there is a lot of reasons to worry about it from a
1437 human health standpoint. If you are a human, you should care
1438 about it.

1439 Ms. {Schakowsky.} Thank you. I wanted to follow up on
1440 the track that my colleague, Mr. Rush, was going down in
1441 terms of cost because it seems that in general, those who
1442 focus on costs are not talking about the costs from exposure
1443 to unsafe air, they are talking about the costs to polluters
1444 of actually cleaning up the air.

1445 So I would like to ask our witnesses about the real
1446 costs associated with this rule, the costs of health impacts
1447 associated with unsafe air that affect the lives of millions
1448 of Americans.

1449 So Dr. Diette, during the current 75 parts per billion
1450 ozone standard, have we seen those adverse effects on public
1451 health?

1452 Dr. {Diette.} Yes, that is one of the points I think,
1453 right? I mean, at least in my written testimony especially I
1454 was trying to highlight the fact that since 2008 when the
1455 standard was considered to be changed then that the studies
1456 that have been done since then are done in an era when the 75
1457 parts-per-billion standard exists.

1458 So we continue to see adverse effects in the current
1459 era, even after the implementation of the 75 parts per

1460 billion. And the range goes down quite low. So 60 is
1461 comfortably within the range of where we see adverse health
1462 effects.

1463 Ms. {Schakowsky.} So you are saying that 60 even is--

1464 Dr. {Diette.} Sixty parts per billion, yeah.

1465 Ms. {Schakowsky.} Uh-huh. Dr. Glicksman, would you
1466 like to add to that?

1467 Mr. {Glicksman.} I just want to add to--actually
1468 respond to the last 2 questions, in particular why it is
1469 important to adopt this standard. The Clean Air Act is a
1470 precautionary statute, as the courts have interpreted it. It
1471 is a preventive statute. In other words, the statute demands
1472 that EPA err on the side of over-protection of the public
1473 health. Congress was aware when it adopted the statute that
1474 there inevitably will always be scientific uncertainty about
1475 the causes and effects of public health consequences, and it
1476 mandated that EPA resolve doubts in favor of protection. And
1477 I will give you a good example of why it did that.

1478 In 1978, EPA adopted National Ambient Air Quality
1479 Standards for lead. Over the years, it has amended that
1480 standard, and science now tells us that the standard that EPA
1481 thought was safe in 1978 was 10 times too high. Many think
1482 that even the current standard is not sufficiently
1483 protective.

1484 So history shows us that over time science is able to
1485 detect adverse effects in public health, that it was not able
1486 to detect previously and that the statute mandates EPAs
1487 overprotection in order to mitigate that tendency.

1488 Ms. {Schakowsky.} Going back to the issue of cost for
1489 just the minute that I have, you have already talked about
1490 the lost school days, et cetera, but I am wondering--and if
1491 you have already answered this, I really apologize for having
1492 been gone. There are multiple hearings going on at the same
1493 time.

1494 How many emergency room visits, if we have any
1495 calculation on that, are expected to be avoided with the
1496 strengthened ozone standard? Does anybody have that kind of
1497 data?

1498 Dr. {Diette.} Yeah. Thank you. I mean, there are
1499 different estimates of it. I think that one of the papers
1500 that I have sort of thought was very valuable was there is
1501 one by Jesse Berman, which is in Environmental Health
1502 Perspectives, and it talks about what the estimates would be
1503 if we achieved the current 75 parts per billion standard and
1504 then also what would happen at lower thresholds including 70
1505 and 60 and so forth. And so when you mentioned school, for
1506 example, at 70 parts per billion, the estimate is
1507 approximately 2 million school days saved. If it is at 60

1508 parts per billion, it would be closer to 4 million as well.

1509 And so there is an incremental advantage at each one of
1510 those thresholds for the types of things that you are talking
1511 about.

1512 Ms. {Schakowsky.} Thank you and I yield back.

1513 Mr. {Whitfield.} The gentlelady yields back. At this
1514 time I recognize the gentleman from Texas, Mr. Olson, for 5
1515 minutes.

1516 Mr. {Olson.} I thank the chair. Welcome to all seven
1517 witnesses. My first question is for you, Ms. Wesley. Last
1518 week EPA's ozone guru, Ms. McCabe, told me that many kinds
1519 will meet this rule by 2025. In essence she says our
1520 concerns are much ado about nothing. EPA has made some big
1521 assumptions to get America to that point in a decade.

1522 For example, they say that technology that hasn't been
1523 identified will show up and make meeting these rules
1524 affordable. They also say that their 111(d) carbon rule will
1525 come off without a hitch and cut some pollution, too.

1526 People back home have their doubts. I share them. But
1527 let's imagine they are right for a moment. Even if some
1528 counties can't comply in a decade, won't there be dramatic
1529 changes and negative impacts in every sector of the American
1530 economy from day one?

1531 Ms. {Wesley.} Well, I think the biggest concern on

1532 behalf of the Baton Rouge Area Chamber and other economic
1533 development organizations across the state is if you change
1534 that standard today, we are then placed into non-attainment
1535 status. And so what does that mean, as we have an economic
1536 development toolkit. We look at rules and regulations and
1537 laws, and we are trying to attract jobs and companies to
1538 Baton Rouge and to the State of Louisiana.

1539 And so if we are placed in non-attainment status, that
1540 would be detrimental harm done not only to BRAC but other
1541 areas across our State. So even though looking toward 2015
1542 that may be one solution, the biggest concern for us is right
1543 now and what that impact means if that standard is changed
1544 today.

1545 Mr. {Olson.} Yes, ma'am. Mr. Eisenberg, I was about to
1546 shoot you, my friend. Will impacts happen automatically, day
1547 one, if this new rule goes into effect?

1548 Mr. {Eisenberg.} They absolutely will. If this thing
1549 goes live on October 1 and October 1 you have to get a new--
1550 if you are in the middle of a permitting process for your
1551 facility and you are not at the very, very, very, very, very
1552 end, then yeah, you have got to comply with the new standard.
1553 And remember what our poll said, over half of our members
1554 believe that it is very unlikely that they are going move
1555 forward with a project if they get stuck in non-attainment.

1556 Mr. {Olson.} Another question, Mr. Eisenberg. As we
1557 proved at last week's hearing with Ms. McCabe, we can never
1558 fully eliminate ozone in America. God gave us natural ozone.
1559 Half or more of the ozone in America is beyond our control.
1560 That means that at a certain point we can't go lower. This
1561 is why so much of this compliance technology EPA expects to
1562 make this rule work is unknown. And yet EPA can't even
1563 consider whether these rules are achievable.

1564 My question is, do you think this is sound law, that EPA
1565 doesn't even consider whether its rules are achievable?

1566 Mr. {Eisenberg.} We absolutely do not. It is actually
1567 written in our policy statements that our members put in
1568 place every 4 years. We believe EPA should be considering
1569 costs in this process and especially feasibility given that
1570 that is such a big challenge here. It is a big reason why we
1571 support your bill because it would actually inject cost and
1572 feasibility into this decision-making process.

1573 Mr. {Olson.} A balance between health and actual costs.
1574 It is bipartisan, bicameral, myself, Mr. Latta, Mr. Green on
1575 this side of the Hill, and Mr. Thune and Mr. Manchin on the
1576 other side of the Hill support this bill. So thank you for
1577 the little plug there, my friend.

1578 My next question is for Mr. Freeman and WD-40 and Ms.
1579 Taylor from the Henry Company. Driven by the Port of

1580 Houston, my district is in the middle of a manufacturing
1581 petrochemical boom. Many people at home are worried about
1582 what this rule would do, whether it can meet their jobs along
1583 the Gulf Coast. But it seems clear to me that the impact
1584 will hit average consumers even far away from the Port of
1585 Houston. Mr. Freeman, WD-40 is a staple of American life. I
1586 have it in my garage, my Jeep parked down in the garage here.
1587 I have it--I am going to have my daughter take it to school,
1588 college next year. My question is, is it fair to say that
1589 these products that every American family has to make their
1590 home a home, how would that be impacted by these new rules?
1591 Will my grandkids have WD-40 like I have had, like I want my
1592 kid to have? What do you think?

1593 Mr. {Freeman.} Well, I would say based on our
1594 experience already with the existing regulations and the
1595 state regulations that come out of that, that we have had to
1596 reformulate WD-40. Now, we have kept the secret juice, the
1597 concentrate, the same, but the solvents that we have to mix
1598 into it which do affect the formula and also could affect
1599 performance and also can affect cost, with this 2018 standard
1600 right now, my honest answer would be to you I don't know what
1601 WD-40 your grandkids would have because we have to clear that
1602 hurdle first.

1603 And so we are dealing with that ambiguity and trying to

1604 get there with a lot of great hard work, and I think we are
1605 not alone in that. I think a lot of consumer product
1606 companies are concerned that maybe we are at that point in
1607 diminishing return at least for consumer product goods which
1608 is one of the things we want to look at. And then the other
1609 part of it is that's why--we are still working underneath the
1610 current standard and trying to make sense out of that.

1611 Mr. {Olson.} Let's not move the goal posts before you
1612 achieve those current standards. I yield back.

1613 Mr. {Whitfield.} At this time I recognize the gentleman
1614 from New Jersey, Mr. Pallone, for 5 minutes.

1615 Mr. {Pallone.} Thank you, Mr. Chairman. During our
1616 hearing last week we heard some of my colleagues argue that
1617 EPA's proposed ozone standard will hurt the economy and that
1618 Americans have to choose between clean air and economic
1619 growth. But history tells us that reducing pollution can
1620 benefit the economy as well as human health and the
1621 environment.

1622 Since its enactment in 1970, the Clean Air Act provides
1623 a perfect example of how we can make steady progress in
1624 cleaning up the air while growing the economy. In fact, over
1625 the past 45 years, we have been able to cut air pollution by
1626 70 percent while our GDP has tripled.

1627 So I am going to ask Mr. Glicksman some questions. What

1628 does the history of the Clean Air Act tell us about the
1629 relationship between environmental health and safety
1630 regulations and a strong economy?

1631 Mr. {Glicksman.} I think the history tells us it is
1632 possible to achieve environmental protection goals without
1633 sacrificing economic growth and productivity and that the
1634 major statutes, like the Clean Air Act, the Clean Water Act,
1635 Resource Conservation Recovery Act demonstrate consistently
1636 that American businesses are innovative enough and creative
1637 enough to figure out ways to comply in a cost-effective
1638 manner that achieve the public health goals of those statutes
1639 without resulting in adverse effects on economic growth.

1640 Mr. {Pallone.} But Mr. Glicksman, yet almost every time
1641 the EPA proposes a significant new requirement, we hear a
1642 litany of arguments for why it can't be done. These
1643 arguments rely on exaggerated claims about implementation
1644 cost, job losses, minimal health benefits. But we have heard
1645 all of these doomsday claims before, and throughout the
1646 history of the Clean Air Act, industry has made claims that
1647 cleaning up air pollution would impose huge costs and harm
1648 our economy. Over and over again these claims have turned
1649 out to be simply wrong.

1650 One of the exaggerated claims being circulated about the
1651 new ozone rule is that estimating the costs would be \$140

1652 billion annually, making it the most expensive rule-making in
1653 history. However, as we heard last week, EPA's cost estimate
1654 approved by OMB was much lower. So again, my question. EPA
1655 estimates that implementation would cost approximately \$3.9
1656 billion for a 70 parts-per-million standard and \$15 billion
1657 for a 75 parts-per-million standard. Those numbers are a far
1658 cry from the 140 billion. So based on your experience with
1659 the environmental regulations, does the \$140 billion price
1660 tag seem reasonable to you?

1661 Mr. {Glicksman.} I am skeptical of the \$140 billion
1662 price tag. There was a similar apocalyptic prediction made
1663 when Congress was considering adopting the acid rain control
1664 provisions of the 1990 amendments. National Association of
1665 Manufacturers at that time predicted serious and lasting
1666 damage to the economy as a result of the acid rain provisions
1667 that would make the United States a second-class industrial
1668 power by the year 2000. Obviously that hasn't happened.
1669 What instead happened was that the cost per ton of
1670 controlling SO₂ was about a tenth of the amount that the
1671 industry predicted at the time those controls were being
1672 considered.

1673 Mr. {Pallone.} So what is going on here? How have the
1674 opponents of the ozone rule landed on such a large estimate?
1675 You venture a guess?

1676 Mr. {Glicksman.} I am not an economist. I can't parse
1677 the numbers in any knowledgeable way, but it is clear in the
1678 interest of industry to over-predict cost so that it will
1679 wind up with less protective regulations that are less costly
1680 to comply with.

1681 Mr. {Pallone.} Well, I thank you. I mean, no matter
1682 how high the cost estimate may be, in my opinion there is no
1683 reason to oppose the new ozone rule.

1684 I might have time for one more question. Dr. Diette,
1685 the Clean Air Act requires the ozone standard to be based
1686 solely on consideration of public health establishing the
1687 level of pollution that is safe to breathe. Why is it so
1688 important to separate considerations of cost from setting the
1689 standard?

1690 Dr. {Diette.} Well, there are many reasons. I mean, I
1691 didn't write the law, right? But I think it has worked out
1692 pretty well since 1970 that it has provided us with very
1693 clean air compared to some of the countries that I have
1694 visited around the world which have horrible air quality.
1695 And I think the reason to do that is because we need--because
1696 the public health is good for people, right? People have a
1697 right to breathe clean air. They have a right to not become
1698 sick by the air that they breathe, and I think that we have a
1699 more productive and a more functional population when people

1700 are not sick and they are not running to the emergency
1701 department. So I think that is the reason to do it.

1702 The other is is that, you know, there is a cost-shifting
1703 thing here, right? I haven't heard a lot of talk about the
1704 people who inhaled the ozone and missed work. I have only
1705 heard about the people that produced the ozone and could
1706 theoretically miss work. So there is an imbalance there in
1707 terms of the thinking I think.

1708 Mr. {Pallone.} I appreciate that. I will just say
1709 again that, you know, since the beginning of the Clean Air
1710 Act, polluters have cried wolf every time EPA has passed a
1711 new rule to protect public health, and the truth is we can
1712 have a strong economy while cutting pollution and cleaning
1713 the air. Thank you, Mr. Chairman.

1714 Mr. {Whitfield.} At this time I recognize the gentleman
1715 from New Jersey, Mr. Lance, for 5 minutes.

1716 Mr. {Lance.} Thank you very much, Mr. Chairman. I
1717 certainly understand the position of all of the distinguished
1718 members of the panel, and of course, from my perspective,
1719 this is part of the larger debate on the state of the
1720 American economy, the better health of the Nation. It could
1721 even tangentially affect the debate we are having in Congress
1722 at the moment regarding trade.

1723 To Professor Glicksman, does the Clean Air Act require

1724 the establishment of the Clean Air Science Advisory
1725 Committee?

1726 Mr. {Glicksman.} The statute created the Clean Air Act
1727 Scientific Advisory Committee, and it mandates that EPA
1728 consult with the committee prior to adoption or revision of
1729 national standards.

1730 Mr. {Lance.} And that is a committee whose members are
1731 appointed by the EPA or--

1732 Mr. {Glicksman.} Yes.

1733 Mr. {Lance.} --by Congress or both?

1734 Mr. {Glicksman.} EPA.

1735 Mr. {Lance.} By EPA? In your written testimony you
1736 state that, ``Scientists have known for a long time that the
1737 current national standard for ozone of 75 parts per billion
1738 set in 2008 is far too weak.'' And then I believe you go
1739 onto recommend the 60 parts per billion. Is that accurate,
1740 Professor? And then a little less than a year ago, in
1741 November, the EPA announced it was proposing to revise the
1742 standard to within 65 to 70 parts per billion. Am I reading
1743 that testimony accurately?

1744 Mr. {Glicksman.} Yes, that is correct.

1745 Mr. {Lance.} And you believe that that revision is
1746 ``much weaker and appears to be inconsistent with the clear
1747 statutory language adopted by Congress and interpreted by the

1748 Supreme Court decision.''

1749 So from your perspective, would 65 to 70 be illegal?

1750 Mr. {Glicksman.} I think it would be an improvement
1751 over 75, but I don't think--

1752 Mr. {Lance.} Yes. Yes, I can count.

1753 Mr. {Glicksman.} I don't think it would fully comply
1754 with the mandate to protect the public health with an
1755 adequate margin of safety.

1756 Mr. {Lance.} And would it be illegal?

1757 Mr. {Glicksman.} If not supported by substantial
1758 scientific evidence it would be arbitrative of the EPA to set
1759 the standard between 65 and 70.

1760 Mr. {Lance.} And would there be a legal remedy for
1761 those who thought it illegal?

1762 Mr. {Glicksman.} Regulations issued by EPA are
1763 routinely challenged in the courts, in the Courts of Appeals,
1764 and the Courts of Appeals have the authority to invalidate
1765 and remand or send back to the agency regulations that don't
1766 comply with the statute.

1767 Mr. {Lance.} And has that occurred regarding ozone?

1768 Mr. {Glicksman.} It has occurred in the past regarding
1769 ozone.

1770 Mr. {Lance.} And the standard has had to be changed as
1771 a result of that?

1772 Mr. {Glicksman.} Yes.

1773 Mr. {Lance.} And therefore there would likely be a suit
1774 if the EPA were to decide this should be 70 or 65 or
1775 somewhere--

1776 Mr. {Glicksman.} My experience is that there is going
1777 to be a lawsuit no matter where EPA sets the standard. It is
1778 going to be challenged by those who think it is overly
1779 protective and those who think it doesn't go far enough.

1780 Mr. {Lance.} Mr. Eisenberg, your opinion on what I have
1781 just asked.

1782 Mr. {Eisenberg.} So first of all, there is a certain
1783 irony to the folks that are pushing for a standard of 60 are
1784 the same ones that say that we should only be considering
1785 science. And 60 is something that EPA dismissed on science
1786 grounds. I mean, they said the science doesn't support 60.
1787 So I always find that a little odd.

1788 That being said, so the current standard, 75, was
1789 challenged, and as Professor Glicksman says, by both sides.
1790 And the court upheld that standard.

1791 Mr. {Lance.} Yes, that is my understanding. The court
1792 has upheld the 75 standard. And then Mr. Eisenberg, I have
1793 an industry in my district that manufactures critical water
1794 infrastructure components. This is in Phillipsburg in Warren
1795 County, and I believe that this could be very damaging to

1796 that for the reasons you have suggested. Mr. Eisenberg,
1797 could you comment on the cost of non-existing pollution
1798 control methods and how that adds to this debate?

1799 Mr. {Eisenberg.} Sure, and the term, EPA's term, is
1800 actually unknown controls. I mean, non-existing--you know,
1801 they basically just haven't told us what they are. We don't
1802 know if they exist or not. We are pretty sure they don't
1803 exist because they didn't tell us. But they call them
1804 unknown controls. That is sort of their term of art.

1805 And you know, modeling the unknown is the chief
1806 difference between our 2 studies, I mean, you know, to answer
1807 the question from before. You know, that is kind of the
1808 issue here. What do you consider the unknown? And you know,
1809 we took an evidence-based approach. EPA just kind of
1810 arbitrarily picked a number and assigned a flat line. That
1811 is about the same cost as a lot of the known controls. So
1812 you know, we think it is a lot steeper. We hope we invent a
1813 better mousetrap, but if we don't you got to start shutting
1814 down, and that gets expensive.

1815 Mr. {Lance.} Thank you. My time has expired. I
1816 respect all the members of the panel. I think this is a very
1817 challenging and difficult situation, but we should move
1818 forward for the economy of the Nation and the better health
1819 of the Nation.

1820 Mr. {Whitfield.} At this time I recognize the gentleman
1821 from Kentucky, Mr. Yarmuth, for 5 minutes.

1822 Mr. {Yarmuth.} Thank you. Thank you very much, Mr.
1823 Chairman. Thanks to all the witnesses. Mr. Cox, I listened
1824 carefully to your testimony. I want to be very clear. It is
1825 my understanding that you said that there is no evidence that
1826 reducing ozone has resulted in any public health benefit. Is
1827 that correct?

1828 Mr. {Cox.} Yes, or to be very precise, studies that
1829 have looked objectively at causality have failed to find
1830 evidence of a causal impact of changes on ozone on changes in
1831 public health.

1832 Mr. {Yarmuth.} Well, I live in a--I represent
1833 Louisville, Kentucky. We are a non-attainment community
1834 making progress. We have an area of town called rubber town
1835 that has I think 32 chemical companies operating in it.
1836 Historically we have had tracking. You can see the cases of
1837 asthma and other respiratory ailments where they have been
1838 admitted from the hospital, where they come from. There is
1839 no doubt that there has been a disproportionate amount of
1840 those cases surrounding rubber town, and as we have made
1841 progress in ozone, those cases have gone down.

1842 Now, obviously they haven't done pathological studies I
1843 think or analyses of that. But Dr. Diette, would you like to

1844 respond to that because I think that is the fundamental
1845 question we have to deal with. If there is no benefit to
1846 reducing ozone, no health benefit to reducing ozone, then
1847 obviously, none of these rules would make sense. But in
1848 terms of your clinical experience and knowledge, how would
1849 you respond to that?

1850 Dr. {Diette.} It is a great question, and I think but
1851 for Dr. Cox who I respect his opinion, we wouldn't be talking
1852 about this. I think the world has mostly moved beyond this
1853 question. So this isn't really something that in 2015 we
1854 should be talking about, about whether ozone affects human
1855 health. We are way beyond that. And I saw in your written
1856 testimony, I saw some interesting things. I think one was
1857 that this idea that there might be a statistical test which
1858 you could assess causality. That is not the way we assess
1859 causality. Statistics are part of it. They are supportive
1860 of it. But causality is a judgment. It is a judgment. And
1861 you know, I know you would like a statistical test, but that
1862 isn't the way it works.

1863 The other thing is is that you cited my friend,
1864 Francesca Dominici, for one of her articles where she talked
1865 about the need to advance the science past just observational
1866 studies and to consider things like natural experiments. And
1867 I think that is a good idea. I mean, I endorse that as well.

1868 And I think the idea of a natural experiment is when these
1869 things happen, right, because we can't do a randomized
1870 control trial the way we can with a new drug. But when these
1871 changes occur, we can study what happened as a result of
1872 them. And MIT did I thought a great study, looking at the
1873 effect of the NOx trading and with the NOx going down and the
1874 ozone level going down by several points showing an
1875 improvement in healthcare costs among other things.

1876 So I think we have got that sort of evidence as well.

1877 Mr. {Yarmuth.} Thank you for that. Mr. Eisenberg, I am
1878 interested in your survey of members because among the many
1879 fine companies that operate in my district, I have 2 Ford
1880 plants, major Ford plants, 1 major appliance manufacturer,
1881 General Electric. I haven't heard from any of them about
1882 these ozone rules. As a matter of fact, I was with the
1883 manager of the Ford plant, the Ford truck plant, over the
1884 weekend, and he suggested that there were expansion plans on
1885 the way, new jobs being contemplated. We already have over
1886 the last 5 years 4,000 more employees at Ford in my district.

1887 And we quite frankly haven't heard from any of those 32
1888 chemical companies about the ozone rules. We haven't heard
1889 from anybody. So I am curious as to whether--Louisville is a
1890 very special place where people just don't complain or
1891 whether--and there is probably some of that there--or whether

1892 you know, the responses that you got in your survey were kind
1893 of the natural inclination of people to say yeah, regulation
1894 is bad. I would resist that.

1895 Mr. {Eisenberg.} So I think it is a legitimate
1896 question. You know, I can certainly say that a lot of those
1897 companies in your district are talking to us. So you know,
1898 we will urge them to also talk to you about it. You know,
1899 certainly a lot of the more energy-intensive industries are
1900 extremely concerned about this. Auto Alliance who represents
1901 the auto industry joined our comments I believe and came down
1902 on the same place we did.

1903 So you know, the voices are out there. You know, I
1904 think there is, you know--we probably could do a little bit
1905 more to amplify them. But that being said, you know, we are
1906 hearing it. You know, we were a little surprised by the
1907 results in our study, too, in our poll, too. We kind of
1908 didn't know what we were going to get. We tried to be as
1909 unbiased as possible. We were very surprised, number one,
1910 that the folks really understood this issue because it is a
1911 technical issue. And number two, we are pretty adamant about
1912 the fact that it was going to be a real barrier to doing
1913 their business.

1914 Mr. {Yarmuth.} Right. I would suggest just in closing
1915 that with corporate earnings being at very, very high levels-

1916 -even WD-40's earnings, I saw they had a nice earnings report
1917 in April. And it is kind of hard to say that this regulation
1918 is having a very significant adverse effect on American
1919 business. I yield back.

1920 Mr. {Whitfield.} The gentleman yields back. At this
1921 time I recognize the gentleman from Illinois, Mr. Shimkus,
1922 for 5 minutes.

1923 Mr. {Shimkus.} Thank you, Mr. Chairman, and I am sorry.
1924 Like many people, I have been bouncing back and forth to the
1925 hearing below. But I am sure many of you saw the beginning
1926 of this hearing of last week when I was talking about really-
1927 -and I am glad my friend from Kentucky is still here because
1928 although this is about the ozone, but for many of us, this is
1929 about the cumulative effects of regulation and the cost and
1930 challenges of responding by either the producers of energy or
1931 the manufacturing sector.

1932 And we weave the story about changing the rules midway
1933 through a baseball game. If you change the strike zone, you
1934 change the outs per inning. You bring in the fences. You
1935 take the fences out. You change the foul lines. How can
1936 business keep up with those changes? And then I talked about
1937 utility MACT, boiler MACT, cement rule, cross-state air
1938 pollution, 111(d), 111(b), particulate matter, tier 3, and
1939 ozone. That is a lot. I believe that is a lot for

1940 manufacturers to respond to.

1941 And so when we have these hearings, right, like we did
1942 last week, we have it on 1 emission standard with the EPA
1943 saying there are health benefit. But we never have this full
1944 debate about--there are health benefits of being poor. There
1945 are health benefits--there are health disadvantages of being
1946 poor, you know, when people are dislocated by job and they
1947 lose their employment, they lose their health benefit.

1948 So this cumulative effects of these regulations--and
1949 they are going on at the same time. This ozone PM is a
1950 perfect example. We don't even have states complying with 75
1951 parts per billion, and the EPA wants to ratchet it down to 65
1952 or 60, while we are doing the other, 111(d) and 111(b) and
1953 all these other rules and regs. It is very difficult for
1954 people to get their hands on.

1955 So in my time, if Mr. Eisenberg, Ms. Wesley, Mr.
1956 Freeman, and Ms. Taylor would--the basic question is do you
1957 think the EPA adequately evaluates the cumulative effects of
1958 the regulations?

1959 Mr. {Eisenberg.} So I think they--I mean, they are
1960 supposed to by executive order, by 13563.

1961 Mr. {Shimkus.} Which is a recent permutation. This is
1962 a recent executive order.

1963 Mr. {Eisenberg.} They don't seem to be doing it here.

1964 They really don't seem to be doing it here, and in
1965 particular, when you look at the conflict between this and
1966 some of the other regulations, I mean, first things first.
1967 There are dozens of regulations already on the books that
1968 take out the same pollutants that we are talking about here,
1969 NOx and VOCs. I mean dozens on almost every industry, which
1970 is why we are getting the reductions we are getting in
1971 addition to the ozone standard.

1972 But at the same time you start to think about, okay, so
1973 we had a truck manufacturer come in the other day. And they
1974 are dealing with a new fuel economy rule. And one of the
1975 challenges they have got is they are also dealing with, in
1976 expectation of the new ozone standard, a stricter NOx
1977 standard.

1978 Mr. {Shimkus.} Right.

1979 Mr. {Eisenberg.} Well, the controls that go on in an
1980 engine to deal with NOx use fuel. So it is another piece of
1981 equipment. And so you kind of can't have the two together.
1982 So as they are trying to ratchet one, they can't ratchet the
1983 other. They are really struggling with it. Hopefully they
1984 will figure it out, but it is a real challenge.

1985 Mr. {Shimkus.} I had an industry come in and say we can
1986 get to the NOx standards, but by doing so we increase the
1987 greenhouse gas standards. We just can't meet the same

1988 standards. Anybody else of the four that I offered want to
1989 respond?

1990 Ms. {Wesley.} I had--

1991 Mr. {Shimkus.} Just--

1992 Ms. {Wesley.} Yes.

1993 Mr. {Shimkus.} Okay. You want to add? Okay. Then we
1994 had also Mr. Freeman and Ms. Taylor. Did you have any?

1995 Ms. {Taylor.} I definitely agree that I don't think at
1996 this time the cumulative effects of regulation are carefully
1997 being considered. That is very obvious. I can tell you from
1998 my standpoint. I am an environmental regulatory attorney by
1999 training. I mean, this is my bread and butter, and you know,
2000 even with the subject matter expertise, it is just an
2001 enormous amount of information to manage. And quite frankly,
2002 compliance execution is very challenging. But that is
2003 nothing new.

2004 Mr. {Shimkus.} Mr. Freeman?

2005 Mr. {Freeman.} I am not aware that a lot of agencies if
2006 any of them do the cumulative overview. I haven't personally
2007 experienced that, but I do think that it is getting more and
2008 more complex and that is one of the challenges we have had.
2009 We have actually had an instance where we had a can of WD-40
2010 that was under 100 percent California Air Resource Board
2011 regulations. Get another regulation. So we had regulatory

2012 overlap on the same product against 2 agencies that did not
2013 agree how they measured VOCs, let alone what the metric for
2014 success was.

2015 So we have actually gone beyond it just being complex to
2016 now they are getting into conflict at times.

2017 Mr. {Shimkus.} Thank you. And I will just end on this.
2018 I chair another subcommittee, and we deal with the NRC and we
2019 had a great hearing on the NRC. And the NRC evaluated this
2020 standard, it costs this much, and the next standard costs
2021 this much and the next standard costs this much. But it was
2022 not just additive. It really was--the true cost was
2023 multiplicative, and that is the challenge that we have with
2024 these multiple regulations. I yield back. Thank you,
2025 Chairman.

2026 Mr. {Whitfield.} The gentleman yields back. At this
2027 time I recognize the gentleman from West Virginia, Mr.
2028 McKinley, for 5 minutes.

2029 Mr. {McKinley.} Thank you, Mr. Chairman. I am just
2030 trying to absorb all this information. I don't come from a
2031 medical background. Mine is an engineering background. So I
2032 am trying to understand a little bit, except some of the
2033 discussion about the health risks. But I have heard fairly
2034 consistently here the inclusion of asthma included. My son
2035 has asthma, so I have been sensitive to that from the day he

2036 was born.

2037 But I am curious that we seem to be attacking our
2038 industries as part of a solution. I am just going to deal
2039 with asthma, if we could. And those of you with a medical
2040 background, I want to accept that, that there could be
2041 something there. But I am also, since we have been talking
2042 about this the last couple of years have done additional
2043 research. And I find that there are other factors that are
2044 seemingly far more reasonably the cause of asthma attacks.
2045 Genetics, ethnicity, why we have more asthma attacks in our
2046 Afro-American community and in our Puerto Rican/Hispanic
2047 communities. He deals with poverty, poor diet, stress,
2048 overweight, and lack of exercise in our children, exposure to
2049 cigarette smoke, smokers. You have a greater likelihood of
2050 having an asthma attack if you also have dermatitis or hay
2051 fever allergies. Indoor air quality are all of these
2052 factors. Indoor air quality. We have dust mites, cockroach
2053 and mouse allergens, mold, animal dander, formaldehyde, dust.
2054 I could go on with all--but we are not addressing that at
2055 all. We are going to say let's go after manufacturing and
2056 have them lower from 75 down to perhaps 60. But we are not
2057 addressing what other reports are saying are far more
2058 causational than others. In fact, this report, Dr. Diette,
2059 from your Johns Hopkins institution, they have come out with

2060 a report themselves just recently and said that they can't
2061 find a connection. They say there is no statistical
2062 difference between the rate of asthma attacks in high-
2063 pollution areas than in non-pollution areas. I thought, that
2064 is interesting because I thought all the studies said there
2065 is directly a tie. Yet Johns Hopkins came out in opposition
2066 to that. So did the--

2067 Dr. {Diette.} Is that the Keets study?

2068 Mr. {McKinley.} --University of Utah at Los Angeles
2069 study. I could go on with that but--

2070 Dr. {Diette.} Is that the Keets study?

2071 Mr. {McKinley.} That was a study performed by Keets--

2072 Dr. {Diette.} Yeah.

2073 Mr. {McKinley.} --McCormick, Pollack and--

2074 Dr. {Diette.} Just so it is clear, the conclusion of
2075 that study is not what you said it was, right? So the
2076 conclusion of that study has to do with the asthma
2077 prevalence, right, so not the asthma attack rate.

2078 Mr. {McKinley.} Asthma prevalent.

2079 Dr. {Diette.} Asthma prevalence.

2080 Mr. {McKinley.} Yeah.

2081 Dr. {Diette.} And what that determined was that race
2082 and poverty were strong determinants but urban dwelling was
2083 not a strong determinant of the prevalence of asthma.

2084 Mr. {McKinley.} So I want to go to--

2085 Dr. {Diette.} There is no--well, excuse me. There is
2086 no indication--

2087 Mr. {McKinley.} Can I--I reclaim my time. I want to
2088 learn more from this but--

2089 Dr. {Diette.} I appreciate it.

2090 Mr. {McKinley.} --I also want to figure out a little
2091 bit about Hawaii. Hawaii operates right now from what I
2092 understand in their attainment counties, are operating at
2093 about right now currently at around 50 parts per billion, and
2094 they have been lower. But yet the rate of asthma, whether it
2095 is prevalence, attacks or what, is 42 percent higher than the
2096 national average here on the continent. I am puzzled with
2097 the disconnect.

2098 So I want to go back to yours, Dr. Cox, if we could
2099 because I was fascinated with one remark that you made and
2100 that was just--I heard and maybe you can clear it up--is that
2101 the concentration ozone may not be the issue. Ozone in and
2102 of itself, someone exposed to ozone, even at a lesser level,
2103 is going to have a triggered attack. Did I misinterpret
2104 that?

2105 Mr. {Cox.} No. I think that indeed people who have
2106 asthma may be triggered at lower concentrations of ozone. I
2107 think you have hit the key point which is that ozone has many

2108 causes. I think the key policy question is what happens to
2109 asthma attacks and other health effects when there is a
2110 change in ozone level? And the discussion that Dr. Diette
2111 and I will put in writing has to do with the difference
2112 between statistical associations between levels of
2113 pollutants, pet dander, and other factors and what happens
2114 when you remove or reduce one of them. I think the most
2115 important scientific fact for us today is that decades of
2116 reduction in ozone levels have not produced the predicted
2117 health benefit.

2118 Mr. {McKinley.} My time is out, but I just was hoping
2119 that you might have been able to help clarify this. There
2120 are other issues that are far more prevalent in causing an
2121 asthma attack, and that is what I was looking for.

2122 Dr. {Diette.} I would interject, though. I would tend
2123 to ask--

2124 Mr. {McKinley.} We don't seem to be addressing that.

2125 Dr. {Diette.} Well, I think you should direct your
2126 question to me, though, and not a biostatistician. It is
2127 honestly not the statistician's job to determine what causes
2128 asthma, and I think you have done a wonderful job of laying
2129 out many of the different causes of asthma, and what you have
2130 highlighted is how generally complex it is as you must know
2131 from your son, right? And one of the principles of treatment

2132 of asthma is that you have to do environmental control on
2133 everything at once that you can identify that matters. So it
2134 is not sufficient to just take care of the mice or the
2135 cockroaches or the dust mites that you mentioned, nor is it
2136 enough to get rid of cigarette smoke. You have to do all of
2137 those things simultaneously for the asthmatic airways to be
2138 in the best state of inflammation and therefore not have an
2139 attack.

2140 So that is why it sounds complicated, and that is why it
2141 is complicated because all those factors coalesce together
2142 and form the syndrome of asthma.

2143 Mr. {McKinley.} But these reports say that is the
2144 biggest cause.

2145 Mr. {Whitfield.} The gentleman's time has expired. At
2146 this time I will recognize the gentleman from Ohio, Mr.
2147 Johnson, for 5 minutes.

2148 Mr. {Johnson.} Thank you, Mr. Chairman. Dr. Cox, would
2149 you like to respond to what you just heard?

2150 Mr. {Cox.} Certainly. I fully agree and emphasize that
2151 there are multiple causes of asthma. I think the idea that
2152 we should expect benefits from removing or reducing one of
2153 them without reducing the rest, as Dr. Diette describes,
2154 leads directly to the empirical question, does it work? Does
2155 reducing ozone reduce the desired health benefits?

2156 Mr. {Johnson.} Right.

2157 Mr. {Cox.} For that question, for the question of how
2158 do changes in exposure change health effects, there is ample
2159 evidence, there is evidence from decades of measurements on
2160 ozone levels and measurements on hospitalization and indeed
2161 death rates, and it is I think very much the job of the
2162 biostatistician to say opinion aside, subjective judgment
2163 aside, political motivation aside, what do the data tell us
2164 about what has actually happened when ozone has been reduced?
2165 And the answer from the few studies that do not take a
2166 correlational approach or a judgment-based approach but take
2167 an empirical data-driven approach, give the perhaps
2168 disappointing but clear answer that there is no detectable
2169 health benefit or health effect from reducing ozone.

2170 Therefore, the believe that if we pour more energy and
2171 effort into further reducing ozone, we should expect fewer
2172 asthma attacks, better attendance at school, fewer
2173 mortalities, and the other benefits that we have heard about.
2174 That expectation is inconsistent with decades of empirical
2175 results to show that it just ain't so.

2176 Mr. {Johnson.} Okay. Thank you very much. You know, I
2177 have got 4 children. I have got 6 grandchildren. I am very
2178 concerned about making sure that our air is clean, that our
2179 water is clean, that my children are drinking and eating and

2180 breathing the right kinds of things.

2181 But I think when we throw out and in most cases make
2182 secondary and oftentimes ignore the economic implications of
2183 some of the things that we are doing, take an area like mine
2184 where I represent 18 rural Appalachian counties. You rule
2185 out the economic implications of these rules, and you shut
2186 down companies and you eliminate opportunities, even if the
2187 health implications--and I am not a doctor--even if the
2188 health implications are bona fide, and I am not saying they
2189 are not, people don't have the money to buy insurance. They
2190 don't have the money to go to a doctor. Doctors aren't going
2191 to come to those areas to treat those patients. We can't
2192 ignore the economic implications.

2193 Mr. Eisenberg, your organization released 2 studies over
2194 the past year looking at the economic impacts from a lower
2195 ozone standard, and I have found the analysis by NERA
2196 Economic Consulting both informative and concerning. I
2197 looked at how many of my 18 counties would be out of
2198 attainment with the standard set to 65 parts per billion, and
2199 to my dismay, I learned that all 18 of those counties would
2200 be in non-attainment.

2201 In my district we are seeing signs of life due to
2202 increased production of oil and gas, thanks to advances in
2203 fracking and horizontal drilling technologies. But the

2204 regulations that accompany this new ozone rule standard will
2205 most certainly slow and ultimately shackle the growth that we
2206 have seen in our communities as I pointed out to Ms. McCabe
2207 at our last hearing last week.

2208 In fact, let me read for the committee's benefit what
2209 NERA said about the new ozone rule and its impact on oil and
2210 gas production. A tightened ozone standard has the potential
2211 to cause non-attainment areas to expand into relatively rural
2212 areas. Where there are few or no existing emission sources
2213 that could be controlled to offset increased emissions from
2214 new activity. If non-attainment expands into rural areas
2215 that are active in U.S. oil and gas extraction, a shortage of
2216 potential offsets may translate into a significant barrier to
2217 obtaining permits for the new wells and the pipelines needed
2218 to expand or even maintain our domestic oil and gas
2219 production levels. Equally concerning is the EPA's Clean
2220 Power Plan which envisions a major shift nationwide from
2221 coal-fired power to natural gas, but with the rollout of
2222 these ozone regulations, I am afraid that our manufacturing
2223 industry will not have a source of reliable and affordable
2224 energy. This is really, really bad news for my constituents,
2225 for my state. You know, I have spent all of my time talking
2226 and asking somebody else's question, and I don't get a chance
2227 to ask my own. So I think I have made my point. We can't

2228 throw out the economic concerns. Throwing out the baby with
2229 the bath water doesn't solve the problems. If we don't have
2230 an economy that can attack these problems with confidence and
2231 resources, we are never going to solve them.

2232 So with that, Mr. Chairman, I yield back.

2233 Mr. {Whitfield.} The gentleman's time has expired. At
2234 this time I will recognize the gentleman from Ohio, Mr.
2235 Latta, for 5 minutes.

2236 Mr. {Latta.} Well, thanks very much, Mr. Chairman, and
2237 thanks for holding today's hearing. And thanks to all of our
2238 witnesses for being here. I really appreciate your time and
2239 your patience.

2240 Ms. Taylor, if I could start with a question to you, in
2241 your testimony you say that the EPA and states should
2242 carefully consider whether requiring manufacturers to achieve
2243 further drastic reductions in VOC content in consumer
2244 commercial products is technically feasible at this time and
2245 also worth the time and resources spent by manufacturers to
2246 comply for a low return on investment in terms of improved
2247 air quality.

2248 Would you like to comment on lowering the VOC content at
2249 the Henry Company's types of products that you have? And how
2250 long does it take to reformulate the products for roofing
2251 material out there to achieve those VOC content and then have

2252 to bring that to market?

2253 Ms. {Taylor.} Sure. Well, first let me say that my
2254 comment was specifically related to the State Implementation
2255 Plan phase. So not at the statutory level where we have
2256 already heard that cost is not considered, but really at the
2257 implementation plan phase where EPA and the states really
2258 work together to, you know, design the appropriate plan for
2259 the individual state.

2260 In terms of the impact on a company like Henry--and this
2261 is my job. That is what Director of Product Stewardship
2262 means. I mean I basically manager our SKUs. So I am the
2263 person responsible for restricting a specific SKU that, you
2264 know, for whatever reason can't comply with a VOC content
2265 limit in a certain jurisdiction.

2266 In terms of what we initially tried to do, when we
2267 receive new regulatory guidelines, and of course we make
2268 every attempt to comply because we are responsible corporate
2269 citizens, we go through our SKUs. We sort out our products
2270 in terms of what currently complies and what does not. That
2271 process alone probably takes a few months. Then after that
2272 process is over, we then look at the products that do not
2273 comply because those are the products obviously that we are
2274 concerned about in terms of the regulation. And we see if
2275 any of those are fairly easy to reformulate. Fairly easy, by

2276 the way, means like probably a year--fairly easy to
2277 reformulate and you know, would go about making those
2278 changes.

2279 Then we take a look at the products that are not easy to
2280 reformulate, and by not easy, I mean the reformulation
2281 process could take 3 to 6 years. And that is not an
2282 exaggeration. We have a number of products where that has
2283 been the case.

2284 Mr. {Latta.} May I ask you, how many at the company
2285 would be working on that?

2286 Ms. {Taylor.} Oh, great question. Several. That would
2287 probably involve--in an approximately 450-person company like
2288 Henry, I would say probably between 15 and 20 would be in
2289 that, and quite frankly, we may even bring in outside
2290 consultants to assist us.

2291 Mr. {Latta.} So really not developing a new product,
2292 just making sure that the one or those products are
2293 compliant? Nothing to advance a new product?

2294 Ms. {Taylor.} That's correct.

2295 Mr. {Latta.} Okay.

2296 Ms. {Taylor.} That's correct.

2297 Mr. {Latta.} Let me ask you another follow-up if I
2298 could because I thought what you said was kind of
2299 interesting, really, your closing line in your testimony.

2300 You said that the primary focus of the EPA should be to
2301 provide additional support to those air quality management
2302 districts that are currently in non-attainment status to help
2303 them reach attainment status under the current level before
2304 making the goal of reaching attainment status even more
2305 difficult for those states to obtain.

2306 And I think that maybe what you just said kind of
2307 answers that when you are looking at the amount of time that
2308 you are putting in for products that are already--I am going
2309 to assume we are going to meet those attainment where you
2310 were. But would you just want to elaborate just a little bit
2311 on that? What would you like to see the EPA out there doing?

2312 Ms. {Taylor.} Well, I think in terms of working with--
2313 so still working under State Implementation Plans because
2314 obviously they would have to be revised with any new
2315 statutory, regulatory changes. But really, taking a look at
2316 what are the main sources. For example as we are talking
2317 about VOCs and ozone, what are the main sources? And we know
2318 and Mr. Freeman has echoed this as well that consumer
2319 products are one of the smaller sources. And so from our
2320 perspective, we quite frankly often feel as though we have
2321 been given perhaps more attention than we deserve based upon
2322 the amount of pollutants that are coming from our particular
2323 industry. So in terms of what EPA could do, I would

2324 respectfully suggest that they work with the states to look
2325 at the larger sources of pollution and perhaps, you know,
2326 review technology, available technology at the time, perhaps
2327 you know, just have even better--quite frankly, even
2328 something like better communication would help this entire
2329 process.

2330 As we have alluded to, Mr. Freeman and myself before, in
2331 terms of EPA working with the individual state air districts,
2332 there are a number of challenges with that. So that would be
2333 quite frankly a good start.

2334 Mr. {Latta.} Well, thank you very much. Mr. Chairman,
2335 I see my time has expired, and I yield back.

2336 Mr. {Whitfield.} the gentleman's time has expired. At
2337 this time I recognize the gentleman from Texas, Mr. Flores,
2338 for a 5 minutes.

2339 Mr. {Flores.} Thank you, Mr. Chairman. Mr. Chairman, I
2340 would like to follow up on one of the comments that the
2341 Assistant Administrator said last week when she testified. I
2342 asked her the question about why has the EPA cost calculation
2343 gone down from \$90 billion to take ozone requirements from 84
2344 down to--why the 2010 estimate was \$90 billion and why their
2345 2014 estimate was \$40 billion, and she said that it was
2346 because the 2010 estimate was taking the ozone estimate from
2347 84 parts per billion down to 65 parts per billion. That

2348 turned out to be a slightly disingenuous answer because she
2349 knew full well that the cost embedded to take it from 84 to
2350 75 was 8.8 billion which means that 81 billion was left to
2351 take it from 75 down to the 65 estimate. So I will be
2352 sending her a letter to ask her to explain why the
2353 difference, the \$39 billion difference in the estimate from
2354 \$81 billion down to \$42 billion in their 2014 estimate so
2355 that we can try to get that cleared up for the benefit of the
2356 committee.

2357 Mr. Eisenberg, you had mentioned in your testimony that
2358 the EPA is proposing a new standard for which you can--and we
2359 have talked about this before, that we only can identify 35
2360 percent of the necessary technologies to get to a 65 parts
2361 per billion standard and that therefore the unknown controls
2362 were 65 percent in terms of a path to compliance.

2363 So this being essentially that the EPA is proposing a
2364 standard where the majority of the control technology does
2365 not even exist. Is that correct?

2366 Mr. {Eisenberg.} They certainly haven't identified it.
2367 So that is our view.

2368 Mr. {Flores.} Okay. And so that is obviously an area
2369 of concern. So one of the questions I have raised to the
2370 administrator last week was how should that be priced? And
2371 they relied on past calculations which were the easier ozone

2372 reductions to achieve than the one we are getting now because
2373 we are getting to the point of diminishing returns.

2374 So I would ask you a 2-part question. As you get to the
2375 part of diminishing returns on control technology, how should
2376 the pricing work? Because you are getting diminishing
2377 returns, should it be higher or lower? And also, if it is
2378 unknown, therefore there is a higher risk that that
2379 technology doesn't exist, how should that be priced?

2380 Mr. {Eisenberg.} So that is an excellent question, and
2381 that is one of the real challenges in looking to the past,
2382 including the immediate recent past as a predictor of the
2383 future on this issue.

2384 NOx was controlled by CARE and a lot of other statutes,
2385 but that is why it is more expensive now because those
2386 technologies are now gone. And so the low-hanging fruit is
2387 gone. The high-hanging fruit is gone. Things are getting a
2388 lot more expensive. And in fact, you have just run out
2389 pretty quickly when you start to do this.

2390 You know, the question of modeling unknown controls, we
2391 continue to be surprised that EPA just draws this flat line
2392 at \$15,000 per ton, you know. I don't want to say they don't
2393 explain it. They do explain it. We just don't necessarily
2394 agree with where they are coming from. But you know, the
2395 real issue is, you know, they are essentially modeling hope,

2396 right? I mean you are modeling the hope that we will figure
2397 this out.

2398 Mr. {Flores.} Yeah, and that takes me to sort of the
2399 real world. I mean, my question to her was if the cost by an
2400 offset today is \$170,000 a ton in the gulf coast area of
2401 Texas, wouldn't you price the offset technology at some
2402 premium over that versus coming up with the price of hope at
2403 \$15,000 a ton. So shouldn't it be priced more at, you know,
2404 \$300,000 a ton or something more reasonable? I mean, what is
2405 your comment on that?

2406 Mr. {Eisenberg.} So I mean, the current offset prices
2407 in Houston are \$175,000 per ton of NOx and \$275,000 per ton
2408 of VOCs. In Southern California, they are \$125,000 per ton
2409 of NOX. So there is definitely a disconnect there.

2410 Mr. {Flores.} So theoretically, the price of an unknown
2411 technology, since you have got the risk that it may never
2412 develop, should be higher in coming up with the--

2413 Mr. {Eisenberg.} We certainly expect it to be higher
2414 than \$15,000 per ton.

2415 Mr. {Flores.} Ms. Taylor, I appreciate your prior
2416 testimony because you give a real-world perspective on these
2417 issues. And I don't think you answered this in your last--
2418 this is kind of a modification on the questions before, and
2419 this is more specific. Does the roof coating industry

2420 currently have the technology to achieve further significant
2421 reductions in the VOC content of their products?

2422 Ms. {Taylor.} That is an excellent question. It really
2423 depends upon the product. If you are talking about roof
2424 coatings, you can make an argument on both sides. Perhaps
2425 the technology is currently available where we could achieve
2426 further significant reductions. If you are talking about
2427 roofing adhesives and sealants, which have different
2428 performance characteristics obviously than a traditional
2429 paint, you know, coating, then I would say no. We currently
2430 don't have the technology. We have been researching the
2431 technology for the past 2-1/2, 3 years, and we will have to
2432 do some--I don't know, we will have to get fairy dust or
2433 something. We will have to sort it out if further drastic
2434 reductions are required.

2435 Mr. {Flores.} Okay. Thank you for your answers. I
2436 yield back.

2437 Mr. {Whitfield.} The gentleman's time has expired. At
2438 this time I will recognize the gentleman from Florida, Mr.
2439 Bilirakis, for 5 minutes.

2440 Mr. {Bilirakis.} Thank you, Mr. Chairman. I appreciate
2441 it very much. Mr. Freeman, you indicate cost to your company
2442 and industry to meet existing volatile, organic compounds to
2443 regulations have been very significant. Could you elaborate

2444 on the costs to date for your industry?

2445 Mr. {Freeman.} I am over here.

2446 Mr. {Bilirakis.} Oh, okay. Very good. Thank you.

2447 Mr. {Freeman.} Cost per day?

2448 Mr. {Bilirakis.} Yeah, per day.

2449 Mr. {Freeman.} That is not a measure that--

2450 Mr. {Bilirakis.} No, cost to date for your industry.

2451 Mr. {Freeman.} If I look at our R&D effort alone, it
2452 would be several million dollars. Not included in that would
2453 be our ongoing supply chain costs I talked about a little bit
2454 earlier that can be a result of regulatory compliance, our
2455 ongoing marketing costs and our ongoing people costs. I have
2456 not added it all up. I am almost a little afraid to, but
2457 they are not easy costs to track necessarily, completely, and
2458 accurately. But we know that it has been significant--

2459 Mr. {Bilirakis.} Thank you--

2460 Mr. {Freeman.} --the view that we do have.

2461 Mr. {Bilirakis.} Thank you. Ms. Taylor, have the costs
2462 of compliance so far been substantial for your company and
2463 the roof coatings industry?

2464 Ms. {Taylor.} Yes. The cost--for us especially at
2465 Henry in particular, I think the most adequate measure would
2466 just be in the number of products that we have had, already
2467 have had to restrict from sale in certain air quality

2468 management districts. As I said, we have over 1,200 SKUs.
2469 There are certain parts of this country where we sell, you
2470 know, less than 50 or 60 individual SKUs.

2471 Mr. {Bilirakis.} Thank you. Ms. Wesley, for the Baton
2472 Rouge Area, have the costs to meet ozone regulations in the
2473 past been significant? Do you believe that EPA's estimate to
2474 implement the proposed ozone rule are accurate or do you
2475 believe it will be more costly than expected?

2476 Ms. {Wesley.} I certainly believe it will be more
2477 costly than expected. We are hearing from our companies in
2478 the Baton Rouge Area and across the State of Louisiana the
2479 costs are excessive. It is something like--I don't have an
2480 exact number for you, but we are hearing from our companies
2481 that it is significant.

2482 Mr. {Bilirakis.} Okay. Very good. Thank you. Just
2483 this past week a survey was released indicating that 26
2484 states have raised concerns about the role of background
2485 ozone, including both naturally occurring and internationally
2486 transported contributions to ground-level ozone as an
2487 achievability or implementation challenge. Mr. Eisenberg,
2488 what happens to permitting for new and expanding businesses
2489 when ozone standards are set close to background levels?

2490 Mr. {Eisenberg.} Thanks for the question. It makes it
2491 extremely hard. You can't get out of it. I mean, think of

2492 the San Joaquin Valley for a minute. So in the San Joaquin
2493 Valley the air regulators there--and they are in really bad
2494 non-attainment, probably the worst in the country. The air
2495 regulators there have said to meet the 70 or 75 parts-per-
2496 billion standard, it is going to require--and this is the
2497 regulators saying this--it would require zeroing out
2498 emissions from all stationary sources, all off-road vehicles,
2499 all farm equipment, and all passenger vehicles. That is how
2500 you get there to account for the ozone. So we have got a
2501 real problem.

2502 Mr. {Bilirakis.} Yeah. Do you believe EPA's proposal
2503 to bring down levels lower than the current levels which many
2504 are still in the process of being compliant will have a
2505 positive or negative impact on the manufacturing sector?

2506 Mr. {Eisenberg.} So we believe it will have a--you
2507 know, the numbers show that we will have a manufacturing-wide
2508 negative impact. No sector is really spared here. Everybody
2509 gets hit.

2510 Mr. {Bilirakis.} Thank you very much. I yield back,
2511 Mr. Chairman.

2512 Mr. {Whitfield.} The gentleman yields back. At this
2513 time I will recognize the gentleman from Virginia, Mr.
2514 Griffith, for 5 minutes.

2515 Mr. {Griffith.} Thank you, Mr. Chairman. I appreciate

2516 the members of the panel for being here today. I apologize I
2517 have not been here for the whole hearing because I have been
2518 at another hearing downstairs, a very important hearing as
2519 well. So I do apologize for that.

2520 Mr. Eisenberg, I want you to go over that again because
2521 it is staggering. You just indicated to Mr. Bilirakis that I
2522 order to comply based on background or foreign ozone levels
2523 you were talking about the San Joaquin Valley in California.
2524 I don't represent anything close to that, but I think it
2525 might be important to hear that again because it was
2526 staggering. Could you tell us again?

2527 Mr. {Eisenberg.} Yeah. And this comes from their
2528 regulators. Because of geographic factors, because of ozone
2529 that is wafting in from Southeast Asia and just because of
2530 naturally occurring background, they have got a real problem.
2531 And so you could literally zero out all the industry there
2532 and you still couldn't make it.

2533 That is obviously an extreme case, but the problem is we
2534 are getting to levels that this is becoming a more normal
2535 problem. I don't think it is ever going to be quite that bad
2536 for anybody in Virginia. I hope it won't. But it is a real
2537 challenge, and this is why our members, the manufacturers in
2538 this country, are on edge because it means that we can't grow
2539 if we are in a place like that.

2540 Mr. {Griffith.} I think you told Mr. Bilirakis you
2541 would have to eliminate, what did you say, all the farm
2542 equipment?

2543 Mr. {Eisenberg.} All stationary sources, so all plants,
2544 all off-road vehicles, all farm equipment, and all passenger
2545 vehicles. Period.

2546 Mr. {Griffith.} Wow. And so what we are in essence
2547 doing is that we are shipping our jobs to other countries,
2548 say in Asia, and they are shipping us back the pollution that
2549 then causes this level to be so high that we would have to
2550 eliminate all passenger vehicles?

2551 Mr. {Eisenberg.} Well, in that area you would.

2552 Mr. {Griffith.} In that area, right, in the San Joaquin
2553 Valley. Been a long day already. Ms. Taylor, let's talk
2554 about something that you said in your written testimony. You
2555 indicated that the volatile organic compound regulation of
2556 consumer and commercial products in certain air quality
2557 management districts around the country are approaching the
2558 point of diminishing returns in terms of actually
2559 contributing significantly to air quality improvement.

2560 Ms. {Taylor.} Yes.

2561 Mr. {Griffith.} So what you're saying is is that you
2562 are really not going to have much impact if they go further
2563 on your industry? Am I interpreting that correctly?

2564 Ms. {Taylor.} That is correct, yes.

2565 Mr. {Griffith.} So they are really not going to have
2566 much accomplishment--

2567 Ms. {Taylor.} Well, I mean you know the greatest gains
2568 which is not uncommon--the greatest gains in terms of VOC
2569 reduction were made over a decade ago, maybe more than 2
2570 decades ago. And so now what we are working with, especially
2571 for certain categories of consumer products--I would imagine
2572 for these regulatory agencies, the goal is to get to zero
2573 grams per liter of VOC. And so we now have products that
2574 have very honestly gone from 200 grams per liter down to 100,
2575 down to 75, down to 50, down to 25. I mean, there is just
2576 not much further for those products to go in terms of, you
2577 know, being able to sell a product at a price point that
2578 consumers will accept and that has performance
2579 characteristics that accurately reflect what we market the
2580 product for. So that is where we are.

2581 Mr. {Griffith.} And Dr. Cox, I know others have hit on
2582 this, but I thought that it was interesting in your testimony
2583 that there is a real question, and you testified, and I am
2584 quoting, ``EPA's insistence that further reducing ozone is
2585 necessary to protect improved human health contrasts with
2586 decades of experience revealing no such benefits actually
2587 occur.'' Can you explain that?

2588 Mr. {Cox.} Yes. The current usual approach to
2589 assessing causation and to predicting whether benefits will
2590 occur is to ask selected scientists to form a judgment in
2591 light of the evidence that they consider to be relevant, and
2592 the scientists that EPA invited to form such judgments have
2593 made a judgment that because ozone is deleterious to the
2594 lung, reducing its level will have benefits. It is a very
2595 common-sense proposition. However, there is an alternative
2596 approach to looking at what will happen which is to adopt the
2597 natural experiment. The natural experiment says in hundreds
2598 of counties across the United States, ozone has gone down in
2599 some cases and has gone up in others. Let's look and see
2600 what difference those different histories have made to the
2601 corresponding histories of health defects. When that
2602 analysis is done, not based on judgment but based on data, no
2603 health benefit from reduction of ozone is seen. That doesn't
2604 mean that no reductions in health risks have occurred, but
2605 they have occurred just as much where ozone has gone up as
2606 where it has gone down.

2607 So based on empirical analysis for causation, the
2608 science would say there is no evidence of a causal impact of
2609 further changes.

2610 Mr. {Griffith.} Let me see if I can translate that
2611 because I only have a few seconds left.

2612 Mr. {Cox.} Thank you.

2613 Mr. {Griffith.} So what you are saying is if you take a
2614 look at the country as a whole, you don't see any health
2615 benefits gained where the ozone level has gone down. You
2616 might see that in individual patients but you don't see it
2617 across the board when you are looking at the entire
2618 population.

2619 Mr. {Cox.} That is correct.

2620 Mr. {Griffith.} Thank you. I yield back.

2621 Mr. {Whitfield.} The gentleman yields back. At this
2622 time we have just a couple more questions, and then we will
2623 conclude this hearing. But I will recognize the gentleman
2624 from Illinois, Mr. Rush, for 3 minutes.

2625 Mr. {Rush.} Thank you, Mr. Chairman. Dr. Diette, I
2626 wanted to give you a chance to respond to anything that you
2627 have heard here but particularly the Keets study that was the
2628 subject of controversy and how the study was
2629 mischaracterized. I want you just to respond to the
2630 mischaracterization of the study and any other thing you
2631 might want to add.

2632 Dr. {Diette.} Sure. Thanks very much. So it is being
2633 misrepresented, right? So first of all what we heard from
2634 the member was not even the facts from the study, but the
2635 study was simply one that looked at a few different factors

2636 and whether or not somebody actually has asthma, so not
2637 whether they have asthma attacks. It was not a study of air
2638 pollution. So it wasn't a study of air pollution, right? So
2639 we can't reach a judgment about ozone from the study. And
2640 what it showed was that being African-American and being poor
2641 were independent risk factors of having asthma and that
2642 living in a city was not.

2643 It can't even potentially have anything to do with the
2644 ozone question because ozone isn't concentrated in cities.
2645 It is in valleys. It is in suburbs. It is in rural areas
2646 and so forth. So it doesn't inform that question whatsoever.
2647 So that is why it is being misrepresented.

2648 But other things that I have heard that I think are
2649 unusual, right, so one, there are a whole bunch of issues
2650 here we have been talking about. One is I heard earlier in
2651 the day that somehow that the parts per billion is going to
2652 get down from 75 to 70 on its own with the current
2653 regulations, and then I am also hearing at the same time that
2654 there is no way to get below 75. So I think there is an
2655 inconsistency with what we are expecting to already happen
2656 and then what we are saying we can't do.

2657 And I would also just say, too, just probably the last
2658 comment I will have with Dr. Cox here, but what he is
2659 describing about there not being any benefit is not a

2660 mainstream view, right, that there a strong consensus among
2661 people who actually take care of sick patients with asthma
2662 and other lung diseases that ozone is harmful. It causes
2663 illnesses. It causes them to die. It is in our guidelines
2664 to tell people to avoid the outside when there are high ozone
2665 days. It is not made up stuff. This is based on science.
2666 So I just want to clarify that as well.

2667 Mr. {Rush.} Let me just ask you this. Is there any
2668 correlation between diet and ozone as was indicated or lack
2669 of exercise? Diet and asthma and lack of exercise and
2670 asthma? Are those some preconditions for asthma?

2671 Dr. {Diette.} So like a lot of things, it is very
2672 complicated, right? So the relationship between exercise is
2673 that for people that exercise outdoors, there is some
2674 evidence that somebody who exercises around the time when
2675 ozone is high, that that can affect their lung function among
2676 other things. So that is an issue. Diet, I don't think we
2677 know yet, right? Diet has the potential to be very helpful
2678 to us, and so to the extent that people have things that help
2679 fend off pollutants, there may be an issue with the American
2680 diet that we and others are working on about whether or not
2681 modifying that would be protective. But that is not a
2682 settled issue.

2683 Mr. {Rush.} Mr. Chairman, I want to thank you so very

2684 much for your giving me this time. I really appreciate it.

2685 Thank you.

2686 Mr. {Whitfield.} You are welcome. At this time I would
2687 also recognize--did you want to enter into the record--

2688 Mr. {Rush.} Yeah, I want to enter into the record a
2689 letter, Mr. Chairman, from the Johns Hopkins University.
2690 This letter is Ms. Corinne A. Keet's response, Dr. Keet's
2691 response to a letter of inquiry from Senator Barbara Boxer.
2692 I want to enter it into the record.

2693 Mr. {Whitfield.} Without objection, so ordered.

2694 [The information follows:]

2695 ***** COMMITTEE INSERT *****

|

2696 Mr. {Whitfield.} And at this time, I am going to give 3
2697 minutes to Dr. Burgess of Texas for additional questions.

2698 Mr. {Burgess.} Thank you, Mr. Chairman, but in the
2699 interest of full disclosure, I don't have a question but I
2700 would like to deliver a soliloquy on the Montreal Protocol,
2701 and we are here today talking about things we can do to
2702 reduce the number of asthma episodes. But I just got to tell
2703 you as someone who has suffered with asthma his entire life,
2704 the withdrawal of an over-the-counter remedy for an acute
2705 asthma attack has been more injurious than anything else that
2706 I have seen in some time. And we can talk about whether or
2707 not we are reducing by 1,000, 2,000, 3,000 the number of
2708 attacks that may occur across the country if we lower the
2709 makeup of ozone by an additional part per billion. But
2710 regardless of how the asthma attack starts, when it starts,
2711 for people who have reactive airway disease who are not on
2712 constant chronic treatment, it is generally 2:00 in the
2713 morning or weather changes, somebody brings a dog in the
2714 house, some trigger mechanism that you may not even know.
2715 But when it happens, there used to be a remedy, and the
2716 remedy was drive down to your all-night pharmacy and buy a
2717 Primatene mist inhaler. You can't do that anymore, and you
2718 can't do that because of the Montreal Protocol enforced by

2719 the Environmental Protection Agency. People tell me that the
2720 EPA or I am sorry, the FDA withdrew my asthma inhaler from
2721 the market, but that is actually not true. It was the EPA
2722 under the Montreal Protocol.

2723 Now, we had a great discussion about this a Congress or
2724 two ago, and I attempted to prevail or to get Congress to
2725 allow the continued sale of over-the-counter asthma
2726 medications. Let me just stress. There is no over-the-
2727 counter asthma rescue inhaler available now. There was one
2728 for a brief period of time that the gentlelady from Florida's
2729 district produced, but then that was taken off the market.
2730 So there is nothing out there for the person who has an
2731 asthma attack in the middle of the night. But no less than
2732 our former Chairman Emeritus, Mr. John Dingell, who had been
2733 on this committee for a long time, in precise, quantitative
2734 terms, said that the amount of chlorofluorocarbon in an
2735 asthma inhaler was, and I am quoting him directly, ``only a
2736 piddling amount.'' It seems nonsensical to have removed that
2737 from the market, and we have only done a disservice to
2738 asthmatics across the country. And it was the EPA that
2739 delivered that disservice.

2740 Thank you, Mr. Chairman. I will yield back.

2741 Mr. {Whitfield.} Well, thank you both, and I might say
2742 that that illustrates one of the concerns that we do have

2743 because when that was taken off the market, the price
2744 increase for people suffering from asthma as a replacement
2745 was significant, which raises the issue Ms. Taylor I think
2746 touched on this and Mr. Freeman. We do live in an innovative
2747 country. We have innovative people in business, and they are
2748 able to come within the guidelines with a lot of money and
2749 effort and time. But frequently, and not unusual, it does
2750 affect the performance of the product. And so eventually you
2751 sometimes reach the point where the product is not what it
2752 was, and so the market goes away.

2753 So this has been an informative hearing, and we
2754 genuinely thank all of you. Many of you came from long
2755 distances, and some of you just came from down the street.
2756 But we do appreciate your taking time to be with us and
2757 giving us your perspective on this important issue. And we
2758 look forward to continuing to work with you as we continue to
2759 address this issue. And I am also going to ask unanimous
2760 consent to entering the following documents into the record:
2761 We have a March 17, 2015, letter to EPA Administrator
2762 McCarthy from the Baton Rouge Area Chamber and 15 other
2763 chambers regarding EPA's proposed ozone rule. And we have
2764 about 10 letters here to EPA Administrator McCarthy from
2765 Louisiana chambers outside the Baton Rouge Area. We have a
2766 statement of the American Chemistry Council and a statement

2767 of the American Forest and Paper Association requesting
2768 retention of the current ozone standard. Without objection,
2769 I will enter that into the record.

2770 [The information follows:]

2771 ***** COMMITTEE INSERT *****

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2772 Mr. {Whitfield.} We will keep the record open for 10
2773 days, and once again, we look forward to the reply of Dr.
2774 Diette and Dr. Cox from--someone asked you all a question.
2775 You said you would get back with them. I appreciate that,
2776 and with that, we will conclude today's hearing.

2777 [Whereupon, at 12:40 p.m., the Subcommittees were
2778 adjourned.]