

**H.R. ———, THE PROMOTING NEW  
MANUFACTURING ACT**

---

---

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON ENERGY AND POWER  
OF THE  
COMMITTEE ON ENERGY AND  
COMMERCE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRTEENTH CONGRESS  
SECOND SESSION

—————  
MAY 21, 2014  
—————

**Serial No. 113-147**



Printed for the use of the Committee on Energy and Commerce  
*energycommerce.house.gov*

—————  
U.S. GOVERNMENT PRINTING OFFICE

91-228 PDF

WASHINGTON : 2014

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON ENERGY AND COMMERCE

FRED UPTON, Michigan

*Chairman*

RALPH M. HALL, Texas	HENRY A. WAXMAN, California
JOE BARTON, Texas	<i>Ranking Member</i>
<i>Chairman Emeritus</i>	JOHN D. DINGELL, Michigan
ED WHITFIELD, Kentucky	FRANK PALLONE, Jr., New Jersey
JOHN SHIMKUS, Illinois	BOBBY L. RUSH, Illinois
JOSEPH R. PITTS, Pennsylvania	ANNA G. ESHOO, California
GREG WALDEN, Oregon	ELIOT L. ENGEL, New York
LEE TERRY, Nebraska	GENE GREEN, Texas
MIKE ROGERS, Michigan	DIANA DeGETTE, Colorado
TIM MURPHY, Pennsylvania	LOIS CAPPs, California
MICHAEL C. BURGESS, Texas	MICHAEL F. DOYLE, Pennsylvania
MARSHA BLACKBURN, Tennessee	JANICE D. SCHAKOWSKY, Illinois
<i>Vice Chairman</i>	JIM MATHESON, Utah
PHIL GINGREY, Georgia	G.K. BUTTERFIELD, North Carolina
STEVE SCALISE, Louisiana	JOHN BARROW, Georgia
ROBERT E. LATTA, Ohio	DORIS O. MATSUI, California
CATHY McMORRIS RODGERS, Washington	DONNA M. CHRISTENSEN, Virgin Islands
GREGG HARPER, Mississippi	KATHY CASTOR, Florida
LEONARD LANCE, New Jersey	JOHN P. SARBANES, Maryland
BILL CASSIDY, Louisiana	JERRY McNERNEY, California
BRETT GUTHRIE, Kentucky	BRUCE L. BRALEY, Iowa
PETE OLSON, Texas	PETER WELCH, Vermont
DAVID B. McKINLEY, West Virginia	BEN RAY LUJAN, New Mexico
CORY GARDNER, Colorado	PAUL TONKO, New York
MIKE POMPEO, Kansas	JOHN A. YARMUTH, Kentucky
ADAM KINZINGER, Illinois	
H. MORGAN GRIFFITH, Virginia	
GUS M. BILIRAKIS, Florida	
BILL JOHNSON, Ohio	
BILLY LONG, Missouri	
RENEE L. ELLMERS, North Carolina	

---

SUBCOMMITTEE ON ENERGY AND POWER

ED WHITFIELD, Kentucky

*Chairman*

STEVE SCALISE, Louisiana	BOBBY L. RUSH, Illinois
<i>Vice Chairman</i>	<i>Ranking Member</i>
RALPH M. HALL, Texas	JERRY McNERNEY, California
JOHN SHIMKUS, Illinois	PAUL TONKO, New York
JOSEPH R. PITTS, Pennsylvania	JOHN A. YARMUTH, Kentucky
LEE TERRY, Nebraska	ELIOT L. ENGEL, New York
MICHAEL C. BURGESS, Texas	GENE GREEN, Texas
ROBERT E. LATTA, Ohio	LOIS CAPPs, California
BILL CASSIDY, Louisiana	MICHAEL F. DOYLE, Pennsylvania
PETE OLSON, Texas	JOHN BARROW, Georgia
DAVID B. McKINLEY, West Virginia	DORIS O. MATSUI, California
CORY GARDNER, Colorado	DONNA M. CHRISTENSEN, Virgin Islands
MIKE POMPEO, Kansas	KATHY CASTOR, Florida
ADAM KINZINGER, Illinois	JOHN D. DINGELL, Michigan ( <i>ex officio</i> )
H. MORGAN GRIFFITH, Virginia	HENRY A. WAXMAN, California ( <i>ex officio</i> )
JOE BARTON, Texas	
FRED UPTON, Michigan ( <i>ex officio</i> )	

## C O N T E N T S

---

	Page
Hon. Ed Whitfield, a Representative in Congress from the Commonwealth of Kentucky, opening statement .....	1
Prepared statement .....	2
Hon. Bobby L. Rush, a Representative in Congress from the State of Illinois, opening statement .....	10
Hon. Jerry McNerney, a Representative in Congress from the State of California, opening statement .....	11
Hon. Fred Upton, a Representative in Congress from the State of Michigan, prepared statement .....	105
Hon. Henry A. Waxman, a Representative in Congress from the State of California, prepared statement .....	106
WITNESSES	
Lorraine Gershman, Director, Regulatory and Technical Affairs, American Chemistry Council .....	12
Prepared statement .....	15
Kenneth Weiss, Managing Partner, Global Air Services, Environmental Resources Management .....	18
Prepared statement .....	20
Collin P. O'Mara, Secretary, Department of Natural Resources and Environmental Control, State of Delaware .....	24
Prepared statement .....	27
John D. Walke, Senior Attorney and Director, Climate and Clean Air Program, Natural Resources Defense Council .....	36
Prepared statement .....	38
Karen A. Kerrigan, President and Chief Executive Officer, Small Business and Entrepreneurship Council .....	56
Prepared statement .....	58
Ross Eisenberg, Vice President, Energy and Resources Policy, National Association of Manufacturers .....	63
Prepared statement .....	65
SUBMITTED MATERIAL	
Discussion Draft, H.R. ———, the Promoting New Manufacturing Act, submitted by Mr. Whitfield .....	4



**H.R. ———, THE PROMOTING NEW  
MANUFACTURING ACT**

**WEDNESDAY, MAY 21, 2014**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON ENERGY AND POWER,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:01 a.m., in Room 2322 of the Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee) presiding.

Members present: Representatives Whitfield, Scalise, Shimkus, Terry, Latta, Cassidy, Olson, McKinley, Griffith, Rush, McNerney, Tonko, Barrow, Dingell (ex officio), and Waxman (ex officio).

Staff present: Nick Abraham, Legislative Clerk; Leighton Brown, Press Assistant; Allison Busbee, Policy Coordinator, Energy and Power; Andy Duberstein, Deputy Press Secretary; Tom Hassenboehler, Chief Counsel, Energy and Power; Mary Neumayr, Senior Energy Counsel; Chris Sarley, Policy Coordinator, Environment and the Economy; Alison Cassady, Democratic Senior Professional Staff Member; Caitlin Haberman, Democratic Policy Analyst; Bruce Ho, Democratic Counsel; and Alexandra Teitz, Democratic Senior Counsel, Environment and Energy.

Mr. WHITFIELD. I would like to call this hearing to order. Today we are going to look at the regulatory roadblocks to the Nation's manufacturing renaissance with a discussion draft of a bill entitled the Promoting New Manufacturing Act. And I do want to thank all the witnesses for being with us today. We look forward to your testimony, and certainly I will be introducing each one of you, and we will have questions for you a little bit later. At this time I would like to recognize myself for a 5-minute opening statement.

**OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY**

Polls have shown that the American people are of the opinion that economic growth and job creation is the number one issue facing the American people. And I think all of us recognize that very slow economic growth over the last 6 years has been pretty frustrating for all of us. Now, I know that President Obama, and Vice President Biden, and people in his administration talk about this issue frequently as well. As a matter of fact, the President frequently in public talks about the importance of streamlining the permitting process. And yet, as is so often the case, he frequently says one thing, but then his administration takes actions that are

contrary to that. And that has certainly been happening at EPA, and many of the other regulatory bodies.

Now, the chemical industry estimated, as of this week, that 177 projects, manufacturing projects, have been proposed in the U.S., representing \$112 billion in investment, and over 600,000 high paying manufacturing jobs. This is an extremely positive development, obviously. And also, with the great renaissance that we are having in the natural gas arena, we have a unique opportunity in America to step out in front and be one of the leading competitors in the world, and competing in the world to grow this economy, and create jobs.

But this manufacturing renaissance is far from a done deal, especially given the cumbersome permitting process that these projects must go through. It would be a great disservice to the American people if our Nation's natural gas advantage is squandered through an unnecessarily lengthy bureaucratic process that delays, or even prevents, these job-creating modern new facilities from being built.

Now, I might add that we invited EPA to testify today, but the agency declined our invitation to permit. They did talk to us yesterday, and said they look forward to working with us on a technical basis as we explore this legislation. And obviously we welcome that, that is very important. And even though EPA won't be here today, we do have other witnesses who agree with EPA's position, and I am sure that they will do a great job of explaining precisely the views of their entities, as well as probably the way EPA feels about some of these issues.

I believe this bill contains several commonsense measures to increase transparency, and reduce unnecessary permitting delays. It increases the amount of public information about the number of these permits being issued, how long the process is taking, and also requires more information on EPA's Environmental Appeals Board process. It reduces permitting delays by requiring that the implementing regulations and guidance be finalized concurrently with any new or revised national ambient air quality standard, rather than doing it months, or even years, later. And it also directs EPA to report to Congress on steps being taken by the agency to expedite the permitting process.

I might add that none of the substantive requirements under the Clean Air Act would be altered in any way under this bill. In fact, these new industrial facilities will be considerably cleaner, more efficient than those currently in operation in the U.S., as well as those operating overseas.

So, in sum, the discussion draft includes reasonable steps to streamline the permitting process, something that the administration agrees, at least the President says, needs to be addressed. So we are open to all suggestions to improve this vehicle as we move forward, and I look forward to the hearing.

[The prepared statement of Mr. Whitfield follows:]

#### PREPARED STATEMENT OF HON. ED WHITFIELD

The growth in domestic energy production over the last decade has truly been a game changer. Oil and natural gas have now joined coal as energy sources this Nation possesses in great abundance, and the Energy Information Administration believes that our energy output can continue increasing in the years ahead.

This ought to be very welcomed news, but at almost every turn Federal red tape prevents us from realizing the full potential of our energy bounty. This subcommittee has already taken action on many of these regulatory impediments, including EPA's war on coal, the delays in building Keystone XL and other energy infrastructure projects, and the bureaucratic obstacles that are holding back natural gas exports. Today, we address the regulatory roadblocks to the Nation's manufacturing renaissance with a discussion draft of a bill entitled the Promoting New Manufacturing Act.

Plentiful and affordable natural gas supplies have given domestic manufacturers a potential advantage over the rest of the world. This is especially true for industries that use natural gas both as an energy source and a chemical feedstock. Indeed, the chemicals industry estimated as of this week that 177 projects have been proposed in the U.S., representing \$112 billion in investment and over 600,000 high-paying manufacturing jobs. This is an extremely positive development, especially for an economy that continues to struggle and with so many Americans still out of work.

But this manufacturing renaissance is far from a done deal, especially given the cumbersome permitting process that these projects must go through. It would be a great disservice to the American people if our Nation's natural gas advantage is squandered through an unnecessarily lengthy bureaucratic process that delays or even prevents these job-creating modern new facilities from being built.

President Obama has expressed the same concerns. In his last State of the Union address, he said "businesses plan to invest almost a hundred billion dollars in new factories that use natural gas. I'll cut red tape to help States get those factories built and put folks to work." I look forward to working with the administration to turn these words into action, and I believe that our discussion draft is an important step.

I might add that we wanted EPA to testify today, but the agency declined our invitation to participate. We are sorry that EPA is not here to provide input, especially given that the President has made permit streamlining for industrial facilities a goal of his administration. Nonetheless, we are hopeful EPA will provide us with technical assistance as we move ahead with the Promoting New Manufacturing Act, and we plan to continue reaching out to the agency as we move forward.

I believe this bill contains several commonsense measures to increase transparency and reduce unnecessary permitting delays for preconstruction permits under the Clean Air Act. It increases the amount of public information about the number of these permits being issued and how long the process is taking, and also requires more information on EPA's Environmental Appeals Board process. It reduces permitting delays by requiring that the implementing regulations and guidance be finalized concurrently with any new or revised National Ambient Air Quality Standard (NAAQS) rather than months or even years later. And it also directs EPA to report to Congress on steps being taken by the agency to expedite the permitting process.

I might add that none of the substantive requirements under the Clean Air Act would be altered in any way by this bill. In fact, these new industrial facilities will be considerably cleaner and more efficient than those currently in operation in the U.S. as well as those operating overseas.

In sum, the discussion draft includes reasonable steps to streamline the permitting process, something that the administration agrees needs to be addressed. We are open to all suggestions to improve this vehicle so that America's manufacturing renaissance can commence as soon as possible.

[The discussion draft follows:]

**[DISCUSSION DRAFT]**113TH CONGRESS  
2D SESSION**H. R.** \_\_\_\_\_

To promote new manufacturing in the United States by providing for greater transparency and timeliness in obtaining necessary permits, and for other purposes.

---

**IN THE HOUSE OF REPRESENTATIVES**

M. \_\_\_\_\_ introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

---

**A BILL**

To promote new manufacturing in the United States by providing for greater transparency and timeliness in obtaining necessary permits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Promoting New Manu-  
5 facturing Act”.

1 **SEC. 2. BUILDING AND MANUFACTURING PROJECTS**  
2 **DASHBOARD.**

3 (a) IN GENERAL.—The Administrator shall, with re-  
4 spect to fiscal year 2008 and each subsequent fiscal year,  
5 publish in a readily accessible location on the Environ-  
6 mental Protection Agency's public Website the following:

7 (1) The total number of preconstruction per-  
8 mits issued during the fiscal year.

9 (2) The percentage of such preconstruction per-  
10 mits issued within one year after the date of filing  
11 of a completed application.

12 (3) The average length of time for the Agency's  
13 Environmental Appeals Board to issue a final deci-  
14 sion on petitions appealing decisions to grant or  
15 deny a preconstruction permit application.

16 (b) INITIAL PUBLICATION; UPDATES.—The Adminis-  
17 trator shall—

18 (1) make the publication required by subsection  
19 (a) for fiscal years 2008 through 2013 not later  
20 than 60 days after the date of enactment of this  
21 Act; and

22 (2) update such publication not less than annu-  
23 ally.

1 **SEC. 3. TIMELY ISSUANCE OF REGULATIONS AND GUID-**  
2 **ANCE TO ADDRESS NEW OR REVISED NA-**  
3 **TIONAL AMBIENT AIR QUALITY STANDARDS**  
4 **IN PRECONSTRUCTION PERMITTING.**

5 (a) **IN GENERAL.**—In publishing any final rule estab-  
6 lishing or revising a national ambient air quality standard,  
7 the Administrator shall concurrently publish regulations  
8 and guidance for implementing the standard, including in-  
9 formation relating to submission and consideration of a  
10 preconstruction permit application under the new or re-  
11 vised standard.

12 (b) **APPLICABILITY OF STANDARD TO**  
13 **PRECONSTRUCTION PERMITTING.**—If the Administrator  
14 fails to publish final regulations and guidance that include  
15 information relating to submission and consideration of a  
16 preconstruction permit application under a new or revised  
17 national ambient air quality standard concurrently with  
18 such standard, then such standard shall not apply to the  
19 review and disposition of a preconstruction permit applica-  
20 tion until the Agency has published such final regulations  
21 and guidance.

22 (c) **RULE OF CONSTRUCTION.**—After publishing reg-  
23 ulations and guidance for implementing national ambient  
24 air quality standards under subsection (a), nothing in this  
25 section shall preclude the Environmental Protection Agen-

1 cy from issuing subsequent regulations or guidance to as-  
2 sist States and facilities in implementing such standards.

3 **SEC. 4. REPORT TO CONGRESS ON ACTIONS TO EXPEDITE**  
4 **REVIEW OF PRECONSTRUCTION PERMITS.**

5 (a) IN GENERAL.—Not later than 120 days after the  
6 date of enactment of this Act, and annually thereafter,  
7 the Administrator shall submit to Congress a report—

8 (1) identifying the goals of the Environmental  
9 Protection Agency, including specific timelines, to  
10 expedite the process for issuance of preconstruction  
11 permits;

12 (2) identifying the specific reasons for delays in  
13 issuing—

14 (A) preconstruction permits required under  
15 part C of the Clean Air Act (42 U.S.C. 7470  
16 et seq.) beyond the one-year statutory deadline  
17 mandated by section 165(c) of the Clean Air  
18 Act (42 U.S.C. 7475(c)); or

19 (B) preconstruction permits required under  
20 part D of the Clean Air Act (42 U.S.C. 7501  
21 et seq.) beyond the one-year period beginning  
22 on the date on which the permit application is  
23 determined to be complete;

F:\WPB\CO13R\PRECONSTRUCTION\_02.XM[Discussion Draft]

1 (3) describing how the Agency is resolving  
2 delays in making completeness determinations for  
3 preconstruction permit applications;

4 (4) describing how the Agency is resolving proc-  
5 essing delays for preconstruction permits; and

6 (5) summarizing and responding to public com-  
7 ments concerning the report received under sub-  
8 section (b).

9 (b) PUBLIC COMMENT.—Before submitting each re-  
10 port required by subsection (a), the Administrator shall  
11 publish a draft report on the website of the Environmental  
12 Protection Agency and provide the public with a period  
13 of at least 30 days to submit comments on the draft re-  
14 port.

15 **SEC. 5. DEFINITIONS.**

16 In this Act:

17 (1) ADMINISTRATOR.—The term “Adminis-  
18 trator” means the Administrator of the Environ-  
19 mental Protection Agency.

20 (2) MAJOR EMITTING FACILITY; MAJOR STA-  
21 TIONARY SOURCE.—The terms “major emitting fa-  
22 cility” and “major stationary source” have the  
23 meaning given to those terms in section 302(j) of  
24 the Clean Air Act (42 U.S.C. 7602(j)).

1           (3) NATIONAL AMBIENT AIR QUALITY STAND-  
2           ARD.—The term “national ambient air quality  
3           standard” means a national ambient air quality  
4           standard for an air pollutant under section 109 of  
5           the Clean Air Act (42 U.S.C. 7409) that is finalized  
6           on or after the date of enactment of this Act.

7           (4) PRECONSTRUCTION PERMIT.—The term  
8           “preconstruction permit”—

9                   (A) means a permit that is required under  
10                  part C or D of title I of the Clean Air Act (42  
11                  U.S.C. 7470 et seq.) for the construction or  
12                  modification of a major emitting facility or  
13                  major stationary source; and

14                   (B) includes any such permit issued by the  
15                  Environmental Protection Agency or a State,  
16                  local, or tribal permitting authority.

Mr. WHITFIELD. At this time, I would like to recognize the gentleman from Chicago, Mr. Rush, for a 5-minute opening statement.

**OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. RUSH. I want to thank you, Mr. Chairman. Mr. Chairman, the Promoting New Manufacturing Act is billed as legislation that will require greater transparency and timeliness in obtaining preconstruction permits for new manufacturing facilities, as required under the Clean Air Act. Mr. Chairman, while I am not opposed to the idea of expediting the permitting process in a practical and thoughtful way, I am not convinced that the bill before us today as currently drafted is the way to go about, in terms of reforming this process.

One of the main concerns I have, Mr. Chairman, with this legislation is that it puts an additional burden, and additional responsibility, on the U.S. EPA at a time when Congress has been steadily slashing funding for the EPA, making it much more difficult, if not impossible for it to carry out all of its duties, these new duties, even some of the new duties that this bill today requires.

Additionally, this bill today before us appears to exempt new facilities from complying with the revised national ambient air quality standards if specific unrealistic conditions are not met, without taking into consideration the fact that much of the guidance, much of the implementation regulations, are enacted on the State level. Specifically, Mr. Chairman, Section 3 adds a new requirement for the EPA that, when publishing any final new or revised national ambient air quality standard, it must also concurrently, and I quote, "publish implementing regulations and guidance."

However, Mr. Chairman, in many cases State and regulated entities already have the tools and the guidance necessary for implementing the new national ambient air quality standards, and in other cases, this guidance evolves organically as issues and questions appear. I feel the consequence of this provision in Section 3, either intentionally or unintentionally, is that it may lead to an emergence of new lawsuits by industry, claiming that the EPA failed to meet this new requirement of concurrently issuing all final regulations and guidance, which may subsequently lead to detrimental delays in the issuance of new protected air quality standards.

I also have concerns with the provision stating that a new or revised—shall not apply to the review and the disposition of a preconstructed permit application, unless final regulations and guidance concerning the submittal and consideration of permit applications have already been published. If a new facility is allowed to be built in an attainment area, but it does not have to comply with new or revised national ambient air quality standards, it is unclear how that new facility will impact existing facilities that may want to expand. And, in fact, it may push the entire area into a non-attainment area under this legislation, Mr. Chairman.

Additionally, in areas of non-attainment, allowing new facilities to be constructed that do not have to meet revised national ambient air quality standards may force other existing facilities to make

even deeper cuts in their pollution emissions in order to bring the area into attainment.

Finally, Mr. Chairman, while I look forward to engaging the distinguished panelists before us here today, I think that it would serve the members of this subcommittee well, it will serve all interested parties well, to hear from, and to question the EPA directly on how this legislation would affect the permitting processing. Mr. Chairman, I hope that we will have the opportunity to do so before we move this bill to markup, and I yield back.

Mr. WHITFIELD. Thank you, Mr. Rush. Mr. Upton is not here this morning. Mr. Shimkus, do you or Mr. Latta have any comments? OK. At this time we will recognize the gentleman from California, Mr. McNerney, for his opening statement.

**OPENING STATEMENT OF HON. JERRY MCNERNEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. MCNERNEY. Thank you, Mr. Chairman. I wasn't expecting to get up this early. I think today's hearing focuses on the discussion draft of Promoting New Manufacturing Act, and I thank the witnesses for coming here this morning, taking time to testify about the proposed legislation. I hope that we will have an opportunity to hear from the EPA before we go to marking up this bill as well.

I strongly support promoting new manufacturing in the United States, and, in fact, I spent a decade in the manufacturing sector, so I sympathize. However, in my humble opinion, Mr. Chairman, the bill looks like an attempt to weaken the Clean Air Act, so we need some work on this provision.

Under the current law, the EPA sets national ambient air quality standards at levels sufficient to protect public health, and with an adequate margin of safety. Essentially, these standards identify the level of air pollution that is safe to breathe. When a company wants to build a new large facility, or expand an existing one, it has to apply for a preconstruction permit. States, not the EPA, issue most of these permits. To get a permit, a company must commit to install appropriate pollution controls, and show that the emissions from the new expanded facility will not cause a violation of the air quality standards. That is a straightforward standard. We shouldn't allow new facilities to worsen already dirty air, or make clean air unsafe to breathe.

Periodically the EPA updates the air quality standards, when the scientific evidence shows that it is necessary to protect public health. Under the Clean Air Act, new facilities need to meet whatever air quality standard is in place, and that ensures that the air is healthy to breathe. But this bill says that the EPA must issue regulations and guidance for implementing a new air quality standard at the same time that it issues the standard. If the EPA doesn't do this, then, to get a permit, new facilities only have to show that they meet the old, less protective standard.

I represented a part of California's San Joaquin Valley, which has some of the Nation's worst air pollution. These conditions negatively affect the quality of life, including health, safety, and missed days of school and work. In other words, air quality isn't just a public health issue, but it is an economic issue. In the valley, the

district has up to 180 days to make a determination, but often these cases are permitted in just a few hours. Our region has been successful in addressing preconstruction permitting.

However, the bill introduces uncertainty into the permitting process, requiring the EPA to issue regulations and guidance, but it is not clear what regulations and guidance will be sufficient. Also, when a facility gets a permit under the old standard, it is unclear whether it would be grandfathered in permanently, or whether it would have to go back later and install additional pollution controls. Adding uncertainty will delay the permitting process.

The bill also imposes a host of new reporting requirements about permitting times, which impacts the States, since the States, and not the EPA, actually issue almost all of these permits. This reporting burden will be carried by the same State and EPA personnel who process the permits. The bill adds to their workload, and authorizes no new funding.

People in my district in the Valley deserve clean air, and the Valley has made substantial progress in addressing this goal. And, in fact, this year is the cleanest air on record. We should continue to build on those efforts, not increase the burdens on air pollution controlled districts. We should be discussing how we can deliver more funding and resources for those agencies, rather than weakening public health protections.

Mr. Chairman, I yield back.

Mr. WHITFIELD. Thank you very much, Mr. McNerney. And, once again, I want to thank the six witnesses for being with us this morning. All of you are quite knowledgeable, and we look forward to your testimony.

Instead of introducing each one of you, and then going back and introduce you again, I am just going to introduce you one by one as I recognize you for your 5 minutes. So our first witness this morning is Ms. Lorraine Gershman, who is the Director of Regulatory and Technical Affairs at the American Chemistry Council. And, Ms. Gershman, you are recognized for 5 minutes.

**STATEMENTS OF LORRAINE GERSHMAN, DIRECTOR, REGULATORY AND TECHNICAL AFFAIRS, AMERICAN CHEMISTRY COUNCIL; KENNETH WEISS, MANAGING PARTNER, GLOBAL AIR SERVICES, ENVIRONMENTAL RESOURCES MANAGEMENT; COLLIN P. O'MARA, SECRETARY, DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, STATE OF DELAWARE; JOHN D. WALKE, SENIOR ATTORNEY AND DIRECTOR, CLIMATE AND CLEAN AIR PROGRAM, NATURAL RESOURCES DEFENSE COUNCIL; KAREN A. KERRIGAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, SMALL BUSINESS AND ENTREPRENEURSHIP COUNCIL; AND ROSS EISENBERG, VICE PRESIDENT, ENERGY AND RESOURCES POLICY, NATIONAL ASSOCIATION OF MANUFACTURERS**

**STATEMENT OF LORRAINE GERSHMAN**

Ms. GERSHMAN. Thank you. Chairman Whitfield, Ranking Member Rush, members of the subcommittee, thank you for the opportunity to testify on behalf of the American Chemistry Council in support of the draft legislation Promoting New Manufacturing Act.

This legislation will improve the regulatory permitting process for new and expanded factories, and help ensure continued growth in shale related manufacturing in the United States.

ACC represents the leading companies engaged in the business of chemistry. We apply the science of chemistry to create innovative products and services that help make peoples' lives better, healthier, and safer. The U.S. chemical industry is a key element of the economy, providing 784,000 skilled, good paying jobs all across our country. We are among the Nation's largest exporters and investors in R and D. Our advanced materials and technologies include many that help save energy and reduce greenhouse gas emissions. High performance building insulation and windows, solar panels and wind turbines, and lightweight packaging and vehicle parts all start with chemistry.

America's chemical industry is undergoing a historic expansion made possible by abundant, affordable supplies of natural gas and natural gas liquids from shale formations. Due to our decisive competitive advantage in the cost and availability of energy and feed stock, the United States is currently the most attractive place in the world to invest in chemical manufacturing. As of this week, 177 chemical industry projects, valued at \$112 billion in potential new U.S. investment, have been announced. Fully 62 percent of this is foreign direct investment. Within 10 years, the new investments could generate tens of billions of dollars in new chemical industry exports, and hundreds of thousands of permanent new jobs.

All of these projects must undergo a lengthy and complex environmental permitting process, filled with challenges that could derail the investments. Problems include uncertainty as to the schedule and process for obtaining a final preconstruction permit, and a requirement that companies use emission modeling programs that cannot adequately accommodate site specific data. Once a project is significantly delayed, the project can be scrapped, and companies make plans to proceed elsewhere.

During his State of the Union address this past January, President Obama highlighted the important role that domestic natural gas is playing in the U.S. economy, and committed his administration to facilitate the permitting process for manufacturing projects. The President said, "Businesses plan to invest over \$100 billion in new factories that use natural gas. I will cut red tape to help those States get these factories built." The White House fact sheet stated, "The administration will help States and localities coordinate review of proposed private sector projects to invest in new energy intensive U.S. manufacturing plants relying on natural gas."

Manufacturing facilities must be able to obtain required permits in a timely, transparent, and efficient manner. In recent years, EPA has tightened a number of NAAQS, including ozone in 2008, nitrogen dioxide and sulfur oxides in 2010, and fine particulate matter in 2012. A proposed tighter ozone NAAQS is expected later this year. Meanwhile, EPA is still working to implement these standards, along with some even older NAAQS. Lacking clear direction from EPA, State permitting agencies and manufacturing facilities have, at times, been left confused about the requirements to complete the preconstruction permitting process.

Manufacturing facilities need certainty and transparency in the permitting process. The steps required to obtain a preconstruction air permit within the Clean Air Act's required 12 month deadline must be clear to all. EPA must issue implementation rules and guidance in tandem with any final NAAQS rules. The Promoting New Manufacturing Act will improve the permitting process by creating a dashboard showing the total number of preconstruction permits issued during the fiscal year, the percentage issued within 1 year of application, and the average length of the review process, requiring EPA to issue guidance concurrent with any new rules so that manufacturers fully understand how to comply, and directing EPA to prepare an annual report to Congress on actions the agency has taken to expedite the permitting process.

The Promoting New Manufacturing Act represents a step towards a timely, efficient, and transparent regulatory process. We are hopeful that, with continued leadership from this committee, and others in the House, that we can pass this bill, and expedite the unprecedented chemical industry investment planned for the United States. With that, I would be happy to take any questions.

[The prepared statement of Ms. Gershman follows:]



**Statement for the Record**  
**Lorraine Gershman**  
**Director of Regulatory & Technical Affairs**  
**American Chemistry Council**  
**Before**  
**House Energy and Commerce**  
**Subcommittee on Energy and Power**

**May 21, 2014**

Chairman Whitfield, Ranking Member Rush, thank you for the opportunity to testify on behalf of the American Chemistry Council<sup>1</sup> in support of the draft legislation "Promoting New Manufacturing Act." This legislation will improve the regulatory permitting process for new factories and help ensure continued growth in shale-related manufacturing in the United States.

ACC represents the leading companies engaged in the business of chemistry. We apply the science of chemistry to create innovative products and services that make people's lives better, healthier, and safer. The U.S. chemical industry is a key element of the economy, providing 784,000 skilled, good-paying jobs all across our country. We are among the nation's largest exporters and investors in R&D. Our advanced materials and technologies include many that help save energy and reduce greenhouse gas emissions. High-performance building insulation and windows, solar panels and wind turbines, and lightweight packaging and vehicle parts all start with chemistry.

---

<sup>1</sup> *The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$770 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for twelve percent of all U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.*



May 21, 2014  
Page 2

America's chemical industry is undergoing a historic expansion made possible by abundant, affordable supplies of natural gas and natural gas liquids from shale formations. Due to our decisive competitive advantage in the cost and availability of energy and feedstock, the United States is currently the most attractive place in the world to invest in chemical manufacturing. As of this week, 177 chemical industry projects valued at \$112 billion in potential new U.S. investment have been announced. Fully 62% of this is foreign direct investment. By 2023, the new investments could generate tens of billions in new chemical industry exports and hundreds of thousands of permanent new jobs.

All of these projects must undergo a lengthy and complex environmental permitting process filled with challenges that could derail the investment. Problems include uncertainty as to the schedule for obtaining a final pre-construction permit, a requirement that companies use emission modeling programs that cannot adequately accommodate site-specific data, and the need to address public input and legal challenges. Once a project is significantly delayed, the project is often scrapped, and companies make plans to proceed elsewhere.

During his State of the Union Address, President Obama highlighted the important role that domestic natural gas is playing in the U.S. economy and committed his Administration to facilitate the permitting process for manufacturing projects. The President said, "Businesses plan to invest almost \$100 billion in new factories that use natural gas. I'll cut red tape to help states get those factories built..." The White House fact sheet stated, "The Administration will help States and localities coordinate review of proposed private sector projects to invest in new energy-intensive U.S. manufacturing plants relying on natural gas."

Manufacturing facilities must be able to obtain required permits in a timely, transparent, and efficient manner. In recent years, the U.S. Environmental Protection Agency (EPA) has tightened a number of national ambient air quality standards (NAAQS)<sup>2</sup> without fully

---

<sup>2</sup> Examples include ozone in 2008, nitrogen dioxide and sulfur oxides in 2010, and fine particulate matter in 2012. A proposed tighter ozone NAAQS is expected later this year. EPA is still working to implement these standards, along with some older NAAQS, including the 1997 ozone NAAQS and the 1997 and 2006 particulate matter NAAQS.



May 21, 2014  
Page 3

implementing them. Lacking clear direction from EPA, state permitting agencies and manufacturing facilities have, at times, been left confused about the requirements to complete the preconstruction permitting process.

Manufacturing facilities need certainty and transparency in the permitting process. The steps required to obtain a preconstruction air permit within the Clean Air Act's required 12-month deadline<sup>3</sup> must be clear to all. EPA must issue implementation rules and guidance in tandem with any final NAAQS rules.

The "Promoting New Manufacturing Act" will improve the permitting process by:

- Creating a "dashboard" showing the total number of preconstruction permits issued during the fiscal year, the percentage issued within one year of application, and the average length of the review process;
- Requiring EPA to issue guidance concurrent with any new rules so that manufacturers fully understand how to comply; and
- Directing EPA to prepare an annual report to Congress on actions the Agency has taken to expedite the permitting process.

The Promoting New Manufacturing Act represents a step toward a timely, efficient, and transparent regulatory permitting process. We are hopeful that with continued leadership from this committee and others in the House, we can pass this bill and expedite the unprecedented chemical industry investment planned for the United States.

With that, I would be happy to take questions.

---

<sup>3</sup> See 42 U.S.C. 7475(c)



Mr. WHITFIELD. Thank you very much, Ms. Gershman. At this time I would like to recognize Mr. Ken Weiss, who is the global managing partner for the Air and Climate Change Environmental Resource Management Company. And you are recognized for 5 minutes, Mr. Weiss.

#### STATEMENT OF KENNETH WEISS

Mr. WEISS. Thank you. Chairman Whitfield, Ranking Member Rush, thank you for the opportunity to testify in support of the draft legislation Promoting New Manufacturing Act. The legislation will remove much uncertainty and related schedule delays from the air emissions permitting process for major capital projects, and help ensure continued growth in manufacturing in the United States.

ERM is a leading global provider of environmental health safety and sustainability related services. We have more than 5,000 people operating in 40 countries, and about 150 offices around the world. Seventy of those offices are in the United States. We have about 350 air quality staff in the United States. We have worked for about 50 percent of the global Fortune 500 in the past 5 years on air quality related assignments, and each year we do about 800 air quality related assignments.

Most of our work is in the oil and gas, power, mining, chemicals, and manufacturing sectors, across a wide swath of American industry, and a significant portion of my practice is advising these industries and my clients on the impacts of their permitting regulations on major capital projects. My experience almost unanimously is that air preconstruction permits are typically on the critical path of the vast majority of major capital projects, and that about 900 projects a year might require these types of permits that would be facilitated by the Promoting New Manufacturing Act.

Companies seeking to execute capital projects need to be able to develop realistic and predictable project timelines. This would ensure that equipment can be designed, procured, installed, and brought online when expected, and also support investment decisions. The uncertainty in the permitting process creates significant issues for such investment decisions. Companies are forced to guess at the amount of additional time to build into the permitting cycle for planning, as EPA often fails to meet the 1-year time limit allowed in the Clean Air Act for processing a permit. For projects that have investment needs of billions of dollars, the impact of these delays should not be underestimated.

The Promoting New Manufacturing Act removes much of this uncertainty by ensuring that the EPA has issued final guidance to permit applicants on the exact manner in which to conduct the permitting analyses associated with capital projects. Guidance is necessary, as many technical issues must be addressed in determining how to conduct the analyses that can show compliance with the ambient air quality standards. This is particularly important, as EPA is constantly updating the ambient air quality standards. EPA recently tightened the NAAQS for nitrogen dioxide and sulfur oxides in 2010, and fine particle matter in 2012, and is expected to issue a tighter ozone standard later this year. At the same time,

the agency is working to implement these standards, along with some older NAAQS, including the 1997 and 2008 ozone NAAQS, and the 1997 and 2006 particulate matter NAAQS. This disconnect results in State permitting agencies and the regulated community in not having clear direction from the EPA regarding what needs to be done to complete the air preconstruction permitting process.

EPA's failure to provide final implementation rules and guidance to the regulated community and State agencies is easily documented. Using the fine particle matter standard as an example, it was not until May 16, 2008 that EPA promulgated its final rule for implementation of the new source review program for fine particle matter, despite having promulgated the NAAQS in 1977 and 2006. Importantly, the 2008 rule required certain gases to be considered precursor emissions to fine particle formation.

Precursor emissions are emitted as gases, but react in the atmosphere to foreign particulate matter, such as sulfate and nitrates. Despite having adopted this rule in 2008, even today there is no final guidance available from EPA on how to conduct a fine particle matter ambient air quality analysis, nor is there any approved computer model available to analyze emissions surrounding the chemical transformation of precursor emissions into particular matter, a major contributor to fine particle concentrations in the ambient air.

The most recent guidance from EPA on how to conduct this analysis is labeled draft, and was issued in March of 2013. It has not been finalized now, more than a year since its release. Affected sources have no choice but to be left with uncertainty. We routinely advise clients that obtaining a PSD permit can require anywhere from 1 to 3 years, and that a minimum of 12 to 18 months need to be allowed in the project schedule.

The types of issues we have seen have included a large shale gas fired combustion turbine that was being constructed right in the middle of adoption of the PM<sub>2.5</sub> NAAQS. The new, more stringent, NAAQS could not be met in the area of the project location, so there was no way to make the required air quality demonstrations. EPA guidance was non-existent, and the State did not know how to resolve this issue. This caused unnecessary project delays for a major new gas turbine.

We worked on a steel plant in Louisiana that was delayed due to issues surrounding the NO<sub>2</sub> ambient air quality standard that was adopted during a review of the permit application, and more than a year after the application was filed. We currently estimate that the lack of guidance added 2 years to the project schedule.

The above examples are just a few of the obstacles we have experienced firsthand. The list of obstacles will grow as more facilities apply for preconstruction permits, and as the NAAQS continue to get more stringent. Additionally, by requiring the EPA to determine its track records to meeting the permit processing timeline, the agency will have the information necessary to act on and remove the underlying causes of project delays created unintentionally by the permitting program.

Thanks for your time. I will be happy to answer any questions you may have.

[The prepared statement of Mr. Weiss follows:]



**Statement for the Record  
Kenneth Weiss  
Managing Partner, Global Air Services  
Environmental Resources Management  
Before  
House Energy and Commerce  
Subcommittee on Energy and Power**

**May 21, 2014**

Chairman Whitfield, Ranking Member Rush, thank you for the opportunity to testify in support of the draft legislation “Promoting New Manufacturing Act.” This legislation will remove much uncertainty and related schedule delays from the air emissions permitting process for major capital projects and help ensure continued growth in manufacturing in the United States.

Environmental Resources Management (ERM) is a leading global provider of environmental, health, safety, risk, social consulting services and sustainability related services. We have more than 5,000 people in over 40 countries and territories working out of more than 150 offices; approximately 70 of which are in the United States. Over the past five years we have worked for more than 50 per cent of the Global Fortune 500 delivering innovative solutions for business and selected government clients helping them understand and manage the sustainability challenges that the world is increasingly facing. In the United States, our staff includes approximately 350 Air Quality Professionals. Last year we completed around 800 air quality assignments in the US, many of which involved minor or major source permitting efforts. Most of our work is in the Oil and Gas, Power, Mining, Chemicals and Manufacturing sectors across a wide swath of American industry. A significant portion of my practice is advising my clients on the impacts of air permitting regulations on major capital projects.

My experience is that air preconstruction permits are typically on the critical path of the vast majority of major capital projects and that about 900 projects a year require the types of permits that would be facilitated by the Promoting New Manufacturing Act. Companies seeking to execute capital projects need to be able to develop realistic and predictable project timelines. This would ensure that equipment can be designed, procured, installed, and brought on-line when expected and also support investment decisions. The uncertainty in the permitting process creates significant issues for such investment decisions. Companies are forced to guess at the amount of additional time to build into the permitting cycle for planning as EPA often fails to meet the one-year time allowed in the Clean Air Act for processing a permit. For projects that have investment needs of billions of dollars, the impact of these delays should not be underestimated.

The “Promoting New Manufacturing Act” removes much of this uncertainty by ensuring that the EPA has issued final guidance to permit applicants on the exact manner in which to conduct the permitting analyses associated with capital project permitting. Guidance is necessary as many technical issues must be addressed in determining how to conduct the air dispersion analyses to show compliance with the National Ambient Air Quality Standards (NAAQS). This is particularly important as EPA is constantly updating the NAAQS.

For example, EPA recently tightened the NAAQS for nitrogen dioxide and sulfur oxides in 2010, and fine particulate matter in 2012, and is expected to propose a tighter ozone NAAQS later this year. At the same time, EPA is still working to implement these standards, along with some older NAAQS, including the 1997 and 2008 ozone NAAQS and the 1997 and 2006 particulate matter NAAQS. This disconnect results in state permitting agencies and the regulated community in not having clear direction from EPA regarding what needs to be done to complete the air preconstruction permitting process.

EPA’s failure to provide final implementation rules and guidance to the regulated community and state agencies is easily documented. Using the final particle matter standard as an example, it was not until May 16, 2008 that EPA promulgated its final rule for “Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>) despite

Page 3 of 4

having promulgated a fine particle NAAQS in 1997 and 2006. Importantly, the 2008 rule required certain gases to be considered precursor emissions to fine particle formation. Precursor emissions are emitted as gases but react in the atmosphere to form fine particulate matter such as sulfates and nitrates. Despite having adopted this rule in 2008, even today there is no final guidance available from EPA on how to conduct a fine particle matter ambient air quality analysis nor is there an approved computer model available to analyze issues surrounding fine particle matter formation due to the chemical transformation of precursor emissions, a major contributor to fine particle concentrations in the ambient air. The most recent guidance from EPA on how to conduct a fine particle ambient air impact assessment is labeled draft and was issued in March of 2013. It has not been finalized now more than a year since its release.

Affected sources have been left with much uncertainty regarding how to conduct the required analyses and have no choice but to add time to project schedules to reflect such uncertainty. For example, at ERM, we routinely advise clients that obtaining a PSD permit can require anywhere from one to three years and that, at a minimum, twelve to eighteen months should be allowed in the project schedule for permit application, preparation, review and processing.

The types of issues that ERM has seen include:

- 1) A project to take advantage of low cost shale gas was delayed as the PM<sub>2.5</sub> NAAQS standard was made more stringent in the midst of the project schedule. The new more stringent PM<sub>2.5</sub> standard could not be met in the area of the project location so there was no way to make the required air quality demonstrations. EPA guidance was non-existent and the state did not know how to resolve the issue. This caused unnecessary project delays for a major new gas turbine.
- 2) ERM worked on a steel plant permit in Louisiana that was substantially delayed due to issues surrounding the NO<sub>2</sub> ambient air quality standard that was adopted during review of the permit application, and more than a year after the application was filed. We estimate the lack of appropriate guidance added two years to the project schedule and the permit is still not yet final.

- 3) The existing air models are overly conservative, and can double count existing sources. Monitoring stations for pollutants monitor actual emissions from the surrounding area, including nearby industrial sources. But when models are used, the starting inputs are the hourly permitted emissions from industrial sources, not actual emissions.

These above examples are just a few of the obstacles ERM has experienced first-hand. The list of obstacles will likely continue to grow, as more facilities apply for preconstruction permits and as the NAAQS continue to get more stringent. The Promoting New Manufacturing Act would help provide facilities with certainty over the requirements and steps needed to obtain a preconstruction air permit within the Clean Air Act's required 12 month deadline.

Additionally, by requiring EPA to determine its track-record with respect to meeting the permit processing timeline mandated by the Clean Air Act, the Agency will have the information necessary to act on and remove the underlying causes of project delays created unintentionally by the permitting program.

Thank you very much for your time. I am happy to answer any questions you may have.

Mr. WHITFIELD. Thank you. Our next witness is Mr. Colin O'Mara, good to see you, who is Secretary of the Delaware Department of Natural Resources and Environmental Control. And we are glad you are with us, and you are recognized for 5 minutes.

**STATEMENT OF COLLIN P. O'MARA**

Mr. O'MARA. Thank you, Mr. Chairman, Ranking Member Rush. I greatly appreciate you accommodating me, being a last-minute add to this panel, replacing my staff member. I will actually be starting a new job in 2 months. This will probably be the last time I will be before you in this capacity. I am going to become the CEO of the National Wildlife Federation, so you will be hearing me to bother you about wildlife issues in the future, maybe a little less on the Clean Air Act. But—

Mr. RUSH. Mr. Chairman, I just want to extend congratulations to him.

Mr. O'MARA. Thank you.

Mr. RUSH. What a promotion.

Mr. O'MARA. I will be in Illinois soon, so—

Mr. WHITFIELD. Yes, and we have a lot of issues we want to talk to you about on wildlife.

Mr. O'MARA. Nothing is as sticky as this stuff. Thank you very much for having me today. Delaware has a long, proud history of manufacturing. You know, companies like DuPont, Gore, you know, we have a refinery, all kind, you know, the chemical industry in many ways completely grew out of Delaware. And we actually agree with the premise of this effort, that more efficient permitting, more predictable, more clear and certain permitting is obviously a good thing for economic growth. We just kind of question the unintended consequences of this particular approach, and have maybe a few suggestions for a different way to look at it.

In Delaware, under the leadership of our Governor, Jack Markel, we have focused like a laser on trying to improve permitting efficiency. You know, and my Air Director is sitting behind me, Ali Mirzakhali, one of the finest Air Directors in the county, put his team through an incredible process of value stream mapping, trying to reduce permit times. He is gone, you know, our permits for kind of major sources take about 4 months, where in many other States it is more than a year. Our minor sources will take 2 months. We are at about 72 days right now, compared to about 104 days, about 3½ months, about 3 or 4 years ago. And so we have shown that, by having a better process, we can get through the permits more quickly, providing the certainty.

And that is really the key to our approach in Delaware. The approach is fairly simple. We want to provide certainty to industry by articulating clear standards. We want to deliver permits in a timely and efficient manner, so they get the decisions they need. And then we actually supplement our strategy with one other piece. We actually provide some incentives. If folks are willing to go above and beyond permitting requirements, we provide, you know, small grants. They want, you know, maybe adopting cleaner fuels, or helping them get, you know, a gas pipeline to the site, or, you know, things that can actually make the facility better long run. And it is because we strongly believe in the underlying belief

in the Clean Air Act, and the tenet of the Clean Air Act, that it is much cheaper to reduce emissions during the design of a facility than it is to try to retrofit later.

Now, a lot of these facilities around the country that have tried to, you know, add controls later, and you have heard this in response to the Toxic Rule and others, the expense and the time that folks need to try to do it after the fact. If we can figure out ways to incorporate these technologies earlier, it is cheaper, and it doesn't create kind of unintended consequences in other facilities.

And I think that the challenge with this bill as proposed, and I really appreciate the opportunity to come at the draft discussion level, before it is formally introduced, before it is marked up, because the unintended consequence of having folks go in and apply for permits under an old standard, when a new standard has already been promulgated in a meaningful way, even though the guidance may not have been issued, puts both the State and the regulated entity in an incredibly precarious position. The regulated entity is basically knowingly not putting the controls that would be necessary for the standard that is promulgated that is fully in the Federal Code at that point, so there is a potential legal liability there. The State, then, has to figure out other places to make up the reductions that could have been more cost effectively reduced through the controls being put on at this new facility.

And so what ends up happening is it might help that individual facility, if they have to do less on the control side. The challenge is those reductions that could have been achieved have to be made up somewhere else. And so, as we are trying to put together our State implementation plans, we might have to go back to an existing industry that has already put on a lot of controls, trying to get that extra additional ton out of that facility, because this other facility didn't kind of do their fair share.

The other kind of inequity that we could create unintentionally is that a new facility that comes in after the guidance. So you could have two facilities, same type of operation, gas turbine generation, you know, one that comes in before the guidance is promulgated, one that comes in afterwards. The one that comes in afterwards is going to have to meet a higher standard, creating another inequity there, where they are doing more to go above and beyond the requirements for exactly the same facility in the same State. You know, we would much rather see ways to, you know, to really kind of incentivize the folks that go above and beyond the permit conditions, rather than having this inequity of the types of standards that different folks meet.

And it really comes back to the underlying assumption that I will challenge in the bill, that States aren't doing a good job figuring this out. EPA has had slow guidance on many of these rules. I mean, the 2008 is a good example. But that doesn't paralyze the States in any meaningful way. We are talking to each other all the time. We are moving ahead. Frankly, a lot of times, the way that we issue permits in Delaware, and a lot of the East Coast States are actually more efficient and more flexible than the way the guidance actually comes out later. Like, actually not having the guidance, and allowing us to implement under just the rule allows us to be more nimble, and actually help industry in a significant way.

And so, you know, I do respect the intent. I mean, there is no one that supports manufacturing more than me, a kid that grew up in Upstate New York, in Syracuse. That is, you know, kind of the heart of the Rust Belt that needs these kind of jobs. But we think we can actually achieve our quality goals in a much more efficient way, not have adverse public health impacts, because we will have additional pollution if this does kind of go into effect, that is going to be very difficult to pull out of the system later. And we would love to work with you on a more efficient way to do it, because we firmly believe that, you know, manufacturing is absolutely critical, but we think we can do a little better than this proposal.

[The prepared statement of Mr. O'Mara follows:]



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL  
89 Kings Highway  
DOVER, DELAWARE 19901

Telephone: (302) 739 - 9000  
Fax No.: (302) 739 - 3106

TESTIMONY OF SECRETARY COLLIN O'MARA BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON ENERGY AND POWER  
OF THE HOUSE COMMITTEE ON ENERGY AND COMMERCE  
ON AN AMENDMENT TO THE CLEAN AIR ACT REGARDING AIR POLLUTION FROM  
NEW AND MODIFIED MAJOR SOURCES  
MAY 21, 2014

Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee, my name is Collin O'Mara and I serve as Delaware's Secretary of Natural Resources and Environmental Control. I have served as past Chair of the Ozone Transport Commission, past Chair of the Regional Greenhouse Gas Initiative, and Chair of the Energy and Climate Subcommittee of the Environmental Council of the States. On behalf of Delaware Governor Jack Markell, I would like to thank you for the opportunity to discuss the discussion draft "Promoting New Manufacturing Act."

Delaware has a long proud history of manufacturing, which remains one of the largest drivers of our state economy. At the same time, we firmly believe that a strong economy and a healthy environment are not mutually exclusive—and that in fact a healthy environment can help

*Delaware's good nature depends on you!*

Printed on  
Recycled Paper

spur economic vitality. We have proven repeatedly in Delaware that we can accomplish both by providing air permits that achieve the most cost-effective reductions in emissions in a timely and predictable manner. Our approach in Delaware is simple: providing certainty to industry by articulating clear permitting requirements, delivering permits in an efficient and predictable manner, and, in many cases, providing financial incentives or other forms of support for adopting cleaner fuels, more energy efficient technologies, or state of the art pollution controls. We believe that a similar approach nationally, combined with many of the legislative ideas included in the “Manufacturing Jobs for America” effort, improved access to lower-cost and low-emission fuels (e.g. natural gas, etc.), integration of next generation energy technologies (e.g. combined heat and power or co-generation), and reforms to federal tax policy, has the greatest potential to promote domestic manufacturing.

**Background:** To ensure healthy air quality for every American, the U.S. Congress has provided state and local air pollution control agencies with the “primary responsibility” for implementation of the federal Clean Air Act. Our most important responsibility under the Act is to protect the health and welfare of citizens throughout the country from the harmful effects of air pollution. We have come a long way since Congress authorized the Clean Air Act. From the underground coalmine fires in Donora, Pennsylvania to restricted visibility in our National Parks, many severe air pollution problems have been corrected due to your actions. One key part of this success depends upon the New Source Review provisions of the Clean Air Act: the Nonattainment New Source Review pre-construction permitting program to improve areas that are not in attainment of a National Ambient Air Quality Standard (NAAQS) and the Prevention of Significant Deterioration (PSD) pre-construction permitting provisions which are designed to prevent other areas from slipping into non-attainment.

We believe the discussion draft of the Promoting New Manufacturing Act would significantly impede our progress to ensure healthy air for all Americans, while having the unintended consequence of exacerbating air quality and public health problems throughout the country. For this and several other reasons, which I will discuss below, we urge the committee to fundamentally restructure or reject the discussion draft legislation.

Before elaborating on our concerns, please allow me to make it clear that we agree with the major goal of this legislation—namely, to support American manufacturing by improving the efficiency and predictability of state and local permitting programs that affect manufacturing companies that wish to build major new facilities or make major modifications to existing facilities. But, put simply, this bill presumes a problem that does not exist: that EPA's failure to issue implementation guidance concurrently with new or revised NAAQS somehow impedes states' ability to issue pre-construction permits in a timely manner. This is not the case. As a state agency that has been issuing pre-construction and operating permits for nearly forty years through multiple revisions of various National Ambient Air Quality Standards, let me assure you that we are fully aware of the importance of the pre-construction permitting programs to industry, and we are fully able to issue permits to these sources in a timely manner.

I would like to share with you our experiences with pre-construction permitting in Delaware. Our permitting program spans well beyond major sources; in fact, we require permits for very small emission sources, such as emergency generators, dry cleaners, printing operations and small manufacturing. Accordingly, we have gained a tremendous amount of permitting experience for a wide range of manufacturing facilities. Part of this experience is due to the major source threshold for most facilities in Delaware is 25 tons per year of NOx or VOC, compared to 100 or 250 tons elsewhere. (This lower standard is required of Delaware because of our state's ongoing difficulties with meeting national ozone standards as a direct result of 90

percent of our pollution originating from out of state upwind sources and the corresponding non-attainment designations for ozone.)

Despite the lower permitting thresholds, my agency issues permits much more quickly than the one-year time limit requirement in the Clean Air Act. Once a major permit application has been deemed “complete,” we routinely issue these permits within four to six months, including all public notice and hearing requirements and EPA review. Specifically, since 2011, Delaware has issued 120 construction permits in an average time of 128 days. We work extremely closely with industry, the public, and EPA to address pre-construction permitting issues as they arise and have always been able to resolve outstanding permit issues. There exists a wealth of guidance and tools that we have been able to use successfully in times of transition, such as the adoption of a new NAAQS. In fact, we have on occasion found that approaches that we developed during transition were more flexible and protective than those contained in the guidance issued later by EPA. The bottom line is this: To the extent EPA is tardy in issuing implementation guidance, we have always been able to work through problems without causing delays in the permitting process.

While we clearly prefer issuance of timely guidance, the underlying assumption in the legislation that permitting authorities are incapable of managing the pre-construction permitting process disregards decades of experience showing otherwise. For example, in 2005, Delaware completed a program we called “Value Stream Mapping,” which included all minor source air construction permits, not just New Source Review. We found that it took on average 104.5 days (or three and a half months) to issue a minor source air construction permit – what we call a “natural minor” permit. After identifying waste and unnecessary bureaucratic delays, we reduced the processing time to 88 days, and today after further improvements, it takes on average just 72 days (or just more than two months) to issue these permits—a 31% reduction. Other states have

streamlined their permitting and have also achieved reductions in permit processing times. We believe that our permitting performance and that of other states demonstrates that more effective ways to reduce permit turnaround time and improve regulatory certainty exist, than the means proposed in the discussion draft.

With respect to the discussion draft bill, we offer the following major concerns:

**Increases Air Pollution and Adversely Affects Public Health:** As drafted, the legislation would likely cause substantial adverse health impacts by exempting sources from complying with health-based air quality standards. Under the Clean Air Act's New Source Review program, before a major source can construct, it must, among other things, conduct an air quality analysis of the expected emissions from the source on surrounding air quality. If the source's projected emissions would adversely affect ambient air quality, the source is required to mitigate those projected impacts before it can construct. This bill would allow sources to perform air quality analyses based on outdated standards that do not sufficiently protect public health, if EPA does not provide guidance for industry concurrently with the promulgation of a revised health-based NAAQS. This exemption would allow a source to pollute more than it is entitled to under the CAA, because EPA has not issued specific guidance with a fully promulgated revised NAAQS. The extra pollution means that public health will be further compromised, with disproportionate effects on those most vulnerable, including children, the infirm and the elderly. Additionally, the downwind states of the Ozone Transport Region would be most affected as the additional emissions would move states, which are already out of attainment due to cross-state air pollution, even further out of compliance after receiving even more pollution from their upwind neighbors. For these reasons, the legislation as drafted would unintentionally undermine the basic framework of the Clean Air Act—to protect public health of all Americans with an adequate margin of safety—and will undercut public confidence in

permitting programs that were designed to protect public health, because regulatory agencies will be required allow harmful emissions in exceedance of a new NAAQS.

**Reduces Certainty for both Manufactures and Regulators:** In every conversation with local manufacturers in Delaware, we hear that regulatory certainty and predictability are essential components of corporate decisions to build or expand facilities. Under the discussion draft, new facilities may request permits with less stringency than a legally adopted NAAQS would typically require, setting up potential legal challenges and other liabilities. At the same time, regulatory agencies would have to present both regulated facilities and the public with draft permits that are not designed to protect the local population from exposures above the most recent established standard that EPA has determined is requisite to protect public health. Because new facilities permitted after a new NAAQS but before guidance issuance will not have achieved the Lowest Achievable Emission Rate by implementing best control technologies, they will be constant targets for more expensive upgrades when either the state needs additional reductions to meet State Implementation Plan obligations of federal unit or facility standards change. The prospect of returning to a recently permitted source for additional rounds of permitting and controls once the new guidance is promulgated, or at the time of Title V permitting, represents a potentially significant implementation cost and administrative burden for both the applicant and regulatory. The discussion draft also requires extensive additional reporting from EPA, which would in turn require state agencies to generate the underlying data for EPA to report to Congress, diverting the state's attention from issuing timely permits due to the additional administrative workload. This would further delay projects unnecessarily.

**Increases Costs of Achieving Air Quality Standards:** A central tenant of the Clean Air Act is that it is much cheaper for any new facility to meet a clearly defined regulatory standard if the necessary operational systems and pollution controls are designed into a facility's operations

from the beginning. To achieve the same level of reduction from an existing facility is often much more expensive because it requires after-the-fact retrofitting of systems with costly additional controls that were not incorporated into the original design. The legislation places both new facilities and existing facilities at risk of facing expensive future system upgrades as a result of future federal standards and/or additional reductions needed in the development of a State Implementation Plan to achieve NAAQS, while such reductions could have been achieved at a fraction of the price during design and construction of the facility.

Instead of reducing requirements for new facilities, we should focus on supporting upgrades that reduce the sources of pollution through adoption of cleaner fuels, integrate advanced control technologies, or improve operational efficiencies. In Delaware, we have established an Energy Efficiency Investment Fund, specifically for industrial facilities and commercial buildings, which provides grants and loans for projects that exceed regulatory requirements and achieve a quantifiable improvement in air quality. A similar approach through tax policy or other incentives, could achieve the desired outcome of this legislation more effectively.

**Creates Inequitable Additional Costs for Both Established and Future Facilities:**

The bill as drafted would have the unintended consequence of transferring emission-reduction responsibilities from exempted sources to other sectors of the economy. This could occur in at least two ways. First, the most obvious impact would occur as a result of the new or modified facility being responsible only for analyzing air quality impacts based on an outdated air quality standard. The additional impacts that would have been identified had the air quality analysis properly been performed based on the newly revised standard would have to be addressed by other sources that apply for permits after EPA issues implementation guidance for the new NAAQS. In other words, because the first source would be allowed to emit more pollution than

would otherwise be allowed had EPA issued guidance at an earlier date, the sources that apply for permits after the guidance is issued would have to “make up” for that deficiency. This would be highly unfair to those other sources.

Second, the proposed changes to the Clean Air Act could also adversely affect existing facilities. Imagine a state or area that is marginally attaining a newly revised standard, but where the exempt facility would be allowed to further deteriorate the airshed by modeling based on an outdated standard, thus moving the entire area into nonattainment with the revised standard. The new nonattainment status would require sources in the entire area to meet an array of new air pollution requirements under the CAA, including new regulations for existing sources, transportation conformity determinations, offsets, and more restrictive Lowest Achievable Emission Rate controls for new sources. (These impacts would come on top of likely paying the additional health care costs associated with the poor air quality.) Thus, a very likely result of this bill would be to heap additional, costly pollution reduction requirements on already stressed existing sources, rather than allowing for the efficient installation of pollution controls while new sources are being constructed, which is the most cost-effective way to reduce pollution into the future. The missed opportunities for emissions reduction resulting from the exemption—i.e., the reductions lost by controlling only enough to meet an outdated standard—would have to be made up somehow by someone else as part of State Implementation Plan, likely at a much greater cost.

In conclusion, Delaware does not believe the discussion draft bill as structured is the most effective means of supporting American manufacturing or ensuring timely issuance of permits. Delaware is among the smallest state in the nation and has one of the lowest budgets to address air pollution, yet we process air quality permits extremely efficiently in the absence of guidance whenever such a situation presents itself. If Congress seeks to expedite state permitting functions and issuance of guidance by EPA, we respectfully encourage Congress to provide

additional revenue to EPA and the state and local permitting agencies so that we have sufficient staff and resources to deliver permits efficiently and predictably. Further, we believe that the draft bill undercuts effective requirements of the Clean Air Act, which are crucial to obtaining healthy air quality and would increase harmful emissions, endangering the health of our citizens and increasing requirements on existing businesses that have weathered times of economic distress. Delaware supports promoting new manufacturing, but it believes that there are much more effective ways to achieve this outcome without exacerbating public health impacts and penalizing existing sources.

Chairman Whitfield and Ranking Member Rush, thank you again for this opportunity to testify. I look forward to your questions.

Mr. WHITFIELD. Thanks very much, Mr. O'Mara. At this time our next witness is Mr. John Walke, who is a Senior Attorney and Director for the Climate and Clean Air Program at the Natural Resources Defense Council. And, Mr. Walke, welcome, and you are recognized for 5 minutes.

#### STATEMENT OF JOHN D. WALKE

Mr. WALKE. Thank you, Chairman Whitfield, Ranking Member Rush, and members of the subcommittee for the opportunity to testify today. The draft legislation before you, in our opinion, is a flawed bill that would authorize amnesty from national clean air health standards, create red tape, and impose unintended burdens on local businesses. Instead of reducing permitting burdens, the bill would open up facilities to new legal liabilities, higher costs, and regulatory delays. I suspect many of these outcomes are unintended consequences of the draft bill, but these objectionable substantive elements of the draft legislation are coupled with a false premise and lack of foundation for its central approach. I would like to take a few minutes to discuss the individual sections of the draft bill, and why they are problematic.

Section 3 of the bill is the most problematic part of the draft bill. It creates an unjustified amnesty from new or revised national clean air health standards during preconstruction permitting for individual facilities undertaking new construction or modifications. This would harm air quality, the health of surrounding communities, and impose unfair burdens and costs on other local businesses in the same area as the facility receiving the amnesty. The bill would create unintended consequences, and increase costs for other businesses in that same area. This is because the Clean Air Act still would require EPA State and local officials to attain national health standards, and to avoid interfering with clean air resources in areas that already meet national health standards.

The only way for regulators to accomplish this would be for Government regulators to crack down on other businesses in the area, or to require the newly permitted facility to either stop operating, or undertake potentially costly retrofits to install necessary pollution controls. Imposing additional costs and control obligations on existing local businesses in order to grant amnesty to a newly constructed facility is inequitable, and even punitive, in our view. There is no reason to impose these terrible choices on facility owners or operators, nor on State and local regulators, local businesses, and local communities, nor is there any reason for doing damage to the Clean Air Act's health safeguards in the manner that we believe Section 3 of the bill would.

None of the written testimony before you today has concrete examples of air permits not being issued due to a lack of EPA implementing rules or guidance. I am personally unaware of situations in which EPA implementation rules or guidance were deemed necessary to the issuance of pre-construction permits following revisions to national health standards. Pre-construction permits, as Mr. O'Mara has indicated, continue to be issued while national air quality standards are being revised and updated. Delays and uncertainty are not welcome, to be sure, but uncertainty for corpora-

tions should not come at the expense of subjecting Americans to the certainty of unhealthy and illegal levels of air pollution in the manner that the bill's amnesty provision would.

Turning to Sections 2 and 4 of the draft bill, these provisions represent red tape that consume limited agency resources in order to compile information mostly in the possession of State and local agencies, rather than EPA. These sections require EPA to collect information on pre-construction permitting, but overlook the fact that over 80 percent of the States oversee their own pre-construction permitting. EPA rarely permits individual facilities, actually, and it makes little sense for Congress to require this information from EPA, rather than from individual State and local permitting authorities. In light of this permitting landscape, the question then becomes whether it makes sense to saddle resource constrained State and local governments with red tape at the expense of carrying out and enforcing health safeguards that protect Americans. We do not think this makes much sense.

Lastly, the draft legislation manages to run afoul of all five Congressional Declarations of Purposes behind the Clean Air Act's pre-construction permitting program in clean areas, or so-called attainment areas. The Act's pre-construction permitting program was written into law by Congress to ensure that newly constructed or modified stationary sources do not violate national health standards, do not interfere with a State's plan for meeting, and continuing to meet those health standards, do not harm national parks, and do not impose unfair burdens and additional costs on other local businesses in an area when a newly permitted facility wishes to construct and add higher pollution levels. The draft bill contravenes all of these statutory objectives.

Today's bill, in our view, represents a sharp departure from the Clean Air Act, and 37 years of permitting practices. EPA updates national health standards when the science shows that standards should be strengthened to protect Americans with an adequate margin of safety. Providing facilities amnesty from national health standards does a disservice to permit holders, other local businesses, air quality, and public health. I urge the subcommittee not to advance the draft bill. Thank you.

[The prepared statement of Mr. Walke follows:]

Summary of Testimony by John D. Walke, Natural Resources Defense Council

The “Promoting New Manufacturing Act,” is a problematic bill that would result in permitting loopholes, red tape and unintended burdens on industry. Even worse, the bill could exacerbate air pollution problems nationwide, causing harm to public health.

Sections 2 and 4 of the bill demand that EPA study and report to Congress on permitting information that the agency largely does not possess. State and local officials perform the vast majority of preconstruction permitting under the Clean Air Act today. If Congress desires this permitting information, it is most efficient to request it of the permitting entities themselves – the states and local agencies that are tasked with issuing the permits.

Section 3 of the bill would allow preconstruction permitting to proceed in violation of national health standards if EPA does not issue implementing regulations or guidance that might not even be warranted. If EPA adopts a new or revised national ambient air quality standard and the agency has not published final implementing regulations or guidance concurrently, this bill would grant amnesty from national health standards during preconstruction permitting. This provision represents a radical departure from the Clean Air Act, 37 years of permitting practice and responsible public health safeguards. Newly permitted facilities could even be allowed to operate in violation of national health standards, while other permitted industries and the public would pay the price for the new facility’s amnesty and excessive pollution. Lastly, this legislation manages to violate all five Congressional declarations of the purposes behind the Clean Air Act’s preconstruction permitting program in attainment areas.

The bill’s stated goal is to “provide[] for greater transparency and timeliness in obtaining permits required under the Clean Air Act.” Today’s so-called “Promoting New Manufacturing Act” does not achieve these goals, yet manages to create new burdens and threaten air quality. I urge the subcommittee to reject this legislation.

TESTIMONY OF JOHN D. WALKE  
CLEAN AIR DIRECTOR  
NATURAL RESOURCES DEFENSE COUNCIL

HEARING ON H.R.\_\_\_\_, THE “PROMOTING NEW MANUFACTURING ACT”  
BEFORE THE SUBCOMMITTEE ON ENERGY AND POWER,  
ENERGY AND COMMERCE COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES

May 21, 2014

Thank you, Chairman Whitfield and Vice Chairman Scalise, and Ranking Member Rush for the opportunity to testify today. My name is John Walke, and I am clean air director and senior attorney for the Natural Resources Defense Council (NRDC). NRDC is a nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 1.3 million members and online activists nationwide, served from offices in New York, Washington, Los Angeles, San Francisco, Chicago, and Beijing. I have worked at NRDC since 2000. Before that I was a Clean Air Act attorney in the Office of General Counsel for the U.S. Environmental Protection Agency (EPA). Prior to that I was an attorney in private practice where I represented corporations, industry trade associations and individuals.

H.R. \_\_\_\_\_, the “Promoting New Manufacturing Act,” is a deeply flawed bill that would authorize amnesty from national clean air health standards, create red tape and impose unintended burdens on local businesses. It does this while failing to expedite preconstruction

permitting for the targeted facilities, and instead opening up those facilities to new legal liabilities, higher costs and regulatory delays. These objectionable substantive elements are coupled with the legislation's false premises and lack of factual foundation for its central approach. NRDC opposes this misconceived legislation and we urge the Subcommittee not to advance the bill.

I will now summarize the bill's provisions and the many problems and concerns raised by its content.

#### **Section-by-Section Analysis**

I begin by examining and critiquing the most troubling provisions in the bill, in Section 3. Then I will turn my attention to sections 2 and 4.

#### **Section 3: False Premises and Unjustified Amnesty**

Section 3 creates an unjustified amnesty from new or revised national clean air health standards during preconstruction permitting for industrial facilities undertaking new construction or modifications. The bill could be read further to authorize subsequent *operation* by such facilities while violating the Clean Air Act's core health standards. This would harm air quality, the health of surrounding communities, and impose unfair burdens and costs on local businesses in the same area as the facility receiving amnesty. Even if the bill does not intend to exempt facilities from health standards during operation, the result still would be to create unintended consequences and increase facility costs as compared to current law.

**Section 3(a): False Premises**

Section 3(a) mandates that when EPA revises a national ambient air quality standard (NAAQS), the agency must simultaneously issue corresponding implementing regulations and guidance documents, including information relating to preconstruction permits. Past practice with EPA regulations and guidance, as well as preconstruction permitting conducted by state and local agencies, demonstrates that the requirement imposed by section 3(a) is counter-productive and unnecessary. Indeed, section 3 begins with false premises and then proceeds to worsen and weaken the Clean Air Act's preconstruction permitting programs.

The first important point is there are statutory deadlines for reviewing and revising, as necessary, national clean air health standards. Section 109 of the Clean Air Act requires EPA to update these standards every five years. 42 U.S.C. § 7409. EPA regularly misses this statutory deadline already and this legislation would only make that situation worse by imposing additional and unnecessary requirements on the agency to adopt implementation rules and guidance at the same time as revised health standards. This can only result in more delays and deny Americans even longer the health benefits from updating national standards consistent with the latest scientific and medical understandings.

There is no statutory requirement to issue NAAQS implementation rules or guidance, nor should there be. In many cases, such requirement would be simply illogical and a waste of time and resources. EPA publishes implementation rules and guidance documents in response to anticipated state questions and challenges. Many times, the very substance of these rulemakings is conceived through meetings with state and local permitting authorities and other stakeholders. The requirements of section 3(a) would short-circuit this process by which EPA responds to

states' concerns and questions regarding new aspects of implementation. It would require the agency to undertake rulemakings regardless of the need for such action, prior to fully hearing from states or understanding questions as they arise during the course of implementation.

History shows that EPA does not always publish implementation rules or guidance if the Agency believes such exercises to be unnecessary. This is especially true for preconstruction permitting requirements, which have been a well-developed feature of the Clean Air Act's regulatory landscape for decades. The one-size-fits-all bill shows no regard for this historic reality or common sense, instead mandating that EPA always adopt implementation rules or guidance documents whenever health standards are adopted or revised. I discuss below how section 3(b) of the bill couples this misunderstanding with a poison pill that harms the public while creating new uncertainties and burdens for regulated entities.

There are examples of revisions to ambient air quality standards, such as the 2011 carbon monoxide NAAQS,<sup>1</sup> in which EPA did not even believe it necessary to issue any implementation rules or guidance, much less on the topic of preconstruction permitting. The revised NO<sub>2</sub> NAAQS is another example of this.<sup>2</sup>

Then there are examples of NAAQS revisions, such as the 2008 lead NAAQS, in which EPA issued guidance<sup>3</sup> but did not consider it necessary or warranted to adopt implementation rules. The guidance addressed prevention of significant deterioration (PSD) and nonattainment

---

<sup>1</sup> Review of National Ambient Air Quality Standards for Carbon Monoxide, 76 Fed. Reg. 54294 (Aug. 31, 2011) (to be codified at 40 C.F.R. pts. 50, 53, and 58).

<sup>2</sup> Primary National Ambient Air Quality Standards for Nitrogen Dioxide, 75 Fed. Reg. 6474 (Feb. 9, 2010) (to be codified at 40 C.F.R. pts. 50 and 58).

<sup>3</sup> Memorandum from Scott L. Mathias, Interim Director, U.S. EPA Air Quality Policy Division, to Regional Air Division Directors, July 8, 2011 *available at* <http://www.epa.gov/airquality/lead/pdfs/20110708QAguidance.pdf>.

new source review (NSR) preconstruction permitting requirements only in an unremarkable, explanatory fashion that merely summarized longstanding regulations and practices. See, note 3, at 1-2. The guidance nowhere indicated that it was creating new requirements or furnishing new information concerning preconstruction permitting. Nor did it suggest in any respect that the guidance was necessary to understand how to undertake preconstruction permitting following the revisions to the lead standards. Instead, the guidance merely repeated in a single document information what was readily available already in EPA regulations and various pre-existing guidance.

When and if EPA does issue implementation rules or guidance, the bill does not make clear what would happen if EPA deemed it unnecessary to discuss preconstruction permitting in an implementation rule or guidance document. It is far from certain that EPA would directly address preconstruction permitting in any such rulemaking.

For starters, the preconstruction program regulations have set forth the core requirements covering all NAAQS pollutants, both existing and newly revised, for more than two decades. Second, the Clean Air Act already requires that “new or revised NAAQS apply to preconstruction permit applications as soon as the new or revised standards become effective, except in limited circumstances.”<sup>4</sup> Each preconstruction permit, whether it be a PSD permit or a nonattainment NSR permit, requires a case-by-case analysis of the air quality impacts of the permit.

---

<sup>4</sup> Memorandum from Majority Staff to Members, Subcommittee on Energy and Power, House Committee on Energy and Commerce, May 19, 2014, at 3, *available at* <http://docs.house.gov/meetings/IF/IF03/20140521/102241/HHRG-113-IF03-20140521-SD002.pdf> (hereinafter “Majority Memo”).

We are not aware of any specific examples in which EPA, state or local permitting authorities were unable to issue preconstruction permits to new construction or modifications following revisions to ambient air quality standards. Moreover, we know of no situations in which EPA implementation rules or guidance were deemed necessary to the issuance of preconstruction permits following revisions to national health standards. Instead, EPA has revised NAAQS repeatedly over the course of nearly four decades since the preconstruction permitting programs were added to the Clean Air Act, and EPA, state and local permitting agencies have been capable of issuing preconstruction permits.

Finally, NRDC opposes Section 3(a) to the extent it is intended to create any new private right of action if EPA does not issue implementing regulations or guidance at the same time as the updated NAAQS. Construing the provision in such a way would thwart the substantive statutory goal of the NAAQS program, and would be functionally equivalent to creating another avenue for substantive review of the NAAQS, in addition to those already provided by the Clean Air Act. Since such a private right of action is already provided for under section 109 of the Act, interpreting section 3(a) thusly would only delay and hinder EPA's progress in meeting its statutory obligations.

Considering the lack of factual foundation and absence of demonstrated need, this legislation is particularly unwarranted and misconceived. To be clear, however, this lack of need is far outweighed by the active harm and weakening of the Clean Air Act that the bill would produce.

**Section 3(b): Amnesty From National Clean Air Health Standards**

Section 3(b) is the most troubling and harmful provision of the bill. If EPA adopts a new or revised national ambient air quality standard and the agency has not published final implementing regulations or guidance concurrently—whether needed or not (see *supra*)—the bill’s response is to grant amnesty from those national health standards during preconstruction permitting. See section 3(b).

This amnesty represents a radical departure from the Clean Air Act, 37 years of permitting practice and responsible public health safeguards. Only stationary sources that model *violations* of the new or revised national health standards during the air quality impacts analysis stage of preconstruction permitting<sup>5</sup> will benefit from this bill or even have need for it. Newly constructed or modified sources that model *compliance* with new or revised air quality standards do not need amnesty from such standards—nor would these companies likely welcome the public stigma associated with being granted amnesty from health standards. So the bill is *only* granting amnesty as a practical matter to *violators* of national health standards. There is no defensible public policy or legal justification for this amnesty.

As discussed in the Congressional Purposes section of this testimony (*infra* at 14-16), the very objectives of the preconstruction permitting program are to ensure that newly constructed or modified stationary sources:

- will *not* violate national health standards;
- will *not* consume all “increment” in an airshed that is meant to be available to allow equitable growth by all companies in that area;
- will *not* interfere with a state’s plan for maintaining attainment of national health standards or attaining those standards; and

---

<sup>5</sup> 42 U.S.C. § 7475(a)(6).

- will *not* worsen air quality in national parks or so-called “class I areas.”

Preconstruction permitting is supposed to ensure that newly constructed or modified stationary sources:

- will be subject to best available control technology (which this legislation does not affect); and
- will undertake any and all pollution control measures to ensure there will be no violations of national health standards, no excessive consumption of “increment” in the airshed, no inequitable impact on other local businesses, and no adverse impacts on national parks or class I areas.<sup>6</sup>

The legislation turns these understandings and practices upside down during the preconstruction permitting process, by granting amnesty to facilities that run afoul of all of these longstanding, statutory purposes.

The bill also suffers from vagueness concerning the important question of whether a facility granted amnesty from national health standards during preconstruction permitting is *also* allowed to *operate* in ongoing violation of these health standards. Whatever the resolution of this vagueness, however, it is clear that the bill weakens the current Clean Air Act and longstanding safeguards, while perversely subjecting the company in question to severe legal vulnerabilities *or* subjecting other local businesses to unfair added burdens.

What is this vagueness? Section 3(b) provides that a revised NAAQS “shall not apply to the *review and disposition* of a preconstruction permit until the Agency has published such final regulations and guidance.” Section 3(b) (emphasis added). This provision suffers from vagueness concerning whether newly constructed or modified sources are allowed to *operate* in violation of

---

<sup>6</sup> See 42 U.S.C. § 7475(a) & (d).

a new or revised national health standard. This section could be read either to (1) authorize ongoing NAAQS violations until EPA issues implementing rule or guidance that may or may not be warranted; or (2) not authorize facility operation in violation of the NAAQS, in which case the amnesty that the bill creates is temporary and limited to the preconstruction permitting phase.

Were the provision read to authorize ongoing NAAQS violations during *operation* of a newly constructed or modified facility, the bill would create an unprecedented loophole for facility owners or operators to knowingly violate national health standards for air pollutants. This means that a new plant, with a lifetime of sixty or more years, would knowingly be exempted from complying with health-based standards that EPA has determined to be necessary to protect public health with an adequate margin of safety. This would have obvious and inexcusable consequences for air quality in the area, and the health of local communities surrounding the violating facility.

But the legislation also would impose harms on *other* local businesses. Existing businesses in the same airshed as the facility granted amnesty would need to undertake additional pollution control measures in order to offset that facility's excessive emissions and NAAQS violations. In the parlance of the Clean Air Act, this single exempt facility would be consuming more than its fair share of pollution "increments," or the amount of an available emissions inventory before emissions in the total airshed violate national health standards.<sup>7</sup> The Clean Air Act still would require EPA, state and local officials to attain national health standards and to avoid interfering with the maintenance of attainment in areas that meet NAAQS.<sup>8</sup> The only way to do this would be to crack down on *other* businesses in the airshed, to prevent NAAQS

---

<sup>7</sup> 42 U.S.C. § 7473 (b); §7475(a)

<sup>8</sup> *Id.*

violations (caused by the single exempt facility) and to ensure there is no interference with maintenance of attainment. Imposing additional costs and control obligations on existing businesses in order to grant amnesty to a newly constructed facility is inequitable and punitive. And the costs to retrofit these existing businesses with additional control measures surely would be less cost-effective than planning incremental additional controls for the newly constructed facility during preconstruction permitting.

In similar fashion, for nonattainment areas that fail to comply with newly revised NAAQS already, the bill's amnesty would only make it more difficult for state and local officials to deliver clean air to their citizens, and more difficult for other local businesses to grow while making up for the statutory amnesty granted newly constructed or modified facilities.

Were the provision read not to authorize ongoing violations of national health standards during operation (the better reading of section 3(b), in NRDC's view), there still would be harmful impacts and consequences that NRDC can only believe are unintended. Under this reading, even while the bill grants a facility amnesty from new or recently revised NAAQS during preconstruction permitting, the background statutory prohibition on violating current NAAQS continues to govern the facility's operation.<sup>9</sup> This is because the facility is only exempt from newly adopted or revised NAAQS during "review and disposition" of a preconstruction permit. Section 3(b).

As explained earlier, any facility undertaking new construction or modifications that avails itself of this bill's amnesty would model violations of the newly revised NAAQS during

---

<sup>9</sup> See, e.g., 42 U.S.C. §§ 7410(a), 7661a(a).

its air quality impact analysis.<sup>10</sup> Section 3(b) would grant the facility amnesty from a revised NAAQS only during preconstruction permitting. The facility then would begin and complete construction with pollution control measures inadequate to comply with the newly revised, more protective NAAQS.

Following that, the facility would wish to begin operation—but doing so would violate the newly revised health standards, based on the Clean Air Act prohibition on any facility operating in violation of national health standards. The bill thus creates unintended consequences that confront the facility owners or operators with terrible choices:

1. either operate the facility in knowing violation of the Clean Air Act, and face possible criminal liability for knowing violations;<sup>11</sup>
2. curtail operation immediately in order to avoid knowing NAAQS violations; or
3. undertake costly retrofits of pollution control measures or offsets in order to comply with the revised NAAQS. Such control measures could have been adopted more cost-effectively and intelligently, of course, during preconstruction permitting, had the bill not unwisely granted amnesty from the NAAQS during preconstruction permitting.

We can see no justification for imposing these terrible choices on facility owners or operators. Nor can we see any justification for doing damage to the Clean Air Act and its preconstruction permitting programs in the manner that Section 3(b) so clearly would.

## **Section 2: Regulatory Burdens, on the Wrong Party**

---

<sup>10</sup> See *supra* at 7-8.

<sup>11</sup> 42 U.S.C. § 7413(c)(1) (imposing criminal liability for knowing violations of Clean Air Act requirements).

Sections 2(a) and (b) of the bill wrap EPA in red tape and consume limited agency resources, in order to compile information mostly in the possession of state and local agencies rather than EPA. Subsection 2(a) requires that the Administrator gather and publish the total number of preconstruction permits issued only during the Obama Administration. This focus initially suggests a partisan political messaging exercise rather than a real public policy need.

The Administrator must also include data on (1) how many permits were issued within one year after an application was filed, and (2) the average time it takes the U.S. EPA to review a permit decision. Subsection 2(b) requires that all of this information be published no later than 60 days after the date on which the bill becomes law, and requires that the agency publish updates annually.

As an initial matter, it is entirely unclear whether EPA even has access to all of the information that this bill would require. The background memo accompanying this bill acknowledges as much, stating that “[a]lthough *the majority of the major NSR permits are issued by State and local permitting authorities*, EPA also may be the permitting authority in certain States.”<sup>12</sup> In fact, EPA notes that:

*Most NSR permits are issued by state or local air pollution control agencies. EPA establishes the basic requirements for an NSR program in its federal regulations. States may develop unique NSR requirements and procedures tailored for the air quality needs of each area as long as the program is at least as stringent as EPA's requirements. A state's NSR program is defined and codified in its State Implementation Plan (SIP).*<sup>13</sup>

---

<sup>12</sup> See Majority Memo, at 2 (emphasis added).

<sup>13</sup> U.S. EPA, New Source Review, *Where you Live* available at <http://www.epa.gov/nsr/where.html> (last visited May 19, 2014) (emphasis added).

Indeed, a chart accompanying EPA's statement indicates that 42 of the 50 states have state New Source Review Programs that they operate themselves.<sup>14</sup> Of the remaining eight states, four of the states still oversee some portion of the NSR program. Only four of the other states are so-called "delegated" states, meaning that they have no unique state NSR authority and are delegated federal authority to issue permits on behalf of EPA in a form of legal agent relationship. In light of the fact that more than 80% of states oversee their own preconstruction permitting, EPA simply may not have immediate access to all of the information that Section 2 would demand, and certainly would face serious challenges gathering it within sixty days. Moreover, since EPA is not the permitting authority for the vast majority of the country, this exercise is more appropriately directed at state and local permitting authorities.

For similar reasons, directing EPA to provide statistics on the length of time EPA's Environmental Appeals Board takes to review permits provides only a small sliver of information on permit appeal proceedings. Just like initial permitting decisions, most permit appeals are undertaken through state administrative proceedings and state judicial bodies. Requiring this information from EPA will not provide Congress with the information it appears to be seeking, nor will it reveal much about the overall scope of preconstruction permitting under the Clean Air Act.

Moreover, the requirement in Section 2(b)(1) that EPA provide this information within 60 days would burden the Agency with an information collection exercise involving information largely outside its possession. Again, this is information that EPA may not have, regarding permits that it is not responsible for issuing. The time constraints provided in the bill would make collecting the information very challenging or even impossible. These inquiries are more

---

<sup>14</sup> *Id.*

appropriately directed to state and local officials, who make these permitting decisions and have firsthand knowledge of how well or poorly the permit process is working within their individual state or locality. The natural question then would become whether it makes sense to saddle these resource-constrained state and local governments with Congressional red tape with no clear public policy benefit—taking resources and attention away from implementing and enforcing laws that safeguard Americans' health. We do not believe this makes sense.

#### Section 4: Additional Red Tape

Like Section 2, Section 4 wraps EPA in more red tape with no clear benefit for public health, clean air or even economic growth, due to the bill's misplaced target. The section requires that "EPA annually submit a report to Congress on actions being taken by the agency to expedite the process for issuing preconstruction permits."<sup>15</sup> As with Section 2, the provision contains a short timeframe in which EPA is supposed to collect the information required by Section 4's report (120 days). The Section also requires EPA to report on permitting decisions, the vast majority of which are undertaken by state and local governments. EPA permits individual facilities infrequently, and it makes little sense for Congress to require this information from EPA, rather than from individual state and local permitting authorities. The question becomes again whether it makes sense to saddle resource-constrained state and local governments with Congressional red tape with no clear public policy benefit. We do not think this makes sense.

Nor should Congress add these additional burdens to a federal EPA already constrained by increasingly severe budget cuts and workforce reductions. In Fiscal Year 2011, House

---

<sup>15</sup> See Majority Memo at 4.

Republicans proposed to reduce EPA's budget by \$3 billion, a 29% reduction from 2010 levels.<sup>16</sup> In each subsequent year for 3 years, House Republicans have proposed to cut EPA's budget by at least \$1 billion.<sup>17</sup> EPA's budget has gone down by over two billion dollars since the Agency's Fiscal Year 2010 budget of \$10.2 billion.

Finally, EPA already has informed federal courts that it currently lacks the resources to carry out existing laws. In *WildEarth Guardian v. EPA*, No. 13-1212, 2014 WL 1887372 (May 13, 2014), EPA informed the public that it "must prioritize its actions in light of limited resources and ongoing budget uncertainties, and at this time, cannot commit to conducting the process to determine whether coal mines should be added to the list of categories under" the Clean Air Act. *WildEarth Guardian*, at \*1. Petitioners challenged that decision in court, arguing that constrained resources were not a legitimate reason for denying their rulemaking petition and failing to enforce the law. The court disagreed, finding that "[A]n agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities," which means that EPA has discretion to determine the timing and priorities of its regulatory agenda." *Id.* at \*1 (citing *Massachusetts v. EPA*, 549 U.S. 497, 527 (2007)). EPA already operates in a resource-constrained budgetary environment; adding paperwork and reporting exercises to the Agency's existing statutory duties to protect Americans' health would only exacerbate EPA's failure to adopt health standards by statutory deadlines or sometimes at all.

---

<sup>16</sup> Lauren Morello et al. *Republicans Gut EPA Climate Rules, Slash Deeply Into Climate Research, Aid and Technology Programs* N.Y. TIMES, Feb. 14, 2011 available at <http://www.nytimes.com/cwire/2011/02/14/14climatewire-republicans-gut-epa-climate-rules-slash-deep-87716.html?pagewanted=all>.

<sup>17</sup> Amy Harder, *EPA faces third straight year of cuts*, NAT'L. JOURNAL, Feb 13, 2012 available at <http://www.govexec.com/oversight/2012/02/epa-faces-third-straight-year-cuts/41185/>.

The Bill Contravenes the Congressional Declarations of Purpose for Clean Air Act  
Preconstruction Permitting

Finally, this legislation manages to violate all 5 Congressional declarations of the purposes behind the Clean Air Act's preconstruction permitting program in attainment areas. These purposes are set forth in Clean Air Act § 160, codified at 42 U.S.C. § 7470.

First, the bill authorizes actual and potential adverse effects to public health and welfare in attainment areas, by allowing new construction and modifications to violate national health standards for air pollution. In doing so, the legislation allows NAAQS attainment and maintenance of attainment to be threatened and even contravened. See 42 U.S.C. § 7470(1).

Second, the bill will harm and diminish the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special regional natural, recreational, scenic, or historic value by allowing new construction or modification to violate national standards for air pollution. See 42 U.S.C. § 7470(2); Section 3(b).

Third, the bill fails to ensure that any potential economic growth will occur in a manner consistent with the preservation of existing clean air resources, because on its face the bill allows new construction to violate national standards for air pollution and consume any remaining "increment" intended to preserve existing clean air resources. Again, this allows NAAQS attainment and maintenance of attainment to be threatened and even contravened. See 42 U.S.C. § 7470(3).

Fourth, the bill allows emission sources to interfere with the implementation plans in place to prevent significant deterioration of air quality in other states. The bill does so by allowing new construction or modifications to violate national standards for air pollution,

thereby ensuring that new construction or modifications in one state will harm the maintenance and attainment efforts of those states downwind. See 42 U.S.C. § 7470(4).

Finally, the bill will ensure that decisions to permit increased air pollution will not be made after careful evaluation of all the consequences of such a decision and after procedural opportunities for informed public participation in the decision-making process, but rather as a mere formality with little insight into the relevant situation at the site of the emission source. See 42 U.S.C. § 7470(5).

The legislation turns these Congressional purposes upside down during the preconstruction permitting process, by granting amnesty to facilities that run afoul of all of these longstanding, statutory purposes.

For these reasons, NRDC urges the Subcommittee members not to advance this harmful legislation.

Mr. WHITFIELD. Thank you, Mr. Walke. And our next witness is Ms. Karen Kerrigan, who is the President and Chief Executive Officer for the Small Business and Entrepreneurship Council. And you are recognized for 5 minutes.

**STATEMENT OF KAREN A. KERRIGAN**

Ms. KERRIGAN. Thank you, Chairman Whitfield, and Ranking Member Rush, and members of the subcommittee, for the opportunity to participate and provide the views of the Small Business and Entrepreneurship Council this morning on legislative efforts to promote new manufacturing and growth in the United States. Again, I am Karen Kerrigan, President and CEO of SBE Council. We are a non-profit advocacy, research, and training organization dedicated to protecting small business, and promoting entrepreneurship. And for 20 years, SBE Council and our members have worked to develop and support policies that enable business start-up and growth. We are pleased to lend our support to the Promoting New Manufacturing Act. This draft bill is a practical measure that aligns with bipartisan goals to improve Government and transparency, and strengthen quality job growth and investment in the United States.

The legislation contains reasonable accountability features that will serve to provide businesses with the timely information they need to make decisions and plan. Provisions that require the EPA to better monitor, make public, and report on the timing of permits, and to provide timely and concurrent guidance and rules about how to comply with new or revised air quality standards, will establish greater clarity and certainty for businesses and investors. This is especially critical, given the potential for new manufacturing in the U.S., a positive development that will lead to quality job growth, and opportunities for small businesses and entrepreneurs.

Now, the figures, as you noted, Chairman, and also provided by Ms. Gershman of the American Chemistry Council, are indeed impressive, and there is a lot of small business opportunity in those projects, opportunities for struggling small businesses, and the potential for new business startup and growth. And this is an area where our economy needs help. That is, we need more entrepreneurship, and growing small businesses that hire full time employees. Unfortunately, ongoing reports find that we are flailing in this critical area. However, there is one sector where we are excelling, and that is in energy.

Beyond the benefits of transparency and clarity the Promoting New Manufacturing Act would bring to the permitting process, small businesses in the energy sector would continue to benefit from the growth in natural gas demand that new or expanded facilities would generate. The tremendous increase in domestic natural gas production has been a significant development for small business. Entrepreneurship and business formation in the energy sector in recent years has been extraordinary. In a report released by our organization in June of 2013, we found that at the same time that both employment and employer firms declined between 2005 and 2010, job growth and new business formation grew within the energy sector, and continues to this day. I provided those de-

tailed numbers in my written testimony, but, again, the growth in new businesses is particularly striking among small firms.

President Obama recognized the opportunities and potential in shale gas development in his State of the Union speech this past January. He pledged to cut red tape to help States to get those factories built referenced in his speech, and based on the ACC's numbers, the Promoting New Manufacturing Act is an opportunity to advance an initiative that appears aligned with the President's pledge. Bringing greater transparency and accountability to the pre-construction permit program is one way both parties can work together to help revitalize manufacturing and strengthen U.S. competitiveness. More growth opportunities for small business and new manufacturing projects, and the energy sector, will produce a virtual cycle of increased investment, enhanced GDP growth, rising incomes, and more jobs.

Thank you again, Chairman and Ranking Member Rush. I look forward to questions and discussion.

[The prepared statement of Ms. Kerrigan follows:]



**“Promoting New Manufacturing Act”**

**Testimony of**

**Karen Kerrigan  
President & CEO**

**Small Business & Entrepreneurship Council**

**Before the**

**Subcommittee on Energy and Power  
Committee on Energy and Commerce  
U.S. House of Representatives**

**The Honorable Ed Whitfield, Chairman  
The Honorable Bobby L. Rush, Ranking Member**

**May 21, 2014**

*301 Maple Avenue West • Suite 690 • Vienna, VA 22180 • (703)-242-5840 • sbecouncil.org*

*Protecting Small Business, Promoting Entrepreneurship*

Chairman Whitfield and Ranking Member Rush, thank you for the opportunity to participate and provide the views of the Small Business & Entrepreneurship Council (SBE Council) at this important hearing today on legislative efforts to promote manufacturing growth in the United States.

My name is Karen Kerrigan, president & CEO of SBE Council, a nonprofit advocacy, research and training organization dedicated to protecting small business and promoting entrepreneurship. For twenty years SBE Council and our members have worked to develop and support policies that enable business startup and growth. We launched the Center for Regulatory Solutions earlier this year to develop innovative solutions and support legislation to improve the regulatory process. We believe the "Promoting New Manufacturing Act" is a practical measure that aligns with bipartisan goals to improve government, and strengthen quality job growth and investment in the United States.

The legislation contains regulatory accountability features that will serve to provide businesses and the public with data and information, which will improve decision-making about investments in new projects that require New Source Review (NSR) permits. Requiring the Environmental Protection Agency (EPA) to better monitor, make public and report on the timing of permits; and to provide timely guidance about how to comply with new or revised air quality standards (affecting permit applications) will establish greater clarity and certainty for businesses and investors. This is especially critical given the potential for new manufacturing activity in the U.S. that is being triggered by the growth in shale gas production.

As noted by President Obama in his State of the Union Address on January 28, the American Chemistry Council (ACC) announced more than \$100 billion in new project investments tied to natural gas. He pledged to "cut red tape to help states get those factories built," which is welcome and needed given the complex and tentative regulatory permitting process that businesses face.

The accountability framework proposed by the "Promoting New Manufacturing Act" will enable the federal government and therefore

businesses to work better. It will complement President Obama's stated goals and efforts to cut red tape.

Beyond the benefits of transparency and certainty that the "Promoting New Manufacturing Act" would bring to the business community and manufacturers of all sizes, small businesses in the energy sector would benefit from the growth in natural gas demand that new or expanded facilities would generate. The tremendous increase in domestic natural gas production has been a boon for small business (and job growth) in recent years. In a report released by SBE Council in June of 2013 ("Benefits of Natural Gas Production and Exports for U.S. Small Business," written by Chief Economist Raymond J. Keating) we found that entrepreneurship and small business formation in the energy sector in recent years has been significant.

While total U.S. employer firms declined by 4.2 percent from 2005-2010, including a 3.7 percent decline in firms with less than 20 workers, growth within the energy sector among key industries has been striking.

**Consider, the number of employer firms grew by:**

- 3.1 percent among oil and gas extraction businesses, including 2.5 percent among firms with less than 20 workers;
- 7.2 percent among drilling oil and gas wells businesses, including 4.7 percent among firms with less than 20 workers;
- 24.5 percent among oil and gas operations businesses, including 24.5 percent among firms with less than 20 workers;
- 5.1 percent among oil and gas pipeline and related structures construction businesses, including 3.5 percent among firms with less than 500 workers;
- 61 percent among oil and gas field machinery and equipment manufacturing businesses, including 59.0 percent among firms with less than 20 workers.

Small and midsize firms overwhelmingly populate each of these

industries that work in the energy sector. Again, according to SBE Council's study, businesses with less than 20 workers represent:

- 91.3 percent of oil and gas extraction employer firms;
- 80.4 percent of drilling oil and gas wells employer firms;
- 84.7 percent of oil and gas operations employer firms;
- 63 percent of oil and gas pipeline and related structures construction employer firms; and
- 60.3 percent of oil and gas field machinery and equipment manufacturing employer firms.

On the jobs front, while total U.S. employment declined by 3.7 percent from 2005 to 2010, jobs grew by 27.6 percent in the oil and gas extraction sector; by 15.1 percent in the drilling oil and gas wells sector; by 38.5 percent in the support sector for oil and gas operations; by 47 percent in the oil and gas pipeline and related structures construction sector; and by 62 percent in the oil and gas field machinery and equipment manufacturing sector.

Looking ahead, more growth opportunities for small businesses and employment in the U.S. energy sector -- as well as new manufacturing projects spawned due to the explosive growth in natural gas production -- will produce a virtuous cycle of increased investment, enhanced GDP growth, rising incomes, and more jobs.

### **Certainty and Risk**

Today's business and economic climate remain challenging for entrepreneurs and small business owners. Unfortunately, nagging "uncertainty" is overshadowing investment decisions in a negative way. That is, uncertainty is prolonging the delay of investment decisions.

When business owners attempt to make important decisions under risky conditions, they look to identify, quantify, and absorb risk. Timely and concrete information helps to improve the decision-making

process. That is why key elements of the “Promoting New Manufacturing Act” are important. Business and investors will be able to review timelines for final preconstruction permit decisions, and measure those timelines against actual permits approved.

Another important consideration for businesses in decision-making is stability and certainty when it comes to the ground rules they operate under and whether changes will affect the timing of permit approval. As you can imagine, it is exasperating and financially difficult for a business to get caught in regulatory limbo. The “Promoting New Manufacturing Act” requires EPA to provide timely guidance about changes to compliance procedures regarding new or revised air quality standards that may affect permit applications. Knowing that the EPA is being held accountable for providing timely guidance, and for developing strategies to expedite and improve the permitting process will hopefully improve a complex process that is currently generating uncertainty.

### **Opportunity for Action**

The “Promoting New Manufacturing Act” is an opportunity to advance a “good government” initiative in an area of great concern to small business and the public. In a recent survey for the Center for Regulatory Solutions, 72 percent of American said that regulations are not created or administered in an open process, and 70 percent believed regulations mostly hurt the economy (47% independents, 22% Republicans, 27% Democrats). Bringing greater transparency and accountability to the New Source Review preconstruction permit program is one way both parties can work together to fully revitalize manufacturing and strengthen U.S. competitiveness. Especially for America’s smaller businesses and entrepreneurs, embedding a layer of transparency in a complex permitting process on top of a challenging economic climate would be a welcome development.

Thank you again for allow our voice to be heard and considered through this hearing today. I look forward to your questions and our discussion.

***Submitted by: Karen Kerrigan, President & CEO, Small Business & Entrepreneurship Council.***

Mr. WHITFIELD. Thank you, Ms. Kerrigan. And our final witness is Mr. Ross Eisenberg, who is the Vice President for Energy and Resources Policy at the National Manufacturers Association. And thanks for being with us, Mr. Eisenberg. You are recognized for 5 minutes.

#### STATEMENT OF ROSS EISENBERG

Mr. EISENBERG. Of course. Thank you so much. Good morning, Chairman Whitfield, Ranking Member Rush, members of the subcommittee. As you have heard from the National Association of Manufacturers, and our 12,000 members, for many years now, the boom in domestic energy production is driving major new investment in manufacturing, and contributing to increased U.S. competitiveness around the world. For us, for manufacturers, this could mean as many as one million new jobs by 2025 as we build new iron, steel, cement, fertilizer, chemicals, aluminum, plastics, and many other manufacturing facilities, as well as the products that are made from these materials, so the future is good.

We understand, as manufacturers, the risks inherent in making investments of this magnitude in the United States. We understand that, even with our built-in energy advantage, we still have a significant disadvantage owing to other policies, like taxes, and torts, and regulations. We understand that new regulations will be issued while we wait for our permit, moving the goalpost, and forcing us to change our entire plan mid-stream. We understand that often law firms, masquerading as public interest groups, will exploit every step of the approval process, and drive up project costs, in the hopes that we will simply want to walk away.

We understand that all of this is going to happen, and we still take these risks, but it doesn't mean that we don't want to do something about it. So with manufacturing on the verge of a major comeback, there is really no better time, in our view, than now for the subcommittee to examine the permitting process, and whether or not it can be improved, and if so, how.

Manufacturers continue to struggle with the complex requirements of the New Source Review program. When I was preparing for today's hearing, I sent a note to our members and reached out to our members, asking for their feedback on what is good and what is bad about the NSR process. What I got back is listed in my written testimony. It is long. The intention here was not to create a list of horrors, and I do understand that that is probably what it looks like, but rather to try to give members an honest assessment of what the plant managers, the business owners, the EH and S people at my members in the field are having to do when they try to build facilities, or modify existing ones. Challenges they raised with me in the NSR process include changed permit conditions that derail the project, a mandatory stay on construction when a project is challenged at the EAB level, modeling issues, of which they say there are very many, barriers to installation of energy efficiency, and combined heat and power that the NSR process provides, threats of litigation on the back end, which then create delays on the front end as you try to serve judgment, improve the permit, uncertainty on how to address remands when permits are sent back, and even delays they are finding for simple minor source

permits that don't even trigger the PSD process. And the EPA, to its credit, has listened to manufacturers' permit concerns, and it is aware of many of these problems, and is actively trying to fix them, but we believe Congress can and should be part of the solution as well.

Now I would like to also talk about what appears to be a real problem in the functioning of the PSD program for greenhouse gases. For several years the NAM and other groups in this town have warned the members of the subcommittee that extending the PSD permitting program to greenhouse gases could act as a deterrent to construction. Based on the numbers of permits completed to date, I am concerned that we may have actually been correct in that respect.

When EPA issued the greenhouse gas Tailoring Rule 4 years ago, it estimated that even with tailoring, it would have to issue about 900 permits per year, so by now about 1,800 permits. However, recent information from the agency shows that in those 3-plus years since PSD was extended to greenhouse gases, they have only done 166 permits total, rather than 1,800, so that is a stunning drop-off, and one for which the agency really doesn't seem to have an easy answer. I think we should figure out why. We at NAM fear that PSD for greenhouse gases may actually be acting as a deterrent to new construction.

So we believe the pre-construction permitting process can be improved, but we don't really believe this should be a partisan, or even a contentious issue. Many of the problems identified can be addressed through a collaborative process involving EPA, Congress, and the regulated community in the States. Frankly, I am a little surprised by the reaction to this bill from some of my colleagues here on the panel. Let us be clear about what we are arguing about here. We are talking about some additional reporting requirements, and requiring that EPA issue a document in a timely fashion. That is really it. That is what we are arguing about here.

So we believe the Promoting New Manufacturing Act takes a pragmatic approach to this very complex issue. It diagnoses a problem, if one exists, and provides the best available information so that EPA and the Congress can then decide if steps need to be taken to improve the process, and it requires the agency to do its job issuing guidance in a timely fashion. Given that a very, very large revision to the ozone NAAQS, quite possibly the most expensive new regulation that will ever be issued, and I say that in all seriousness, is due by the end of next year, this is a relatively small task to require from the agency. If the EPA expects implementation of this major new reg to begin immediately upon its issuance, then it must, at a minimum, issue the tools and develop the tools manufacturers are going to need to comply with it.

So we appreciate the time and attention that the subcommittee is giving to the pre-construction permitting process. We thank you. Manufacturers look forward to working with you, and the entire subcommittee, on this bill, and on other measures that will enhance our manufacturing comeback. Thank you.

[The prepared statement of Mr. Eisenberg follows:]



*Leading Innovation. Creating Opportunities. Promoting Progress.*

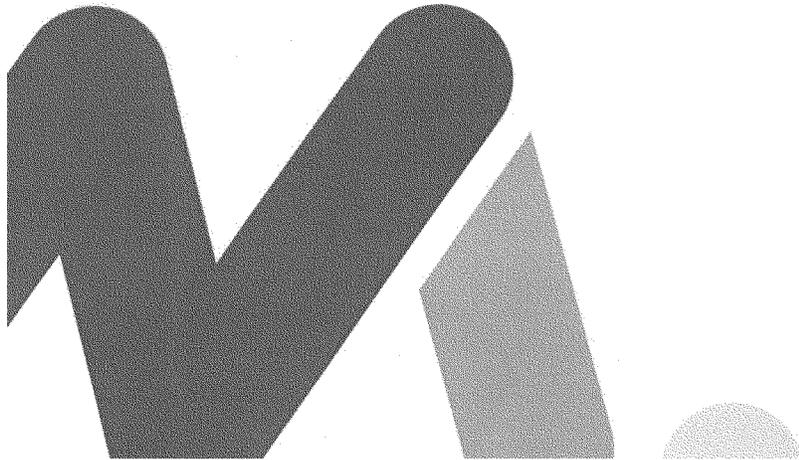
## Testimony

**of Ross Eisenberg**  
Vice President  
Energy and Resources Policy  
National Association of Manufacturers

*before the House Committee on Energy and Commerce  
Subcommittee on Energy and Power*

*on "Discussion Draft of the Promoting New Manufacturing Act"*

May 21, 2014



### Summary of Written Testimony

The boom in domestic energy production—in particular, increased oil and gas production made possible by advances in shale technology—is driving major new investment in domestic manufacturing and contributing to increased U.S. competitiveness around the world. With U.S. manufacturing on the verge of a major comeback fueled by a dominant position on energy, there is no better time than now for the Subcommittee to examine the existing air permitting process to determine whether and how it can be improved.

Manufacturers and regulators alike continue to struggle with the complex requirements of the New Source Review (NSR) program. Manufacturers have identified a wide range of challenges with NSR, ranging from relatively minor impediments to major problems. These include: changed permit conditions that derail the project; mandatory stay when a project is challenged at the Environmental Appeals Board (EAB); modeling issues; barriers to installation of combined heat and power (CHP) and energy efficiency measures; threats of litigation create delays on the front end; remand issues; and minor source problems. The EPA air office has listened to manufacturers' permitting concerns and is actively working to fix many of them, but these fixes do not always trickle down to the state permitting authorities as easily as EPA or industry would prefer.

Manufacturers also continue to be concerned with the NSR process as applied to greenhouse gases (GHGs), which appears to be acting as a deterrent to new construction. When EPA extended NSR to GHGs in early 2011, it forecasted that it would need to issue 900 new preconstruction permits per year; however, in the three-plus years since the GHGs became covered, only 166 permits have been issued *in total*.

Manufacturers believe the preconstruction process can be improved. However, we do not believe this should be a partisan, or even particularly contentious, issue. Many of the problems identified can be addressed through a collaborative process involving the EPA, Congress and the regulated community. The Promoting New Manufacturing Act would take positive steps toward addressing several of the preconstruction permitting issues raised by manufacturers. It diagnoses the problem on GHG permitting (if one exists) and provides the best available information so that the EPA and Congress can then decide if steps are needed to improve the process. By requiring that any guidance or regulations implementing a new or revised National Ambient Air Quality Standard (NAAQS) be published concurrently to the NAAQS, the bill will help minimize any disruption caused by potentially major revisions to the NAAQS for ground-level ozone in 2015. All but a handful of the new manufacturing facilities driven by the shale boom would fall in nonattainment areas for Ozone at 60 parts per billion (ppb), the low end of the range the EPA is expected to consider.

**TESTIMONY OF ROSS EISENBERG  
BEFORE THE HOUSE COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON ENERGY AND POWER**

Hearing on:  
"Discussion Draft of the 'Promoting New Manufacturing Act'"

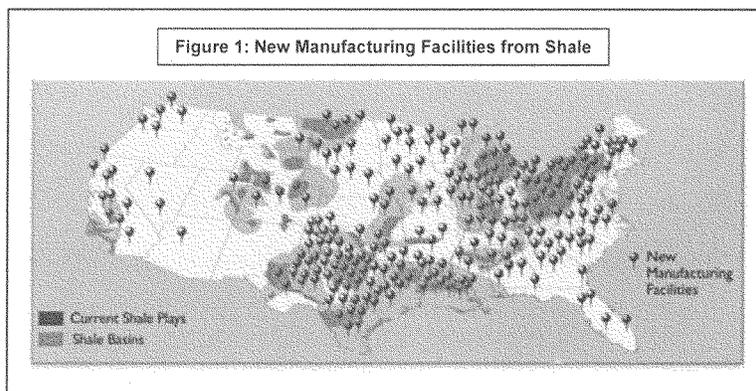
**MAY 21, 2014**

Good morning, Chairman Whitfield, Ranking Member Rush and members of the Subcommittee on Energy and Power. My name is Ross Eisenberg, and I am the vice president of energy and resources policy at the National Association of Manufacturers (NAM). The NAM is the nation's largest industrial trade association, representing nearly 12,000 small, medium and large manufacturers in every industrial sector and in all 50 states. I am pleased to represent the NAM and its members at today's hearing to evaluate the discussion draft of the Promoting New Manufacturing Act.

The NAM appreciates the subcommittee's interest in the permitting process for manufacturing facilities. This oft-overlooked aspect of the regulatory process can provide a great deal of headaches—and at times great cost and delays—for a manufacturer looking to build a new facility, expand an existing one, or even modify an already-operational plant so it can run better. With manufacturing in the United States on the verge of a major comeback fueled by a dominant position on energy, there is no better time than now for the subcommittee to examine the existing air permitting process to determine whether and how it can be improved. For all of these reasons, the NAM supports the Promoting New Manufacturing Act.

### Energy Is Fueling Exciting New Opportunities for Manufacturers

As the subcommittee has heard from the NAM and countless others in recent years, the boom in domestic energy production—in particular, increased oil and gas production made possible by advances in shale technology—is driving major new investment in domestic manufacturing and contributing to increased U.S. competitiveness around the world. A recent report by the global research firm IHS predicted that combined upstream, midstream and downstream unconventional oil and gas production processes, and the chemical industry benefiting from it, will support more than 460,000 combined manufacturing jobs by 2020, rising to nearly 515,000 by 2025.<sup>1</sup>



The potential gains to manufacturing are even more pronounced when other energy-intensive manufacturing projects driven by low-cost energy are included. PricewaterhouseCoopers (PwC) forecasts that full-scale and robust development of U.S. shale plays could result in one million new manufacturing jobs by 2025 in chemicals, iron and steel, aluminum, plastics, cement and other

<sup>1</sup> *America's New Energy Future: The Unconventional Oil and Gas Revolution and the U.S. Economy*, September 2013, available at <http://www.ihs.com/info/ecc/a/americas-new-energy-future-report-vol-3.aspx>.

industries.<sup>2</sup> In addition, PwC estimates that lower feedstock and energy costs could help manufacturers in the United States reduce natural gas expenses by as much as \$11.6 billion annually in that same time frame.<sup>3</sup>

### **Permitting Challenges Persist**

Manufacturers understand the risks inherent in making investments of this magnitude in the U.S. We understand that even with our built-in energy advantage, U.S. policies on taxes, torts and regulations make it more expensive to manufacture here than in our largest trading partners. We understand that new regulations will be issued while we wait for our permit, moving the goalposts and forcing us to change our entire plan. We understand that law firms masquerading as public interest groups will exploit every step of the approval process for our projects and ultimately sue us, seeking to delay a decision and drive up project costs in the hopes that market conditions will change or we will walk away. We understand that all of this will happen. But it doesn't make it right.

The Clean Air Act preconstruction permitting process is an area that can be improved. Manufacturers and regulators alike continue to struggle with the complex requirements of the New Source Review (NSR) program. NSR requires that any new construction or major modification to a "major source" in an attainment area first obtain a Prevention of Significant Deterioration (PSD) permit and install the Best Available Control Technology (BACT) before construction can begin. NSR often triggers evaluations that can last for several years, despite a 12-month aspirational deadline set by the Environmental Protection Agency

<sup>2</sup> *Shale Gas: A renaissance in US manufacturing?* December 2011, available at <http://www.pwc.com/us/en/industrial-products/publications/shale-gas.jhtml>.

<sup>3</sup> *Id.*

(EPA). PSD permits are often issued by state air quality control agencies, in consultation with the EPA, and can vary widely. The BACT selection process itself is done on a case-by-case basis for each affected facility. When the construction or modification occurs in a nonattainment area, NSR requires a “Nonattainment NSR” permit, which has a much stricter set of requirements than PSD.

Manufacturers have identified a wide range of challenges with NSR, ranging from relatively minor impediments to major problems. These include:

- Changed permit conditions that derail the project. One of our members, Charlotte Pipe and Foundry, a company that testified before this Subcommittee two years ago, had to abandon a new “green foundry” project in North Carolina due to new fine particulate matter (PM2.5) National Ambient Air Quality Standards (NAAQS). Charlotte Pipe had already purchased land for the project and even paid to have its permit placed in the state’s nine-month fast-track process. Eighteen months of delay later, the new standards were issued, the rules were changed mid-stream—to comply, the project would have needed 4,500 acres instead of 450—and Charlotte Pipe was forced to give up.
- Mandatory “stay” when a project is challenged at the Environmental Appeals Board (EAB). If a permit is challenged in federal district court, the project applicant may choose to begin construction activities at its own risk. However, when the same permit is challenged at the EAB, the project is effectively “stayed,” and construction is placed on indefinite hold pending the outcome, delay and uncertainty that can cost the applicant millions of dollars. Opposition groups frequently cause this delay by filing an appeal to the EAB.
- Modeling issues. Air quality modeling has become the most critical step in obtaining a PSD permit in recent years. The EPA’s models, which manufacturers report are overly conservative and prone to errors, are a consistent source of delays in the permitting process and can often lead to abandoned projects. In one case, a manufacturer’s small facility with relatively low emissions could only demonstrate compliance via modeling by raising stack heights from 20 feet to more than 150 feet, at a cost of millions of dollars. The project did not go forward. Another manufacturer that produces natural gas compressor stations reports that disagreements with the EPA’s nitrogen dioxide (NO<sub>2</sub>) models are preventing the issuance of a PSD permit, and the applicant may need to do a seven-figure study to

address these modeling issues. Yet another manufacturer's project failed multiple modeling runs because it has a rail line bisecting the facility; even though only a few trains run through the property, the facility is required to place modeling receptors (points of impact on the environment being modeled) along the rail line because the EPA claims the public has access to the site, and hence could be exposed to worst-case emissions. The EPA-required American Meteorological Society/EPA Regulatory Improvement Committee Model (AERMOD), which predicts ambient impacts of criteria pollutants that will be emitted from the NSR source, itself could use improvements. Manufacturers report that AERMOD over-predicts short-term pollutant impacts during low wind-speed scenarios; Overstates fugitive PM2.5 particulate emissions from sources such as roadways and material handling and storage facilities; and predicts high building downwash concentrations during low wind speed and stable conditions. Finally, AERMOD is a 32-bit program that has a limitation of only accessing a maximum of two gigabytes of memory and only is approved to use a single processor. Many NSR modeling projects will entail 30,000 to 100,000 receptors and 200 to 500 emission points that have to be modeled. In addition, modelers must use either one year of on-site meteorological data or five years of meteorological data from an approved weather station. These models are approved only to be run on a personal computer (PC) with a single processor. These modeling runs can take in excess of 35 to 40 days to run on a PC for just one year of data. If an applicant must run five years of data, it will take months to run the model on a PC with a single processor.

- Barriers to installation of combined heat and power (CHP) and energy-efficiency measures. NSR is often triggered when a facility attempts to upgrade or install technologies that lead to increased energy efficiency, making some manufacturers reluctant to move forward with an end-use energy-efficiency project if it could potentially lead to NSR. For instance, an energy-efficiency project that allows a plant to increase its hours of operation would trigger NSR due to a net increase in emissions, even though the facility is using energy more efficiently and producing more of its product.
- Threats of litigation create delays on the front end. The EAB does not defer to states' expertise in permitting when appeals are brought forth by environmental groups. As a result, state environmental regulatory agencies constantly second-guess their decisions and try to draft "litigation-proof" permits, driving a longer permitting process. In addition, all correspondence (e-mails, draft documents, data, notes to file, meeting notes, etc.) between industry and environmental regulatory agencies is discoverable under federal and state Freedom of Information Act (FOIA) laws. This often makes industry and agencies think twice about sharing ideas and confidential business information/data that may become public, stifling communication and resulting in a longer permitting process.

- Remand issues. When NSR/PSD permits are remanded by the EAB, there are often questions regarding how to address issues raised by the remand. State environmental regulatory agencies look to the EPA for guidance when such questions arise, and these questions are not always easily resolved. This ultimately results in a longer permitting process as state agencies struggle to find a path forward to address remand items to the satisfaction of the EPA.
- Minor source problems. Simple permit modifications for minor sources—which do not go through PSD—are taking anywhere from six to twelve months for approval. One member reports that the NSR process for a synthetic minor source has already taken fifteen months, and the project has not even received a draft construction permit. At the current pace, the member may not receive approval until the end of the summer.

The EPA's air office has listened to manufacturers' permitting concerns, and to its credit, the EPA is aware of many of the problems listed above and is actively working to fix them. But these fixes do not always come to fruition in a timely way in light of opposition or trickle down to the state permitting authorities as easily as the EPA or industry would prefer. For instance, it became apparent that the EPA's models had a built-in bias that led to a gross overestimate of particulate matter (PM) emissions from sources like gas-fired boilers, which have virtually no PM emissions. Industry conducted a long-term study quantifying these overestimates, and the EPA issued a guidance memorandum to states and regions allowing bias corrections to address the problem. However, it took more than six months for the memorandum to come out, and now manufacturers are being told that states will not allow sources to make the corrections. The EPA has also made model corrections to deal with low wind speeds, but they are beta options, meaning applicants need permission to use them based on a detailed justification. Many states and regions have been unwilling to grant permission for their use.

**The Curious Case of PSD for Greenhouse Gases (GHGs)**

As a consequence of the 2009 Endangerment Finding for Greenhouse Gases (GHGs) and the ensuing Light-Duty Vehicle GHG Rule, the EPA extended the reach of NSR to GHGs. Sensing an immediate problem—PSD for GHGs at the statutorily required levels would expose six million buildings to preconstruction permitting—the agency issued the GHG Tailoring Rule, which raised the NSR/PSD thresholds for GHGs. The agency estimated that, even at the GHG Tailoring Rule levels, it would still need to issue 900 PSD permits per year for GHGs.

However, recent information from the EPA shows that in the three-plus years since NSR/PSD was extended to GHGs, only 166 permits have been issued *in total*.<sup>4</sup> That is a stunning drop-off in PSD permits, one for which the agency does not seem to have an easy answer. Manufacturers fear that PSD for GHGs may be acting as a deterrent to new construction.

Regulated sources have approached NSR with trepidation for years; this is information the agency is already aware of. However, PSD for GHGs carries with it an additional set of challenges that could be scaring manufacturers off. First of all, the likelihood of a costly and time consuming permit challenge or lawsuit from an environmental group increases substantially when GHGs are involved. Once an NGO appeals a permit to the EAB, the EPA is barred from finalizing the permit and authorizing construction to proceed. Such delays can result in costs costing many millions of dollars per month, uncertainties in

---

<sup>4</sup> Presentation of Anna Marie Wood, director, Air Quality Policy Division, Office of Air Quality Policy and Standards, at the Clean Air Act Advisory Committee Spring Meeting, April 2014.

obtaining needed materials and labor force, and the risk of further delay associated with any remand which cause further months of delay but typically involve only minute issues to address the administrative record. Second, there is no easily accessible resource for PSD permit information to inform potential applicants what to expect. The EPA did, for the first 18 months of PSD for GHGs, post copies of its BACT opinion letters online.<sup>5</sup> However, in early 2013, the agency stopped posting these letters, reserving the right to post new letters only if an issue had not been previously addressed. As a result, there is no record of what the EPA considers as a GHG BACT for any project since 2012. Finally, because the only real control technology for GHGs is energy-efficiency, the BACT process for a manufacturer is significantly more involved and intrusive than for any other pollutant (which usually can be controlled by technologies bolted onto a smokestack). Energy-efficiency changes are process changes, and the EPA and state air quality agencies simply are not qualified to make these judgments.

The table below provides examples of the requirements manufacturers could be forced to meet to obtain a GHG PSD permit. The examples below are taken entirely from the EPA's own materials.

---

<sup>5</sup> Available at <http://www.epa.gov/nsr/ghgcomment.html>.

<p><b>Manufacturers That Use Commercial or Industrial Boilers</b></p>	<ul style="list-style-type: none"> <li>• Change energy sources to costly alternatives.</li> <li>• Perform system integration, calibration and maintenance (\$1 million).</li> <li>• Install an economizer (\$2.3 million).</li> <li>• Install an air preheater (\$200,000–\$250,000).</li> <li>• Install a condensate return system (\$75,000).</li> <li>• Reduce slagging and fouling of heat transfer surfaces (\$50,000–\$125,000).</li> <li>• Perform network-based optimization (\$100,000).</li> </ul>
<p><b>Cement Manufacturers</b> (also applies to glass and other similar manufacturing processes)</p>	<ul style="list-style-type: none"> <li>• Change energy sources to alternative fuels and sources, such as hybrid solar plants.</li> <li>• Substitute the raw materials used.</li> <li>• Blend cement with other materials.</li> <li>• Change the way the facility operates, including everything from motors to fans to compressed air systems to lighting.</li> </ul>
<p><b>Iron and Steel Manufacturers</b></p>	<ul style="list-style-type: none"> <li>• Change energy sources to costly alternatives.</li> <li>• Make changes to the coke-making, casting and hot rolling process, which will add on costs for potentially decades (with changes to the coke-making process costing as much as \$110 per metric tonne and payback times of more than 50 years).</li> </ul>
<p><b>Pulp and Paper Manufacturers</b></p>	<ul style="list-style-type: none"> <li>• Change energy sources to costly alternatives.</li> <li>• Replace boilers.</li> <li>• Install new technologies for chemical recovery furnaces and combustion units.</li> <li>• Install new combined heat and power (CHP) units or switch the type of CHP system used.</li> <li>• Install control measures to reduce GHG emissions from pulp and paper landfills.</li> </ul>
<p><b>Oil Refiners</b></p>	<ul style="list-style-type: none"> <li>• Change energy sources to costly alternatives.</li> <li>• Install carbon capture technologies.</li> <li>• Install or upgrade power or waste heat recovery systems.</li> </ul>

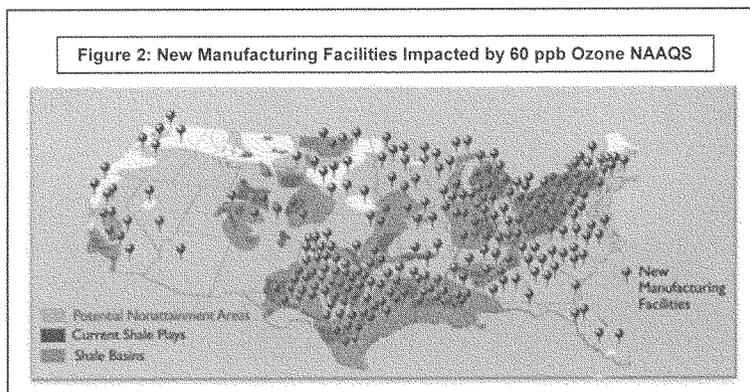
Manufacturers remain concerned that PSD for GHGs will ultimately dictate fuel choice. For instance, if a manufacturer selects natural gas as its BACT, does it then create a precedent that natural gas is the BACT for all similar projects going forward? Put another way, if a similar project wishes to use a different fuel, does the prior choice of natural gas as a BACT operate as a barrier to that choice?

**Improvements Made by the Promoting New Manufacturing Act**

As this testimony makes clear, manufacturers believe the preconstruction process can be improved. However, we do not believe this should be a partisan, or even particularly contentious, issue. Many of the problems identified can be addressed through a collaborative process involving the EPA, Congress and the regulated community.

The Promoting New Manufacturing Act would take positive steps toward addressing several of the preconstruction permitting issues raised by manufacturers. It would require the EPA to publish annually information on the number of NSR/PSD permits issued and the length of time permitting authorities and the EAB are taking to complete their jobs. In other words, it diagnoses the problem (if one exists) and provides the best available information so that the EPA and Congress can then decide if steps are needed to improve the process.

The bill would also ensure that any guidance or regulations implementing a new or revised NAAQS be published concurrently to the NAAQS; if the implementing guidance is not published at the time of the NAAQS, then preconstruction permits need not be revised until the implementing guidance has been issued. This is a very important issue that could present major problems in 2015 when the EPA revises its NAAQS for ground-level Ozone. All but a handful of the new manufacturing facilities driven by the shale boom would fall in nonattainment areas for Ozone at 60 parts per billion (ppb), the low end of the range the EPA is expected to consider.



The NAAQS for most criteria pollutants are already so tight that most large projects trigger NSR, discouraging investment in these larger ventures that create more jobs and economic growth. If the EPA lowers the NAAQS for Ozone, even by an amount as small as 5ppb, many new areas will be subject not only to NSR but to nonattainment NSR, a process that requires emission offsets, installation of the strictest technology on the market, and a rigorous set of permitting hurdles that effectively prevent new construction. If the EPA expects implementation of a new Ozone NAAQS to begin immediately upon its promulgation, it must, at a minimum, develop the tools manufacturers will need to comply.

### **Conclusion**

Manufacturers appreciate the time and attention the subcommittee is giving the preconstruction permitting process. With GHGs, Ozone and several other new air regulations on the immediate horizon that will impose new permitting requirements, it is critical that Congress and the EPA try to diagnose

and address as many challenges as they can before it is too late. Manufacturers look forward to working with the members of the subcommittee on the Promoting New Manufacturing Act and other measures that will enhance our manufacturing comeback.

Mr. WHITFIELD. Thank you, and thank all of you for your testimony. At this time I would like to recognize myself for 5 minutes for questions, and then we will go to the other members.

Ms. Gershman, you had mentioned in your testimony, and other witnesses also, about the 177 projects, and that 62 percent of this would be foreign investment. Are you all tracking these projects, and could you give us an update on your analysis of that?

Ms. GERSHMAN. Certainly. We have been tracking publicly announced projects, so nothing in our—any of our numbers are secret. It is all gathered from press releases that companies themselves have made. The 177 new projects that I reference include projects in the petrochemical, resins, fertilizer, chlor-alkali, and organic chemical sectors. There is an even larger of announced projects in other industries resulting from the use of shale gas, which includes iron, steel, tires, and many manufacturing plastic processors and resins as well.

Mr. WHITFIELD. Now, you know, one of the frustrating things, obviously, about Congress today is that there seems to be very little agreement on much of anything, but on expediting the permitting process, even the President is talking about the need for that. The States come to us frequently and talk about the need for that. Mr. O'Mara talks that in Delaware things seem to be going relatively well. I mean, Mr. Walke may disagree and not think anything really needs to be changed, but, Mr. Walke, would I be accurate in saying that, in your view, really nothing does need to be changed about this permitting process right now?

Mr. WALKE. No. We would support the expediting of permits, just not at the expense of granting amnesty from health standards. That has been the focus of my testimony.

Mr. WHITFIELD. But there are some methods to expedite that you all would be supportive of?

Mr. WALKE. Sure. Certainly. We would be happy to join that conversation.

Mr. WHITFIELD. And Mr. O'Mara, now, you said that you had some ideas on this, because, like I said, the States have complained to us about lack of direction. We have heard a lot of witnesses talk about it, but evidently it is not an issue in Delaware. What are some areas that you think we should be looking at that maybe we are not looking at right now?

Mr. O'MARA. I think some of the conversations you facilitated last year, actually, I think has some good kind of bipartisan ideas around greater communication with EPA. And, I mean, one of the hang-ups that happens in some other regions, I am fairly blessed in Region Three that we are talking to our regional administrator all the time, and—

Mr. WHITFIELD. Are you referring to the forums?

Mr. O'MARA. Yes, the forums that you held.

Mr. WHITFIELD. OK.

Mr. O'MARA. I mean, one area for, you know, greater collaboration is working with the EPA prior to submittal. So the States will send it back for the final review, and sometimes they get sent back, get remanded. You know, that process, if there is a greater coordination on the front end, can avoid a lot of the misunderstanding. And so you have seen some issues in some other States where

there isn't that coordination up front, and you end up with this kind of torturous cycle. You know, if you can actually cut the back end, that provides a lot more certainty.

I also think transparency could really help. You know, we try to be very transparent with our applicants, you know, about, you know, this is the date the draft permit is going to be issued, this is the date of the hearing, this is the date the decision will be made, so they can build that into their plan, because time is money. I mean, the cost of the permit is a fraction of the opportunity cost of not getting implemented. So, you know, more transparency there at the State and local level though, as Mr. Walke was saying, rather than at EPA's level, because really this is a local decision.

And then the last is actually around money. You know, a lot of the cuts to the EPA have been in the air program in the last few years, and those are resources that actually pay for much of the staff that would be putting out the guidance that we are complaining is being delayed. Some of that trickles through to the States, because the State grants get cut also, and so then we are trying to do more with less, trying to get things out. And so having sufficient staff to deliver permitting, more transparency, and then encouraging additional investment I think would be a good package that everyone could agree to.

Mr. WHITFIELD. OK. Mr. Eisenberg, are you personally aware of projects that have actually just been abandoned because of the complications of this permitting process?

Mr. EISENBERG. Yes, I am. And the members themselves ask that I not reveal who they are, but yes, I mean, without a doubt. And this is not, you know, these happen. Sometimes they don't happen. So I don't want to make generalizations here, but yes, I have members that walked away from projects because the permitting process was taking too long, or the modeling got to a point where there was no way that they could build this facility to meet the standards that were being—

Mr. WHITFIELD. You know, I am glad that you raised the greenhouse gas issue, because the endangerment finding, and even with the tailoring rule, I mean, I think EPA recognizes that they are going to have some significant issues, and those numbers that you gave about the 900 per year, and they have issued, like, 166, and I guess the endangerment finding was in 2009. So I think that is a very real issue, but I think all of us recognize the need to try to come up with a solution, and I hope that we have an opportunity, all working together, to do that.

My time has expired, so at this time I recognize Mr. Rush for 5 minutes.

Mr. RUSH. I want to thank you, Mr. Chairman.

Secretary O'Mara, we often hear from regulated industries about the importance of regulatory certainty in making investment decisions. We even heard from some of the witnesses today that this bill would do nothing to enhance regulatory certainty. Has your State even been unable to issue preconstruction permits because EPA has not issued guidance for a new air quality standard, and is this a situation that States have the ability to handle?

Mr. O'MARA. Thank you for the question. You know, we were the first State to sign the Constitution, so we have no problem kind of blazing ahead. And, frankly, in the case of times where there isn't guidance, we keep working hard, we don't wait. And so we will coordinate with the EPA, we will make sure they know what we are doing, but it is never held us up. And I have permitted, you know, hundreds of megawatts of combined gas plants. I have permitted big, you know, a restart of a refinery permitted, and big expansions of units, all kinds of energy projects in our State. And, you know, we are turning around permits very, very quickly, and it hasn't slowed us down at all, as long as we are communicating during the process.

Mr. RUSH. Do you agree with the assertion that this bill will provide greater transparency and timeliness in obtaining pre-construction permits for new manufacturing facilities? And, secondly, how does the EPA's role differentiate from the State role in the process, and how would this bill impact that relationship?

Mr. O'MARA. I think that the concept of transparency is a good one, because I do think that there is additional public pressure that can be applied to, you know, permits that are languishing if it is more clear about, you know, what timelines are, and kind of where things are stuck in the process. I think it is at the wrong level in the bill, frankly. I mean, you know, does EPA headquarters have to have a list on their Web site of projects in Delaware, or should Delaware have that list?

And as many of you know, that have served on, you know, State and local legislative bodies, I mean, there is nothing more effective to expedite, you know, decision-making than having folks, and, you know, having those kind of timelines public, because folks are held accountable. And so I think, in terms of consistency, I think it actually creates more confusion, because you will have different standards, and there will be lack of clarity for both the regulator and the industry, and I think the transparency should really be more focused on the State and local level, instead of the Federal level.

Mr. RUSH. This bill assumes that it is a huge problem if EPA does not issue rules and guidance at the same time as a new air quality standard, so the bill allows a facility to obtain a pre-construction permit pegged to an old air quality standard if the EPA hasn't issued rules and guidance. Does this facilitate permitting, or does it create new avenues for litigation and delay, in your opinion?

Mr. WALKE. Well, it is important to recognize that, you know, in the 37 years of this permitting program, it has been a requirement that new facilities meet revised health standards after they have been adopted. So the history of the 37 years, and I am not going to argue is an ideal history, but it shows that we can and do regularly, every year, every month, issue pre-construction permits at the same time that there are these standards changing.

What puzzles me about the bill is, by granting amnesty to these newly constructed facilities, so for the first time ever in the Clean Air Act they don't have to meet updated health standards, it poses a dilemma that Mr. O'Mara pointed out. These facilities would actually model violations of the new standards, and some of the witnesses have indicated that that has happened previously. But I don't believe the bill intends to grant perpetual amnesty from re-

vised health standards. There is some vagueness about the bill that my written testimony addresses.

But if that is the case, then a facility has to come back again, after the fact, with an after the fact permitting exercise, retrofit control exercise, and in the meantime other businesses are suffering the burden of additional pollution controls that I think are probably also unintended consequences of the bill. So I am not going to argue that this system that we have today is perfect, or could not stand improvement, but I think this actually takes us backwards. It certainly does on the health front. I think it does vis-à-vis permitting of the individual facility, and certainly for the other local businesses in that area.

Mr. RUSH. I would like to just ask one additional question of both you and Mr. O'Mara. When you speak about public health, what is the impact on public health if this bill will go forward?

Mr. O'MARA. Right now there are 30 million Americans, particularly on the East Coast, that are living with unhealthy air. And, you know, and I think, you know, in Delaware, where 90 percent of our pollution comes from out of State sources, you know, the idea of new facilities coming in, being allowed to pollute more than cost-effective technology would allow, to not capture those reductions that are much cheaper than going back to an existing facility, where it might cost, you know, 50 times as much to add pollution controls to an older facility. It is economically inefficient.

But, I mean, this is what affects kids. I mean, I have a 2-year-old daughter. I mean, the idea that she is breathing air that is unhealthy on a lot of days is painful. Seniors, you know, another disadvantaged population. So, at the end of the day, it is about people, and I think there are ways to avoid some of those impacts.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. WHITFIELD. Gentleman's time has expired. There has been some comment about the burden on EPA of posting on its Web site. I might note that, in their budget documents, they already provide information on the percent of permits that they are issuing, so they already have a lot of this information. But at this time I will recognize the gentleman from Louisiana, Mr. Scalise, for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman. I appreciate you having this hearing, and I thank all of the panelists for coming and providing the testimony, and for answering our questions. I know there are a lot of questions that we have. EPA is one of those agencies that we have a lot of questions for because, frankly, when you talk to people that are trying to create jobs out in the country, I know in South Louisiana, unfortunately, the biggest impediment that they tell me about when they are sharing their challenges at creating more jobs in America are the regulations, and the lack of guidance, the lack of obtainable type of standards that are coming out of Washington.

And that is not the way that Government should work. Government should not be the impediment to American job creation because, and I think a few of us have touched on this, I have seen it, many cases, when businesses are making decisions of where to make investment, they are not just saying, I am going to make it in Louisiana, or I am going to make it in Delaware, they are looking at other countries. And we are losing some of these jobs to

other countries because we are not getting clear guidance from Washington. And the EPA is one of the worst offenders.

Now, let us be honest about this. When you look at some of the problems that we have seen from EPA, one of the reasons that this bill is necessary, and all it says, by the way, is that when they come out with some proposed rule, they have to concurrently publish regulations and guidance for implementing the rule. Just tell people how to implement it. Because a lot of times what we see is these rules have nothing to do with improving air quality. The rules are designed to literally try to inhibit people's ability to get a permit. That is not the Government's role, to stop people from making investment in this country and creating jobs.

And, by the way, when those jobs go to those other countries, Brazil, or India, or China, you name it, we have got a list. When they go to those other countries, they don't use the standards that we have today. They emit more carbon. They don't follow the same kind of environmental regulations we already have. And yet, when these new standards come out, so often they are not about improving health and safety, it is about denying an industry. The President brags about the war on coal, saying he is going to bankrupt the coal industry. He doesn't want to see coal plants be more efficient. He wants to see them shut down, and he is doing it. That is not the role of the Federal Government.

So when we talk about this, I want to at least get some questions answered about this investment that I hear about, that others hear about. We hear about over \$100 billion of investment that is waiting to happen, really good high paying jobs in America. Obviously Louisiana would be one of those States that would benefit, but so many other States across the country would. I want to ask Ms. Kerrigan and Mr. Eisenberg, because you all are there on the front lines, can you share with us some of the stories you know? I mean, are these numbers right? Are they low, maybe high? When we hear about \$100 billion of investment that is waiting, and we just want guidance, want clear guidelines so that people can play by the rules. If you can share first, Ms. Kerrigan?

Ms. KERRIGAN. One hundred billion dollars is a lot of money. Even if it was half of that, I mean, that is significant, you know, in terms of investment that could be made in this country. And when you, you know, when you look at the uncertainty of this issue in general, I mean, it really does filter down to the small businesses. You know, the individual, you know, firms and small businesses that, you know, are planning to work on these projects, or are contracted to work on these projects, there is a lot of planning that they need to do, in terms of financing, in terms of human capital acquisition, in terms of investing in new assets, et cetera.

So if there is delay, or any type of delay or derailment, I mean, this is very costly to business owners and entrepreneurs, and could be catastrophic for some, you know, if these projects—if they are planning to work on them, they have made the investment, and the project falls through. But—

Mr. SCALISE. And Mr. Eisenberg, because I know you talked about the, you know, the folks that you have heard directly, I have heard directly, of plants that have moved to other countries because of the inability to get any kind of guidance and direction, and

get a permit to move forward and do something in a safe and effective manner in this country. I mean, can you give me a ballpark of what you think the number is that is out there of projects, manufacturing jobs, that are ready to go.

Mr. EISENBERG. Sure. So we have had a couple different economists look at this, using the information that is out there, publicly available information, and also doing some research within the sectors, and there are two that we have put out. One is the one that that PWC did a couple years ago that said if we actually fully develop the shale resource that we have, then, based on the direct sort of upstream, midstream, you know, drilling kind of jobs, and then the manufacturing facilities that will then build out from all the energy, we could be creating, just with the manufacturing, a million jobs by 2025.

We supported as study, as did ACC and a few other groups, that IHS Global Insight did a couple years ago, about a year ago, that looked at the natural gas value chain and chemicals, so it didn't get as far as PWC, but it took a much deeper dive, and it forecasted for manufacturing about half a billion new jobs by 2025. The numbers have been pretty consistent.

The amount of development down there is really staggering. I mean, anecdotally, I have members come in and say, look, we can't build fast enough because we literally can't find the people to do it. You know, we have a pipefitter that shows up for work one day, and then the guy down the street outbids me for him the next day. So there is a lot waiting to happen down there if we can figure—

Mr. SCALISE. And I appreciate what you all do in trying to create jobs in America. A lot of people up here talk about helping small businesses. There are real things we can actually do. This bill is one of them. There is no amnesty in this bill. This bill just says, if you are going to put a new standard out, EPA—I mean, if one of your companies misses a deadline for filing the permit, they don't get the permit. EPA has missed deadlines over and over again. There just ought to be some transparency, and make the standard obtainable. Show how you can actually get it done. Don't put a standard out just to put somebody out of business and run those jobs to China. That is what we are trying to do here, and I thank you, Mr. Chairman—

Mr. WHITFIELD. Gentleman—

Mr. SCALISE [continuing]. For the hearing. Yield back the balance of my time.

Mr. RUSH. Mr. Chairman?

Mr. WHITFIELD. Yes?

Mr. RUSH. Mr. Chairman, I want to clarify a statement that you made, and—

Mr. WHITFIELD. That I made?

Mr. RUSH. Yes, you made, that the EPA has the reporting data in its budget document. Mr. Chairman, we asked the EPA whether they had data on State permitting times, and EPA maintains that a database of the air pollution technology is required in major pre-construction permits. They do have a database, but it is voluntary. States are not required to report on that system, report to the system. Some States report voluntarily, other States report their most significant permits, and some may not do much reporting at all.

The EPA estimates that perhaps only 50 percent of all pre-construction permits make it into that database. Only 50 percent, Mr. Chairman. This means that to get the data required by this bill, the EPA is going to have to impose new mandatory reporting requirements on the States. And, Mr. Chairman, I don't see how that will speed up State permitting. And if we had made it possible for the EPA to testify today, we could have heard this from the agency firsthand. And I just wanted to clarify those comments that you made a little earlier, Mr. Chairman. Thank you very much.

Mr. WHITFIELD. Thank you so much for clarifying that. At this time I would like to recognize the gentleman from Michigan, Mr. Dingell, for 5 minutes.

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy. I commend you for this hearing. My questions at first will be for Mr. Walke, Director of Climate and Clean Air Program.

Sir, the Clean Air Act requires EPA to set protective air quality standards for pollutants, and States have the primary responsibility to meet these standards. The bill before us appears to ignore this division of responsibility and labor. Section 2 requires EPA to post information about permits issued by EPA, State, and local permitting authorities. Section 4 appears to require that EPA report on permit delays and actions EPA is taking to address delays for permits issued not only by EPA, but also by State and local permitting authorities.

Now, Mr. Walke, you have testified that State and local permitting authorities, not EPA, issue most of the pre-construction permits in this country. Does any of the other, or do any of the other panelists disagree with that statement? OK, thank you, gentlemen and ladies. Now, this means, then, that Section 2 is requiring EPA to record an expenditure report on what scores of State and local permitting authorities are doing. To your knowledge, does EPA currently have the information that is required by Section 2, yes or no?

Mr. WALKE. No, sir, I do not believe they do.

Mr. DINGELL. OK. Does anybody disagree with that statement?

Ms. GERSHMAN. I actually think that there might be a question as to what information EPA has versus does not have. In the appropriations language for fiscal year 2015, there is a performance metric in there for EPA that states that it is tracking the number of major permits that are being issued each year, and there is a percentage target of 78 percent that are issued within a year. But what we do not know is where that number comes from.

Mr. DINGELL. Thank you very much. It also appears that Section 4 would require EPA to go through public notice and comment to prepare an annual report on delays in pre-construction permits issued not only by EPA, but also by State and local permitting authorities. Mr. Secretary, is that right?

Mr. O'MARA. Yes.

Mr. DINGELL. Now, to your knowledge, does EPA have or regularly collect information from State and local permitting authorities on the specific reason for delays in issuing permits, yes or no?

Mr. O'MARA. Not formally. There is a lot of conversation, but not—

Mr. DINGELL. Now, Mr. Secretary, if EPA doesn't publish implementation guidance, or is late in so doing, are State permitting agencies equipped to issue pre-construction permits in a timely manner, yes or no?

Mr. O'MARA. Yes.

Mr. DINGELL. Now, Mr. Secretary, the bill creates a loophole that could allow a new facility to meet an old air quality standard. Will this do anything to help the State of Delaware process its permits faster, yes or no?

Mr. O'MARA. No.

Mr. DINGELL. You would be finding yourself in the awkward position of approving permits to an old standard, rather than the new one, the current one, is that right?

Mr. O'MARA. Yes.

Mr. DINGELL. Now, the language of Section 3 is also ripe for litigation. Do you agree with that, and if so, could you please elaborate?

Mr. O'MARA. Yes, I do believe that it is, because there is an open question about when the new standard is already in place, but when the guidance is then finalized, whether the facility that was permitted without the guidance under the old standard would then have to make immediate retrofit and upgrades to it, setting up citizen suits, setting up legal challenges, setting up inequity with other firms. So the legal uncertainty is significant, we believe.

Mr. DINGELL. So it sort of appears here that we may be imposing, by the legislation, additional burdens that are unproductive, rather than by reducing the burdens, is that correct?

Mr. O'MARA. Yes.

Mr. DINGELL. Mr. Chairman, I thank you for your recognition. I commend our panel. I hope that we have been listening to my dear friend, Mr. Rush, who is very wise in these matters. And I thank you for your courtesy to me and the panel. Thank you for your—

Mr. WHITFIELD. Yes, we always listen to him. Thank you, Mr. Dingell. At this time I would like to recognize the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. RUSH. Mr. Chairman.

Mr. Latta. Well, thank you very much, Mr. Chairman, and thanks very much for our panelists for being here today. Just, again, I always like to just kind of preface what I am going to say with a little bit about my district, and the State of Ohio, and also what goes on, I think, in manufacturing. I have got 60,000 manufacturing jobs in my district. I not only have 60,000 manufacturing jobs, since my staff actually started keeping track, over the last 22 months I have done about 500 visits in my district to manufacturing facilities, businesses, you name it, across it. The number one issue I hear from everybody out in my district are Federal regulations.

And when SBA came out with their statistics a couple years ago, showing that in 2011 we had \$1.7 trillion of regulations out there, that was a problem. But now, when we look at the update for this year, in 2014, we are looking at about \$1.9 trillion. I have never had any of my businesses out there that I have ever gone through, small, medium, or large, ever say that they were against clean air, against clean water. But what we are looking at is a problem with

trying to comply, and also with the EPA always being the number one issue out there.

Now, one of the things that—I was in one plant, and it was a very large manufacturer, and they probably had a table about the size of what we see across here, and it was full of all these books, and everything else, and they said one thing to me. You know, one of the problems we have is trying to comply with this, but the problem that they had was the EPA was trying to tell them to take a square peg, pound it through a round hole, because those regulations didn't even work for their plant. So it really comes down to we want to make sure that, you know, we have everybody on the same cylinders, because, as we have heard from our witnesses today, especially for the number of jobs that are out there that we have the in the potential in the future are very, very important.

So, Mr. Eisenberg, if I could start with you, you note in your testimony that revisions to the national ambient air quality standards can affect the ability to obtain air permits, and you specifically referenced the potential revisions to the ozone standards. And can you explain?

Mr. EISENBERG. Yes, thank you. So we are now at a level that was put in place in 2008, was recently affirmed by the DC Circuit, of 75 parts per billion for national ambient air quality standards for ground level ozone. Those levels are subject to change every 5 years, subject to revision. We are in the middle of one of those cycles right now. EPA is on a deadline to put out new ozone NAAQS in December of this year, and finalize them by October of next year.

The last go round, EPA's numbers were about \$90 billion a year. We are looking at it, and we are thinking that it could actually be a little bit higher than it. The reason, quite frankly, is that, you know, we have made a lot of progress here on ozone, and we are getting to a point where the gains are getting a lot more expensive because, quite frankly, a lot of the technologies that we are required to get down to some of these levels just don't actually exist, and you have to get very, very creative, and do things that may be a little unconventional, and a lot more expensive, than we would expect.

If I could take a second, you know, one of the big assumptions here that we are making on this bill, in terms of, you know, some of the slippery slope downstream problems that it could cause is that if you, the Congress, were to tell EPA that it has to do the guidance concurrently, then it wouldn't do it, and then all these bad things would happen. We hope that EPA would do it, and that these problems would be avoided. So, you know, again, if EPA just didn't do it, and ignored the statute, then yes, you could be creating some unintended consequences, and you certainly would do that in the case of ozone. We would hope that, certainly for ozone, and for something that is going to cost that much, that we could get this guidance concurrently, so that we are not just stuck in limbo as the goalposts were moved.

Mr. LATTA. Thank you. Ms. Kerrigan, if I could ask, you refer in your testimony to the complex and tentative regulatory permitting process that businesses face in this country. Do you believe that it

is important to look for ways to expedite the permitting process, and is that critical for job growth in this economy that we have?

Ms. KERRIGAN. Absolutely. Look, we have, you know, we have heard the other testimony, and the investment dollars that are out there, and that are going to be invested in these projects. And, from a small business perspective, when I hear numbers like the ACC's numbers, in terms of \$100 billion, I mean, I think small business. I think small business opportunity, new business formation, new jobs, all the things that our economy needs to get back to robust growth, and back to competitiveness again.

So not only in permitting, but in other areas, if there is, you know, if Government can improve, and it can work better, if it can work in collaboration with the business community, I mean, that is going to get these investment dollars flowing, and get our economy back to robust levels of growth again.

Mr. LATTA. Well, thank you very much. And, Mr. Chairman, I see my time has expired, and I yield back.

Mr. WHITFIELD. At this time the Chair recognizes the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman. I have several concerns about this bill. It follows the House Republicans' mantra that the way to produce jobs is to weaken environmental protections. I don't believe that is the case. It assumes that EPA is the problem, even here, where States are issuing almost all of these permits. In fact, the bill would likely slow permitting by diverting State and EPA resources, and adding legal uncertainty.

But I want to focus on another problem. Section 3 of the bill undermines decades of Clean Air Act practice, and weakens air quality protections. The Clean Air Act requires a large new or expanding industrial facility to get an air pollution permit before starting construction. The facility must commit to install pollution controls. It must demonstrate that its emissions won't produce unhealthy levels of air pollution in the area. And if the facility's pollution would cause the area to violate an air pollution standard, then the facility must do more to reduce or offset its emissions.

Well, this bill creates a loophole in the law. If EPA fails to meet new procedural requirements, the bill would allow a facility to get a permit by measuring its emissions against an outdated, less stringent air quality standard. Mr. Walke, you called this amnesty. What is the practical effect of allowing a new facility to be permitted under an outdated standard?

Mr. WALKE. Well, the practical effect is the facility will emit pollution at levels that we know to be unhealthy, that previously, under 37 years of law, we had required them not to emit at in order to protect the public. And Mr. O'Mara, and his colleagues across the country, will be left explaining to concerned members of the public that Congress forced him, and his colleagues, to allow a facility to pollute at unhealthy levels that he cannot assure them are protective of air quality where they live.

Mr. WAXMAN. So a permitting authority might have to issue a permit for a high air polluting facility? Mr. Walke, what are the public health implications of exempting new or modified facilities from more protective air quality standards?

Mr. WALKE. The Clean Air Act, since 1970, has required national health standards that are requisite to protect public health with an adequate margin of safety, the safety margin, primarily to protect children, seniors, asthmatics, and other vulnerable parts of the population. This bill wipes away those safeguards and says, we are going to allow this facility to pollute at levels that are not necessary to protect the public with that adequate margin of safety, and it will allow excessive and unhealthy levels of pollution that the law currently does not allow. We should be very clear about that.

Mr. WAXMAN. Secretary O'Mara, what impact could this have on States like Delaware, that are downwind from polluting sources?

Mr. O'MARA. Right now we are working, using every vehicle in our disposal, to both reduce emissions in the State, and we have reduced emissions more than any other State in the country over the last 5 years, but also trying to get more reductions upwind. By having facilities that could cost-effectively have fewer emissions, and not capturing them at that point, you are either going to have to find ways to reduce it in other places, which would be more expensive, or we just have to suffer worse and worse health outcomes. Either outcome is bad for the economy, and bad for the environment.

Mr. WAXMAN. So the bill shifts the burden of air quality improvements from new plants to existing ones, existing facilities. Doesn't that raise the cost, when you are trying to retrofit an existing? Isn't it more reasonable to say it would be less expensive of a new facility that is coming online, that is going to be around for a longer period of time, should bear the cost of producing the emission reductions?

Mr. O'MARA. Yes. I mean, study after study shows that it is much more cost effective to integrate pollution controls and system designs to meet new standards as you are building a facility as compared to retrofitting it. And so the idea of going back to, you know, a paint shop to make up for, you know, emission reductions, because the big facility could have gotten 30 percent fewer emissions, but they didn't make the investments, is going to cost 50 times as much for the small guy, I would argue hurt manufacturing more than the avoided controls will help it.

Mr. WAXMAN. So we raise the overall cost of pollution controls, and we harm public health at the same time. That doesn't sound like a very good deal to me. Existing industrial sources in your State, particularly if a new facility pushes an area into violation of the Clean Air Act, would be not just more expensive, but that would trigger a lot of other consequences as well. Would that be fair and cost effective?

Mr. O'MARA. Neither fair nor cost effective.

Mr. WAXMAN. And I think, Mr. Chairman, this goes against a key principle of the Clean Air Act, which requires new sources to do more because they will be around longer, it is a lot more cost effective to put in pollution controls up front. And if we step back and recognize the Clean Air Act works, it protects public health, it holds polluters responsible, fosters a State/Federal partnership, and produces cost effective pollution control, as far as I can tell,

this bill would do none of those things. Thank you. I yield back my—

Mr. WHITFIELD. The gentleman's time has expired. At this time recognize the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman. I guess I am working under the premise, from what I have read coming into this hearing, that some of these delays can be anywhere from a third to 40 percent of these pre-construction, or other EPA permits can be delayed for over a year. I know of one example, out on the West Coast, in Bellingham, Washington, they have been 4 years trying to get a permit to export coal, 4 years. Four years.

Mr. Walke, in your adult life, have you ever been unemployed?

Mr. WALKE. No, sir.

Mr. MCKINLEY. I am afraid too many people in the Beltway don't understand what that must feel like, when you are married, your 2-year-old child, you lost your job, and you are told they are going to build this other plant, or there is a hope for something to happen, but it keeps getting delayed time and time and time again. When do we become more caring, as a Nation, to find out how we can move these projects forward?

People want to build construction, or they want to build these manufacturing plants. The President has said he wants to do that. You say in your testimony that you would like to see that. But you seem to be putting perfect in front of just the good with this legislation. We are trying to make something happen, and we see Government constantly standing in the way. It is a dangerous thing that I have noticed here. I have only been in Congress for 4 years, but I see well-meaning people come to these panels, and their true intent is to stop legislation. And they do it very clever, with their words, how they twist them around, but the bottom line is not to let something happen.

And all the while there are people in West Virginia, in Illinois, in Indiana, and Iowa, that are looking for jobs. They need manufacturing to come back to America. And people like you stand in the way because you want perfect to be the enemy of good. And let me ask you, what would you do to expedite these permits so that there is no reason—you and I both know it. I am an engineer. I have designed a lot of manufacturing plants. I have seen the delays on that. Why should they take over a year to get a preconstruction permit?

Mr. WALKE. Mr. McKinley, if I may, you have chosen to spend a lot of your time talking about me, and I do care. I am here giving my time as a citizen and a witness—

Mr. MCKINLEY. Would you please answer the question? Because—

Mr. WALKE [continuing]. Because—

Mr. MCKINLEY. OK, that is the way you come across to me.

Mr. WALKE. We have a—

Mr. MCKINLEY. That is my impression.

Mr. WALKE [continuing]. Public policy—

Mr. MCKINLEY. Tell me how we are—

Mr. WALKE [continuing]. Disagreement.

Mr. MCKINLEY [continuing]. Going to get—

Mr. WALKE [continuing]. That there is no need—

Mr. MCKINLEY. How are we going—

Mr. WALKE [continuing]. To make—

Mr. MCKINLEY [continuing]. To get this thing—

Mr. WALKE [continuing]. Personal.

Mr. MCKINLEY [continuing]. Working across America again? That is my question. Just how are you going to help us do it?

Mr. WALKE. I think I have answered the question that I am willing to answer for you, Mr. McKinley, after your remarks. Thank you.

Mr. MCKINLEY. Well, apparently you don't choose to help us out, because we are trying to find a solution, and you seem to be putting up roadblocks.

Mr. WALKE. I am here to—

Mr. MCKINLEY. So—

Mr. WALKE [continuing]. Help, Mr. McKinley—

Mr. MCKINLEY [continuing]. I am sorry that the—Mr. O'Mara, would you find ways that you might be—find that you could help us expedite some of these, and find some solutions?

Mr. O'MARA. Yes. I think we have done a lot of work with the value stream mapping, figuring out where the dead spots were in the timing of the permits. We issue our permits in about 4 months, 4 to 6 months on average in Delaware, which is significantly less than the year minimum that is required in the law.

You know, we have better communication, more transparency. We fund our programs probably a little better than some other States, and we have a lot more collaboration with industry. And so, you know, I mean, I think those are all things—and the other thing that we have worked on, a lot of the plants are looking for access to natural gas, and they can't figure out a way always to get access, because a lot of times they have to bear the entire burden of the cost of getting the gas pipeline to their facility. We have actually helped with the cost of that, in many cases, to make the economics better for some of these manufacturing plants. But we have a range of things in Delaware we would love to share. I mean, I know Randy pretty well in West Virginia, my counterpart, and they are doing some good things in West Virginia on the permitting side too.

But, you know, there are a lot of these conversations going on among State regulators, and there are things that we can do to move things a lot faster.

Mr. MCKINLEY. And at this time, my concern here, again, as you heard from my opening remarks, there are a lot of people unemployed that are struggling out there, and I wanted to find ways that we can show more caring and compassion to help them out. How can we move that along? We have the resources. It is a matter of prioritizing the time within the EPA, or wherever it is, to make those things happen. And when you, with your 2-year-old child, and someone else with a 2-, or 4-, or 6-year-old child, they just want a job. And when they hear someone holding up a permit because of a technicality, I find that offensive, and it is not good for the welfare of this country. So I yield back the balance of my time. Thank you.

Mr. WHITFIELD. Gentleman yields back. At this time will recognize the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman, and I thank the witnesses for their testimony. There is a good spectrum of opinions that came across this morning. I do want to say that I disagree with some of my colleagues' statements that the EPA's total purpose is to prevent projects from going. I mean, that is not realistic. That is fairly biased, so we will move on from that.

But, you know, from our point of view, when you hear testimony, you hear fairly contradictory ideas regarding uncertainty. Does this bill, proposed bill, increase uncertainty, or does it increase certainty? Does it increase State agency burdens, or does it decrease State agency burdens? Does it improve air quality, or does it decrease air quality? Those are the things that I would like to understand about this bill. So I know that these have come up already in some of the questions, but I would like to start with the increasing of the certainty, or decreasing of the certainty, that this bill would provide.

And I would like to start with Ms. Kerrigan. Would you give an opinion about whether this would increase or decrease uncertainty in the permitting process for manufacturers?

Ms. KERRIGAN. Sure. I think it would increase and improve certainty. The transparency aspect, you know, of the legislation, in terms of the posting of the information about the permits, the percentage of the permits, the timing of the permits, you know, public measurement of that, those type of things, tends to improve performance. So—

Mr. MCNERNEY. How about legal challenges? Would legal challenges be enhanced or diminished?

Ms. KERRIGAN. You know, I am not quite sure. That assumes that the EPA, as I read this law, wouldn't do its job under this legislation, that it wouldn't be doing the concurrent guidance and the rules, along with an Act. So, you know, if they didn't do what they were supposed to do, then this stuff, you know, some of the unintended consequences, the legal challenges and things like that, may occur.

Mr. MCNERNEY. Mr. Walke?

Mr. WALKE. Well, as I have testified, I believe the bill probably unintentionally creates greater legal uncertainty and vulnerabilities for both the facility that is receiving the amnesty under Section 3(b), as well as other local businesses that, as Mr. O'Mara has testified, are now going to be facing greater and more costlier obligations to retrofit, and to make up for that shortfall. I don't think you meant misuse of the term uncertainty, but I think the bill does create the certainty that unhealthy emission levels will increase in the area, and the certainty that local communities will be subjected to unhealthy air pollution is just an inescapable result of the amnesty.

Mr. MCNERNEY. Which would increase legal problems for the manufacturers?

Mr. WALKE. Well, I suspect that there may be some unhappy citizens and groups in those communities that do not wish unhealthy air pollution levels to increase, and the bill creates, you know, legal uncertainties and vulnerabilities for such lawsuits, not only created

by the bill, but in the background law that allows citizens to hold Government accountable when they don't uphold the law.

Mr. MCNERNEY. Well, thank you. Mr. O'Mara, would Promoting New Manufacturing Act place a large burden on States, or would it reduce the burden on States?

Mr. O'MARA. It increases the burden. It increases it in two major ways. One is that the regulatory uncertainty of having to permit facilities under an old standard, knowing that you are going to need to ask existing facilities to make up for their shortfall to meet your State goals is a challenge. And then some of the report challenges folks—if they were, you know, feeding information to the EPA, rather than delivering permits, that could slow down the permits as well.

Mr. MCNERNEY. Does anyone on the panel believe that the bill would improve air quality?

Mr. EISENBERG. If I may, I don't believe that this bill's intention is to improve or degrade air quality, one or the other, it is just to make the permits happen faster. I mean, no manufacturer wants to pollute more, right? I mean, so—

Mr. MCNERNEY. Clearly.

Mr. EISENBERG [continuing]. We just want to make—

Mr. MCNERNEY. If you live in a non-attainment region, you certainly don't want to see things get worse, and I have a fear that this would make things worse.

Last question, Mr. O'Mara, do you have specific recommendations that would improve the permitting process that you would like to share, perhaps in written version later on?

Mr. O'MARA. Absolutely. Would be happy to share an example.

Mr. MCNERNEY. All right. Mr. Chairman, I yield back.

Mr. WHITFIELD. Gentleman yields back. At this time recognize the gentleman from Texas, Mr. Olson, for 5 minutes.

Mr. OLSON. I thank the Chair, and welcome all the witnesses. The people back home in Texas 22 want clean air and clean water, and they know that we have made great strides in improving our environment. Of course, these protections have come at a cost. But if we go too far, if we allow regulations to become red tape with little benefits, we block economic opportunity. We kill jobs. Sometimes I think EPA forgets that poverty is a threat to public health too. Rules show that economic expansion hurts the most impoverished in Texas. Slow economic expansion hurts the most impoverished in Texas, and that is why bills like this one before us are so useful.

As Mr. Eisenberg testified, we will see a new ozone rule. It will likely be among the most expensive regulation in our country's history. EPA's estimate of a 10-year, \$1 trillion drag on our economy could be the low end. That doesn't make for a merry Christmas. Every State will see tough new permit requirements. Creating jobs will be harder.

With that in mind, it is not unreasonable to demand transparency and fairness on New Source Review. We need to get this right, and strike the right balance before it gets worse. We have almost 10 million unemployed people in this country. I wonder what they would give to have a plant, or a job, in their hometown.

My first questions are for Ms. Gershman and Mr. Eisenberg. Recently EPA has failed to release updated guidance after it published new NAAQ standards. We are giving people a target, but leaving them in the dark as to how to get there. That is unfair. It brings uncertainty at a time when NAM and ACC members are making multibillion-dollar investment decisions. How important is a good understanding of timing when a major project is on the line? How important is that? Ms. Gershman?

Ms. GERSHMAN. You are really hitting the nail on the head, and I want to emphasize that, you know, the facilities that we are building are state of the art. They have pollution controls. Nothing in this legislation is doing anything to undermine the NAAQS and the permitting process itself. These facilities will already have to install the best available control technology, or ensure that it has the lowest achievable emission rate. None of that is being changed. What we are simply here to ask is for EPA to make sure that it has thought through some of the implementation challenges that come about with these lower standards. That is what we are asking.

EPA is still working to implement some of these standards that they have put in place, with the unintended consequences of not having the models available, or not having monitoring available to make the designations. Areas that are in limbo between standards do not necessarily know how to proceed. This holds up permits. A lot of these projects come with a substantial amount of financing attached. This financing is not available indefinitely, and if these permits aren't issued, there are times where the financing will disappear, and the projects will therefore not go forward. And that is really what we are trying to do here.

Mr. OLSON. Yes, ma'am. Mr. Eisenberg, you as well, sir.

Mr. EISENBERG. Thank you. I think Ms. Gershman summed it up quite well. You know, we wouldn't be talking about this if it hadn't become a problem already, and it is a problem that we just want solved. You know, you saw in my written testimony the list of issues that my members have. There was very little editing on my part in that list. I mean, I just said, hey, guys, can you send me what you think, and I just put it in there, and they have a lot of problems.

I don't think that they are under the illusion that this is ever going to be perfect. They just want it to not be impossible, and it is at a point where it is impossible.

Mr. EISENBERG. And one final question for all the panelists, if EPA releases new air quality standards, do you believe that the agency should always issue rules and guidance in a concurrent or timely fashion, yes or no? Ms. Gershman?

Ms. GERSHMAN. Yes.

Mr. OLSON. Mr. Weiss? Mr. O'Mara?

Mr. O'MARA. Yes, but we shouldn't stop the permit if they don't.

Mr. OLSON. Mr. Walke?

Mr. WALKE. As warranted.

Ms. KERRIGAN. Yes.

Mr. OLSON. And finally, Mr. Eisenberg?

Mr. EISENBERG. Yes.

Mr. OLSON. One final question, Mr. Eisenberg, about ozone. These new rules would put most of our country in non-attainment. Doesn't that make sense to make this step right, make it more important that this permitting process is correct?

Mr. EISENBERG. So you raise a very interesting issue there. I put some graphics in my testimony where we literally mapped out all of the projects that are now on the slate because of this new energy resource, and they all fall in areas that would presumably be non-attainment at 60, which is the low end of what EPA is considering. We are extremely concerned about this, and so, at a minimum, we need the permitting fixed on the backend, so that if we get hit hard on the front end, we at least have a way forward.

Mr. OLSON. I am out of time to get back. By the way, sir, five National parks and forests will be attainment with this .6 parts per billion standard. Five.

Mr. WHITFIELD. Thanks for your enthusiasm, Mr. Olson. At this time I would like to recognize—

Mr. OLSON. Thanks.

Mr. WHITFIELD [continuing]. The gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair, and welcome, witnesses, and let me thank you all for sharing your thoughts with this committee. I do find it regrettable, though, if your personal integrity is challenged, or when your thoughts are offered, and we put you down for that.

We all support efficient and effective permitting that protects public health and our environment without unnecessary delays, but this bill won't accomplish that goal, in my opinion. Rather than helping State agencies process permits, or helping EPA support States, the bill actually distracts the very people tasked with writing the permits and implementing the law. The bill requires EPA to publish data on permit processing times, but EPA doesn't have this information because States, not EPA, issue almost all of the permits. My understanding is that States voluntarily provide some information, but to get all of the information required by the bill, EPA is going to have to put new reporting requirements upon States.

Secretary O'Mara, do you think EPA publishing data on permitting times will help Delaware issue pre-construction permits more quickly?

Mr. O'MARA. No, because I think, at the end of the day, having the local entity, whether it is a local quality management district or a State, in our case, having that information delivered at the local level, so it is more transparent, is actually a better use of time. There is more accountability locally than at the national level.

Mr. TONKO. Thank you. And would it be a distraction for your permitting staff if they have to collect information for EPA?

Mr. O'MARA. Well, every minute they are spending on that is a minute they are not issuing a permit.

Mr. TONKO. Thank you. The bill also requires EPA to report to Congress every year about the agency's efforts to expedite pre-construction permitting. Again, since States are the primary permit writers, it is unclear how EPA will be able to explain, or commit

to resolve, any permitting delays. Secretary O'Mara, would this report to Congress help Delaware Expedite its pre-construction permitting?

Mr. O'MARA. No.

Mr. TONKO. While the core of this bill requires EPA to issue guidance and rules concurrently with any new or revised air quality standard, putting aside whether or not this is a workable or useful requirement, one thing is clear. It would require EPA to do still more work on a shorter timely.

Mr. Walke, what do you think? Do you think this bill's reporting requirements will make it easier or harder for EPA to issue guidance and rules more quickly?

Mr. WALKE. I think it will make it harder.

Mr. TONKO. Now, this committee wants EPA to do more, more information collection and publication, more actions to expedite State permits, and more reports to Congress, more and faster rules of guidance for every revised air quality standard. Common sense dictates that this would require more people and more resources, but the bill fails to provide the agency with any new funding. In fact, my Republican colleagues have voted time and time again to slash the EPA's budget.

Mr. Walke, how have budgeted cuts affected EPA's ability to implement clean air programs?

Mr. WALKE. We have actual evidence that EPA itself has told Federal courts, and has certainly told stakeholders that they lack the necessary budget resources today to fully carry out the law, and my written testimony has just an example of that that occurred in a court case, I think about 2 weeks ago.

Mr. TONKO. Unfortunately, EPA is not here today to tell us how this bill would affect the agency's ability to issue timely guidance and rules, while satisfying this bill's reporting requirements. I hope we will have a chance to hear from EPA before marking up this bill.

Secretary O'Mara, I will ask you this, as the lone Government official on this panel. Would you rather have EPA focus its limited resources on implementing air quality standards, and providing technical assistance to States, or on collecting data and reporting to Congress?

Mr. O'MARA. We will take any help we can get to have them help us issue permits more quickly.

Mr. TONKO. Thank you. If my Republican colleagues are actually interested in making permitting faster and more efficient, then they should start by ensuring that EPA and State agencies have the resources they need to implement the law. And, with that, Mr. Chair, I yield back.

Mr. WHITFIELD. The gentleman yields back. At this time I would like to recognize the gentleman from Mr. Louisiana, Mr. Cassidy, actually, he is not Mr. Louisiana, he is Mr. Cassidy from Louisiana, for 5 minutes. I was all set to call on Mr. Griffith, and then you—OK. Mr. Griffith, you are—

Mr. GRIFFITH. All right.

Mr. WHITFIELD [continuing]. Next, 5 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman, I appreciate that. Mr. Eisenberg, you were asked earlier if you thought that this bill im-

proved air quality, and you said you weren't sure that that was the purpose of the bill, but I would submit to you that it may be part of the purpose of the bill. It may not have been the primary purpose of the bill, and here is the reasoning.

I think Mr. Scalise hit on it earlier, that I think that this does actually work to improve air quality. You indicated in your prior testimony that while nobody wanted to be named, that you had members of your organization who had not opened up facilities, or had stopped working on a project because of the length of time, and the fact that they weren't certain what was going to happen with the permitting process through the EPA because of the length of time, and the uncertainties caused by the current system.

And what we know is, according to a NASA study, it takes 10 days for the air to get from the middle of the Gobi Desert to the Eastern Shore of Virginia. When you are talking about air, we all share the same air. So either that company chooses, for regulatory purposes, to open up their facility in another country, which doesn't have the standards that we have, or they choose to let their competitors in another country produce the product that they could have produced in the United States, creating jobs for American citizens, and at the same time those countries don't have the regulations that we have in existence in our country.

And the delay in the regulatory process thus means that that product, whether it is a Styrofoam cup, or some big piece of equipment, is going to be made in some other country, as opposed to being made in the United States, thus we have damaged the air of the world, particularly the air in the Northern Hemisphere, if it goes in the Northern Hemisphere, which then directly impacts the air quality in the United States. With that reasoning in line, wouldn't you agree, then, that this bill, by making the process easier, and encouraging manufacturing in the United States, where we do care about our air quality, actually does improve air quality? Would you agree with me on that?

Mr. EISENBERG. I would, and thank you for pointing that out. You know, and, frankly, if EPA does the job that Congress would be requiring in this bill, then the permits are issued quickly, and done at the levels that the statute would require. And so, yes, it would absolutely improve air quality.

Mr. GRIFFITH. Yes. And I think that everyone would agree, and, Ms. Gershman, if I understood your testimony earlier, your folks are doing the best that they can with the state-of-the-art technology. They don't want to be out here dumping things into the air. They are trying to do what is currently available, and they just need to know what the regulations are going to be, and it is that uncertainty which leads them to have frustration, and maybe even, as well, look at perhaps using another country, or allowing a competitor to produce the product. Is that also true?

Ms. GERSHMAN. Yes, that is correct. We are already doing the state of the art. We are taking the best available technologies and installing them on our new facilities.

Mr. GRIFFITH. And whenever there are delays, that can also create costs, which don't help us create new jobs. It creates a negative impact on jobs.

Ms. GERSHMAN. Absolutely.

Mr. GRIFFITH. So, and I don't know who might want to touch on this, maybe Mr. Eisenberg, because I was talking with some people this morning, and we went to my old boiler MACT bill that I had in a few years back, and they were lamenting particularly the timelines not having been passed because of the uncertainty. Just like this bill, that bill tried to deal with some of the uncertainties, and they were talking about the fact that regulations came out in 2004, and a lot of companies started—because they had a short time period, they started implementing, and spent millions and millions of dollars complying with the 2004 regs.

Then those got overturned in court, and the EPA had to come up with new regs, and now they are spending millions and millions of dollars to do things. And we heard testimony about even from universities. Not just always manufacturers that get hit by this, but the universities got hit by this. They spent the money to comply, then found out they weren't in compliance, and that creates a problem as well, does it not?

Mr. EISENBERG. It absolutely does.

Mr. GRIFFITH. And so what we are trying to do here is—there is a balance, and I appreciate Mr. O'Mara working with us on that balance, and all of you all trying to find that balance. We all want clean air. We all want clean water. What we have to do is try to figure out a way that we can have some certainty for those people who are creating the jobs, and at the same time make sure that we are moving forward to make our country the best that it can be. But that does not mean that we have to destroy jobs in the process. Wouldn't you agree with that, Mr. Weiss?

Mr. WEISS. I do agree with that.

Mr. GRIFFITH. And I do appreciate it. Thank you all so much for being here today, and for your testimony today. And, with that, Mr. Chairman, I yield back.

Mr. WHITFIELD. Gentleman yields back. Mr. Cassidy, you are up next, or would you prefer that I go to Mr. Terry?

Mr. CASSIDY. Go to Mr. Terry.

Mr. WHITFIELD. OK. I will recognize the gentleman from—

Mr. TERRY. I appreciate—

Mr. WHITFIELD [continuing]. Nebraska, Mr. Terry, for 5 minutes.

Mr. TERRY. Thank you, Mr. Louisiana, I appreciate that. A little bit of a mild rant here first, just to kind of set the stage why I do think we need to be more specific in timelines, just some of my personal experiences with people in my district.

For example, a family owned business, called Magnolia Steel, employs about 50 people just a few miles outside of Omaha, but the family lives in my district. They wanted to expand. They were adding about 20 people. But they had to extend the building, and since they pour molten steel into parts that are being used in machinery, it took them 2 years and \$2 million. The addition to the building was a \$1 million project. So they actually spent more in compliance costs than they did for the actual structure. So I hear stories about that, and the fact that it took 2 years, and I think, that is a broken process, especially on a small—we are not talking a Toyota facility. We are talking about a metal shed, basically.

And then another Omaha business that has another one in Ohio, it is a metal fabrication business, spent a similar amount of time

working with the Feds, the EPA again, on this one. Took a long time. Then, once they got all of the EPA and Federal permitting, and spent all the money for that, the State of Ohio, this plant happened to be in Ohio, they have one in Omaha as well, and the State came in and said, "Yes, but our rules are different, and you have to do things differently." So now we have this conflict between State and Federal.

And both of those owners told me of their extreme frustration, and that is the basis of trying to figure out a way to streamline this, to reduce the cost of permitting, because the guy that makes the steel parts, the first one I talked about, literally said, I was on the verge of just shutting everything down and just moving the plant to Mexico. That doesn't benefit anybody. So I think it is in everyone's best interests that we figure out a better way to streamline this.

Mr. Walke, some of us are very skeptical about the EPA. And I had a personal issue, they had a new copper level for the State of Nebraska that was actually proposed to be lower than the natural copper levels in our water. And when I asked them directly, where is the science behind it? They said, well, we are just making assumptions due to our modeling, but I will get you that, meaning they didn't have it. And then, lo and behold, about a year later, they came up with a study that said they were right. I love it when they make the numbers first, and then back it up with the science later. It leaves me a little skeptical.

And then we can get into the modeling on health, and the fact that they say this coal fired plant reduces mercury emissions, but yet there hasn't been one instance of high blood level of mercury in the citizens that were around that plant for 30 years. So sometimes we have to question, and that is our role.

So, with that, one of the things that I hear from, and I am going to ask Mr. Weiss this, because no one has asked you a question since I have been here—

Mr. WEISS. I was hoping just to stay here.

Mr. TERRY [continuing]. Very little—you seemed lonely over there. So part of this is that time period that we discussed, where there is maybe a change in the air quality standard. That has changed. They adapt to the new technology, or try to, but the guidance from the EPA seems to be non-existent, or slow. And I think that is probably the issue Magnolia Steel was caught up in, and why it took 2 years, is to get the guidance on how they actually comply. Do you see that as part of the problem here, as the guidance aspect of it, and what is the best way to reduce that?

Mr. WEISS. I do. From a permitting engineer's viewpoint, which is what I do for a living, what I would like to know is what do you want me to do to make the demonstration? And right now, in a lot of cases, that guidance doesn't exist, and I use the fine particle standard as an example. I actually don't know how to make the demonstration that EPA wants often. And I issue more permits, or do a lot more permitting work than a lot of people, and I don't know how to do it.

And that causes delays on two levels. One, it causes delays prior to even filing the application, because we have to go meet with permitting authorities, and try and understand what they want, and

not all State agencies are as good as Delaware. They don't really know what they need, and that is a big issue, because you go meet, say, how do you want to do this? We don't know. Even when the States issue the permits, they follow EPA guidance. So the States need EPA guidance as much as the regulated community, and it doesn't exist. And I am sure that has caused delays, because I have projects that I am working on where that has caused delays prior to filing the application. We then file an application, and the comment is, well, that analysis not good enough. Well, we don't know. We will know when we see it. OK, and that is a problem, OK? And that is a real problem in the process.

So the way I read the Act is, let us get the guidance out, what do you want us to do? And let us not weaken air quality standards. Let us get the guidance out so the permitting community knows what we need to get done. And that would improve the process.

Mr. WHITFIELD. Gentleman's time has expired. At this time recognize Mr. Cassidy from Louisiana for 5 minutes.

Mr. CASSIDY. Thank you, Chairman Whitfield. Ladies and gentlemen, I apologize, I have been running up and down, so if I am asking you redundant questions, it is just because I have been running up and down. And just to give a context, the context we all know, clearly we have a problem with job growth for working class, middle class America, and they have traditionally been employed in mining, manufacturing, and construction, which shale gas and upstream/downstream creates an incredible number of good jobs with good benefits in mining, manufacturing, and construction.

But what I am hearing is that we have met the enemy, and he is the EPA. Now, I gather, Mr. O'Mara, you are not sure about the spill, but what did I read, as I was obviously quickly scanning, that the EPA, in 2011, when it said it was going to cover greenhouse gases, forecasted it would need to issue 900 new preconstruction permits per year, but in the 3 plus, only 166 have been done in total. This is you, Mr. Eisenberg? How many jobs would—and we have all these plans that would be for new projected plants. Can you give an estimate of how many jobs would have been created, had there been 900 issued?

Mr. EISENBERG. Frankly, I don't know that I can. You know, the real issue there, and I really am just curious about why this is happening, I did have a member that said, well, we got our permit pretty quickly, I don't know where we fall into that, and we just permitted a facility. And he went back and he looked, and he said, well, we figured out a way not to trigger PSD.

So what could be happening is that folks are building smaller projects that don't trigger things at that threshold. Is that a good thing? I honestly don't know the answer to that either. I mean, I don't think it is. I think, if we have laws that are stopping us from going big, and from building big things, that is a problem too.

Mr. CASSIDY. So assuming that there is economy of scale in some of these projects, and we are competing globally, and I regularly hear that China, with their lax environmental standards, are building just to build, to employ people, putting us at a competitive disadvantage, losing that economy of scale might hurt our workers, correct?

Mr. EISENBERG. That is correct.

Mr. CASSIDY. That is remarkable. And, Ms. Gershman, I gather that you, in turn, are aware of these projects. Again, do you have any estimate of how many jobs are on hold because of the lack of certainty and timeliness, as regards approval?

Ms. GERSHMAN. We have heard from some members that every day that the permit is not approved after that year timeline, they can cost up to \$5 million a day. And that is because a lot of these facilities have already gone out, and they secured all of the construction folks. And they have gone out and they have created job creation programs for folks in the community to be the operators, and the pipefitters, and the electricians, and all of the support staff that goes into running these huge, complex facilities. And all of that is on hold while permits continue to be hammered out. And that is something that, they want to move forward, they are committed to it, and yet they can't go ahead and hire those folks until they have work for these folks to do.

Mr. CASSIDY. Now, what I know intuitively is that if we want to improve wages for folks, and we create a lot of competition for construction workers, their wages are going up.

Ms. GERSHMAN. That is correct.

Mr. CASSIDY. It is just because if you need a top-flight welder—

Ms. GERSHMAN. That is right.

Mr. CASSIDY [continuing]. She is going to be able to bid her services, frankly.

Ms. GERSHMAN. Exactly. And if there are no projects going forward, she will be waiting to get those services bid on.

Mr. CASSIDY. Now, Ms. Kerrigan, I sponsored a bill called the Energy Consumers Relief Act, which was just focused upon—we had somebody from EPA the other day making a comment, and I am sure he regrets making it, that their economic projections are often flawed and unreliable. Well, thanks a lot, we have been banking on them for some time. And the whole point of my Consumer Relief Act was to bring transparency to these major rules.

Let me just ask, knowing that others have asked it, if all you did was bring transparency, OK, this is what you have to go on what Mr. Weiss said. I say Weiss, not Weiss. I apologize if I—Weiss. Seymour Weiss assassinated Huey P. Long, which happens to be how I am so familiar with the name, as long as I am Mr. Louisiana. So it looks as if there is transparency. That in itself would allow companies to plot out. Well, we know it is actually not going to take a year, it will take 18 months, and so therefore we can do all our permitting, in light of the expanded timeline, something like that. Would you agree with that?

Ms. KERRIGAN. Yes, I do. I agree with that. And, again, if you have more transparency, and particularly the elements that are addressed in this bill, I think that will improve performance, in terms of expediting, you know, the permits, and then that creates certainty, you know, for businesses and investors.

Mr. CASSIDY. And jobs for working Americans.

Ms. KERRIGAN. Absolutely.

Mr. CASSIDY. Mr. Weiss, and I was just intrigued, you do all this work, and yet you sometimes don't really know how EPA's progressing?

Mr. WEISS. Well, I don't know how EPA wants us to do the analysis.

Mr. CASSIDY. That blows my mind. I mean, because—

Mr. WEISS. Mine too, so—

Mr. CASSIDY. Yes. It seems fairly straightforward that if you are going to say, OK, we are going to have these many shale, you know, related mining opportunities, or plants using natural gas as a feed stock, that you should be able to say in a spreadsheet, we give you this, we give you this, we give you this, and here are the variables we will define later. But I gather there is nothing such as that?

Mr. WEISS. Right. Your amazement is the same as my clients'.

Mr. CASSIDY. So, again, when it comes to job creation for the working Americans, we are having the hardest time. We have met the enemy, and it sounds like the enemy could be the EPA. I yield back, and thank you.

Mr. WHITFIELD. Well, you know, Mr. Cassidy has touched on this, Mr. Weiss touched on it, and the crux of the issue is that specific point. A new standard is decided on at EPA, and EPA has been very aggressive. And then the guidance does not come out for some time later, sometimes years later. And so you are sitting there, wondering about the modeling, wondering about the emissions. The guidance document is extremely technical, and so no one has the guidance that they need. And that is the crux of the issue.

So, I mean, is it unreasonable to request EPA to come forth with the guidance when they come forth with the new standard, or is that something that is impossible to do? Would you all make a brief comment on that for me? I mean, what is the big issue about trying to do that?

Mr. EISENBERG. I mean, that is certainly how we look at it. I don't see this as being unreasonable at all. We would hope that EPA would put it out in a timely fashion, and we would hope that there is a way to—

Mr. WHITFIELD. I mean, that they don't do it. Do you have an idea, Ms. Kerrigan?

Ms. KERRIGAN. I have no idea. I mean, we would love to hear, and I am sure you would, from the EPA on this. It seems like it is something that can be done. You know, they are good at regulating, and, you know, this is what they—

Mr. WHITFIELD. But that is what Mr. Terry and others were talking about. These manufacturers, or people who want to invest, and even the States lack the guidance and—

Ms. KERRIGAN. Um-hum.

Mr. WHITFIELD [continuing]. So the uncertainty is there, and you are worried about the lawsuits, you are worried about spending the money. And, Mr. O'Mara, do you have any thoughts, or Mr. Walke, or—

Mr. WALKE. Well, it, unfortunately, takes a lot of time and resources to adopt these implementation rules and guidance, and you can look at the history of the program from the Reagan administration, and Bush. It is not a partisan issue. It is a matter of just the amount of time it takes.

One thing I want to mention that hasn't been mentioned yet today is, much of the implementation rules and guidance that even-

tually come out from EPA don't have anything to do with permitting at all, so there is a little bit of a disconnect in the bill. The bill is written kind of overly broadly to say, if EPA fails to issue all, or any, implementation rules or guidance, we are going to allow permitting to proceed in violation of a newly revised standard. So there is a disconnect that kind of augments these unintended consequences that we have been talking about.

But I think the simple answer to your question, Mr. Chairman, is it takes a lot of time, and involves a lot of consultation. There is complexity. The question is, you know, who bears the burden of that? Should the public suffer, you know, heavier polluted air, or is there another solution to a valid problem?

Mr. WHITFIELD. Yes. Mr. O'Mara?

Mr. O'MARA. Thank you. I mean, there are two different ways to look at the lack of guidance in the beginning. I mean, there is the way that Delaware has approached it, where we are going to go full steam ahead. We are not going to wait for it. We are going to, you know, be very clear with industry. We are going to, you know, consult close with the EPA, but we are not going to wait for them. And there are other places that, you know, will ask for guidance all the time, and kind of have this paralysis where they won't issue permits until the guidance is issued, and I think you have heard some of those nightmare stories.

I mean, I would like to actually see some additional either guidance, or, use a different word, some additional direction to the States to move ahead. There is no reason to wait for EPA guidance, and safe to do that in good faith, with some kind of reasonableness to the adherence to the NAAQ standard should have some kind of sovereignty, or some kind of deference in the decision-making process in the interim period. I mean, a process like that would actually achieve air quality goals, and give the manufacturers at this table more certainty, and the State regulators that have the capacity can work with folks one on one, instead of decisions coming out of DC.

Mr. WHITFIELD. Yes.

Mr. O'MARA. And so maybe that is some area of potential commonality, because—

Mr. WHITFIELD. Yes.

Mr. O'MARA [continuing]. But you don't want States to feel paralyzed, where they don't feel like they can go with a permit, and also these other adverse impacts.

Mr. WHITFIELD. Right. Mr. Weiss, do you have any comment?

Mr. WEISS. Thank you. The process of adopting a national ambient air quality standard was also a long, and consultative, and time consuming process, and I really don't understand why the guidance can't be worked on simultaneously during that process. They know the standard is coming. In the case of fine particles, they knew that precursor emissions were going to be a big issue in the fine particle standard. And, really, we should have a way of analyzing precursor emissions, because they are a major contributor, and that all could have been worked on during the adoption of the ambient air quality standard, and one shouldn't forget that.

Mr. WHITFIELD. Ms. Gershman, do you have a comment?

Ms. GERSHMAN. Yes. I agree with Mr. Weiss. I think really what we are trying to get at here is to require EPA to give a little more thought through the entire NAAQ setting process as to what happens after that NAAQ number is put out there. And we are just looking for some certainty as to—

Mr. WHITFIELD. Yes.

Ms. GERSHMAN [continuing]. What happens at that point.

Mr. WHITFIELD. Well, thank you. Mr. Rush, you probably—

Mr. RUSH. Mr. Chairman, the question I have is not to the panel, it is to you. Are you going to allow EPA to come before this subcommittee prior to a markup? I think that it is very important that the EPA be allowed to respond to some of the issues raised by members of this subcommittee, and some of the panelists. And so it is my opinion that, and the question is, whether or not it is unreasonable to allow the EPA to come before this subcommittee tomorrow, Thursday, next week, before we proceed to marking up this bill? The EPA needs to have an opportunity to respond. So is it your intention to allow the EPA an opportunity to come to testify before this subcommittee on this matter?

Mr. WHITFIELD. I don't know if we are going to have another hearing for EPA or not, but we are in discussions with EPA. They have indicated that they are willing to work with technical assistance. And I don't even know when we are looking at a markup, but, you know, I personally don't want to mark up a bill that is not going to have some genuine support. And some of these suggestions about additional sovereignty for States and so forth, so that they have more authority, is something that I think has some merit, because I think all we are looking for is a little certainty. But we look forward to working with you as we move forward on it.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. WHITFIELD. Thank you all, and that concludes today's hearing. I want to thank all of you for taking your time to come up and visit with us, and we appreciate your expertise, and your thoughts on this important subject. We will keep the record open for 10 days for any additional materials that might need to be administered. So that will conclude today's hearing. And, by the way, our staffs may be in touch with some of you over the next few days or weeks, as we try to see if there are ways we can improve this draft bill. So thank you very much. Hearing is adjourned.

[Whereupon, at 12:09 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**Opening Statement of the Honorable Fred Upton  
Subcommittee on Energy and Power  
Hearing on H.R. \_\_, the "Promoting New Manufacturing Act"  
May 21, 2014**

*(As Prepared for Delivery)*

America is on the verge of becoming an energy superpower. Not only do we possess more energy than any other country, but we are capable of using that energy to accomplish great things.

Perhaps most important of all to manufacturing states like Michigan, we can use our energy advantage to reverse the gradual decline in American manufacturing that has been going on for decades and create a real resurgence in the years ahead. The Promoting New Manufacturing Act will help us achieve that goal and continues our efforts to build the Architecture of Abundance.

The U.S. has all the ingredients to strengthen our domestic manufacturing dominance. We have the affordable energy supply to run our factories, especially our growing abundance of natural gas. We have private investors willing to invest billions of dollars on new projects in America. We have a workforce that is second to none but many of whom need jobs. And we have the technical knowledge to build manufacturing facilities that are the cleanest and most efficient in the world. All we need is a regulatory process that will allow it to happen.

By now, we all know about Keystone XL. I wish I could say that bureaucratic nightmare is an isolated incident, but sadly, it isn't. Potential future manufacturing facilities face a similar regulatory maze that can delay projects for years on end or stop them outright.

We want to be a world leader in manufacturing, not in red tape. I am glad the president identified the potential of new American manufacturing in his State of the Union address, and acknowledged that there is red tape that needs to be cleared away. Today's hearing begins the process of making this goal a reality.

The Promoting New Manufacturing Act is a good starting point. We know changes to National Ambient Air Quality Standards are on the horizon, which will ultimately have an impact on how much of this manufacturing renaissance we can actually get permitted into existence. This discussion draft takes some very sensible steps toward a more transparent and timely process for air permits under EPA's New Source Review program. It increases transparency by making more information publicly available on these permit applications, and gives the states and permit applicants the critical information they need to ensure that when it comes to air quality standards, future implementation rules and guidance documents are developed, proposed, and finalized in a timely manner.

I hope today's hearing can kick off a collaborative effort between Democrats and Republicans, and between Congress and the Executive branch. We can all agree that a continued manufacturing decline is neither inevitable nor desirable, and that the current regulatory process leaves room for improvement. I look forward to a constructive debate on this discussion draft.

###

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

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

Majority (202) 225-2827  
Minority (202) 225-3841

**Statement of Rep. Henry A. Waxman**  
**Ranking Member, Committee on Energy and Commerce**  
**Hearing on H.R. \_\_, the Promoting New Manufacturing Act**  
**Subcommittee on Energy and Power**  
**May 21, 2014**

Today's hearing addresses the Promoting New Manufacturing Act. The bill's sponsors say the goal of the legislation is to facilitate a manufacturing renaissance in the United States by expediting air permits for new facilities.

But the premise of this bill is flawed. New manufacturing facilities aren't being held back by clean air requirements. Weakening the Clean Air Act won't create jobs. And the specific provisions of this bill will slow down permitting, not speed it up. In truth, this bill is yet another Republican attempt to weaken Clean Air Act protections.

The Clean Air Act requires major new or expanding sources of air pollution to obtain permits with pollution limits before the facilities start construction. It's a lot easier and less costly to minimize air pollution when you're designing and building a facility, compared to cleaning up existing facilities. These preconstruction permits are based on a simple principle – a new facility should not increase local air pollution above levels that are safe to breathe.

The bill violates this principle by creating a permitting loophole. When EPA issues a new, more protective air quality standard, new sources are supposed to get their permits under the new standard. But if this bill passes, new sources could get their permits based on the old out-of-date standard. The bill adds potentially years of delay to compliance with the new standards by delaying their applicability until EPA jumps through brand-new procedural hoops, such as issuing more regulations and guidance.

This is ill-advised for several reasons.

First, this could force states and EPA to issue permits for facilities that pollute more than they would under current law. In fact, this bill would allow new facilities to degrade air quality to levels that are not safe to breathe.

In areas where the air is already unhealthy, allowing new facilities to pollute more means that existing industrial facilities will have to pollute less. And those facilities are usually more expensive to clean up. This is neither fair nor economically wise.

It's also unclear what EPA would need to do to avoid this result. The bill says that EPA must issue rules and guidance for implementing a new air quality standard at the same time as it issues the standard. But it's entirely unclear what rules and guidance would be sufficient. That's a recipe for litigation.

Other aspects of the bill could actually slow the permitting process, making this bill counterproductive for the issue it aims to address.

The bill requires EPA to publish data and compile annual reports for Congress on permit timing and delays.

But EPA doesn't even issue the vast majority of preconstruction permits. Aside from Indian Country, the territories, and a couple local areas in California, preconstruction permits are issued by states and local air districts. EPA simply doesn't have much of the information required by the bill. EPA also can't expedite permitting without getting more involved in state and local permitting processes.

So this bill would require cash-strapped state and local officials to spend resources gathering information for Congress . . . instead of processing permits.

It would require EPA to spend time compiling that data . . . rather than drafting guidance and supporting state and local permit authorities.

EPA and state air pollution agencies don't need new loopholes in the Clean Air Act. They don't need more reports to Congress.

What they do need is adequate funding to implement the law. They need people and resources.

But my Republican colleagues have voted time and again to slash EPA's budget. Federal funding for state and local air pollution control agencies has not even kept up with inflation.

I urge my colleagues to get beyond the rhetoric and take a close look at what this bill actually does. It allows new facilities to release more harmful air pollution, disadvantages existing facilities, and increases burdens on state permit writers. This legislation may be good for polluters, but it's not good for the breathers.