

**BIG RELIEF FOR SMALL BUSINESS: LEGISLATION
REDUCING REGULATORY BURDENS ON SMALL
MANUFACTURERS AND OTHER JOB CREATORS**

HEARING
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTEENTH CONGRESS
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BIG RELIEF FOR SMALL BUSINESS: LEGISLATION REDUCING REGULATORY BURDENS ON SMALL MANUFACTURERS AND OTHER JOB CREATORS

WEDNESDAY, SEPTEMBER 13, 2017

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

The subcommittee met, pursuant to call, at 10:02 a.m., in Room 2123, Rayburn House Office Building, Hon. John Shimkus (chairman of the subcommittee) presiding.

Members present: Representatives Shimkus, McKinley, Barton, Blackburn, Harper, Olson, Johnson, Hudson, Cramer, Walberg, Carter, Walden (ex officio), Tonko, Ruiz, Peters, McNerney, Cárdenas, Dingell, and Pallone (ex officio).

Staff present: Ray Baum, Staff Director; Elena Brennan, Legislative Clerk, Energy/Environment; Chuck Flint, Policy Coordinator, Communications and Technology; Tom Hassenboehler, Chief Counsel, Energy/Environment; Jordan Haverly, Policy Coordinator, Environment; A.T. Johnson, Senior Policy Advisor, Energy; Bijan Koohmaraie, Counsel, Digital Commerce and Consumer Protection; Ben Lieberman, Senior Counsel, Energy; Mary Martin, Deputy Chief Counsel, Energy/Environment; Drew McDowell, Executive Assistant; Alex Miller, Video Production Aide and Press Assistant; Dan Schneider, Press Secretary; Sam Spector, Policy Coordinator, Oversight and Investigations; Andy Zach, Senior Professional Staff Member, Environment; Jeff Carroll, Minority Staff Director; Jean Fruci, Minority Policy Advisor, Energy/Environment; Caitlin Haberman, Minority Professional Staff Member; Rick Kessler, Minority Senior Advisor and Staff Director, Energy/Environment; Alexander Ratner, Minority Policy Analyst; Andrew Souvall, Minority Director of Communications, Member Services, and Outreach; and C.J. Young, Minority Press Secretary.

Mr. SHIMKUS. The Subcommittee on Environment will now come to order.

The Chair now recognizes himself for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

This morning, we will continue our subcommittee's oversight of the Clean Air Act. And while we usually focus our attention on

major rules with multibillion-dollar impacts, today we will look at four EPA rules and policies that are far from major but are of great concern to small businesses dominating sectors affected by them. We will consider bills that make targeted changes to these policies so as to preserve jobs and investment in affected businesses and communities.

We welcome our business-owner witnesses who have come from considerable distances to be here today, as well as our other witnesses, in what I hope will be a productive hearing.

Two of the bills deal with small business manufacturers. Both the brick industry and the wood-heaters industry are comprised of companies that are downright tiny compared to GM or an Apple, but the well-paying jobs they provide often make them an important contributor to local economies where they are located. Unfortunately, both these sectors are struggling under the weight of costly EPA rules with tight deadlines.

H.R. 1917, the BRICK Act, would provide much-needed additional time for brick makers to comply with EPA's new requirements while also assuring that they won't be forced to comply with standards that are later thrown out by a Federal court, as has happened to this industry in the past. I thank my good friend Bill Johnson for taking the lead on this bipartisan effort.

H.R. 453 is another bipartisan bill that would provide similar relief from a EPA rule impacting wood heaters, giving manufacturers 3 more years to comply to meet the second phase of EPA's latest requirements.

H.R. 1119, the SENSE Act, addresses facilities that take environmentally damaging coal refuse and turn it into electricity and harmless ash. That ash can be used to remediate the sites formerly contaminated by coal refuse piles. As with many of the businesses we will discuss today, these coal-refuse-to-energy plants not only provide direct jobs but also are an indirect source of employment in struggling communities.

Unfortunately, EPA lumps these waste treatment facilities in with traditional coal-fired power plants and has imposed requirements that are not achievable for many of them. The SENSE Act would make targeted changes to two regulations to establish emission reduction targets that are appropriate and achievable for this specialized technology.

Finally, H.R. 350, the RPM Act, seeks to clarify longstanding policy vehicles modified exclusively for competition on racetracks. Thousands of amateur racing enthusiasts support a wide range of large and small businesses, from the component manufacturers and retailers to racetrack operators to garages that service these specialized racing vehicles.

Never in the 47-year history of the Clean Air Act has the Agency enforced the anti-tampering provisions against vehicles that are taken off public roads and driven exclusively on raceways, but in 2015 the Agency inserted language into an unrelated proposed rule suggesting a change in the policy.

While the EPA later retracted that language, it did so in a manner that left unclear the legal status of the owners of these cars and motorcycles, as well as the businesses that serve them. The

RPM Act would remove that cloud and make clear the Agency's hand-off policy is indeed the law.

We welcome constructive input on these bills, but time is of the essence. The next wood-heater deadline takes place in 2020. The coal-refuse-to-energy deadline is 2019. And the brick deadline is 2018. This is a very short window for small businesses to line up financing to undertake the required work, assuming they can afford to do it at all. That is why I support action to enact these bills as soon as possible.

And I thank you for listening to my opening statement.

[The legislation appears at the conclusion of the hearing. The prepared statement of Mr. Shimkus follows:]

PREPARED STATEMENT OF HON. JOHN SHIMKUS

This morning we will continue our subcommittee's oversight of the Clean Air Act, and while we usually focus our attention on major rules with multibillion-dollar impacts, today we will look at four EPA rules and policies that are far from major but are of great concern to the small business-dominated sectors affected by them. And we will consider bills that make targeted changes to these policies so as to preserve jobs and investment in affected businesses and communities. We welcome our business-owner witnesses who have come from considerable distances to be here today as well as our other witnesses in what I hope will be a productive hearing.

Two of the bills deal with small business manufacturers. Both the brick industry and the wood heaters industry are comprised of companies that are downright tiny compared to a GM or an Apple, but the well-paying jobs they provide often make them an important contributor to the local economies where they are located. Unfortunately, both of these sectors are struggling under the weight of costly EPA rules with tight deadlines. H.R. 1917, The BRICK Act, would provide much-needed additional time for brick makers to comply with EPA's new requirements, while also assuring that they won't be forced to comply with standards that are later thrown out by a Federal court—as happened to this industry in the past. I thank my good friend Bill Johnson for taking the lead on this bipartisan effort. H.R. 453 is another bipartisan bill that would provide similar relief from an EPA rule impacting wood heaters, giving manufacturers 3 more years to meet the second phase of EPA's latest requirements.

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Finally, H.R. 350, the RPM Act, seeks to clarify longstanding policy on vehicles modified exclusively for competition on racetracks. Thousands of amateur racing enthusiasts support a wide range of large and small businesses—from components manufacturers and retailers, to racetrack operators, to garages that service these specialized racing vehicles. Never in the 47 year history of the Clean Air Act has the agency enforced the anti-tampering provisions against vehicles that are taken off public roads and driven exclusively on raceways, but in 2015 the agency inserted language into an unrelated proposed rule suggesting a change in policy. While the EPA later retracted that language, it did so in a manner that left unclear the legal status of the owners of these cars and motorcycles as well as the businesses that serve them. The RPM Act would remove that cloud and make clear that the agency's hands-off policy is indeed the law.

We welcome constructive input on these bills, but time is of the essence. The next wood heater deadline takes place in 2020, the coal-refuse-to-energy deadline is 2019, and the brick deadline is 2018. This is a very short window for small businesses to line up the financing and undertake the required work, assuming they can afford to do it at all. That is why I support action to enact these bills as soon as possible. Thank you.

Mr. SHIMKUS. And I now yield to the vice chairman of the Telecom Subcommittee, Marsha Blackburn, for as much time as she may consume.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman.

And I just want to, first of all, thank our witnesses for being here. And I want to thank the chairman for putting these bills forward and allowing us to work on this on behalf of our constituents and our small business manufacturers.

You look at the impact of things like the BRICK Act and the good work that is being done there trying to get these clay products manufacturers out from under some of the weight of the EPA.

As I work in my district with small business manufacturers, whether it is building products, whether it is just-in-time manufacturing for the auto industry, whether it is those that are working in energy generation, I hear repeatedly that the EPA is a stumbling block. It has not been helpful over the last few years.

I am certain that Administrator Pruitt is going to do a good job of rightsizing the EPA and the rules and also making certain that we do what is necessary to conserve and protect our environment.

So I thank you for the hearing. I yield back.

Mr. SHIMKUS. The gentlelady yields back her time.

The Chair now recognizes the ranking member of the subcommittee, Mr. Tonko, for 5 minutes.

OPENING STATEMENT OF HON. PAUL TONKO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. TONKO. Thank you, Mr. Chair.

And good morning to our panelists.

Today's legislative hearing will focus on four bills that seek to amend and, in my opinion, weaken the Clean Air Act.

But, first, I want to thank all of our witnesses for being here today. I certainly appreciate hearing the perspectives from small businesses that are responsible for implementing the EPA rules.

I also want to thank Dr. Bascom for being here on behalf of the American Thoracic Society. It is equally important that we hear about the medical and public health effects of delaying Clean Air Act rules.

Finally, I am happy to welcome back Ms. Alexandra Teitz, who served as senior counsel to this committee for many years and is testifying on behalf of the Sierra Club.

The first two bills, the BRICK Act and the SENSE Act, were considered by the committee in the 114th Congress. Once again, I doubt the likelihood of either becoming law in the 115. I would recommend that, instead, we use our limited time to continue to build upon our bipartisan record of success.

H.R. 1917, the Blocking Regulatory Interference from Closing Kilns, or BRICK, Act, would delay implementation of the EPA's Brick and Structural Clay Products Rule until all legal challenges are resolved. Not only does this incentivize frivolous litigation and delay compliance, it creates a bad precedent that could be applied

to other standards. Personally, I believe this can more effectively be resolved by the courts.

H.R. 1119, the Satisfying Energy Needs and Saving the Environment, or SENSE, Act, would revise EPA's Cross-State Air Pollution Rule, or CSAPR, and Mercury and Air Toxics Rule, or MATS, to allow power plants that burn waste coal to emit higher levels of sulfur dioxide and hydrogen chloride.

New York has seen the benefits of the Clean Air Act's good-neighbor provision. I saw the damage caused by acid rain, particularly near my district, north of my district, in the Adirondacks, and much of it was due to out-of-State pollution.

CSAPR requires certain States to reduce their annual emissions of sulfur dioxide. This rule has been extremely effective, preventing tens of thousands of premature deaths and hospitalizations and millions of missed days of work or school each year.

CSAPR used a phased-in approach to achieve emissions reductions, where emissions allowances decreased over time. But the SENSE Act would hold allowances for waste coal constant. It is worth noting that States already have the ability to create their own implementation plans, which could include shifting allowances. This bill would impede on States' rights to determine the best path for reducing emissions.

Ultimately, I do not believe we should be giving any fuel source special treatment on reducing air pollution, especially when other power plants are expected to meet similar requirements.

H.R. 453, the Relief from New Source Performance Standards Act of 2017, would delay the Step 2 compliance date by 3 years for three categories of wood-fueled heaters. I would note that there are companies already compliant with EPA's 2020 standard.

Finally, H.R. 350, the Recognizing the Protection of Motorsports Act of 2017, would exempt motor vehicles used solely for competition from penalties for altering a vehicle that results in increased emission of air pollutants. I am concerned how broadly this bill is written. It would create a loophole that would make it even more difficult for EPA to regulate manufacturers that produce emissions-control defeat devices for vehicles.

Ultimately, delaying or undermining rules that seek to reduce hazardous air pollutants is not good for Americans. It is not good for their health. The scientific, medical, and public health communities have ample evidence that polluted air is a threat to our health, particularly for vulnerable populations. We also know that pollution can be a tremendous drag on our economy and productivity, causing respiratory illnesses, costly hospitalizations, missed school- and workdays, and even premature deaths.

The Clean Air Act has been about making progress over time. The longer we delay new standards, the longer our constituents are forced to live with unhealthy levels of air pollution. Our country can do better than the status quo, and, in recent years, the EPA has worked hard to develop protections that will continue the decades-long trend of improving our Nation's air quality.

So I want to reiterate my initial concerns with the bills before us today. I look forward to hearing from our witnesses, and I do yield back. Thank you, Mr. Chair.

Mr. SHIMKUS. The gentleman yields back his time.

The Chair now recognizes the chairman of the full committee, Mr. Walden from Oregon, for 5 minutes.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. I thank the gentleman and appreciate the hearing and your leadership on these issues.

I want to focus on this air quality issue, especially as it relates to wood stoves and what is happening in the West. Year after year after year after year after year after year, we have these catastrophic wildfires on Federal lands, some of which have been set aside and managed in a way that they have no management. Some people litigate, some organizations litigate every effort or nearly every effort, it seems, to go in and reduce the fuel loads.

My hometown of Hood River is under—part of it has been under evacuation, 1 level, for fear of a fire that is burning in the Columbia Gorge National Scenic Area that blew out 14 miles overnight. The main freeway is closed, has been for the better part of a week and will be for another week.

I raise this because air quality issues in Oregon and elsewhere in the West in the summer have gotten to the hazardous level. So if you want to do something that is extraordinarily important, it is join us in trying to reform how we manage our precious public lands and our Federal forests to reduce the fuel loads.

This year, on the 30th anniversary of Cycle Oregon, they had to cancel it because the air quality was so bad. They had to cancel performances at the National Shakespeare Festival, the Britt Music Festival. The Sisters Folk Festival had to be canceled. And schools have had to close because of the emissions, toxic emissions, from these forest fires.

We have had legislation the House has passed time and again—we hope to do it again this year—to be able to get in to manage these lands like all other forest land managers manage except for the Federal forests. We have to change this policy.

I have constituents who remain perplexed that they have to invest in new wood stoves to scrape by and heat their homes when all summer long they can't breathe in their homes or their schools because the smoke gets trapped in the valleys from the forest fires. Now, we need to improve both; I recognize that. But the same organizations that have litigated and shut down logging activities on our forests and deprived them of their economic activities that result in the increased fuel loads that end up with these fires that end up destroying our forests and polluting our air now want to make their costs go up to keep their homes warm in the winter.

So we have to do better as a country. I look forward to working with my friends across the aisle on our legislation. To really make a big change in air quality, we need to address how we manage our public forests. Because burning, dead trees emit carbon. Healthy, green trees sequester carbon. It is that simple. And we haven't even gotten into the runoff that will occur in our watershed, the damage to fish and habitat that exist on these fires.

So they cost us hundreds of millions of dollars a year. Five hundred thousand acres have burned in Oregon already this summer.

And we have to do better for air quality, for water quality, and for the future of our precious public resources.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

I come from a district back in Oregon comprised of many rural communities where small businesses are most often the core of local economies and the primary job creator. That is just one reason why Federal regulators need to be especially careful when imposing costs on the small businesses, not to mention the consumers, least able to absorb them.

I believe that EPA has on occasion failed to consider the interests of the “little guy” when regulating sectors dominated by small manufacturers and other small businesses resulting in policies that do more economic harm than environmental good, and place undue burden on consumers. Today, we will consider four bills that make commonsense adjustments to preserve small businesses and jobs while still protecting the environment.

We will address the impact of regulations and policies aimed at brick makers, coal-refuse-to-energy plants, the amateur racing industry, and, particularly important to many in rural Oregon, wood stoves.

In many parts of Oregon, we’re surrounded by forests and wood stoves are the most economical way to heat a home or a ranch shop. But Oregonians in these areas know all too well how expensive burdensome regulations can be. Areas like Lakeview and Klamath Falls have found themselves facing no good option between risking air quality restrictions that make could prohibit economic growth, or forcing residents to purchase expensive new wood stoves that meet new regulations. These communities ended up spending \$1.5 million to help consumers afford new stoves.

All this, while our Federal forests continue to burn catastrophically every summer because of a lack of proper management, pumping unregulated particulate matter, aerosols, and carbon into the air. In short, right now most of my communities are suffocating from the smoke of wildfires. More than 500,000 acres have burned. It’s hard for our citizens to understand how the failure of the Federal Government to better manage forest lands to reduce the pollution from fires is balanced against the punitive and costly regulation of another Federal agency when they’re trying to scrape by and heat their homes.

Some may argue that Congress has no role modifying EPA rules, and that we should simply wait it out while legal challenges work their way through the courts or EPA completes its reconsideration process of these policies. With respect to the issues and legislation being addressed today, I disagree. After all, it was Congress that delegated to EPA its authority under the Clean Air Act, and Congress has the right and the duty to step in when we see this authority being misused in ways that threaten small businesses and jobs. Furthermore, time is short and there is no guarantee that either the courts or the agency will act soon enough to prevent plant closures and pink slips.

The direct and indirect jobs in these sectors are well worth preserving, and that can be done with minimal and targeted changes to existing EPA provisions.

We may hear claims today that these bills represent a dangerous rollback of environmental and public health protections, but we need to maintain a sense of perspective. For one thing, none of the four sectors at issue are particularly significant sources of emissions. For example, coal-refuse-to-energy plants represent about one half of one percent of the Nation’s coal-fired capacity, and vehicles modified to be used exclusively for competition are an even smaller fraction of the 250 million vehicles owned by Americans. Additionally, many of these businesses face other measures that restrict emissions. The brick industry has already reduced emissions by nearly 95 percent according to a study by the U.S. Chamber of Commerce. Perhaps most importantly, none of the bills we will discuss repeals any regulation—they simply make minimal adjustments in order to reduce the risk of plant shutdowns and layoffs.

I conclude by noting that EPA recently updated its air quality trends to include the 2016 data, and the news is very good. Air pollution continues to decline, and that includes nearly all the emissions at issue today. The data shows that there is no environmental justification for inflicting economic harm on small businesses and the communities where they are located, and thus there is every reason to pass these bills to ensure that any such harm is avoided.

Mr. WALDEN. With that, I would yield the balance of my time to my friend from North Carolina, Mr. Hudson.

OPENING STATEMENT OF HON. RICHARD HUDSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. HUDSON. I thank the gentleman.

And thank you, Chairman Shimkus and Ranking Member Tonko, for holding today's important hearing on reducing regulatory burdens on small manufacturers and job creators.

I appreciate the subcommittee's consideration of this common-sense RPM Act, introduced by Representative Patrick McHenry and myself.

I am from Concord, North Carolina, arguably the heart of motorsports of America, so I know a thing or two about motorsports and its impact on our economy. I am fortunate to represent many of the 57 racetracks in our State, including the Charlotte Motor Speedway, as well as many race teams and small businesses that take part in the racing industry.

It will come as no surprise that the EPA's proposed racing regulation threatens the way of life of a lot of Americans who enjoy modifying cars for competition, as well as a \$1.6-billion-a-year industry.

In 1990, when Congress amended the Clean Air Act, the legislation made explicit these vehicles were off limits to regulation. But the EPA decided to ignore the law and targeted the racing industry anyway. Rightfully so, after that happened, I heard from many constituents who were concerned this rule would bring their industry to a screeching halt.

Former EPA Administrator Gina McCarthy once testified in front of this committee that job loss is not a consequence of environmental rules. During a hearing on our budget, I reminded her of this statement and told her how many jobs this regulation alone would eliminate. The Administrator admitted the outcome of EPA's regulation did not match their intent. So, shortly after this testimony, I wrote a letter with my colleagues to EPA asking for clarification. Three days later, they reversed their decision and dropped this foolish proposal.

That is a huge victory, but the RPM Act is still needed to give long-term certainty to this industry and to stop the EPA from ever attempting to regulate this racing industry again. I look forward to working with the committee to advance this initiative.

And before I yield back, Mr. Chairman, I would ask unanimous consent that I be able to submit for the record a letter from John Marshall from Innovation Performance Technologies, a business in my district that will be impacted by this regulation.

Mr. SHIMKUS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. SHIMKUS. The gentleman's time has expired.

The Chair now recognizes the ranking member of the full committee, Congressman Pallone from New Jersey, for 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Chairman Shimkus.

The four bills before us this morning are more about transferring burdens than relieving them. My Republican colleagues repeatedly claim they support clean air, and yet they continually put forward bills designed to delay, weaken, or repeal regulations that are issued to protect public health by cleaning up the air.

The so-called relief from regulation comes at the expense of the public's health, and costs are not reduced. They are just transferred from favored businesses to the general public, who will pay for more doctor visits and lost work- or schooldays.

Exempting businesses from clean air rules leads to more air pollution. It is that simple. We all want small businesses to thrive, and the history of the Clean Air Act demonstrates clearly that we can grow the economy while cleaning up the air and improving public health.

We considered two of these bills in the last Congress, H.R. 1917, the BRICK Act, and H.R. 1119, the SENSE Act. And I opposed them then, and I oppose them now.

While I understand there are special circumstances relating to the hazardous air pollution rule for brick and clay ceramic manufacturing, the BRICK Act is the wrong answer. It would set a terrible precedent, encouraging endless legal challenges designed to stall compliance with regulations. In this case, it is proceeding in the courts, and the court has the ability to stay the rule. This issue should be resolved there, not here.

The SENSE Act would revise the Mercury and Air Toxics Standards and Cross-State Pollution Rules to allow power plants that burn coal refuse to emit higher levels of sulfur dioxide and hydrogen chloride. It is unnecessary and would allow plants to produce more pollution.

As a Representative from a downwind State, I am particularly concerned about this bill. The Cross-State Rule uses a phased-in approach to achieve emissions reductions to allowance trading. It would shift a greater percentage of these emission allowances to coal refuse plants.

The EPA has a plan for how all these allowances should be allocated to individual plants. The States also have the ability to submit their own plans for achieving the required emission reductions. So the States already have the power to give extra allowances to coal refuse plants, as this bill would mandate.

H.R. 453, the Relief from New Source Performance Standards Act of 2017, extends the deadline for implementing new standards for residential wood-fueled stoves, hydronic heaters, and forced-air furnaces. EPA finalized rules for these appliances in 2015 and the new standards that apply to 2020. These standards have not been updated since 1988, nearly 30 years ago, and there is no justification for extending the deadline.

Wood smoke from inefficient heating devices creates harmful particulate pollution, as well as toxic air pollutants like benzene and formaldehyde. Delaying this rule will allow noncompliant stoves and heaters to be sold for 3 more years, and since these appliances

last for decades, it would take much more time to reduce pollution from these devices.

A number of States have taken steps to encourage the transition to cleaner-burning devices. Several States petitioned EPA to initiate this rule because of severe local problems with wood-smoke pollution. The companies that have invested to improve their products to meet the deadline—and there are many—should be rewarded for their efforts. And, instead, this bill rewards those who have delayed, while punishing the public with more pollution.

And, finally, we have H.R. 350, the Recognizing the Protection of Motorsports Act of 2017. Automobile racing's history is as long as the car itself, and amateur racing continues to be a popular pastime. No one wants to end this activity. But there is a big difference between racing on a track, whether as a professional or an amateur, and daily driving on public roadways.

The devices marketed and installed on a vehicle to improve its performance as a racing car are defeat devices. They undermine emission control systems and result in more pollution. And daily driving of such a vehicle pumps significantly more pollutants into the air. EPA just fined Volkswagen for using defeat devices, as we know.

So, if someone installs these devices on a vehicle, that vehicle should no longer be driven on public roads. It is now a racecar, and it should only be raced on a track. But H.R. 350 creates a loophole in the Clean Air Act that is much too broad to ensure that these devices will only end up on a racetrack, and I oppose it in its current form. This may be something we can work on going forward, but I can't support a bill that facilitates emissions cheating.

Again, I do not accept that we have to compromise the public's health to have a healthy economy. These bills make that trade, and they undermine the public health protections within the Clean Air Act. And I think we can and should do much better, Mr. Chairman.

And, with that, I yield back.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Mr. Chairman, the four bills before us this morning are more about transferring burdens than relieving them. My Republican colleagues repeatedly claim they support clean air, and yet, they continually put forward bills designed to delay, weaken, or repeal regulations that are issued to protect public health by cleaning up the air.

This so-called "relief" from regulation comes at the expense of the people's health. And costs are not reduced; they are just transferred from favored businesses to the general public who will pay for more doctor visits and lost work or school days.

Exempting businesses from clean air rules leads to more air pollution. It is that simple. We all want small businesses to thrive and the history of the Clean Air Act demonstrates clearly that we can grow the economy while cleaning up the air and improving public health.

We considered two of these bills in the last Congress—H.R. 1917, the BRICK Act and H.R. 1119, the SENSE Act. I opposed them then, and I oppose them now.

While I understand there are special circumstances related to the hazardous air pollution rule for brick and clay ceramic manufacturing, the BRICK Act is the wrong answer. It would set a terrible precedent, encouraging endless legal challenges designed to stall compliance with regulations. This case is proceeding in the courts and the court has the ability to stay the rule. This issue should be resolved there, not here.

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levels of sulfur dioxide and hydrogen chloride. It is unnecessary and would allow plants to produce more pollution.

As a Representative from a downwind State, I am particularly concerned about this bill. The Cross-State rule uses a phased-in approach to achieve emissions reductions through allowance trading. It would shift a greater percentage of these emissions allowances to coal refuse plants.

EPA has a plan for how those allowances should be allocated to individual plants, but States also have the ability to submit their own plans for achieving the required emissions reductions. So States already have the power to give extra allowances to coal refuse plants as this bill would mandate.

H.R. 453, the Relief from New Source Performance Standards Act of 2017, extends the deadline for implementing new standards for residential wood-fueled stoves, hydronic heaters, and forced-air furnaces. EPA finalized the rule for these appliances in 2015, and the new standards apply in 2020. These standards have not been updated since 1988—nearly 30 years ago. There is no justification for extending the deadline. Wood smoke from inefficient heating devices creates harmful particulate pollution, as well as toxic air pollutants like benzene and formaldehyde.

Delaying this rule will allow non-compliant stoves and heaters to be sold for 3 more years. And, since these appliances last for decades, it will take much more time to reduce pollution from these devices.

A number of States have taken steps to encourage the transition to cleaner burning devices. Several States petitioned EPA to initiate this rule because of severe local problems with wood smoke pollution. The companies that have invested to improve their products to meet the deadline—and there are many—should be rewarded for their efforts. Instead, this bill rewards those that have delayed, while punishing the public with more pollution.

Finally, we have H.R. 350, the “Recognizing the Protection of Motorsports Act of 2017.” Automobile racing’s history is as long as the car itself. And, amateur racing continues to be a popular pastime. No one wants to end this activity. There is a big difference between racing on a track—whether as a professional or an amateur—and daily driving on public roadways. The devices marketed and installed on a vehicle to improve its performance as a racing car are defeat devices—they undermine emission control systems and result in more pollution. Daily driving of such a vehicle pumps significantly more pollutants into the air. EPA just fined Volkswagen for using defeat devices.

If someone installs these devices on a vehicle, that vehicle should no longer be driven on public roads. It is now a race car. And, it should only be raced on a track. H.R. 350 creates a loophole in the Clean Air Act that is much too broad to ensure that these devices will only end up in race cars. I oppose it in its current form. This may be something we can work on going forward, but I cannot support a bill that facilitates emissions cheating.

Again, I do not accept that we have to compromise the public’s health to have a healthy economy. These bills make that trade. They undermine the public health protections within the Clean Air Act. I think we can and should do much better.

Mr. SHIMKUS. The gentleman yields back his time.

And we have now concluded Members’ opening statements. The Chair would like to remind Members that, pursuant to committee rules, all Members’ opening statements will be made part of the record.

Again, we want to welcome our panel. Thank you for being here. Many of you have traveled great distances to join us.

Your full statements will be submitted for the record. You will have 5 minutes. We will be lenient, but don’t go 10. We will gavel you down.

And we appreciate you being here, and I will introduce you as your time comes forward. And I can’t wait to introduce Alexandra before the committee, so that will be a real joy.

So, first, we would like to have Mr. Frank Moore, president of Hardy Manufacturing Company.

You are recognized for 5 minutes. Welcome.

STATEMENTS OF FRANK MOORE, PRESIDENT, HARDY MANUFACTURING COMPANY, INC.; RYAN L. PARKER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ENDICOTT CLAY PRODUCTS COMPANY; ALEXANDRA E. TEITZ, PRINCIPAL, AT STRATEGIES, LLC, ON BEHALF OF THE SIERRA CLUB; VINCENT BRISINI, DIRECTOR OF ENVIRONMENTAL AFFAIRS, OLYMPUS POWER, LLC, ON BEHALF OF THE ANTHRACITE REGION INDEPENDENT POWER PRODUCERS ASSOCIATION; REBECCA BASCOM, M.D., PROFESSOR, PENN STATE COLLEGE OF MEDICINE, ON BEHALF OF THE AMERICAN THORACIC SOCIETY; AND STEVE PAGE, PRESIDENT AND GENERAL MANAGER, SONOMA RACEWAY

STATEMENT OF FRANK MOORE

Mr. MOORE. Thank you, Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee. Thank you for holding today's hearing.

My name is Frank Moore, and I am president and owner of Hardy Manufacturing Company. We are a small, family-owned business with about 50 employees and a network of 400 dealers.

My father-in-law developed and patented the outdoor hydronic heater in the late seventies. This product was developed to help farmers and rural workers who had their own firewood to heat their homes and were trying to make ends meet. Those needs continue today.

I am here representing wood-burning stove and heater manufacturers, dealers, retailers, and installers, most of whom are small businesses, and all are impacted by the EPA's emissions standards for new residential wood heaters. And so are the consumers who depend on wood burning to heat their homes. These products include hydronic heaters, wood and pellet stoves, and wood furnaces.

I will refer to this regulation as the New Source Performance Standard, or NSPS for short.

And I want to be clear, the wood-burning industry supports Federal standards. In fact, we have petitioned the EPA to set national standards so our industry would have uniformity and predictability. We did not ask to be regulated out of business. We are not asking Congress to repeal the EPA rule. We are only asking you to provide us an additional 3 years to continue R&D, testing, and certification of EPA.

So here is the situation that we face. The NSPS rule was finalized in 2015 with two sets of standards. Many manufacturers were able to meet the Step 1 standards, which for Hardy and other hydronic heater manufacturers meant about a 90 percent emissions reduction. Step 2 standards are the challenge, requiring a nearly 98 percent emissions reduction by May 2020. Products not meeting Step 2 standards cannot be sold after May 2020 even if they are sitting at a retailer's.

To accomplish all of the following steps by the summer of 2018—that is 1 year from now—number one, develop new, cleaner technologies that don't yet exist; number two, test them internally for durability and customer satisfaction; number three, work through the coming logjam at one of only five EPA-approved test labs to

have the new product certified as compliant with Step 2; and, lastly, receive EPA approval on our certification application.

There is simply not enough time to complete these steps and manufacturing appliances can be sold by 2020. An additional 3 years would also help spread out significant R&D costs, ranging from \$200 to \$500,000 per product. Plus, EPA lab testing costs as much as \$20,000 per test. For small businesses like mine, these costs are huge.

This regulation is already costing jobs. As an example, a company in Minnesota has already laid off workers to divert capital into R&D, fearing they will not have product ready to sell in 2020. Some small manufacturers have told us they may exit the business because they cannot recoup their investment competing against larger companies.

Since the NSPS became law, Hardy's sales and payroll has been cut in half. We continue to be aggressive in developing Step 2 appliances, but with the short lead time to complete certification, I am not sure our company can survive.

If this deadline is not changed, the wood-burning home-heating industry will shrink, hurting small businesses and reducing jobs. For consumers, that means less choice and higher prices, factors that will slow improvements to our Nation's air quality because consumers will hold on to their older, higher-emitting heaters when faced with higher prices and fewer products.

Most NSPS standards are reviewed no more frequently than every 8 years. This rule combines two revisions within one 5-year period. The small businesses in our industry are in dire need of a 3-year extension.

Thank you for your time today, and I will try to answer any questions that you might have.

[The prepared statement of Mr. Moore follows:]



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**Testimony of Frank Moore, President & Owner, Hardy Manufacturing Co., Inc.
before the
House Committee on Energy & Commerce
Subcommittee on the Environment
In Support of H.R. 453 (the Relief from New Source Performance Standards Act)
September 13, 2017**

Chairman Shimkus, Ranking Member Tonko, Members of the Subcommittee:

Good morning. On behalf of Hardy Manufacturing and the entire stove and heater (hearth) industry, I would like to thank the Chair and members of the Subcommittee for holding this hearing today on the Relief from New Source Performance Standards Act (H.R. 453).

My name is Frank Moore and I am the President and Owner of Hardy Manufacturing Co. We are a small family-owned business. My father-in-law developed and patented the Outdoor Hydronic Heater in the late 70's.¹ This product was developed because of the very unstable price of fuel oil and propane for farmers and rural dwelling industrial workers who had their own firewood to heat their homes and were trying to make ends meet in a difficult economic time. Those needs continue today.

¹ A hydronic heater (also known as a wood boiler) heats an entire home. The product typically looks like a small shed when installed outside. It is fueled by wood or pellets to heat water. The water is then pumped through the home through warming baseboards, radiators, and/or radiant tubing in floors or ceilings of the home or any related buildings such as barns and greenhouses.

I'd first like to make clear that we don't oppose federal standards for wood-burning appliances. In fact, we asked EPA to set national standards so the industry would have uniformity and predictability, which translates to lower costs for consumers due to increased manufacturing efficiencies. Having a federal standard is vital for the success and future of our industry. Today I am testifying on behalf of all manufacturers and retailers, most of whom are small businesses, who manufacture or sell one of the three categories of appliances impacted by the EPA's emissions standards for new residential wood heaters: (1) hydronic heaters, (2) wood and pellet stoves, and (3) wood furnaces.

As a small business we provide jobs for about 50 people with payrolls exceeding \$2 million. We also have over 400 dealers nationally that depend on the sales and service of this product. Over the past few years our sales and payroll has been cut in half partly because of the economy but mainly of fear that this type of heating appliance is too expensive and could be banned from use to heat families' homes. We have been at the forefront in developing a clean-burning Outdoor Wood-burning Heater for the past 10 years. We have built a test laboratory in-house and invested over \$1 million in research and development on developing a clean-burning Outdoor Hydronic Heater. We have been driven by three requirements: (1) it must pass the EPA's test; (2) it must be durable and easy to operate; and (3) it must be affordable for families who are being pinched by the economy.

REQUIREMENTS OF TODAY'S STANDARDS

When the EPA finalized its New Source Performance Standards (NSPS) for New Residential Wood Heaters; New Residential Hydronic Heaters and Forced-Air Furnaces in February 2015, the wood heater industry was encouraged to see that reasonable standards had been set for Step 1 of the rule, which took effect May 15, 2015. Step 1 updated the already-established requirements for woodstoves, tightening the emissions limit to 4.5 grams of particulate matter per hour (g/hr). Prior to the 2015 NSPS, woodstoves had a limit of 7.5 g/hr. Pellet stoves are now required to be tested and certified by EPA while prior to 2015 they were not mandated to be tested.

Hydronic heaters and wood furnaces didn't have any federal requirements in place before 2015. Hydronic heater manufacturers, including Hardy Manufacturing, worked for years with EPA to develop a voluntary program that hydronic heaters could be tested to and be considered "EPA-qualified." The standards for hydronic heaters in Step 1 of the final NSPS included the requirements of that voluntary program. Hydronic heaters reduced emissions by 90 percent with Step 1 of the NSPS, going from completely unregulated to having a federal rule establishing an emissions limit of 0.32 pounds per million British Thermal Units (lb/mmBtu) weighted average.² Wood furnaces faced an even greater challenge, since the product category didn't have a voluntary program before the final EPA rule. Today, all new residential stoves and central heaters are subject to EPA's Step 1 standards.

² A weighted average is an average of all the test runs completed during testing. The average for Step 1 must be at or below 0.32 lb/mmBtu.

However, Step 2 of the rule, set to take effect May 15, 2020, dramatically departs from the data-driven nature behind development of Step 1. For hydronic heaters, which have already reduced emissions by 90 percent, EPA wants us to squeeze out additional emissions reductions, forcing this industry to reduce emissions by 98 percent in just five short years between Step 1 and Step 2 coming into effect. Step 2 would set an emissions limit of 0.10 lb/mmBtu for each of four individual burn rates (i.e. a particular test run) when testing with crib wood or 0.15 lb/mmBtu if tested with cord wood.³ This is much different from what's required in Step 1 with very little time for transition between these two sets of standards in the rule.

We have spent years and millions of dollars industry-wide to develop sellable products based on test protocols that use weighted averages as the requirement for compliance. Even if a product can meet the Step 2 requirements, I believe it would not be consumer friendly, durable or affordable. To my knowledge there is not enough data to support that change.

WE ARE FACING A FUTURE LOGJAM IN TEST LABS

Assuming we have developed the technology, the entire industry – hundreds of products – must have products tested by one of five EPA-approved testing labs. With hundreds of appliances needing to be tested between now and 2020, there simply isn't enough capacity and time to provide equal opportunity and access to test labs to get all these products approved in time. For example, one large testing lab told us it has

³ Unlike the requirements of Step 2, Step 2 requires hydronic heater manufacturers to meet a lower emissions limit (0.10 lb/mmBtu or 0.15 lb/mmBtu) during each individual test run, not the average of those test runs. Crib wood is dry pine, essentially a set of two-by-fours. Cord wood is regular firewood.

processed a total of 14 wood heaters in 12 months and one was sent back to the manufacturer for more work. Another lab, in the same time period, processed six appliances and 50 percent had to be sent back to the manufacturer to be redesigned. These numbers don't represent test labs at capacity as many manufacturers are still in the R&D stage.

Following valid testing by an EPA approved lab, manufacturers must then obtain a certificate of conformity from a third-party certifier. At the end of it all, EPA must review the entire certification package, which can take longer a considerable amount of time if there are any questions. All certification applications must go through EPA! Since most of the new cleanup technologies have to be invented and then developed to meet the Step 2 standards, there will be huge surge in testing needs as we get closer to the deadline with not enough capacity to get them approved in time. An additional three years allows the pressure to be lifted from the test labs and manufacturers to enable a steady stream of fully-developed products to be tested and reviewed by EPA.

If anyone has driven to a football game on a big game day, like the Egg Bowl where Mississippi State plays Ole Miss, everyone is going to the same place around the same time. You can't control what time the game starts or when the parking lots open in the morning around the stadium. You have no choice but to face traffic and delays on that route to the stadium. The one way into the stadium area acts as a funnel and can add a significant amount of time to reaching your destination and enjoying the game. You can make plans in advance, but you're still going to have to wait in line. Like the main road that leads to the football stadium, the test labs have a certain amount of space. If you try to push that space beyond its limits, everyone experiences a

slowdown due to the pressure to make it through to your destination, the big game, or EPA certification.

With May 15, 2020 quickly approaching, there will be more and more pressure put on test labs. In order to have products on retailers' shelves by May 2020 that meet Step 2, manufacturers must have products certified by EPA by the summer of 2018. Any manufacturer that begins testing after that point faces a high risk of not having products ready to pitch to retailers for the 2019-2020 heating season. If everything goes well in testing, the testing process takes about a week. But the time it takes for EPA to complete its review is uncertain, as EPA may have questions about the report or the manufacturer may have to go back to R&D before testing is even completed. Without a variety of clean and efficient products for consumers to choose from, the future of this industry and air quality will face many more challenges.

SMALL BUSINESSES SUFFER THE MOST

Manufacturers such as myself have made significant investments in R&D just to meet Step 1 of this rule. The majority of our industry, with one or two exceptions, is comprised entirely of small businesses. Our industry trade association, the Hearth, Patio & Barbecue Association (HPBA), found that R&D costs between \$200,000 and \$500,000, for each model, and can take more than a year to complete a prototype product. In addition to R&D costs, the average cost for lab space and time in a test lab costs about \$20,000 or more, depending on how well the testing goes. These costs are then passed on to the consumer in the final retail price per unit. The R&D and testing that has to be done for today's more complicated engineering needs has increased the

price of products in a market that is highly price-sensitive, but some stability in the regulatory arena will allow those prices to lower as manufacturers recoup the costs expended in developing a final product.

The burden of spreading out these costs is much higher for small manufacturers. A larger manufacturer that sells 10,000 units a year can spread out the cost, for example, of \$320,000 for development of one model by adding an extra \$32 per unit to recoup the cost within a year. For a larger manufacturer that has to re-test up 30 models before 2020, they will have a total cost of \$9.6 million. A small manufacturer that sells perhaps 1,500 units a year with that same per unit expense will have fewer units to spread that \$320,000 cost and will have to add \$213 to the price of each unit.

Small businesses will be hit hardest.

One small woodstove manufacturer, Kuma Stoves, located in Rathdrum, Idaho, employs 11 people, most of whom are the owner's family. The impact of this rule affects an entire family; this is a "do or die" moment for the future of the company as well as for the family. I understand that Kuma Stoves has no doubts about being able to eventually comply with the Step 2 standard for woodstoves, but they simply need more time. Being one of the smaller companies within the woodstove industry, it will simply take more R&D and lab time given the lack of resources that other larger companies may have. Further, it will take more time to recoup the cost of development, testing, and certification because they will need to spread out the cost of compliance over fewer units sold compared to larger

manufacturers who sell more units and can spread out costs more widely. Like many others in this part of the industry, for Kuma Stoves it isn't a matter of not being able or not wanting to comply, it is a matter of not enough time to comply in time for 2020.

At a time when public officials talk about promoting US small businesses, this rule as currently planned would have the opposite effect. Our industry and EPA alike need the effective date of Step 2 to be pushed back by three years in order to address technical issues with Step 2 and empower manufacturers to create the next generation of clean-burning wood heaters. Most NSPS standards are reviewed no more frequently than every eight years. This revision combines two revisions within one five year time period.

For some manufacturers, especially hydronic heater and wood furnace manufacturers, the move to Step 2 is much too soon for them to be able to recuperate from Step 1 losses. To date, very few wood furnaces and hydronic heaters have shown that they can meet the Step 2 standards. To further add to the mix, EPA is granting manufacturers, on a case-by-case basis, the ability to make changes to the test method to make it easier to pass. However, it is very difficult to determine with public information which products were tested under modified conditions. The playing field isn't balanced and it appears that it is being manipulated by EPA to justify their prior policy decisions. Already, manufacturers are considering how they can survive the storm that is to come with Step 2. Some manufacturers have made significant layoffs in anticipation of Step 2 and the need for any action that helps them survive, if at all. The

majority of factories in this industry are located in rural small- to-medium-sized towns and communities because that is where this industry started.

The 2020 rule is impacting business decisions, today.

Central Boiler, the largest manufacturer of outdoor hydronic heaters in the United States, located in Greenbush, Minnesota, expresses concern with meeting the fast approaching NSPS Step 2 deadline and the absence of a sell-through provision. Dennis Brazier, owner and CEO of Central Boiler states, "With no sell-through provision in the 2020 NSPS requirement, manufacturers would by now essentially need to have products that meet the demanding requirements and we do not. This is critical in order to keep supply in the pipeline, allow dealerships adequate time to completely sell and replace their Step 1 inventory prior to the 2020 deadline. The 2020 NSPS requirement doesn't truly give manufacturers and dealers five years to comply without a sell-through provision, nor does it give manufacturers enough time for adequate product testing and consumer education. It is for these reasons I appeal for a 3-year extension to comply with Step 2 of the NSPS."

The current EPA rules require that ALL wood-burning appliances sold after May 15, 2020 meet step 2 standards. That means that a significant majority of appliances currently or soon-to-be on the market – despite meeting standards promulgated less than three years ago – will be able to be sold even though they were manufactured prior to the May 2020 date. For many of us that means we must invent the technology, test it

and have it certified by EPA by the summer of 2018 in order to have products in stores by the May 2020 deadline. In reality, the heating season of 2019-2020 is the deadline for Step 2. May isn't exactly the time of year when people are thinking about buying a new wood heater. Retailers will only buy products from manufacturers in 2019 (or sooner) that already meet the Step 2 requirements.

Retailers have made these concerns clear in business decisions.

One furnace manufacturer witnessed the near-collapse of the furnace industry in 2016 due to uncertainty in the regulatory world. Combined with new regulations, election-related changes, and an unusually warm winter, it was a horrible year, especially for the wood furnace industry. Retailers are risk averse and didn't want to buy products leading up to 2016 that they might not be able to sell in later heating seasons. Between 2015 and 2016, this manufacturer reported a significant (more than 50 percent) decrease in volume. This year is thankfully looking to be a normal year, thanks to more political certainty, but this story is not unique to the furnace industry and will occur again as uncertainty strikes this industry in the lead-up to 2020.

For hydronic heaters, EPA is currently allowing manufacturers to use a U.S.-based method or a European method which is considered far easier to pass than the U.S. method. For Step 2, by contrast, EPA will not allow products tested with the European method during Step 1 to be manufactured or sold after the Step 2 May 15, 2020 effective date. To the public looking at EPA's list of EPA-certified hydronic

heaters, it looks like there are dozens of appliances that can meet Step 2 because they hit lower numbers using the European method. In reality, all of those products will need to be re-tested with the U.S. method if they want to be on the market after May 2020. The methods are very different. For example, the U.S. method requires that testing begins the moment before the fire is lit, starting with what we call a "cold start." The European method doesn't require a cold start. Testing in our lab showed that units tested and passed using the European method were significantly dirtier when tested using the U.S. method. In fact, one European-tested model that supposedly can achieve the Step 2 limit did not even come close to meeting the requirements when tested using the U.S. method. Certifying units that were tested using the European test method amounts to an unfair advantage and this uneven playing field directly impacts sales of American-made units.

All of these challenges force industry concentration and mergers, of bigger companies buying up smaller companies, or smaller companies simply going out of business. This is already happening today.

WHAT DOES THIS MEAN FOR CONSUMERS?

Many things in life are not impossible. Meeting Step 2 is not impossible, as EPA will tell you. However, being forced to meet this part of the rule in such a tight timeframe will increase the cost of appliances that do make it through testing. You can either take the time to efficiently develop a very clean burning product at a low cost or you can expedite the process and end up with a product that passes the Step 2 test

(perhaps just one lucky test series) but it doesn't work as well as it could for the consumer and the price point will start out high.

Clean, effective, and affordable products need time for development.

One woodstove manufacturer, located in Morrisville, Vermont, makes very attractive, unique, and clean woodstoves made out of soapstone and cast iron. All 13 of their current EPA approved models are cleaner than EPA's current emissions limit of 4.5 g/hr. In order to redesign or create new models that might meet Step 2, changes that would need to be made, in such a short time frame, would dramatically increase the price of the product by \$800 to \$1,000. It is likely that consumers wouldn't pay this premium. With more time, manufacturers could find a more elegant and effective solution to decrease emissions even further than we already have.

Like manufacturers, retailers are making business decisions right now based on the Step 2 2020 requirements. It can sometimes take up to five years for a retailer to sell a hearth product from the time they purchase it from a manufacturer. With that in mind, many retailers aren't purchasing products from manufacturers that don't already meet the 2020 requirements. Even though it is still 2017, in practice the effective date is already having an impact. Manufacturers could be performing R&D on bringing down prices of existing products and making them more appealing to consumers looking for alternative and affordable ways to provide heat for their family, but instead many

manufacturers are focused on getting at least one of their products into compliance with the 2020 requirements.

CLEAN AIR IMPACTS

The requirements of Step 2 will make products even more expensive and less affordable for consumers, hindering the real goal here: to help air quality. Although products that pass Step 2 will have lower tested emissions rates, more people will hold onto older stoves and repair them rather than replace them with newer EPA-certified appliances. Across the U.S., woodstove changeout programs have removed thousands of older non EPA-certified appliances and replaced them with newer, more efficient and cleaner burning EPA-certified stoves. This is where the largest emissions reductions are gained, not from regulations.

Stove changeout programs work.

In one town, Libby, Montana, the entire town had all non EPA-certified stoves removed and replaced with EPA-certified stoves. The local air quality agency measured particulate matter levels indoors and outdoors before and after the changeout. A year later, measurements during winter months showed an average of a 72 percent improvement in indoor air quality and a 28 percent improvement in outdoor air quality.⁴

But, if the price of products increases, fewer appliances will be able to be changed out and less emissions reductions will be realized.

⁴ Hearth, Patio & Barbecue Association. (2008). *Preliminary Report: Clearing the Smoke: The Woodstove Changeout in Libby, Montana*. Retrieved from <https://www.hpba.org/Initiatives/Woodstove-Changeouts/Success-Stories/Libby-Montana-Changeout>

Before the NSPS was updated in 2015, woodstoves were already regulated by the first NSPS, which was last amended in 1990. The current NSPS regulated pellet stoves, hydronic heaters, and wood furnaces for the first time. By EPA's own estimate, the Step 1 hydronic heater standard represents a 90 percent reduction in emissions compared to uncontrolled appliances. All products covered by this rule will remain regulated by Step 1 regardless of when Step 2 comes into effect. Delaying Step 2 by three years will have a very minor impact on the environment.

CONCLUSION

By not delaying the Step 2 effective date, more harm would be done due to the reasons discussed above. More time will allow my company and the rest of the industry to develop less expensive alternatives that will encourage consumers to replace their older appliances with today's (and tomorrow's) latest technologies.

My company has worked in good faith with EPA and the state air agencies to develop reasonable standards for outdoor hydronic heaters. Our industry wants federal standards, but they need to be achievable and not put the majority of an industry out of business. I urge you to pass H.R. 453 and give more time to an industry that has made millions of dollars in investments to develop affordable and independent heating options for our customers, your constituents. This is a commonsense request that isn't asking for a mountain to be moved, only the effective date of a not-yet-in-effect rule that wasn't given enough time to come to fruition. Our company will continue experiencing a

downward spiral if we don't get this extension. Thank you for your time and listening to me today. I am now happy to answer any questions you may have.

Mr. SHIMKUS. The gentleman yields back his time, and the Chair thanks you.

The Chair now recognizes Mr. Ryan Parker, president and CEO of Endicott Clay Products.

You are recognized for 5 minutes, sir.

STATEMENT OF RYAN L. PARKER

Mr. PARKER. Chairman Shimkus, Ranking Member Tonko, and distinguished members of the subcommittee, good morning, and thank you for inviting me to testify on this important issue.

My name is Ryan Parker. I am the president and CEO of Endicott Clay Products Company, which has manufactured clay brick near Endicott, Nebraska, for 97 years. Our company is a family-owned company, and I currently work with two of the three generations of that ownership.

We have grown from a plant that serves a local market to a nationally recognized manufacturer. We have a recipe that has made it possible: devoted employees, wonderful clay, and a passion for excellence.

I am also here on behalf of my industry, as I serve on the board of directors of the Brick Industry Association. We are an industry that has less than \$1 billion in total annual revenue. Approximately 75 percent of the companies in the brick industry are small businesses, like Endicott Clay Products Company, and have been making brick for 100 years or more.

The manufacturers in my association have been good employers and neighbors in their local communities. Our industry is committed to doing our share and to doing the right thing for our employees, our vendors, customers, and communities.

However, as our industry continues to struggle to come out of the Great Recession, we have limited resources. It is imperative that these limited resources be used judiciously and on the most important issues. It is important that there is some benefit to every dollar spent and that the money not be spent needlessly or prematurely.

Our company currently employs approximately 325 people, including our manufacturing, sales, and support staff. The village of Endicott that we are located near has a population of 132. We work in a very rural area and struggle to attract qualified workers from a 45-mile radius around our plant. Most of our employees grew up in a small town or on a farm and exemplify the grit and determination that made our country the greatest in the world.

Our company makes something tangible, something real, something sustainable that people admire for generations on schools, churches, homes, and skylines all over North America. The permanency of what we do is our daily inspiration.

Nearly 10 years ago, the permanency of our business and our industry was called into question. Our industry was facing a massive recession and was coming into compliance with air regulations that hit our industry hard.

The first Brick Maximum Achievable Control Technology Rule, Brick MACT, that was finalized in 2003 required state-of-the-art air quality emissions controls for many brick plants throughout the country. After \$100 million were spent by my industry to come into

compliance with the 2003 Brick MACT through expensive stack tests and control devices, the rule was vacated by the courts in 2007.

The cost of coming into compliance with the vacated rule was never to be recouped, and many brick plants had to continue annual operation and expense of the installed control devices due to operating permits being issued that incorporated the devices.

The newest Brick MACT was promulgated in 2015 and requires existing source compliance by December 26, 2018. I am here today because we are concerned that this regulation could become the same moving target that the last Brick MACT did and that further expense and regulatory uncertainty could cripple our industry. We are here to ask your help to ensure that our companies comply with a rule that will not be vacated in the courts again. We believe the BRICK Act can give us the certainty we need.

The 2015 Brick MACT does include some innovative requirements, including health-based standards for over 99 percent of the hazardous air pollutant emissions from our industry kilns. Unfortunately, the requirements for the remaining 1 percent emissions, mercury and nonmercury metals, will require the same multi-million-dollar controls for many in our industry that would have been required before the health-based standards were conceived.

If the emission limits in the 2015 Brick MACT are altered as a result of the current pending litigation, we could be facing a significant cost. The cost of adding air pollution control devices for our company alone would be approximately \$8 million. We have already spent hundreds of thousands of dollars on two baghouses, stack testing, and engineering support.

For many in our industry, they are quickly having to decide whether or not to add further control devices. Reminiscent of the painful decisionmaking made by many in our industry in the 2000s, the cost of compliance is now, while the certainty and form of the 2015 Brick MACT is unknown. Unknown costs and regulatory uncertainty hurts companies like ours. A financial burden of millions would be devastating to our company. We do not have the ability to pass along these costs to our customers.

I cannot say for certain that we would ever be able to borrow the money required to finance air quality controls that will increase our costs dramatically without adding to our revenue or product quality, especially since these controls would do very little to improve the air quality near our plant.

It is easy to imagine that the loss of a brick company here or there is manageable for the small communities that most of us operate within. However, if Endicott Clay Products were to cease operation, millions would be lost from our community. As the largest employer by far in our county, we pay over \$10 million in wages to our 325 employees per year. Most of our employees would have difficulty finding other employment due to lack of opportunity, educational requirements, and jobs that require their lifelong skills acquired in brick-making.

Our historical narrative is a good one. We manufacture a sustainable product embraced by everyone on the political spectrum. We have a product that delivers thermal, lifecycle, aesthetic, and safety benefits to buildings and civilization since the Babylonians.

The BRICK Act would allow us some time to see exactly what is needed to comply with the 2015 Brick MACT and ensure that we and others in our industry are not investing in equipment that ultimately is not needed. Our industry's past experience with the 2003 Brick MACT compliance showed us how easily \$100 million in investment for air controls can be made obsolete. Please work together to allow our industry to gain the necessary time to see that our jobs, our product, and our livelihoods are not jeopardized.

Thank you for taking the time to listen to me today, and I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Parker follows:]

**Testimony of
Ryan L. Parker
President & CEO
Endicott Clay Products Company
Endicott, Nebraska**

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

**Date: September 13, 2017
Time: 10:00 A.M.
Location: Room 2123
Rayburn House Office Building
Washington, D.C.**

**Title: Big Relief for Small Business: Legislation
Reducing Regulatory Burdens on Small
Manufacturers and Other Job Creators**

Chairman Shimkus, Ranking Member Tonko, and distinguished Members of the Subcommittee, good morning and thank you for inviting me to testify on this important issue. My name is Ryan Parker. I am the President and CEO of Endicott Clay Products Company, which has manufactured clay brick near Endicott, Nebraska for 97 years. Our company is a family-owned company and I currently work with two of the three generations of that ownership. We've grown from a plant that serves a local market to a nationally recognized manufacturer. We have a recipe that has made it possible – devoted employees, wonderful clay, and a passion for excellence.

I am also here on behalf of my industry as I serve on the Board of Directors of the Brick Industry Association. We are an industry that has less than \$1 billion dollars in total revenue. Approximately seventy-five percent of the companies in the brick industry are small businesses like Endicott Clay Products Company and have been making brick for a hundred years or more. The manufacturers in my association have been good employers and neighbors in their local communities. Our industry is committed to doing our share and to doing the right thing for our employees, our vendors, customers and communities. However, as our industry continues to struggle to come out of the Great Recession we have limited resources. It is imperative that these limited resources be used judiciously and on the most important issues. It is important that there is some benefit to every dollar spent and that the money not be spent needlessly or prematurely.

Our company currently employs approximately 325 people, including our manufacturing, sales and support staff. The village of Endicott that we are located near has a population of 132. We work in a very rural area and struggle to attract qualified workers from a 45 mile radius around our plant. Most of our employees grew up in a small town or on a farm and exemplify the grit and determination that made our country the greatest in the world. Our company makes something tangible. Something real. Something sustainable that people admire for generations on schools,

churches, homes, and skylines all over North America. The permanency of what we do is our daily inspiration.

Nearly ten years ago the permanency of our business and our industry was called into question. Our industry was facing a massive recession and was coming into compliance with air regulations that hit our industry hard. The first Brick Maximum Achievable Control Technology Rule (Brick MACT) that was finalized in 2003 required state-of-the-art air quality emissions controls for many brick plants throughout the country. After \$100 million dollars were spent by my industry to come into compliance with the 2003 Brick MACT through expensive stack tests and control devices, the rule was vacated by the courts in 2007. The cost of coming into compliance with a vacated rule was never to be recouped and many brick plants had to continue annual operation and expense of the installed control devices due to operating permits being issued that incorporated the devices.

The newest Brick MACT was promulgated in 2015 and requires existing source compliance by December 26, 2018. I am here today because we are concerned that this regulation could become the moving target that the last Brick MACT did and that further expense and regulatory uncertainty could cripple our industry. We are here to ask your help to ensure that our companies comply with a rule that will not be vacated in the courts again. We believe the BRICK Act can give us the certainty we need.

The 2015 Brick MACT does include some innovative requirements, including health-based standards for over 99 percent of the hazardous air pollutant emissions from our industry kilns. Unfortunately, the requirements for the remaining 1% emissions, mercury and non-mercury metals, will require the same multi-million dollar controls for many in our industry that would have been required before the health based standards were conceived.

If the emission limits in the 2015 Brick MACT are altered as a result of the current pending litigation we could be facing a significant cost. The cost of adding air pollution control devices for our company alone would be approximately \$8 million dollars. We have already spent hundreds of thousands of dollars on two baghouses, stack testing, and engineering support. For many in our industry, they are quickly having to decide whether or not to add further control devices. Reminiscent of the painful decision-making made by many in our industry in the early 2000s, the cost of compliance is now while the certainty and form of the 2015 Brick MACT is unknown.

Unknown costs and regulatory uncertainty hurts companies like ours. A financial burden of millions would be devastating to our company. We do not have the ability to pass along these costs to our customers. I cannot say for certain that we would ever be able to borrow the money required to finance air quality controls that will increase our costs dramatically without adding to our revenue or product quality. Especially since these controls will do very little to improve the air quality near our plant.

It's easy to imagine that the loss of a brick company here or there is manageable for the small communities that most of us operate within. However, if Endicott Clay Products Company were to cease operation, millions would be lost from our community. As the largest employer by far in our county, we pay over \$10 million in wages to our 325 employees per year. Most of our employees would have difficulty finding other employment due to lack of opportunity, educational requirements, and jobs that require their lifelong skills acquired in brickmaking.

Our historical narrative is a good one. We manufacture a sustainable product embraced by everyone on the political spectrum. We have a product that delivers thermal, life-cycle, aesthetic, and safety benefits to buildings and civilizations since the Babylonians. The BRICK Act would allow us some time to see exactly what is needed to comply with the 2015 Brick MACT and ensure that we and others in our industry are not investing in equipment that ultimately is not needed. Our industry's past experience with the 2003 Brick MACT compliance showed us how

easily \$100 million dollars in investment for air controls can be made obsolete. Let's not repeat the past errors which could cause many small businesses in our industry to close their doors unnecessarily. Our technical task force believes that there are some mistakes in how EPA set the limits and that these may be fixable. If so, we may not need the same control equipment to meet the standard.

Our industry needs the BRICK Act to be signed into law. Please work together to allow our industry to gain the necessary time to see that our jobs, our product, and our livelihoods are not jeopardized. Thank you for taking the time to listen to me today and I would be happy to answer any questions that you may have.

Mr. SHIMKUS. Thank you very much.
 Now I would like to recognize Ms. Alexandra Teitz from AT Strategies, on behalf of the Sierra Club.
 Welcome back, and it is great to see you.

STATEMENT OF ALEXANDRA E. TEITZ

Ms. TEITZ. Thank you, Mr. Chairman, and thank you, Mr. Tonko and members of the committee, for this opportunity to testify today and for your very kind welcome.

My name is Alexandra Teitz. I am principal at AT Strategies, and I am here today representing the Sierra Club. The Sierra Club is the Nation's oldest and largest grassroots environmental non-profit organization, with over 826,000 members nationwide.

I have practiced clean air law for over two decades now, first as an attorney in the Office of General Counsel at EPA for many years and then for many more years up here in jobs on the Hill and, in particular, as senior counsel to this committee, which was a truly wonderful experience.

Today's hearing considers four bills that would modify clean air regulations or the act itself to allow specified entities to emit more pollution into the air. Of a special concern, the SENSE Act would weaken the Cross-State Air Pollution Rule and the Mercury Air Toxics Standards Rule for power plants, which are two of the most important and effective pollution-control requirements in place today.

The bills we are discussing today would result in more smog, more fine particle pollution, and more toxic air pollution. The effects would be real, and they would be harmful. They mean more asthma attacks, more kids in emergency rooms, more bronchitis, more heart attacks, and more pneumonia, among other health impacts.

In addition, the bills embody a fundamentally unfair and deeply troubling approach to regulation. These bills grant favors to special interests. No matter how great these companies are, they are being singled out for special favors, picking winners and losers in competitive markets.

And with slim rationales for the proposed legislative actions, Congress would be overturning evidence-based scientific, technical, and legal decisions that were made by EPA, States, and courts after extensive open public processes, including with a lot of industry input.

Since Congress passed the Clean Air Act in 1970, we have made significant progress in cleaning up our air by following a basic principle: We hold polluting entities responsible for cleaning up their pollution.

Generally, where air pollution is harmful and can be controlled, we require polluters to take reasonable actions to reduce their emissions. Determinations of what is harmful and what is reasonable in specific instances are highly technical, and these decisions are made generally by EPA or State regulators as authorized by law and based on science, analysis, data, and open public process.

But these bills take a different approach. They would create loopholes in the requirements for a few specific entities: waste coal plants, brick manufacturers, manufacturers of residential wood

heaters, and manufacturers of certain aftermarket auto parts. The loopholes are neither necessary nor justified, but the bills would allow these specific entities to meet looser standards, delay their cleanups, or avoid regulation altogether.

One of these bills would bypass a feature of our court system just for brick manufacturers by staying the effective date of air toxics standards for the brick industry until all challenges to the rules are resolved. This effectively eliminates the courts' current authority to grant or deny a stay request in the ongoing litigation.

Another bill would tamper with the longstanding principle under the Clean Air Act that, where EPA determines that States need to reduce a given quantity of pollution, the States retain the authority to determine how to achieve those reductions. But Congress would substitute its judgment, in this case.

And one bill, as a practical matter, although it is not at all clear this is the intent of the bill, but the effect would be to hobble EPA enforcement against cheating on vehicle pollution controls, which can be a very significant air pollution problem.

In granting special breaks to these entities, Congress would overrule decisions and authorities of States and courts as well as the EPA. It would hurt the many small businesses that have already made the investments to take care of their pollution and clean up by moving the goalpost midgame, and it puts them at a competitive disadvantage.

By shifting cleanup responsibilities to sources of pollution with higher cleanup costs, as some of the bills do, Congress would interfere in the markets, create inefficiencies, and raise costs across the board.

And since there is no way to legislate away the harm from pollution, the American people and particularly our kids and our seniors would have to pay for these special breaks with their health. And, to me, that doesn't make sense, and it doesn't seem fair.

Thank you. I would be happy to answer any questions.

[The prepared statement of Ms. Teitz follows:]

**Testimony of Alexandra E. Teitz
Principal, AT Strategies, LLC
On Behalf of the Sierra Club**

**Hearing on “Big Relief for Small Business: Legislation Reducing Regulatory
Burdens on Small Manufacturers and Other Job Creators”
Before the Subcommittee on Environment,
Committee on Energy and Commerce
U.S. House of Representatives**

September 13, 2017

Thank you Chairman Shimkus, Ranking Member Tonko, and Members of the Subcommittee for this opportunity to testify before you. My name is Alexandra Teitz, Principal, AT Strategies, LLC, and I am here today representing the Sierra Club. I have practiced clean air law for over two decades, first as an attorney in the Office of General Counsel at the U.S. Environmental Protection Agency, and, for many years, as a Senior Counsel to this Committee.

The Sierra Club is the nation’s oldest and largest grass-roots environmental non-profit organization, with over 826,000 members nationwide. The Club’s purposes are to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth’s ecosystems and resources; to educate and enlist humanity in the protection and restoration of the quality of the natural and human environment; and to use all lawful means to

carry out these objectives. Sierra Club members are greatly concerned about air quality, and the Club has a long history of involvement in air quality related activities on both the local and national levels.

Today's hearing considers four bills that would modify Clean Air Act regulations, or the Act itself, to allow specified entities to emit more pollution into the air. Of especial concern, one bill – the SENSE Act – would weaken the Cross-State Air Pollution Rule and the Mercury Air Toxics Standards rule for coal-fired power plants, two of the most important and effective pollution control requirements in place today.¹ These bills would result in more smog, more fine particle pollution, and more toxic air pollution, such as acid gases. The effects would be real and harmful—more asthma attacks, more kids in emergency rooms, more bronchitis, more heart attacks, and more pneumonia, among other health impacts.

In addition, the bills embody a fundamentally unfair, and deeply troubling, approach to regulation. In passing these bills, Congress would grant favors to special interests, picking winners and losers, and, with slim rationales for the proposed legislative actions, Congress would overturn evidence-based scientific and technical decisions made by EPA, States, and courts after extensive open processes.

¹ U.S. EPA, *Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; Final Rule*, 76 Fed. Reg. 48208 (Aug. 8, 2011); U.S. EPA, *National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial- Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units; Final Rule*, 77 Fed. Reg. 9304 (Feb. 16, 2012).

Since Congress passed the Clean Air Act in 1970, we have made significant progress in cleaning up our air by following a basic principal—we hold polluting entities responsible for their pollution. Generally, where air pollution is harmful and can be controlled, we require polluters to take reasonable actions to reduce their emissions. Determinations of what is harmful and what is reasonable are made by EPA and State regulators, as authorized by law, and based on science, analysis, and an open public process.

But these bills take a different approach. They would create loopholes in the requirements for a few favored entities—waste-coal plants, brick manufacturers, manufacturers of residential wood heaters, and manufacturers of certain aftermarket auto parts. The loopholes are neither necessary nor justified, but the bills would allow these specific entities to meet looser standards, delay their clean-ups, or avoid regulation altogether. One of these bills would bypass part of our court system—just for brick manufacturers—by staying the effective date of air toxics standards for the brick industry until all challenges are resolved, effectively eliminating the courts' current authority to grant or reject a stay request in the ongoing litigation.

In granting special breaks to these entities, Congress would overrule decisions and authorities of States and the courts, as well as EPA. By shifting clean-up responsibilities to sources of pollution with higher clean-up costs, Congress would interfere in the markets, create inefficiencies, and raise costs across-the-board. And since there is no way to legislate away the harm from pollution, the American people, and particularly our kids and seniors, would have to pay for these special breaks with their health. It doesn't make sense, and it doesn't seem fair.

I. H.R. 1119, the Satisfying Energy Needs and Saving the Environment (SENSE) Act, weakens two critical clean air rules by creating loopholes for favored industries, worsening air quality and harming public health.

A. The Cross-State Air Pollution Rule and the Mercury and Air Toxics Standards are two of the most important and effective regulations adopted by EPA to reduce air pollution that harms Americans' health.

Coal-fired power plants have long been the single largest industrial source of air pollution in the United States, emitting nitrogen oxides (NO_x), sulfur dioxide (SO₂), mercury and other metals, such as arsenic and nickel, and hydrogen chloride and other acid gases, as well as carbon dioxide. These pollutants constitute or form ozone (when combined with volatile organic compounds), fine particulate pollution (PM_{2.5}), toxic air pollutants, acid rain, and greenhouses gases. The resulting harms to human health from ozone and fine particulate pollution are well known and include aggravation of asthma, bronchitis and other lung diseases, heart attacks, stroke, and premature death. Toxic air pollutants are linked to other serious harms to human health including damage to the brain and nervous system, and cancer. Environmental effects of pollution from these plants include acidification of lakes, damage to crops and forests, and reduced visibility from haze. These pollutants cause their effects both locally and far downwind of their sources.

Since the passage of the Clean Air Act in 1970, EPA has worked to reduce pollution from coal-fired power plants. Despite real progress on pollution other than greenhouse gases, these plants continue to be the largest industrial source of air pollution, and they are often the least expensive source of pollution reductions. Thus, as EPA and States work to achieve healthy air for all Americans, reducing emissions from coal-fired power plants remains a large and essential part of the solution. The Cross-State Air Pollution Rule and the Mercury and Air Toxics Standards, both issued in 2011, are two of the most recent actions to cost-effectively tackle coal-fired power plant pollution that harms Americans' health.

The Cross-State Air Pollution Rule, also known as the Good Neighbor Rule, requires 27 upwind States to reduce the SO₂ and NO_x emissions that are contributing to unhealthy air in downwind States. While the rule provides each upwind State an emissions budget, allocated among emission sources, as required under the Clean Air Act, the rule also allows each State to develop its own approach to identifying covered sources and achieving the required level of reductions. Consistent with the Clean Air Act and guiding D.C. Circuit and Supreme Court decisions, the Cross-State rule uses the pre-existing SO₂ and NO_x trading programs to achieve the State budgets, and no State has chosen to substitute a different approach. These trading programs are a market-based approach that achieves the needed pollution reductions from the power sector in a highly cost-effective manner by allowing the sources to decide where to make the reductions. After extensive litigation and a judicial stay of the rule, Phase 1 of the rule began in 2015, and Phase 2, with tighter limits, began in 2017.²

² U.S. EPA, *Rulemaking To Amend Dates in Federal Implementation Plans Addressing Interstate Transport of Ozone and Fine Particulate Matter*, 79 Fed. Reg. 71663 (Dec. 3, 2014).

The benefits of the Cross-State Rule far outweigh its costs. Each year, this rule prevents up to 34,000 premature deaths, 19,000 cases of acute bronchitis, 15,000 nonfatal heart attacks, 19,000 hospital and emergency room visits, 1.8 million days of missed work or school and 400,000 cases of aggravated asthma.³

The Mercury and Air Toxics Standards rule requires coal-fired power plants to meet numeric emissions limits for mercury, other metals, and acid gases. EPA set the limits based on the reductions that can be achieved using “a range of widely available and economically feasible technologies, practices and compliance strategies.”⁴ The Clean Air Act provides that existing sources must comply within three years of the rule’s effective date (i.e., in 2015) and States may extend this deadline for an additional year as needed for sources to install technology. Invoking a provision of the Act meant for standards governing “mining waste operations” (rather than power plants) the States of Pennsylvania and West Virginia have asked waste-coal plants in those States to achieve full compliance with the standards by April 2019, three full years later than almost every other coal-fired power plant.⁵

The Mercury and Air Toxics Standards also provide benefits that far outweigh the costs. EPA estimates that for every dollar spent to reduce pollution under this rule, American families receive up to \$9 in health benefits.⁶ EPA estimated that in 2016, the rule would avoid up to

³ U.S. EPA, 76 Fed. Reg. 48,215, 48,309.

⁴ U.S. EPA, *Fact Sheet; Mercury and Air Toxics Standards for Power Plants* (<https://www.epa.gov/sites/production/files/2015-11/documents/20111221matsummaryfs.pdf>).

⁵ See, e.g., Order Granting a Petition to Object to a Permit, In re. Scrubgrass Generating Co., LP, Power Plant, Pet. No. III-2016-5 (EPA May 12, 2017).

⁶ U.S. EPA, *Fact Sheet; Consideration of Cost in the Appropriate and Necessary Finding for the Mercury and Air Toxics Standards for Power Plants* (https://www.epa.gov/sites/production/files/2016-05/documents/20160414_mats_ff_fr_fs.pdf).

11,000 premature deaths, 2,800 cases of chronic bronchitis, 4,700 heart attacks, 130,000 cases of aggravated asthma, 5,700 hospital and emergency room visits, 6,300 cases of acute bronchitis, 140,000 cases of respiratory symptoms, and 540,000 days when people miss work.⁷

B. The SENSE Act increases air pollution, overrides State authorities, and picks winners and losers by allowing favored sources to pollute more, while penalizing other cleaner sources.

1. The SENSE Act increases air pollution, harming the health of America's children and seniors.

The SENSE Act picks one favored type of coal-fired power plant— those burning waste-coal—and allows those plants to continue emitting at higher levels indefinitely. For SO₂ pollution regulated under the Cross-State Rule, the bill does this by requiring EPA to give coal refuse plants allowances equivalent to their allowances under Phase 1 of the Cross-State Rule, rather than giving these plants the smaller quantities of allowances they would receive under Phase 2 of the rule or subsequent iterations of the rule. For air toxics regulated under the Mercury and Air Toxics rule, the bill allows waste-coal plants to meet a less stringent numeric limit for acid gases that apparently would allow these plants to avoid operating pollution control technology. By writing both of these loopholes into law, the SENSE Act prevents the standards from ever being strengthened, even as technology improves and costs fall.

⁷ 81 Fed. Reg. 24,420, 24,427 (April 25, 2016).

With respect to Cross-State Rule, although the SENSE Act provides for the possibility that some of the additional SO₂ pollution allowed by the bill could be offset, there is no assurance that the environment would be held harmless, and any offsets would come at the expense of other coal-fired power plants. If and when coal-fired power plants in a State reduce emissions through conversion to gas or shut-down, their allowances would be seized to offset the increased allowances awarded to waste-coal plants in that State.

Specifically, the bill directs the Administrator to provide SO₂ allowances to waste-coal plants at Phase 1 levels indefinitely, including under subsequent revisions to the Cross-State rule.⁸ Although §2(b)(2)(A) of the SENSE Act bars the Administrator from increasing the total SO₂ budget for States with waste-coal plants, §2(b)(2)(B) then directs the Administrator to implement this directive for the 2017-2020 compliance periods by reducing allowance allocations for coal plants in the relevant State that shut down or convert to natural gas in a prior compliance period. At best, the language is ambiguous regarding whether EPA may offset the increased pollution from waste-coal plants by reducing allowance allocations to other plants, other than those that convert or shut-down, leaving it up to EPA and the courts to interpret. The bill makes no provision for maintaining the SO₂ budget if there are an insufficient number of allowances available from plants that convert or shut-down, or for maintaining the SO₂ budget in compliance periods after 2020. As this concern was highlighted during action on the bill in the last Congress, but has not been addressed, presumably the sponsors intend to allow air pollution to increase.

⁸ SENSE Act, section 2(b).

In addition to allowing more pollution from waste-coal plants, by seizing SO₂ emissions allowances from other coal plants that convert to gas or shut down, the SENSE Act disincentivizes other coal plants from cleaning up, which will also allow higher levels of pollutants other than NO_x and SO₂ (which should be less affected, given the Cross-State Rule's emissions caps).

With respect to the Mercury and Air Toxics Standards, there is no provision to offset any of the increased toxic air pollution caused by the bill's alternative looser air toxics standards.

We do not know how many additional asthma attacks, respiratory diseases, heart attacks, strokes and other health harms would be associated with the SENSE Act, as there has been no detailed technical analysis of the effect of the changes it would make. But there is no question that the bill would result in higher levels of air pollution that are already harming Americans' health.

2. The SENSE Act overrides State authorities and local decision-making under the Cross-State Rule.

Under the Clean Air Act's successful and much lauded cooperative federalism approach, EPA has the authority to require States to reduce their emissions, but States have the authority to decide *how* to reduce their emissions, unless they refuse to act. The SENSE Act would override this long-standing and sensible balance between state and federal authority, which has been at the heart of the Clean Air Act since its adoption in 1970.

Under the Cross-State Rule, upwind States, including Pennsylvania and West Virginia, had the opportunity to adopt State-specific programs to allocate extra allowances to waste-coal plants, but chose not to do so. The SENSE Act not only overrides the current approach, but also eliminates State authority to determine how to reduce air pollution going forward, by specifying and preserving allowance allocations for these plants in law for the indefinite future. Further, the bill would direct the EPA Administrator to reduce allowance allocations to other coal-fired power plants, again overriding State authorities.

3. The SENSE Act picks winners and losers, distorting the market and raising costs of clean-up under the Cross-State Rule.

The SENSE Act picks winners and losers in the market for electricity production, distorting market participants' choices and raising costs across the board. First, the SENSE Act advantages waste-coal plants over other coal plants simply by allowing them to emit more pollution, thereby reducing their operating costs.

Second, the SENSE Act specifically penalizes coal-fired power plants (other than waste-coal plants) that reduce emissions. In recent years, many coal-fired power plants with multiple units have achieved compliance with pollution limits by shutting down one or more units or converting one or more units to other fuels. The plants have used the then-excess allowances to purchase electricity from new cleaner sources, such as renewables, or to help finance the conversion or cover emissions at the remaining coal-fired units. Under this bill, however, these

options might no longer be available to some plants, making clean-up more expensive and likely slowing air pollution reductions. As the prior administration noted in its Statement of Administration Policy on this bill in the last Congress, the SENSE Act's approach creates an uneven playing field, economically advantages some coal plants over others, and reduces compliance choices for coal plants not fueled with waste-coal.⁹

Finally, the bill also bars waste-coal plants from trading any of their SO₂ allowances in the market, which distorts their economic incentive to reduce emissions, and raises the costs of SO₂ reductions across the board.¹⁰

4. The SENSE Act creates a loophole in the Mercury Air Toxics Rule already rejected by the courts.

Waste-coal plants are entirely capable of meeting the Mercury and Air Toxics Standards rule's acid-gas standards, and the courts have already rejected their claims to the contrary. EPA established the rule's standards based on the actual emissions of power plants—including coal-waste plants—reported before the rule went into effect. In the rulemaking, EPA specifically considered whether waste-coal plants should be treated differently from others, and determined that there was no justification for such an approach.¹¹ As EPA noted when it finalized the rule,

⁹ Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy, H.R. 3797 – Satisfying Energy Needs and Saving the Environment (SENSE) Act* (March 14, 2016).

¹⁰ *See id.*

¹¹ 77 Fed. Reg. 9303, 9395 (Feb. 16, 2012).

the best-performing waste-coal plants demonstrated acid gas emissions well below EPA's standard.¹²

Based on this record, the court of appeals for the D.C. Circuit upheld EPA's decision on this point, unanimously rejecting waste-coal-plants' request for special treatment.¹³ Indeed, of the nineteen plants that EPA examined before finalizing the rule, eight—over 40 percent—had acid gas emissions below EPA's standard, even before making any investment in compliance.¹⁴ The technologies used to reduce emissions at the best performing plants, such as spray-dry absorbers or scrubbers, can readily be used at the other plants as well, and new, lower-cost technologies have emerged as well.¹⁵ While some waste-coal plants have raised concerns about their ability to re-sell their coal ash if certain sorbent-injection technologies are used to reduce acid gases, waste-coal plants have demonstrated their ability to avoid those problems by installing alternative technologies or utilizing different sorbents that do not contaminate fly ash.¹⁶ Plants may also avoid fly ash contamination by reconfiguring existing control systems.¹⁷

C. The loopholes in the Cross-State Rule and Mercury and Air Toxics Standards provided by the SENSE Act are not justified.

¹² EPA Response to Comments Vol. 1 at 587.

¹³ *White Stallion v. E.P.A.*, 748 F.3d 1222, 1250 (D.C. Cir. 2014).

¹⁴ EPA Resp. Brief at 94-95.

¹⁵ "Circulating Fluidized Bed Scrubber vs. Spray Dry Absorber," Power Engineering International (August 19, 2015) (available at <http://www.powerengineeringint.com/articles/print/volume-23/issue-8/features/circulating-fluidized-bed-scrubber-vs-spray-dryer-absorber.html>).

¹⁶ EPA Response to Comments Vol. 1 at 587 (describing use of "polishing" controls rather than dry sorbent injection; 77 Fed. Reg. at 9412 (noting availability of non-sodium based sorbents, e.g. hydrated lime).

¹⁷ 77 Fed. Reg. at 9413 (noting that by placing fabric filter "downstream" of injection system to capture sorbent, plants may ensure that "fly ash ... remain[s] uncontaminated.").

The rationale for this legislation rests on two false premises: first, that waste-coal plants cannot meet current air pollution control requirements without shutting down; and second, that the appropriate response is to sacrifice public health by allowing continued unhealthy pollution.

In fact, as discussed above, waste-coal plants, just like other coal-fired power plants, have multiple affordable technological options for meeting the pollution limits in the Cross-State Rule and Mercury and Air Toxics Standards.

But even if it were the case that these plants would be uncompetitive if they were held to the same pollution control requirements as other coal-fired power plants, there is no reason why Americans' health should be sacrificed. In effect, the SENSE Act would subsidize these plants to help them compete against other electricity producers, but hide the costs of the subsidy by converting them to health burdens and forcing American families to bear them.

II. H.R. 1917, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act of 2017, unjustifiably delays reductions in toxic air pollution from brick manufacturers, exposing American families to more dangerous pollution for years to come.

A. The Clean Air Act requires EPA to issue regulations to reduce toxic air pollution from industry, including brick and structural clay manufacturers.

The Clean Air Act aims to reduce Americans' exposure to toxic air pollutants, which are specifically listed metals and chemical compounds that are known or suspected to cause cancer, birth defects, neurological effects or other serious health effects. EPA must set standards by specified deadlines to control toxic air pollutants from each industry sector responsible for this pollution.

Brick and structural clay manufacturing emits toxic mercury, other hazardous metals, dioxins, hydrogen fluoride and hydrogen chloride, which are associated with various acute and chronic health disorders, including cancer. EPA initially identified this industry as a source of toxic air pollutants in 1992.¹⁸ This triggered a requirement for EPA regulate these emissions as expeditiously as practicable, and no later than 2000, but EPA was not able to not complete the rule until 2003.¹⁹ The requirements were further delayed when the D.C. Circuit vacated the rule in 2007, finding the standards insufficiently stringent to meet the Clean Air Act's requirements.²⁰ EPA completed a new rule in September 2015, and manufacturers are required to meet the standards by September 2018, or September 2019, if a facility needs an additional year to install

¹⁸ U.S. EPA, *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990*, 57 Fed. Reg. 31576 (July 16, 1992).

¹⁹ U.S. EPA, *National Emissions Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing*, 68 Fed. Reg. 26690 (May 16, 2003).

²⁰ *Sierra Club v. EPA*, 479 F.3d 875 (D.C. Cir. 2007).

pollution controls.²¹ EPA estimates that the final Brick and Structural Clay Products rule will reduce nationwide air toxics emissions by approximately 375 tons per year.²²

B. The BRICK Act lets brick manufacturers continue to pollute until all their lawsuits are exhausted, overriding the court's authority to offer such relief only when justified under longstanding legal standards.

The BRICK Act uses manufacturer's lawsuits against the air toxics standards as an excuse to allow manufacturers to emit uncontrolled pollution for years to come. The Court of Appeals for the D.C. Circuit has the authority to stay the effectiveness of a rule pending the court's review, but usually the regulations remain in effect while legal challenges are ongoing.²³ Case-law provides standard criteria that the court uses to determine whether a request to stay a rule during litigation is justified, taking all the relevant considerations into account. The court may stay a rule if it finds that the party seeking the stay has demonstrated that: (1) it is likely to prevail on the merits of the appeal; (2) without relief, it will be irreparably harmed; (3) issuance of the stay would not substantially harm other parties interested in the proceedings; and (4) the stay would favor the public interest.²⁴

Here, none of the industry litigants have even asked the court to stay the Brick and Structural Clay Products rule, presumably because they recognize that they do not meet the legal

²¹ U.S. EPA, NESHAP for Brick and Structural Clay Products Manufacturing; and NESHAP for Clay Ceramics Manufacturing; Final Rule, 80 Fed. Reg. 65470 (Oct. 25, 2016).

²² *Id.* at 65512.

²³ See *Scripps-Howard Radio, Inc. v. Federal Communications Commission*, 316 U.S. 4, 11, (1942).

²⁴ See *Virginia Petroleum Jobbers Assoc. v. Federal Power Commission*, 259 F. 2d. 921 (1958).

criteria. This is manifestly not a situation where justice requires that the underlying rule be stayed while the litigation plays out.

Nonetheless, the BRICK Act would intervene, effectively removing the court's authority to grant or deny a stay by preemptively staying the rule for the duration of litigation over the rule. Under the Clean Air Act, manufacturers were supposed to have cleaned up their toxic air pollution by 2004 at the latest. But now, after a 13-year delay and an additional 13 years of air pollution, the BRICK Act would allow manufacturers to continue to pollute uncontrolled.

The BRICK Act also incentives just the kind of frivolous litigation that Congress has expressed concern about in other contexts. Because the rule would remain stayed for as long as manufacturers are in court, and because a single set of lawsuits on behalf of the whole industry is clearly less expensive than installing pollution controls across an entire industrial sector, manufacturers would have an overwhelming economic incentive to exhaust every possible legal avenue, no matter how dubious the claim.

Finally, the BRICK Act sets a terrible precedent. To the extent that this bill encourages Congress to intervene to stay other regulations while legal challenges play out, the BRICK Act paves the way to imposing substantial additional strains on our already over-burdened courts, forcing the U.S. government to waste taxpayer dollars defending frivolous and unfounded legal claims, and sacrificing Americans' health due to years of additional unnecessary pollution.

III. H.R. 453, the “Relief from New Source Performance Standards Act of 2017,” delays cleaner-burning wood stoves until 2023, exposing communities to years of additional unhealthy fine particle pollution.

A. The Clean Air Act requires EPA to set air pollution control standards for new sources of pollution, including new residential wood heaters.

Smoke from residential wood heaters can pose serious health concerns, particularly in communities where many people depend on burning wood for heat. The most harmful pollutant in the smoke is particle pollution, but it also contains carbon monoxide, volatile organic compounds, which combine with other pollutants to form smog, black carbon, and toxic air pollutants such as benzene. As noted above, particle pollution (including black carbon) and smog harm human health by causing aggravation of asthma, bronchitis and other lung diseases, heart attacks, stroke, and premature death. At low levels of exposure, carbon monoxide can cause problems for people with certain types of heart disease.²⁵ Benzene is known to cause cancer.²⁶

Under section 111 of the Clean Air Act, the New Source Performance Standards provisions, EPA must set standards for new sources of air pollution that may endanger public health to assure that the sources control pollution to the extent achievable, based on demonstrated approaches. This sensible and effective program recognizes that it is often easier

²⁵ U.S. EPA, *What are the harmful effects of CO?* (<https://www.epa.gov/co-pollution/basic-information-about-carbon-monoxide-co-outdoor-air-pollution#Effects>).

²⁶ U.S. EPA, *Benzene* (updated 2012) (<https://www.epa.gov/sites/production/files/2016-09/documents/benzene.pdf>).

and more cost-effective to build-in pollution controls with a new facility or product, compared to retrofitting existing facilities or products. In addition, pollution reductions from a new source produce benefits for the full lifetime of that source.

In 2015, EPA strengthened the pollution control requirements for new residential wood heaters, based on technology improvements that allow manufacturers to build wood heaters that produce far less air pollution.²⁷ The standards will cut fine particle pollution and VOCs from new wood heaters by almost 70%, and will cut carbon monoxide pollution by 62%.²⁸ These significant improvements will especially benefit communities where wood smoke is a major contributor to particle pollution. The standards will also tend to make the heaters more efficient, allowing homeowners to use less wood. EPA noted that the rule has an usually large net benefit of more than 100 times the cost of the rule, due to the costly health impacts of wood smoke and the relative affordability of pollution reductions from new wood heaters.²⁹

EPA included multiple provisions in the rule to help manufacturers achieve the new standards, including phasing in the new limits to give manufacturers five years to comply fully. Manufacturers do not have to meet the final standards until 2020.

²⁷ U.S. EPA, *Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces; Final Rule*, 80 Fed. Reg. 13672 (Mar. 16, 2015).

²⁸ U.S. EPA, *Overview of Final Updates to Air Emissions Requirements for New Residential Wood Heaters* (<https://www.epa.gov/residential-wood-heaters/fact-sheet-overview-final-updates-air-emissions-requirements-new>).

²⁹ See 80 Fed. Reg. 13672, 13674.

B. The “Relief from New Source Performance Standards Act of 2017” would allow wood heater manufacturers to keep making more polluting heaters, resulting in years of additional fine particle pollution and ongoing serious health problems, particularly for communities with many wood stoves.

Despite the ongoing public health harms from wood smoke and the extended compliance period for manufacturers under the rule, H.R. 453 would delay cleaner wood burning heaters for three more years, on top of the five years manufacturers already have to comply. Worse, the damage from H.R. 453 will persist not for three years, but for many more years, or even decades to come, as each new higher-polluting wood heater sold between 2020 and 2023 will continue to emit more pollution over its entire lifespan. Areas such as Fairbanks and Salt Lake City that are struggling with unhealthy levels of particulate pollution driven primarily or partially by wood smoke cannot afford cleaner technology to be further delayed.³⁰

³⁰ EPA has reclassified Fairbanks and Salt Lake City from moderate to serious non-attainment for PM2.5 because the areas have been unable to meet the 2006 health-based standard for PM2.5. U.S. EPA, *Determinations of Attainment by the Attainment Date, Determinations of Failure To Attain by the Attainment Date and Reclassification for Certain Nonattainment Areas for the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standards*, 82 FR 21711 (May 10, 2017). For Fairbanks, the PM2.5 exceedances are primarily due to wood-burning heaters. <https://www.epa.gov/newsreleases/epa-proposes-action-fairbanks-alaska-air-quality-plan> (discussing contribution of wood smoke to Fairbanks' PM2.5 nonattainment). For Salt Lake City, wood smoke is a smaller but non-trivial part of the problem. Utah Dept. of Health, *Wood Smoke and Your Health* (<http://www.health.utah.gov/utahair/pollutants/woodsmoke/>) (identifying residential wood smoke as the source of roughly 5% of PM2.5 emissions from Salt Lake City and other counties).

IV. H.R. 350, the “Recognizing the Protection of Motorsports (RPM) Act of 2017,” undermines protections against tampering with vehicle emissions controls by creating a new loophole for after-market emissions control defeat devices based on their intended use in racing vehicles.

A. The Clean Air Act prohibits tampering with or deploying devices to defeat motor vehicle emissions controls.

Motor vehicles are a major source of health endangering air pollution, emitting nitrogen oxides and VOCs that combine to form smog, as well as particle pollution. Transportation produces more than half of the nitrogen oxides, almost a third of the VOCs, and over one-fifth of the particulate matter air pollution in the United States.³¹ As noted above, smog and particle pollution harm human health by causing aggravation of asthma, bronchitis and other lung diseases, heart attacks, stroke, and premature death.

Section 203(b)(3) of the Clean Air Act prohibits “any person” from removing or rendering inoperative emissions controls on certified motor vehicles, or from selling or installing automotive parts that would “bypass, defeat, or render inoperative” vehicle emissions controls on such vehicles. The VW scandal is the most well known, but far from the only, example of cheating on vehicle emissions controls. In 2015, EPA entered into a consent agreement with a company that had sold after-market defeat devices to bypass emissions controls on several

³¹ U.S. EPA, *Smog, Soot, and Other Air Pollution from Transportation* (<https://www.epa.gov/air-pollution-transportation/smog-soot-and-local-air-pollution>).

popular truck models.³² The company stipulated that it had sold over 100,000 individual defeat devices from 2010-2013, including over 86,000 “performance tuners.”³³ EPA estimated that the emissions impacts of the performance tuners alone is 71,000 tons of NOx emissions.³⁴ To provide some context, this is almost enough to wipe out the 80,000 tons of NOx reductions from power plants achieved through a 2016 rule updating the requirements of the Cross-State Air Pollution Rule.³⁵ This underscores how critical it is that EPA be able to enforce against the manufacture and sale of these defeat devices.

While there has been some recent controversy about EPA’s interpretation of the section 203(b)(3) language, EPA has made it clear that it is not concerned about vehicles used exclusively for racing. EPA stated that its “focus is not on vehicles built or used exclusively for racing, but on companies that don’t play by the rules and that make and sell products that disable pollution controls on motor vehicles used on public roads. These unlawful defeat devices pump dangerous and illegal pollution into the air we breathe.”³⁶

Furthermore, as a practical matter, EPA has effectively no ability or inclination to enforce motor vehicle requirements against individual vehicle owners, even if they are in violation. With over 240 million light-duty vehicles on the road today, EPA reasonably and appropriately directs

³² Consent Agreement, *In the Matter of H&S Performance, LLC*, U.S. EPA, Environmental Appeals Board, No. CAA-HQ-2015-MSEB 8248, 8 (Dec. 17, 2015) (<https://www.epa.gov/sites/production/files/2016-01/documents/hascafo.pdf>).

³³ *Id.*

³⁴ *Id.*

³⁵ U.S. EPA, *Final Cross-State Air Pollution Rule Update for the 2008 NAAQS* (https://www.epa.gov/sites/production/files/2017-06/documents/final_finalsaprur_factsheet.pdf).

³⁶ Jalopnik, *The EPA Will Not “Ban Racecars” After All* (April 15, 2016) (<http://jalopnik.com/the-epa-will-not-ban-race-cars-after-all-1771338067>).

its limited regulatory and enforcement resources at the far fewer manufacturers of vehicles and after-market parts.³⁷

B. In the guise of protecting amateur racers, the “RPM Act of 2017” carves a gaping loophole in the Clean Air Act motor vehicle pollution control requirements, blocking EPA from ever enforcing against manufacturers of add-on emissions control defeat devices, regardless of the devices’ use in practice.

The RPM Act adds sweeping new language to the Clean Air Act that would make it impossible, in practice, for EPA to regulate after-market parts manufacturers that produce add-on emissions control defeat devices for vehicles. As proponents of the RPM Act note, there is a long history of amateur racers converting on-road vehicles to vehicles that are used solely for racing, and to our knowledge, EPA has never taken enforcement action against any such modification or vehicle. There are relatively few vehicles used solely for racing, and these vehicles are driven for relatively small periods of time, making their air pollution contributions comparatively insignificant. Narrowly crafted targeted language that applied only to such modifications and vehicles would likely have little adverse effect on motor vehicle emissions, relative to current circumstances.

Unfortunately, the RPM Act is the opposite of narrow and targeted. The Act states that “no action with respect to any device or element of design . . . shall be treated as a prohibited act

³⁷ Bureau of Transportation Statistics, Table 1-11: Number of U.S. Aircraft, Vehicles, Vessels, and Other Conveyances (statistics for light-duty vehicles for 2015) (https://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/publications/national_transportation_statistics/html/table_01_11.html).

... if the action is *for the purpose of* modifying a motor vehicle into a vehicle to be used solely for competition.” The result is that, under the RPM Act, a manufacturer is free to manufacture devices that defeat air pollution controls on vehicles, as long as *the manufacturer* can assert that it intends the devices to be used only on vehicles used solely for racing. Of course, the manufacturer’s intent does nothing to constrain the ultimate use of the device. Moreover, professional vehicle repair shops could modify vehicles to remove air pollution controls under this language, as long as they assert that the intended purpose is that the vehicle is used solely for racing. Yet once the devices are sold or the vehicles are modified, EPA has no practical ability to police individual vehicles to determine whether or not they are driven on the roads. Whatever the intent of the RPM Act, in practice, it would allow a potentially significant increase in unhealthy air pollution from motor vehicles.

Mr. SHIMKUS. The gentlelady yields back her time, and thank you for your testimony.

The Chair now recognizes Mr. Vincent Brisini, director of environmental affairs, Olympus Power, on behalf of the Anthracite Region Independent Power Producers Association.

You are recognized for 5 minutes. Welcome.

STATEMENT OF VINCENT BRISINI

Mr. BRISINI. Thank you, Chairman Shimkus, and thank you to the committee for allowing me to be here to testify today.

I am here today testifying on behalf of ARIPPA in support of the SENSE Act. ARIPPA is the trade association for a small but unique industry that removes coal refuse from the environment and then combusts that coal refuse along with limestone in circulating, fluidized bed boilers to make electricity.

The coal refuse being used by the ARIPPA member facilities and other similar facilities is typically material remaining after the historic mining and processing of coal. The resulting ash from this coal-refuse-to-energy process is used to remediate and reclaim coal refuse sites and other mining-affected lands. Coal refuse piles cause air, surface water, and groundwater pollution, as well as being safety and health hazards.

As a lifelong resident of the bituminous coal region of Pennsylvania, I lived among coal refuse piles and have experienced firsthand the air pollution and odor issues caused by the piles that are burning, the dust that blows off of them, and the water pollution that causes many miles of stream to be so contaminated that they can't support aquatic life.

I have also witnessed the benefits provided by the coal-refuse-to-energy facilities. The coal refuse piles that were removed from Revloc, Pennsylvania, by Ebensburg Power Company and the land that was reclaimed as part of the coal-refuse-to-energy process not only eliminated sources of air and water pollution, it brought life back to the south branch of the Blacklick Creek. This project has allowed the South Branch Fishing Club to stock the stream for the past 3 years with between 500 and 1,000 trout each year.

In addition to these kinds of environmental and recreational benefits, the coal-refuse-to-energy facilities provide considerable economic benefits to the areas in which they are located.

According to reports prepared by Econsult Solutions, a Philadelphia-based economic consulting firm, the combined economic and environmental benefits of the coal-refuse-to-energy industry in Pennsylvania and West Virginia total about \$800 million per year. The industry directly and indirectly supports approximately 3,800 jobs, with total earnings for those employees of more than \$231.5 million per year.

While these coal-refuse-to-energy facilities are relatively small, the family-sustaining jobs they provide, directly and indirectly, are critical to the small communities where the facilities are located.

One of the biggest problems, if not the biggest problem, that the SENSE Act faces is that most people have not personally experienced coal refuse piles. People who have never lived in a coal region and haven't experienced daily the environmental health and safety issues associated with coal refuse simply do not appreciate

those issues and the amazing benefits provided by the coal-refuse-to-energy facilities.

The Pennsylvania Department of Environmental Protection recently issued a report showing diminished pollutant loadings—generally well over 90 percent removal for most pollutants—from the sites that have been remediated and reclaimed through the coal-refuse-to-energy process. These reduced loadings are exactly why the South Branch Fishing Club has been able to successfully stock trout in the south branch of the Blacklick Creek.

Absent the efforts of the coal-refuse-to-energy industry, it is likely that most of the remaining coal refuse piles will never be reclaimed or remediated. There simply isn't enough public funding available.

What is important to understand about the SENSE Act is that it addresses the one standard in the Mercury and Air Toxics Standards Rule that most of the bituminous-coal-refuse-fired facilities can't meet, the acid gas standard. The SENSE Act, instead, provides an additional performance limit for bituminous-coal-refuse-fired facilities only, which would require 93 percent removal of the potential sulfur dioxide in the coal refuse being used as fuel.

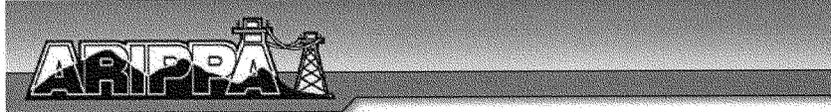
Importantly, under the SENSE Act, this is accomplished in a fashion that does not have any negative effect on the environment. Because the Cross-State Air Pollution Rule sulfur dioxide emissions budget, which the SENSE Act protects, and the Mercury and Air Toxics Standards Rule sulfur dioxide acid gas limit are both based on the same sulfur dioxide emission rate, the State and regional sulfur dioxide emissions will, at most, remain the same but, more likely, will be even lower under the SENSE Act.

Consequently, all of the monetized benefits of both the Cross-State Air Pollution Rule and the Mercury and Air Toxics Standards Rule will be preserved, if not increased, by the provisions contained in the SENSE Act.

So, to me, someone that has lived all of his life in the bituminous coal region, the SENSE Act makes perfect sense. It protects the environment and allows the bituminous-coal-refuse-fired facilities to continue to provide their economic, multimedia, environmental safety and health benefits.

Thank you very much for the opportunity to provide testimony in support of the SENSE Act. And thank you to Representative Rothfus for crafting a bill that is actually to everyone's benefit.

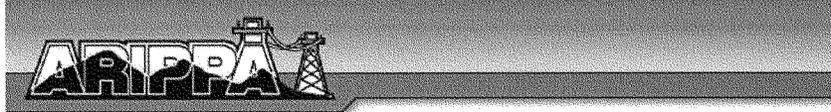
[The prepared statement of Mr. Brisini follows:]



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**Testimony of ARIPPA before the
House Committee on Energy and Commerce,
Subcommittee on Environment,
in Support of H.R. 1119 (the SENSE Act)
September 13, 2017
Summary Points**

- Coal refuse is a legacy problem in coal regions.
- Coal refuse piles produce multi-media environmental, safety and health problems.
- The coal refuse to energy industry effectively and permanently addresses the coal refuse problems in a fashion that is good for the environment as well as local and state economies.
- Total economic output of the PA & WV coal refuse industry, including direct, indirect and induced activity, is estimated at about \$800 million.
- The coal refuse to energy industry in PA and WV supports 3,800 family and community sustaining jobs per year, with total annual employee earnings of more than \$231.5 million.
- Environmental benefits resulting from plant activities (which include water quality benefits, public safety benefits, and land value benefits) are estimated at about \$30 million per year.
- A number of bituminous coal refuse fired units can't meet either of the Mercury and Air Toxics Standards rule's acid gas limits and face a threat of imminent closure absent the SENSE Act.
- The SENSE Act provides an additional performance based sulfur dioxide acid gas limit for bituminous coal refuse fired units only.
- The SENSE Act provisions ensure that all of the monetized health benefits of the Cross State Air Pollution Rule and the Mercury and Air Toxics Standards rule are preserved.
- The SENSE Act is responsible legislation that allows six (6) bituminous coal refuse-fired units to continue to provide a permanent solution to the legacy coal refuse problem in coal regions while ensuring there aren't any negative environmental impacts.



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**Testimony of ARIPPA before the
House Committee on Energy and Commerce,
Subcommittee on Environment,
in Support of H.R. 1119 (the SENSE Act)
September 13, 2017**

Mr. Chairman, Members of the Committee:

Good morning. On behalf of ARIPPA, I would like to thank the Chair and Committee for holding this hearing today on the "Satisfying Energy Needs and Saving the Environment Act" or "SENSE Act" (H.R. 1119).

My name is Vincent Brisini and I am the Director of Environmental Affairs for Olympus Power, LLC. Today, I am testifying on behalf of ARIPPA, the trade association representing the coal refuse to energy industry. By way of background, and in terms of my perspective on the issues before you today, I have more than 42 years of experience in air resources management, in both public service and the private sector. From 2011 to 2015, I served as Deputy Secretary for the Office of Waste, Air, Radiation, and Remediation in the Pennsylvania Department of Environmental Protection; and prior to that worked for 33 years as an air quality and environmental manager in the electric generation sector, principally in Pennsylvania.

ARIPPA is a non-profit trade association representing the interests of the coal refuse to energy industry. Its membership includes electric generation facilities that utilize environmentally-friendly circulating fluidized bed (CFB) boiler technology to convert coal refuse into electricity. These plants are located principally in or near the anthracite and bituminous coal regions of Pennsylvania and the bituminous coal region of West Virginia.

According to a report prepared by Econsult Solutions, a Philadelphia-based economic consulting firm, the combined economic and environmental benefit of the coal refuse to energy industry to Pennsylvania alone totals about \$780 million per year. The industry directly and indirectly supports 3,600 jobs with total earnings of more than \$220 million per year.

What sets these coal refuse-fired power plants apart is the critical role they play in environmental clean-up and remediation in coal regions by removing coal refuse piles from the landscape, cleaning up the air, land and water polluted by these piles, and protecting public health and safety without shifting the cost of these activities to public sources. Coal refuse is a legacy of previous coal mining and consists of low quality coal mixed with rock, shale, slate, clay and other material. It was discarded as “waste” during the original coal extraction process and randomly disposed in piles near mine sites and the towns that developed near those sites.

CFB technology with limestone injection can effectively combust coal refuse from past mining activities to respond to the formidable environmental challenges posed by the millions, likely billions, of tons of coal refuse deposited throughout Pennsylvania, and other historical coal-mining regions. To date, the coal refuse to energy industry in Pennsylvania has removed and used as fuel more than 200 million tons of coal refuse, restored more than 1,200 miles of streams and reclaimed more than 7,000 acres of mining affected lands. The environmental value of this industry to Pennsylvania has been quantified on average at \$26 million per year.

As the Environmental Protection Agency (EPA) has recognized in the development of a number of regulations, the combustion of coal refuse in CFB units provides critical environmental benefits. Consequently, the Agency should recognize and facilitate, rather than hinder, the continued operation of these units. Importantly, these facilities are such very low emitting electric generating units (EGUs) that [8] of them were used in establishing the mercury standards now required by 40 CFR Part 63, Subpart UUUUU, otherwise known as the Mercury and Air Toxics Standards (MATS) rule. Additionally, the unique

characteristics of the ash generated by these coal refuse to energy facilities is recognized in Pennsylvania law and environmental regulations for beneficial use in the reclamation of mining affected lands and neutralizing acid mine drainage.

The use of coal refuse as fuel in CFB boilers has eliminated many abandoned coal refuse piles located throughout the Commonwealth of Pennsylvania and to a lesser extent West Virginia, Utah, and Montana. However, despite the efforts of the coal refuse to energy industry, the volume of remaining coal refuse across the Commonwealth is daunting. Estimates range from 300 million tons to 2 billion tons in Pennsylvania alone.

These coal refuse piles are more than eyesores. They are a major source of acid mine drainage into surface and ground waters; can spontaneously combust or catch fire causing the emissions of toxic pollutants; are prone to subsidence; and represent real public health and safety hazards. If these piles are not removed and used by the coal refuse to energy industry, it is highly likely that they will remain in place and continue to endanger our citizens, scar our land and pollute our air and our waters. It is estimated that, at any given time, there are fifty abandoned coal refuse piles burning in the Commonwealth of Pennsylvania. The dispersed and varied nature of these piles makes quantifying the total impact on air quality difficult, but in outlining an ongoing study of the issue, the United States Geological Survey (USGS) observed that burning coal refuse piles produce and disperse mercury, methane, particulates, hydrocarbons and other elements such as arsenic and selenium, through the air in a completely uncontrolled manner.¹ USGS observed that these elements also leach in to water bodies and accumulate in fish, entering the food supply.² An example of the dramatic environmental benefits that can be accomplished by the removal and use of coal refuse as fuel in an ARIPPA member facility and the subsequent use of the resulting beneficial ash in reclamation and remediation, is the South Branch of the

¹ U.S. Department of Interior, United States Geological Survey, "Emissions from Coal Fires and Their Impact on the Environment," Fact Sheet 2009-3084, Sept. 2009.

² *Id.*

Blacklick Creek, in Pennsylvania. Post-reclamation, the Pennsylvania Department of Environmental Protection has documented an acid loading reduction of 96%, an iron loading reduction of 99%, an aluminum loading reduction of 94%, a manganese loading reduction of 87% and a sulfate loading reduction of 82% in the watershed of the South Branch of Blacklick Creek³. The creek, once iron-stained and devoid of aquatic life, is now stocked with trout by the South Branch Fishing Club for the enjoyment of sport fishermen. This stocking has occurred for the past three years.

As identified in the Pennsylvania Department of Environmental Protection's Citizens Advisory Council's 2015 Transition Report, Pennsylvania faces a cost to recover abandoned mine lands of approximately \$16.1 billion. Costs of this magnitude can be expected for other coal producing states in the eastern portion of the United States as well. There simply is not adequate public funding available to address all of these piles.

For these reasons, EPA, the Pennsylvania Department of Environmental Protection (PADEP), the Office of Surface Mining Reclamation and Enforcement, and other non-governmental organizations have long-recognized the multi-media environmental benefits of the coal refuse to energy process used by the ARIPPA member facilities. In fact, as discussed further below, in the preamble to the MATS rule, EPA explained why they were not proposing changes to the New Source Performance Standards for coal refuse fired power plants:

"Coal refuse (also called waste coal) is a combustible material containing a significant amount of coal that is reclaimed from refuse piles remaining at the sites of past or abandoned coal mining operations. Coal refuse piles are an environmental concern because of acid seepage and leachate production, spontaneous combustion, and low soil fertility. Units that burn coal refuse provide multimedia environmental benefits by combining the production of energy with the removal of coal refuse piles and by reclaiming land for productive use. Consequently, because of the unique environmental benefits that coal refuse-fired EGUs provide, these units warrant special consideration so as to prevent the amended NSPS from discouraging the construction of future coal refuse-fired EGUs in the U.S."⁴

³ PA Department of Environmental Protection, "Reclamation of Refuse Piles using Fluidized Bed Combustion Ash in the Blacklick Creek Watershed, Pennsylvania," <https://wvmdtaskforce.files.wordpress.com/2017/05/2017-aaron-martin-wed-salon-c-1100.pdf>

⁴ EPA, 76 Fed. Reg. 25066, May 2011, <https://www.gpo.gov/fdsys/pkg/FR-2011-05-03/pdf/2011-7237.pdf>

However, despite their manifest environmental benefits, and due to erroneous assumptions in certain federal environmental regulations, some bituminous coal refuse-fired power plants are threatened and may be unable to continue to provide these publicly-important environmental, safety and health benefits.

H.R. 1119, the proposed SENSE Act, seeks to address the sulfur dioxide (SO₂) allowance allocation errors contained in the Cross-State Air Pollution Rule (CSAPR) and the erroneous assumptions in the Mercury and Air Toxics Standards (MATS) rulemaking with respect to bituminous coal refuse-fired facilities. Without the SENSE Act, certain coal refuse to energy facilities which use and remediate the coal refuse piles located in the higher sulfur content bituminous regions located in West Virginia and western Pennsylvania will be forced to close. Millions of state and local taxpayer dollars will be required to replace this successful public private partnership, reclaim the areas blighted by coal refuse and to address the associated environmental, health and safety problems – money that is simply not available in the budgets of Pennsylvania and local communities. Federal funding for abandoned mine reclamation is already “drying up” due to the greatly reduced amount of coal that is being mined, and state and local budgets are simply unable to tackle this daunting challenge. Absent the SENSE Act, the end result would be the loss of a bituminous coal region private solution to the public coal refuse problem and the continuation of the health, safety and environmental problems associated with these sites!

Cross-State Air Pollution Rule (CSAPR) - Sulfur Dioxide (SO₂) Allowances

In Phase 2 of CSAPR, sulfur dioxide allowance allocations to electric generating units that burn coal refuse from the historic mining and processing of bituminous coal are reduced to levels that cannot be achieved by these bituminous coal refuse-fired units.

The SENSE Act mandates that in Phase 2 of CSAPR or in any future revised emissions budget under CSAPR, the bituminous coal refuse-fired electric generating units only be allocated SO₂ allowances at the

levels specified in Phase 1 of CSAPR. However, to assure that the annual sulfur dioxide emissions budgets that have been established by EPA are not increased, the SENSE Act provides that the Administrator must “re-allocate” sulfur dioxide allowances from the allowance allocations to other CSAPR affected electric generating units which have been or will be permanently retired or fully converted to burn only natural gas. This will result in a proportional reduction in sulfur dioxide allowance allocations to those units consistent with the number of allowances needed for the re-allocation specified in the SENSE Act.

At the same time, the SENSE Act includes provisions that prevent bituminous coal refuse-fired plant owners receiving these CSAPR emission allowances from gaining an economic windfall. It prohibits qualifying plants from transferring any unused CSAPR allowances to other facilities; and, while allowing unused CSAPR allowances to be “banked” for future compliance periods at the facilities receiving a SENSE Act allowance allocation, it requires the surrender of such allowances if the facility permanently retires or switches to natural gas.

The fact that the ARIPPA facilities can generate electricity and provide jobs while simultaneously remediating a major environmental challenge results in economic benefits to the state and local communities that far outstrips the value of the actual electricity produced. It should be noted that most ARIPPA facilities are very small with typical installed capacities of 80 to 85 megawatts. As such, the impact on electricity markets of these facilities is small, but the loss of their value to the communities they serve would be vast.

Mercury and Air Toxics Standards (MATS)

While some groups have expressed that these units are being provided a “free pass on the MATS rule, nothing could be further from the truth. The SENSE Act only provides an additional alternative SO₂ limit for 6 bituminous coal refuse-fired units to meet the acid gas standard in MATS. Plus, those units must use circulating fluidized bed combustion as that technology is necessary to

produce the beneficial use ash used to remediate and reclaim mining affected lands, including the coal refuse sites. Only one of the bituminous coal refuse-fired facilities can meet the MATS rule's acid gas hydrogen chloride (HCl) limit and one other different facility's units can meet the acid gas sulfur dioxide (SO₂) limit. The one facility that meets the HCl limit cannot meet the SO₂ limit and the other facility that can meet the SO₂ limit cannot meet the HCl limit.

As previously identified, in promulgating New Source Performance Standards (NSPS), EPA concluded that the unique environmental benefits provided by coal refuse facilities warranted special consideration. EPA amended the NSPS so as to not discourage coal refuse facilities by recognizing that the quality of coal refuse varies widely in terms of caloric value and sulfur content, and different vintage waste coal units have different capabilities relative to their ability to control sulfur dioxide (SO₂).

Unfortunately, these same concepts were not carried through in the MATS rule. EPA's definition of "coal" for this purpose combined all of the different types of coal into one category, only differentiating between lignite and all other coal types. Contrary to the recommendation of EPA staff, EPA did not differentiate between the types of combustion technology used; the coal refuse being burned; emission control technologies already in place; or the availability and appropriateness of SO₂ control technologies. EPA included fuel switching as an option for emissions control, with no consideration of the fact that this option is not available for coal refuse facilities. One technology suggested by EPA – dry sorbent injection (DSI) – is not effective to achieve the level of SO₂ reduction required, and would change the chemical makeup of the ash produced, rendering it unusable for remediation purposes and requiring landfill disposal at exorbitant cost. Further, testing showed that the use of DSI to meet the alternative hydrochloric acid (HCl) emission standard resulted in non-compliance with the MATS mercury standard. Coal refuse facilities that burn relatively high-sulfur waste coal would have to achieve an SO₂ capture rate higher than that achieved by even the newest coal refuse-fired

power plant. The end result is that there is no feasible economic way for most of the bituminous coal refuse-fired facilities to meet either of the current acid gas limits required by the current MATS rule.

The difficulty in meeting the MATS Rule acid gas standard SO₂ limit arises from the high sulfur content of most of the remaining bituminous coal refuse fuels. Abandoning the controlled combustion and reclamation of the most high-sulfur coal refuse piles would effectively relegate the surrounding communities to living with the uncontrolled air and water pollution from these sites in perpetuity.

The SENSE Act addresses this oversight in the regulation by establishing an additional alternative performance based acid gas compliance option for coal refuse facilities burning bituminous coal refuse which is based upon the removal and control of SO₂. Absent this provision, three bituminous coal refuse-fired facilities in Pennsylvania and one in West Virginia will be forced to permanently retire due to an inability to meet either of the current acid gas limits. Along with the closure of these plants would be the loss of the multi-media environmental benefits that these plants provide through combining the generation of energy with the removal of coal refuse piles and reclamation and restoration of land and water resources.

To ensure the continuation of the multi-media environmental benefits that the bituminous coal refuse-fired plants provide through the continued removal, remediation and reclamation of coal refuse piles, the SENSE Act legislation establishes an alternative, performance based standard to be provided for these units to demonstrate compliance with the MATS acid gas standard. Specifically, under the SENSE Act, the bituminous coal refuse-fired units would be able to demonstrate compliance with the MATS acid gas standard by demonstrating a 93% removal of potential sulfur dioxide emissions based on as-fired fuel sampling and continuous emissions monitoring systems measurements. This performance based limit is consistent with the concepts established by EPA's New Source Performance Standards (NSPS) for SO₂ emissions for new coal refuse plants by providing a similar limit for existing coal refuse units.

This alternative SO₂ limit would be demonstrated on the same boiler operating day basis as the other acid gas standards in MATS.

It has also been implied that the coal refuse fired electric generating units, including those burning bituminous coal refuse, are high emitters of mercury. In fact, they are among the lowest emitters in the United States. If one reviews the emission rates of the units used by EPA to set the MATS mercury standard, they will find that a disproportionately large number of the circulating fluidized bed electric generating units, including those using bituminous and anthracite coal refuse as fuel, were used to set the mercury standard contained in the MATS rule. Further, the remaining coal refuse-fired units that weren't used to set the MATS mercury standard emit mercury at such low levels that they all qualify under the MATS regulations as mercury low emitting electric generating units (Hg LLE). It is extremely important to tell the whole story rather than imply a circumstance by only providing a portion of the information.

Conclusion

The SENSE Act is a reasonable, targeted effort to address the errors that EPA has made in the CSAPR and MATS rules, and is a very important part of ensuring that bituminous coal refuse-fired facilities are able to continue their mission of reclaiming and recovering these mining affected lands and providing high quality, family sustaining jobs in the communities in which these facilities are located. Importantly, this is accomplished in a fashion that causes no regional increase in SO₂ emissions, preserves the monetized health benefits of the MATS rule and the CSAPR and does not allow any facility to have an emission increase that could cause or contribute to non-attainment of any national ambient air quality standard (NAAQS).

As part of my testimony, and for your records, I am providing to you certain white papers prepared by ARIPPA that more clearly describe the problems associated with coal refuse sites (**Annex A.**) and the

impacts of the finalized CSAPR (**Annex B.**) and MATS (**Annex C.**) rules on the coal refuse-fired industry.

Also included is an analysis of the MATS mercury limit.

Thank you to Representative Rothfus for crafting the SENSE Act and thank you for the opportunity to testify today. ARIPPA urges you to support the SENSE Act and its passage this year.

Attachments:

ARIPPA Map with PA Plants, MGW & Tons Per Year 7-27-16
Annex A. ARIPPA Coal Refuse Whitepaper with Photos 10_05_15
Annex B. ARIPPA CSAPR Whitepaper 9_24_15 (with logo)
Annex C. ARIPPA MATS Whitepaper 9_24_15 (With Logo)
Mercury and Air Toxics Standard Mercury Limit Analysis 8_29_17
Mercury MACT Floor highlighted version 8_29_17

Mr. SHIMKUS. The gentleman yields back his time.

The Chair now recognizes Dr. Rebecca Bascom, professor, Penn State College of Medicine, on behalf of the American Thoracic Society.

You are recognized for 5 minutes. Welcome.

STATEMENT OF REBECCA BASCOM

Dr. BASCOM. Mr. Chairman, Ranking Member, thank you for the opportunity to testify today.

I am Rebecca Bascom. I am professor of medicine at Penn State College of Medicine and practice at Milton S. Hershey Medical Center in Hershey, Pennsylvania.

I work as a lung doctor. Half of my time each week, I have a white coat on, I have a stethoscope, I am listening to the lungs of people to decide whether they have lung disease or not. And I can tell you, I know a lot about people who suffer from lung disease, and I know a lot about the grit of people who have to endure some of these very difficult diseases.

I also teach medical students, and I also do research and partner with amazing scientists at Penn State looking for solutions to some of these diseases and also to assess health effects and impacts on the respiratory system.

Today, the committee is considering four bills that would change the Clean Air Act to create industry-specific exemptions and delays to meeting Clean Air Act standards. And while the details of the bills vary, they share one thing in common, which is more air pollution.

And that is bad for the patients that I treat, because air pollution does make sick people sicker. For common diseases like asthma and COPD, exposure to air pollution makes people more likely to end up in the emergency room, to miss school, to need medications, and sometimes hastens their death.

Air pollution is also bad for healthy people, something that many people are not aware of. It reduces lung function development. It accelerates declines in lung function. It also increases all-cause mortality for healthy people.

And we know that acid gasses and sulfur dioxide have adverse lung effects. I had a patient who was bicycling, got near a power plant, and had to get off her bicycle because her asthma was kicked up. So the effects can occur very quickly.

They also contribute to the formation of particulate matter, another dangerous form of air pollution that can be distributed throughout the body, with effects not only in the lungs but in the heart and elsewhere.

So when we talk about air pollution, it is not just kids who are impacted; it is all of us.

Air pollution is a particular concern for people that I treat who have advanced lung disease, cystic fibrosis that affects children, and pulmonary fibrosis that affects people in their golden years. And I need to tell you about the impact of air pollution on those individuals, because it changes their lives from managing their disease to being on death's door. And this is a huge problem for them and a huge source of fear.

Forty years ago, when I started taking care of patients with lung disease, I was brought to a room of a patient who was a miracle guy. He was 20 years old, and he had lived that long with cystic fibrosis. And now all the time I am taking care of people, adults with cystic fibrosis, who have children who are living full lives, delivering pizza, you know, living their life.

However, the thing they fear is an acute exacerbation, because if they get an acute exacerbation, they are going to land in the hospital, they are going to lose their jobs because they will be out for 3 weeks, needing intravenous antibiotics. Air pollution makes them more likely to have an acute exacerbation.

And we have recently learned that air pollution makes it more likely that *Pseudomonas aeruginosa* and meth-resistant staph aureus take residence in the lungs of people with cystic fibrosis. And the presence of those bacteria make them have a much more difficult time maintaining their lung function. So air pollution puts them from a controlled situation to being on death's door, and that is a real problem.

For people who have pulmonary fibrosis, air pollution makes them more likely to have an acute exacerbation. I see people with pulmonary fibrosis at our monthly support group. And I run the Pulmonary Fibrosis Care Center at Penn State. And I know that people who have an acute exacerbation may not leave the hospital and that ozone air pollution makes them more likely to have an acute exacerbation because it causes deep-lung injury, and injury and disrepair are the central problem for pulmonary fibrosis.

So people ask me whether or not improving air pollution can improve health, and the answer is absolutely yes. There are really good data. The Harvard Six-City Study, for example, showed that reductions in air pollution reduce morbidity and mortality; some fabulous studies from Southern California that look at the impact on children and that show that, over a 20-year period, that children's lung growth improves when air pollution levels are reduced. And that is true if you are a boy or if you are a girl, all ethnicities, if you have asthma or if you are healthy. So air pollution cleanup clearly benefits across a whole wide range of people.

So, in summary, we know that air pollution is bad for health, and we know that improving air pollution and protecting our air quality improves health. And so I really encourage you to resist any loopholes and rollbacks on air pollution control.

Thank you.

[The prepared statement of Dr. Bascom follows:]



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**Testimony of the American Thoracic Society
Before the House Energy and Commerce Committee, Subcommittee on
Environment
Regarding Legislative Proposals to Weaken and Delay Implementation
of the Clean Air Act
Presented by Rebecca Bascom MD MPH
On September 13, 2017**

Mr. Chairman, Ranking member, my name is Dr. Rebecca Bascom. I am a pulmonologist in the Division of Pulmonary and Critical Care Medicine at Penn State University Milton S. Hersey medical center in Hersey PA. On behalf of the American Thoracic Society I want to thank the Committee for the opportunity to testify regarding legislation that would grant selected industries exemptions from meeting air pollution emission standards set under the Clean Air act. The American Thoracic Society strongly urges the committee to reject these misguided attempts to roll back progress made under the Clean Air act.

The American Thoracic Society is a medical professional organization with over 15,000 professionals and patients who are dedicated to the prevention, detection, treatment and cure of respiratory disease, critical care illnesses and sleep-disordered breathing. We pursue our mission through research, clinical care, education and advocacy.

Why does the ATS care about air pollution? The ATS cares because air pollution has a direct impact on the short-term and long-term health of the patients we serve. Pollutants like ozone, particulate matter, sulfur dioxide and other hazardous air pollutants have life and death consequence to my patients. Today the committee is considering 4 separate bills that would grant industry specific exemptions to EPA Clean Air Act standards. While each industry is seeking its own exemption, the unifying theme is each of the bills would allow more pollution. I'd like to share with you information on why these bills are bad for the health of the patients I serve.

Ozone Pollution

Several of the bills under discussion today would increase the risk of higher ozone pollution, so I would like to share some important information about ozone's serious health risks. Ozone (O₃) is a potent oxidant that damages the airways and lungs. There are literally hundreds of high quality peer reviewed studies that document the adverse health effects that exposure to ozone pollution has on the lungs and other organ systems. Recent studies provide several lines of evidence demonstrating dose-response relationships between ozone exposure in the 60 to 80 ppb range and adverse health effects. These effects include hospital admissions and emergency room visits for children with asthma.

A growing body of evidence suggests that exposure to ozone may also induce the development of asthma in children, in addition to provoking attacks in children who already have the condition. Taken together, the data are persuasive that ozone pollution – at levels currently experienced in the United States – makes children sick.

But it's not just children - adults are also at risk. Research studies of adults have also shown that as ozone levels increase, so do, severe asthma exacerbations, emergency room visits, and hospitalizations for asthma. Similar associations have been found for adult admissions for chronic obstructive pulmonary disease and pneumonia. Perhaps of greatest concern, there is now stronger evidence of increased mortality in association with higher ozone levels, particularly among the elderly and those with chronic disease. Large, multi-city studies found strong and consistent associations with increased risk of premature death, particularly in the warmer months when ozone levels are higher. Ozone and nitrogen dioxide exposure over the preceding 6 weeks was associated with an increased risk of acute exacerbation of idiopathic *pulmonary fibrosis*, suggesting that *air pollution* may contribute to the development of this clinically meaningful event in patients with pulmonary fibrosis. In sum, there is accumulating evidence that ozone pollution damages human lungs and contributes to disease. The EPA has the authority and obligation to adopt and take steps—including reducing emissions from racing cars—to protect children and adults from the adverse health effects of ozone exposure.

Sulfur dioxide

The SENSE Act would allow power plants to emit more sulfur dioxide into the air. Sulfur dioxide is a gas that causes a range of harmful effects on the lungs, including:

- Bronchoconstriction, a narrowing of the airways that causes difficulty breathing;
- Increased asthma symptoms;
- Increased visits to emergency departments for breathing problems; and
- Increased hospital admissions for respiratory illnesses.

Sulfur dioxide has been shown to harm health directly, and in combination with other pollutants. For example, in a study of asthmatic children in 7 cities, researchers reported that increased asthma symptoms were associated with SO₂ alone, as well as SO₂ in combination with other pollutants.

Sulfur dioxide does not just harm people who live near these plants who would be breathing the sulfur dioxide as a gas. Sulfur dioxide reacts in the atmosphere and becomes sulfate, an ultrafine and fine particulate air pollutant. Reducing sulfur dioxide emissions therefore provides multiple benefits to health not only close to the sources, but hundreds of miles away.

Particulate Matter Pollution

These bills would also increase the risk of particulate matter by rolling back or delaying measures already in place—and, in some cases long overdue—to clean up emissions. Particulate matter is a complex mixture of extremely small particulates and liquid droplets that are suspended in the air we breathe. Particulate matter pollution can be emitted directly from the burning firewood or fossil fuels such as coal, or can be formed when gases such as sulfur dioxide interact in the atmosphere to create particulate matter pollution. The exact nature of the particulate matter pollution varies significantly based on the pollution source, but all fine particulate matter can be inhaled deeply into the lungs. Many inhaled particles are small enough to traverse the lung tissue and enter the blood stream and effects organs outside the lung, including the brain and heart. Exposure to air pollution has both long-term and short-term adverse health consequences.

Particulate Matter Pollution – Long-term health effects

The continued emissions of sulfur dioxide from power plants would continue to produce particles from the reaction of SO₂ gas in the atmosphere. This would happen on a day-in, day-out basis, creating long-term exposure to particulate matter. A number of large studies have looked at the long-term health effects of ambient particles. First was the Harvard Six Cities study which found that over a 16 year period, adults who lived in the most polluted of the 6 cities had a 26% higher rate of death as compared to those in the least polluted city. Several other studies have found similar results including the American Cancer Society Cancer Prevention Study II, the California Seventh-day Adventists cohort study, and a 2007 national study of 66,000 participants from the Women's Health Initiative. These studies provide evidence linking long-term exposure to ambient particulate matter and all-cause mortality, cardiovascular mortality, and non-fatal cardiovascular events. The impact of particulate air pollution on life expectancy is substantial.

Recent reviews by the International Agency for Research on Cancer, part of the World Health Organization, now concludes that long-term exposure to particulate matter can cause cancer, particularly lung cancer.

Particulate Matter - Short-term health Affects

Wood stoves and outdoor wood boilers are among the reasons too many places suffer episodes of high particulate matter that can also threaten human health. Hundreds of studies in the U.S. and around the world have confirmed that elevations in particulate matter are associated with an increased risk of premature death, cardiovascular death, hospitalization for respiratory and cardiovascular diseases, and respiratory symptoms a risk that is demonstrated with days of the exposure. These scientific studies have linked particulate matter exposure to a variety of problems, including:

- Aggravated asthma in children;
- Increased emergency department visits and hospital admissions;
- Higher risk of hospitalization for congestive heart failure, stroke, and myocardial infarction (heart attacks);
- Increased risk of premature death; and
- More frequent dangerous irregularities of the heartbeat ; and
- More frequent deaths, second heart attacks, and hospital admissions for people who have already experienced one heart attack.

Particulate pollution can cause health problems for anyone, but certain people are especially susceptible. Children and teenagers, the elderly, and people who already have cardiovascular disease, chronic lung disease or diabetes are among the groups most at risk. Particulate matter pollution is real concern for patients with lung diseases like cystic fibrosis. Research shows that annual average levels of particulate matter pollution exposure are associated with lung function decrease and an increased likelihood of pulmonary exacerbation in CF. Even healthy adults who work or exercise outdoors may face higher risk. As best we can now tell, people pass into and out of conditions where they are more susceptible to the effects of fine particulates. Even younger and healthier people may be transiently susceptible.

In sum, particulate matter pollution is bad for human health.

Toxic Air Pollutants

Finally, the SENSE Bill and the BRICK Act would also allow more toxic air pollution by allowing utilities and brick manufacturing facilities to emit more mercury and carcinogens such as arsenic and chromium. Instead of adopting established technology long needed to reduce these emissions, the industries seek delays that would burden the people who live downwind of their facilities.

Reducing Air Pollution Improves Health

To get you to agree to let them delay cleaning up, industry would like you to ignore the evidence that shows that as pollution is reduced, health improves. We know this from studies that looked at the impacts of changes made in the last twenty to thirty years. Scientists in 2013 looked at changes in life expectancy in 200 counties in the U.S. and calculated that reductions in fine particle air pollution between 1980 and 2000 increased the average lifespan in these counties by approximately 5 months. Importantly, the greatest increase in life expectancy was seen in those counties showing the greatest reduction in fine particle air pollution during this time. A follow-up study, just published this week, found that reductions in particulate matter in the U.S. between 1980 and 2010 reduced premature deaths by about one-third. Studies on Steubenville, OH—one of the six cities Harvard studied—and Salt Lake City, UT provide other real world examples showing that reduced air pollution emissions lead to measurable improvements in morbidity and mortality. Two recent publications based on a 20 year multi-cohort study of children in southern California demonstrated improvements in lung-function development in children as air quality improved. These were observed in girls and boys, in children with and without asthma, and across multiple ethnicities – suggesting all children benefit from improvements in air quality.

Legislation Before the Committee

This explanation should provide a warning against the 4 separate bills that would grant industry specific exemptions to EPA Clean Air Act standards. Each of the bills would allow more of these harmful pollutants. Mr. Chairman, my patients don't know or care if the pollution that is making them sick is from a wood stove, a brick kiln, a coal power plant or a race car. All they know is air pollution is making them sick and they expect Congress and the Administration to allow EPA to continue its work in preserving and improving the quality of air we all breathe. On behalf of my patients, I urge the committee to reject the bills under consideration.

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Mr. SHIMKUS. The gentlelady yields back her time. Thank you for your testimony.

And the last-but-not-least member of the panel is Mr. Steve Page, president and general manager of Sonoma Raceway.

You are recognized for 5 minutes, and welcome.

STATEMENT OF STEVE PAGE

Mr. PAGE. Chairman Shimkus, Ranking Member Tonko, members of the subcommittee, I appreciate this opportunity to speak today about H.R. 350, the Recognizing the Protection of Motorsports Act.

The RPM Act confirms that the Clean Air Act allows for certified motor vehicles to be modified into race vehicles used solely for motorsports competition. This bipartisan bill was introduced by Representative McHenry and has 139 cosponsors, including subcommittee members Hudson, Carter, Johnson, Murphy, and Walberg, as well as my own Congressman, Mike Thompson.

My name is Steve Page. I am president and general manager of Sonoma Raceway, a motor racing and performance automotive center about 30 miles north of San Francisco.

For decades, Americans have converted their street vehicles into racecars, from pre-World War II classics to modern-era performance cars. Sonoma Raceway is proud to participate in this defining American tradition. Our raceway consists of a 2 1A½-mile, 12-turn, natural-terrain road course, a quarter-mile championship drag strip, a three-quarter-mile karting track, an industrial park that is home to 75 racing businesses, a performance racing school, acres of campgrounds, and a variety of support facilities.

We offer one of the most diverse race schedules in the industry and are the only track in the U.S. to host all three of the Nation's top professional racing series: NASCAR, NHRA drag racing, and the IndyCar series, for which we host the season finale. And we invite you all to check out the championship race this Sunday on NBC Sports Network.

While these major event weekends garner attention and media coverage at a national level, Sonoma Raceway is actually a year-round motorsport complex, with racing scheduled 340 days and up to 50 weekends a year. In fact, most of the activity at Sonoma Raceway consists of amateur driving programs, sports car and vintage racing, drag racing, motorcycle racing, testing, and other activities involving the recreational racing community.

The majority of the vehicles competing on our track began their lives as assembly-line vehicles and have been modified with high-performance suspension, safety, and exhaust systems. These are cars, trucks, and motorcycles that have given up their license plates and arrive and depart our facility on trailers.

Sonoma Raceway employs about 80 full-time workers. The 75 small businesses located in our industrial park employ hundreds of skilled technicians who convert, modify, store, and prepare race vehicles for events.

Racing's footprint in the local economy extends well beyond our campus. In 2016, the Sonoma County Economic Development Board measured the total regional economic impact of a single vintage race weekend at our facility at nearly \$2 million. That is the

kind of boost to the local economy that takes place at Sonoma Raceway on a regular basis, day-in, day-out, year-round, and is representative of hundreds of racetracks around the country.

Since the majority of our racing features motor vehicles that were originally designed and sold for street use, we were surprised to learn that the EPA had issued a proposed regulation in 2015 to prohibit the conversion of a motor vehicle into a race vehicle if the emissions system is modified. This is inconsistent with the EPA's application of the law for over 40 years and represents a serious threat to our sport.

According to the agency, a motor vehicle must always remain in its original configuration, even if it is trailered to the track and used exclusively for racing. While the EPA has signaled it does not currently intend to take enforcement action against individual racers, the agency maintains that it has the authority to do so. This interpretation now defines a majority of our customers as lawbreakers.

Given the agency's policy, a clarification to the law is absolutely needed. The RPM Act simply makes clear that converting a motor vehicle into a dedicated racecar does not violate the law. Further, it restores the original intent of the Clean Air Act, that the law applies to motor vehicles used on our roads and highways and not to race vehicles and parts.

In California, which owns the strictest emission laws in the country, our State government takes a different approach. California statute and regulations specifically allow for motor vehicles to be modified for use exclusively in motorsport competition.

On behalf of Sonoma Raceway, our employees, and the many small businesses that would be affected by the EPA's action, I strongly support the RPM Act and ask the subcommittee to consider the important role that racetracks and motorsports play in our economy when reviewing this legislation.

Thank you again for this opportunity to address the subcommittee, and I look forward to taking any questions you may have.

[The prepared statement of Mr. Page follows:]

Testimony of

Steve Page, President & General Manager
Sonoma Raceway

before the

Subcommittee on Environment
House Committee on Energy & Commerce

on

September 13, 2017

Introduction

Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee, I appreciate the opportunity to speak today about H.R. 350, the “Recognizing the Protection of Motorsports Act of 2017.” The so-called “RPM Act” confirms that the Clean Air Act allows for certified motor vehicles to be modified into race vehicles used solely for motorsports competition.

My name is Steve Page, and I am President and General Manager of Sonoma Speedway in Sonoma, California. It is a pleasure to be with you today. I look forward to providing some perspective on operating a race track and the important role Congress can play in providing long-term stability to amateur and sportsman racers, fans, and the many small businesses connected to motorsports in the U.S.

Background on Sonoma Raceway

While Sonoma, California is viewed as a mecca for wine connoisseurs, Sonoma Raceway is known as a premier venue within the racing community. The facility is located on approximately 1,600 acres and consists of a 2.52-mile, twelve-turn natural terrain road course, a 1/4-mile championship drag strip, a 3/4-mile karting track, paddock and asphalt skid pads, an industrial park that is home to 75 racing businesses, a performance racing school, acres of campgrounds, and a variety of support facilities.

Sonoma Raceway offers one of the most diverse racing schedules in the industry. In fact, we are the only track in the U.S. to host the nation’s top three professional racing series: the Monster Energy NASCAR Cup Series, the NHRA Mello Yello Drag Racing Series, and the Verizon IndyCar Series.

While major events garner much of the racing community’s attention at a national level, the facility is a year-round motorsport complex with events scheduled 340 days and 50 weekends a year. Many of these days include anywhere from two to four events occurring simultaneously. In fact, most of the activity at Sonoma Raceway consists of participant driving programs—sports car and vintage racing, drag racing, motorcycle racing, testing and other activities involving the recreational motor racing community.

While the professional racing scene is seasonal, amateur racing is year-round. In fact, most of the activity at Sonoma Raceway consists of participant driving programs—sports car and vintage racing, drag racing, motorcycle racing, testing and other activities involving the recreational motor racing community. Nearly all of the top national and regional amateur racing organizations spend time on our track. Some of these activities involve purpose-built race cars, others involve unmodified street cars, but the majority of the vehicles competing on our track on any given day began their lives as production automobiles and have been modified with high performance suspension, safety and exhaust systems. These are cars that have given up their license plates and they arrive and depart our facility on trailers.

The 75 small businesses located in our industrial park are where many of these vehicles are converted, modified, stored, prepared for events and fixed when they break. Those businesses

employ hundreds of skilled technicians and they in turn support a range of high-performance parts and components manufacturers and distributors whose products are delivered to our facility on a daily basis. Although racing is a hobby for our spectators and many of the drivers as well, Sonoma Raceway is an economic small business driver in the region. Sonoma Raceway itself employs about 80 full-time workers and, including the tenants in our industrial park, there are 300-400 people who come to work at the raceway every day. During large events, staffing numbers can balloon as high as 2,000-2,500 workers.

Racing's footprint on the local economy also extends well beyond our campus. The Sonoma County Economic Development Board measured the regional economic impact of a vintage race weekend at our facility in last Spring at nearly \$2 million. This is the kind of activity that takes place at Sonoma Raceway on a regular basis. Our marquee events like NASCAR or IndyCar fill up hotel rooms and restaurants for 30 miles in every direction with spectators, drivers, race teams, support staff, sponsors, and race officials. Since many of the sponsors activate promotional programs in every market in which a race takes place, race teams often use various events to entertain their sponsors and their guests. The same is true at hundreds of other motorsports race venues around the country.

Background on Production Vehicle Racing

Racing is an integral part of our American automotive heritage that dates back to the late 1800s. For purposes of today's hearing, my testimony is focused on stock car racing, whereby a production vehicle designed for general transportation is modified into a dedicated racecar.

Automobile racing's origin is likely tied to the prohibition era, as bootleggers competed against each other when they weren't otherwise outrunning law enforcement. Formal rules governing fair competition emerged after World War II and racing quickly became a beloved past-time for participants and spectators alike. The National Association of Stock Car Auto Racing (NASCAR) was formed in December 1947, with the first sanctioned event in Daytona Beach commencing less than two months later.

While most people associate stock car racing with NASCAR, the majority of racers compete at local racetracks around the country in amateur and sportsman classes of racing. Tens of thousands of amateur and grassroots level professional racers compete in converted street vehicles, including cars, motorcycles, and trucks that undergo varying levels of modifications before they are ready for competition.

A number of NHRA's (National Hot Rod Association) racing classes are also designed for sportsmen competing in converted street vehicles. NHRA was founded in part as a means of getting hot rodders to race at drag strips instead of on the roads and highways. This effort was an undisputed success, as more than 40,000 licensed competitors are currently affiliated with NHRA.

It is also important to note that hundreds of American companies employing tens of thousands of American workers create innovative products to make race cars and motorcycles perform better. These products cover a broad spectrum, from improving fuel-efficiency, suspension and

aerodynamics to increasing power output and incorporating advanced composite materials. Once fully-outfitted, these race vehicles bear little resemblance to their time in the show room. From roll-cages, netting, a safety harness, and an interior that is void of most standard features, race vehicles that are converted from automobiles are easily distinguishable.

EPA's Draft Rule and Interpretation Adversely Impact Racing

While many classes of racing at oval, road, track and off-road racetracks feature motor vehicles that were originally designed and sold for street use, in July 2015 the EPA issued a proposed regulation to make illegal the act of converting a motor vehicle into a race vehicle. To accomplish this prohibition, EPA set forth a new interpretation of the Act. EPA stated that if a motor vehicle has been certified for emissions compliance, there is no exemption from the law's tampering prohibitions that would allow for converting it for competition use. The EPA's 2015 position rendered illegal the majority of future and current race cars and motorcycles that compete at tracks around the country, since it applies retroactively to all vehicles subject to the law which was enacted in 1970.

The racing community was first made aware of this provision in early 2016. It had been included within a large and unrelated rulemaking for greenhouse gas emissions from trucks and buses. As someone who has worked in racing for over 25 years, I can attest that I have never seen a greater threat posed to the sport. News of this change spread quickly and sparked fear among racing enthusiasts, our employees and all businesses connected to motorsports. Despite the EPA's decision to remove the race vehicle conversion provision from the final rulemaking, the issue is still unresolved for the racing community. The agency stood by its position that the Clean Air Act does not provide a legal means for modifying a motor vehicle's emissions system when converting it into a dedicated race vehicle. This interpretation is inconsistent with the EPA's application of the law for as long as I have been in the industry.

While the EPA has signaled that it does not currently plan to bring enforcement actions against racers who compete in emissions-modified vehicles, the agency maintains that it has the authority to do so. It is important to note that racers make substantial investments in their vehicles, outfitting them with products that improve their safety and performance. For race tracks and motorsports parts businesses, the need for a solution to this problem is also critical. Parts manufacturers and the businesses that sell these products remain under threat of significant civil penalties. I find it very concerning that this interpretation considers them to be breaking the law.

While the EPA may not be penalizing racing in the short-term, an enforcement freeze is not a long-term solution. Accordingly, the world of motorsports requires certainty in federal law that what they are doing is legal, just as it always had been prior to 2015.

The RPM Act

The practice of converting a motor vehicle into a dedicated race vehicle had been unquestioned from 1970 to 2015. The "RPM Act," makes clear that making such a conversion does not violate the law. The legislation provides assurances to business that produce, sell, and install race parts

on vehicles used solely for motorsports competition. Further, it restores the original intent of the Clean Air Act, that the law applies to motor vehicles used on our roads and highways but not to race vehicles and racing parts. This bipartisan bill was introduced by Rep. Patrick McHenry and has 139 House cosponsors including Subcommittee members Richard Hudson (an original cosponsor), Buddy Carter, Bill Johnson, Tim Murphy and Tim Walberg.

As one of the 70 racetracks in California, we are also anxious for the clarity the "RPM Act" would provide, establishing congruence with California statute and the approach taken by the California Air Resources Board (CARB), which allow for motor vehicles to be modified for use exclusively in motorsports competition.

Conclusion

On behalf of Sonoma Raceway, our employees, drivers, and the dozens of small businesses that populate our industrial park, I strongly support the "RPM Act" and ask the Subcommittee to consider the important role that racetracks and motorsports parts businesses play in our economy when reviewing this legislation.

Thank you again for this opportunity to address the Subcommittee. I look forward to answering any questions you may have.



September 18, 2017

Dear Chairman Shimkus, Ranking Member Tonko and members of the Environment Subcommittee:

Thank you for allowing me the opportunity to testify on behalf of H.R. 350, the "Recognizing the Protection of Motorsports Act of 2017" (RPM Act), at the above-referenced hearing. I am submitting supplemental comments for the official record to refute a contention raised during the hearing, that H.R. 350 would create a loophole which would prevent the EPA from enforcing against illegal products that take motor vehicles used on public roadways out-of-compliance with the Clean Air Act (CAA).

H.R. 350 was specifically drafted with a very limited scope. The legislation simply clarifies that CAA Section 203(a)(3), which covers tampering, does not apply to street vehicles converted into race vehicles used only at the track. Additionally, the conversion process itself is not an act of tampering. H.R. 350 makes no changes to Section 203(a)(3) regarding the EPA's ability to enforce against products sold or installed on motor vehicles operated on public roadways that take the vehicle out-of-compliance. This is and would remain an act of tampering.

The bill is not seeking to create any "loopholes" on the issue of tampering and EPA enforcement, as was suggested in testimony by a representative from the Sierra Club. Rather, the legislation simply returns application of the CAA to how it had been interpreted between 1970 and 2015, that the law applies to street vehicles but not race vehicles, including converted highway vehicles. H.R. 350 provides no protection to persons who market or install products on street vehicles while claiming the product was sold for "race use only." Sales of products that take a highway vehicle out-of-compliance are acts of tampering subject to EPA enforcement. I heartily endorse this enforcement authority.

As noted on several occasions at the hearing, the state of California takes a different approach on this topic. Under California law, racing vehicles are exempt from regulation. See Cal Health & Saf Code § 39048 and § 43001. Regulators have also defined the term to only apply to vehicles used exclusively for racing, which exhibit racing features (ex: roll-cages, netting, a safety harness, etc.), and are no longer licensed. See 13 CCR 2260. Companies are specifically directed to label products with a disclaimer (ex: for racing use only) to help ensure proper use.

Chairman Shimkus, Ranking Member Tonko and members of the Environment Subcommittee
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Enactment of H.R. 350 would make the federal and California laws consistent. It would also remove confusion from the marketplace on how the Clean Air Act applies to companies that market racing products and individuals who install such products. Nevertheless, the EPA would retain its ability to enforce against any and all misuse.

Thank you again for this opportunity to supplement my September 13, 2017 comments. I welcome the opportunity to answer any questions you may have.



Steve Page
President & General Manager

Mr. SHIMKUS. The gentleman yields back. Thank you for your testimony.

And thank you all for being pretty punctual on time. That gives us an opportunity to begin with opening statements. I recognize myself for 5 minutes.

Mr. Brisini, I want to—and as quickly as possible, if you can, because I want to get a lot of questions out. This cost-benefit analysis kind of story this bill went through last Congress, can you address that, how, in your opinion, the benefits are outweighing what may be viewed as, you know, the cost of allowing a waiver of some of the Clean Air Act?

Mr. BRISINI. Well, I think what is really important to recognize is that you are not losing any of the monetized benefits, so there is really only upside by virtue of the SENSE Act.

The SENSE Act contains provisions to ensure that the Cross-State Air Pollution Rule budget for each State where this would happen is not increased. The allocations that would come to provide the additional allocation to the bituminous-coal-refuse-fired plants comes from retired units, units that have been retired as long as 5 years and possibly even longer, so that no existing plant's allocation is affected.

The retired plants in Pennsylvania, for example, keep 65 percent of what they were allocated. Thirty-five percent would be allocated to the bituminous coal refuse plants. And in West Virginia, the existing plants keep 87 percent of the—the retired units keep 87 percent of their allocation. If you were to do a complete reallocation, they likely would get nothing.

So I look at the SENSE Act by virtue of the provisions that protect the CSAPR budget, and I look at those situations where you will have no regional increase because of that—it is cap and trade—you will actually have decreases in SO₂ likely, because they can't sell them, they can't trade them, they have to be used at the facility. The only facility that can get this allocation is a bituminous-coal-refuse-fired plant that burns 75 percent coal refuse to ensure that they are cleaning up the environment by producing the beneficiary-use ash, and then they have to surrender those allowances when they retire.

So there is only upside to the SENSE Act.

Dr. BASCOM. Can I speak a little about the cost?

Mr. SHIMKUS. Ma'am, it is my time. So we will recognize you—

Dr. BASCOM. OK.

Mr. SHIMKUS [continuing]. If someone wants to ask you a question.

Mr. PAGE, let me ask about the statement of a concern that the aftermarket parts used in amateur auto racing might find their way into the regular vehicle market. Can you speak to that?

Mr. PAGE. Sure. Let me make two points.

There is nothing in what is proposed in the RPM Act that allows a modification of cars that are used on the highway—

Mr. SHIMKUS. So that would still be against the law.

Mr. PAGE. That would still be against the law.

Mr. SHIMKUS. OK. Great. Thank you.

Let me go to Mr. Moore and Mr. Parker. I represent a big, rural area, 33 counties. My biggest community is 33,000, and then it

goes down from there. You are both located in small communities, it sounds like. Endicott is 100. And, actually, 50 employees would be a big employer in my congressional district.

So, Mr. Moore, can you speak, and then Mr. Parker, in my minute left, just briefly, the impact to the local community and the importance of the jobs and the tax base that you provide in rural America?

Mr. Moore?

Mr. MOORE. Thank you.

You know, our business is small, with 50 employees, but there are several vendors all over the United States. We have dealers, a 400-dealer network that will have retailers, installers, that type. And then our community, everybody that we employ is local. And we do local banking; everything is done locally. We contribute back to the community, and we are just a part of that community. And, I mean, the loss of a—

Mr. SHIMKUS. Are you one of the major employers in the local community?

Mr. MOORE. Semi-major, yes, sir, we are.

Mr. SHIMKUS. OK.

Mr. Parker?

Mr. PARKER. Thank you.

We are by far the largest employer in our county. For us, most of the employees that we attract, we have a very difficult time to get them. But adding to our tax base, in addition to the millions in wages that we pay, we have over 1,000 acres that we pay tax on, millions of dollars of equipment that we pay personal property tax on.

And local vendors depend on us for their businesses as well, whether that is welding, mechanics, electrical trades, and so forth. Our facility, while we are in the middle of nowhere, granted, we provide a lot of jobs, and we have a lot of activity at our facility.

Mr. SHIMKUS. Great. Thank you very much.

The Chair now recognizes the ranking member of the subcommittee, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair.

Ms. Teitz, can you explain CSAPR's phased-in approach to emission allowances, please?

Ms. TEITZ. Sure. Mr. Tonko, could I briefly address just a couple points that were just made?

Mr. TONKO. Sure.

Ms. TEITZ. Would that be—thank you.

I just wanted to note that Mr. Brisini made the point that the SO₂ levels would be held constant under the cap under the SENSE Act. And that may well be the intent of the bill. However, as it is drafted, that is not clear.

And the concern is that the language says, in one place, that EPA shall hold levels constant, but then in the very next section it says that they shall do that by taking allowances from other sources for a certain time period, which depends on those allowances being available from those sources and is limited to that 4-year period that is specified.

So, if that is the intent of the bill, it certainly could be fixed to address that portion of the concern, but that is not how it is cur-

rently clearly drafted. That would still leave the concern about acid gases increasing, but with respect to that piece of it, that is the concern about the increased SO₂.

And then, in terms of the concern about the defeat devices that Mr. Shimkus raised, because—again, it is a drafting question, and, as members of the committee know, drafting is critical. Because it is drafted to turn on what the purpose of the device is, you would be allowed to manufacture a defeat device that would have the purpose of being installed for racing, but, once it is on the market, it could be sold and people could use it for whatever purpose, as they have, in fact, done.

And EPA has no practical ability to go after some vehicles in the middle of 260 million vehicles that are on the roads today. So EPA just wouldn't be able to enforce that in any practical matter, without being able to go to the manufacturers and say, you can't sell these things.

So, again, there may be a way to do that, but that is not what the result of the bill would be. And we have seen in recent settlement cases that, in fact, defeat devices have been sold as aftermarket parts recently and have resulted in huge quantities of NOx emissions—in one case, NOx emissions sufficient to offset recent updates to the Cross-State Rule.

And I apologize. Going back to your original question, Mr. Tonko, the—I am sorry. Could you refresh me?

Mr. TONKO. Sure. CSAPR's phased-in approach to emission allowances, just explaining that phased-in approach, if you could.

Ms. TEITZ. That is right.

So CSAPR has several phases, and it tightens down over time, because we want to be—as technology improves and as we make reductions, we want to keep tightening those limits down. So there are two phases, and the second phase, you know, is critical in terms of continuing to make the emissions reductions that downwind States need to come into attainment.

Mr. TONKO. So, under the SENSE Act, would waste coal plants continue to receive higher phase-one allowances indefinitely?

Ms. TEITZ. That is right. They would never ratchet down.

Mr. TONKO. So EPA would never be able to strengthen this standard even if emissions control technology greatly improves or becomes significantly cheaper. Is that correct?

Ms. TEITZ. That is correct. And nor would States be able to do that. If they looked around and said, we need more emissions reductions and this is the cheapest place to get them, this is where we want to get them, they would not be able to do that.

Mr. TONKO. One of the central principles of the Clean Air Act is cooperative federalism. States have the authority to choose how to reduce emissions, but the SENSE Act would actually override this.

So, Ms. Teitz, is anything currently preventing States with waste coal plants from giving these plants additional allowances?

Ms. TEITZ. I am sorry? Repeat the last bit?

Mr. TONKO. Is anything currently preventing States from—

Ms. TEITZ. Oh. No. At this point, they absolutely have the ability to adopt their own plans and give these plants more allowances, redistribute them however they wish.

Mr. TONKO. OK.

And, Dr. Bascom, can you discuss the health impacts of sulfur dioxide pollution that you have seen in your patients or in recent medical studies?

Dr. BASCOM. Sure.

Sulfur dioxide is a highly soluble gas, so it is taken up 99 percent by the upper respiratory tract. And what that means is that it triggers asthma, it is a big actor. People that have asthma who are around sulfur dioxide can exercise less before they are set off, and they have an increased medication need.

The other thing about it is that, when it comes out of the stack, it can then contribute to particulate air pollution. And we have been there before, raising stacks on power plants in the Midwest and resulting in long-term transport of particulate air pollution to patients in Pennsylvania.

The idea of taking, I agree, bad coal that is sitting on the ground and messing with the streams and all of a sudden sending it up into the stack and spreading it out across Pennsylvania for my patients, it just seems like a really bad idea.

Mr. TONKO. So you do see a cost to this act.

Dr. BASCOM. Yes. Absolutely.

Mr. TONKO. Thank you.

I yield back.

Mr. SHIMKUS. The gentleman's time has expired.

The Chair now recognizes the vice chair of the subcommittee, Mr. McKinley from West Virginia, for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman.

Mr. Brisini, you tried to describe for the crowd here the issue of the mine refuse piles. We have seen them all over West Virginia. We have seen them in Pennsylvania and Ohio, where those plants are—wherever they are mining coal and power plants, those things are located. And there have been—I think, for people to understand, sometimes these mine gob piles—as we refer to them, gob piles—can catch fire spontaneously and burn for some period of time. They are really a problem for us.

So I admire the efforts here in Congress to try to clean those piles up and find a use for them. And when they have been able to do this by developing these power plants, these small qualified facilities, to use those facilities, we should be embracing that, because it is clearly cleaning up our environment.

But yet, in the last few years since—I have been in Congress 6 years—I have seen a relentless attack on these plants. So I admire Congressman Rothfus for addressing this legislation to try to bring some kind of commonsense approach to how we take care of this.

Dr. BASCOM. But it is a pollution-shifting—

Mr. MCKINLEY. But I have—

Mr. SHIMKUS. Would the gentlelady suspend?

The way the committee operates is that we ask questions to individuals and then the individuals are then asked to respond to our questions. So it is not proper to just—no. So I am sure one of my colleagues will get a chance to direct questions.

The gentleman can continue.

Mr. MCKINLEY. I want to continue with that. Because of the interruption, I lost some time on that.

But what my issue is with this legislation—and I am a cosponsor of the legislation. I know its intention, but I know also there are unintended consequences that can happen when you go through this legislative process and the rulemaking process that is attached to it.

So what I want to address is the SO₂ allowances under CSAPR. To address the SO₂ emissions, we have to address CSAPR. But when we address CSAPR, we open up NO_x gases as well.

Do you see that it could be interpreted, when we open up or look at CSAPR, that NO_x gases could be addressed or revisited?

Mr. BRISINI. That is certainly not the intent—

Mr. MCKINLEY. It is a “yes” or a “no,” I think, hopefully.

Mr. BRISINI. I don’t think there is a “yes” or “no.” I think that depends on what somebody else would try to do. Now, from the standpoint of this—

Mr. MCKINLEY. Do you think it is possible that the NO_x gases could be revisited when—

Mr. BRISINI. I think it is highly unlikely. I can’t speak in a certainty because I can’t control what somebody outside our industry would do. This has nothing to do with NO_x. This is not any interest—

Mr. MCKINLEY. I understand that.

Mr. BRISINI [continuing]. In NO_x.

Mr. MCKINLEY. Would you have some language or do you have language to make sure that tightens up? Because I don’t think that was the intention.

Mr. BRISINI. We could provide that language, absolutely.

Mr. MCKINLEY. I don’t think their intention was to expand it over to NO_x gas.

Mr. BRISINI. Absolutely not.

Mr. MCKINLEY. OK. Thank you on that. And I do hope we can continue to clean this up.

I am also—while we stay with you on this subject, do you think that the—because we have been under this attack on these facilities. They have been chasing our coal-refuse-to-energy plants now for the last number of years. If they would be successful, do you have an idea of how many jobs could be lost?

Mr. BRISINI. Well, I think, at this point in time, that you have the potential to lose probably a thousand-plus jobs and a corresponding percentage of that, somewhere close to \$100 million in earnings to those jobs. But you also lose the environmental benefits.

Now, I think—and I really want to stress this point. The SENSE Act is crafted so there won’t be any SO₂ increase. Now, what is important about the SO₂ increase and keeping that level is that all of the benefits—virtually all of the benefits of the Mercury and Air Toxics Standards are there because of sulfur dioxide.

If you look in the preamble to the regulation and the EPA identifies the benefits, it is due to sulfur dioxide, and it is as a precursor to fine particulate matter. The only air toxic identified in the MATS Rule as a monetized benefit is mercury, which is \$4 million to \$6 million a year. The benefit from sulfur dioxide is \$36 billion to \$89 billion a year, out of a total \$37 billion to \$90 billion benefit.

Now, because these facilities have already done dispersion modeling to verify that they do not cause or contribute, at their current emission levels, a violation of the sulfur dioxide standard, because they have provisions such that you maintain the CSAPR cap, by virtue of the fact that CSAPR and MATS are using in the CSAPR States exactly the same reductions to justify those regulations, there is no increase in the pollutant that provides for the monetized benefits identified for both of those rules.

Mr. SHIMKUS. The gentleman's time—

Mr. MCKINLEY. Thank you. I yield back.

Mr. SHIMKUS [continuing]. Has expired.

The Chair now recognizes the gentleman from California, Mr. Peters, for 5 minutes.

Mr. PETERS. Thank you so much.

And thanks to all the witnesses.

First, I would just observe that one of the things that we struggle with is to try to achieve high-quality air standards with a minimum drag on the economy. And I want to give attention to both sides. One thing I thought I heard that wasn't fair was all the rules are industry-specific, so, of course, the requests are pretty industry-specific. I think that is not a reason to be critical.

Mr. Moore, you made the point that, for your product, if we don't deal with this, it is possible that some superior technologies—you said 90-percent-emissions-cutting technology—won't be on the shelves because you can't hit 98 percent.

Do you believe that not just your company but the entire industry for your product has achieved that 90 percent level?

Mr. MOORE. I will try to answer that as best I can.

My understanding is the majority of the manufacturers have met the Step 1 phase, which for hydronic heaters that is a 90 percent emission reduction.

Mr. PETERS. Is there a date in the regulation itself for meeting Step 1?

Mr. MOORE. In 2015. May of 2015.

Mr. PETERS. So that is behind us, and now—

Mr. MOORE. Correct.

Mr. PETERS [continuing]. We are just talking about the second step coming down the road.

Mr. MOORE. Right. So, today, the only thing that I can manufacture is the Step 1, which is the 90 percent emissions reduction.

Mr. PETERS. Right. I want to just say, I heard your testimony. It impressed me, because I think we don't want to have the perverse effect of not having better technology on the shelves because we couldn't achieve perfection.

I would be open to some sort of extension. I am not sure whether 3 years is the right amount. But I would like to indicate to the author of the bill that you made some sense to me.

Mr. MOORE. Thank you very much.

Mr. PETERS. Mr. Page, how does California address the issue that was raised in terms of enforcement? How do we make sure in our State that modified vehicles, vehicles that are modified for racing, with poorer performance in terms of air quality are not used on the street?

Mr. PAGE. I can't get into a lot of detail about enforcement techniques. What I can say is that the cars that are modified that compete on our track are pretty easy to identify. They arrive on trailers. They have been modified with roll cages, with slick tires, lots of sponsor decals. If they leave the facility and hit the public highways, it is pretty easy to identify—

Mr. PETERS. Well, I would just say, some racing, though, is advertised as, you know, regular cars. So, you know, you would have Acuras racing, and they would look like Acuras. Maybe it wouldn't be so easy to identify. Is that right, or no?

Mr. PAGE. There are unmodified street cars that race on our track. There are rules for every kind of racing. Generally, the cars that are modified with high-performance exhaust systems are pretty easily identified as racecars.

Mr. PETERS. And often louder.

Mr. PAGE. Significantly, yes.

Mr. PETERS. OK.

Again, I think—I was surprised to hear that California has accommodated this, since we are pretty tough on this kind of thing. But, again, I will look more into that.

Mr. PARKER, the question I had for you was, the lawsuit that invalidated the 2007 rules, presumably that was a lawsuit filed by the industry. Is that right?

Mr. PARKER. The lawsuit was actually from Sierra Club.

Mr. PETERS. OK, so Sierra Club's lawsuit. Now, is the current lawsuit on the 2015 rules—who has filed that?

Mr. PARKER. Both the environmental as well as our industry.

Mr. PETERS. One of the things that, as a lawyer, I would always wonder is whether I could get a stay of enforcement, because you have to show likely to have success on the merits and then irreparable harm. You have made a pretty decent case for irreparable harm. Have you tried to get a stay as part of the litigation?

Mr. PARKER. We are working on that avenue right now. Our issue is that the clock is ticking for the compliance date, which is December of next year.

Mr. PETERS. Yes.

Mr. PARKER. So we are really working on multiple avenues, including a stay, to try to ensure that we have time.

Mr. PETERS. Do you have any sense from the court of when that stay decision might be issued?

Mr. PARKER. I do not.

Mr. PETERS. Ms. Teitz, do you know the answer to that specific question?

Ms. TEITZ. I don't know the answer to that specific question. I wasn't actually aware that a stay request had been filed with the court.

Mr. PETERS. OK.

Well, I am sympathetic to you, too, because I think that, again, it is tough for businesses to be knocked around without having certainty. On the other hand, I would ask you to pursue the remedies in court before you come to the legislature. I think there is a remedy available in court, it seems to me, to deal with this.

If that were unsuccessful—I am not saying I am not sympathetic, but I would certainly be more sympathetic that you are careening to-

ward not knowing what the answer is, and, you know, maybe we should step in.

But I would like to see you—and would love to know if it is possible—to tell me the timeline on getting a stay. That would make an impression on me.

Mr. Chairman, I yield back. Thank you.

Mr. SHIMKUS. The gentleman yields back his time.

The Chair now recognizes the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

I appreciate the discussion that we are having today and all of our panel members for being here.

You know, our small businesses in America are the backbone of our economy. We have known that for a long time. And brick manufacturers are a part of those small companies that we are talking about, those small businesses. And I think it is a shame that the regulations that we are discussing today go after their very livelihood.

Unfortunately, Mr. Parker, you are no stranger to the very real economic consequences of heavyhanded Federal regulations. You have seen it firsthand. The brick industry has borne the brunt of an unpredictable regulatory process, beginning way back in the early 2000s.

And while some of my colleagues believe that the BRICK Act sets a concerning precedent, the situation that the brick and clay ceramic industries find themselves in today, this MACT on MACT situation, is, in itself, very unique.

So I think we need a bit of pragmatism when we approach this situation, not simply give history the option to repeat itself. And we need to consider the livelihood of the people that will be impacted by EPA's most recent reiteration of the BRICK Act.

Also troubling for me is this regulation essentially caps the economic productivity of the clay ceramics industry. While the EPA, under the former administration, admits that the regulation will not reduce emissions emitted by the industry, it decided to set new regulatory standards for it anyway. I would hope that my colleagues would appreciate the ridiculousness of this current regulatory environment.

So, Mr. Parker, the EPA essentially assumed that you can raise the prices of your bricks to pay for new control equipment. Is this really an option? And what type of competition does the brick industry face?

Mr. PARKER. Well, I would love to be able to raise prices at any time, especially to cover costs that come up. If we could raise prices—and this is speaking as a CPA from my prior professional career—I would absolutely embrace getting revenue wherever I could. So, no, we cannot raise prices to cover, whether the control is a scrubber or any other type of device.

The competition that we are facing right now, our industry has really benefited from being isolated, in a way. We have not had a lot of foreign competition, especially for traditional face brick. It is a very heavy product with low value, and that does not lend itself very well to competition from overseas.

However, that is changing. And we have seen that with the tile manufacturers, where European imports decimated a lot of the tile manufacturers, including our line of tile that we used to make back in the eighties. We sell very, very little tile anymore. And we are also starting to see thin brick imports from China as well as Europe, which are now competing against our product.

Mr. JOHNSON. So competition is getting pretty stiff in the global economy.

Mr. PARKER. It is more stiff today than it has ever been.

Mr. JOHNSON. OK.

Is it correct to say that you and other brick manufacturers have already reduced their emissions substantially and that these new standards require further reductions from these already reduced levels?

Mr. PARKER. It is. When the 2003 Brick MACT came in, compliance was within the 3-year window, so all of the companies in our industry came into compliance by 2006. The rule was then vacated in 2007.

Our companies and our industry continued to operate based upon operating permits that were issued with those control devices that were put in under a rule that was ultimately vacated.

Mr. JOHNSON. OK. All right. Yes, we talked about that a lot over the last several years.

Can you explain how this MACT-on-MACT approach could result in unachievable standards?

Mr. PARKER. Sure.

When the 2015 MACT was drafted, they took a look at the best-performing kilns that were in existence. The control devices that were put on those kilns were very effective for the kilns at those locations. The EPA drafted the regulation looking at the performance of those kilns and used that as their baseline for establishing the new MACT. So, essentially, we now have a MACT-on-MACT-type situation.

Mr. JOHNSON. OK. And if you are forced to implement this rule, what is it going to do to employment in your industry?

Mr. PARKER. For our industry, it would be devastating. We have companies that put in control devices that spent \$1 million, \$2 million, \$3 million, \$4 million at a location to comply with the 2003 Brick MACT that was vacated. With the current MACT that is currently in front of our industry, many of those control devices are going to have to be torn out to put in a higher-performance-type scrubbing system.

Mr. JOHNSON. OK.

Mr. SHIMKUS. The gentleman's time has expired.

Mr. JOHNSON. All right. I yield back, Mr. Chair.

Mr. SHIMKUS. The Chair recognizes the gentlelady from the State of Michigan, Mrs. Dingell, for 5 minutes.

Mrs. DINGELL. Thank you, Mr. Chairman.

The bills before us, in different ways, attempt to delay, roll back, or create loopholes in the Clean Air Act for multiple industries that would be detrimental to public health, I believe. Air pollution, no matter the source, adversely harms all of us. This is why it is so critical we protect the standards established by the Clean Air Act and continue to reduce all forms of harmful pollution.

So it is important we take a step back and have a real conversation about air pollution's direct impacts on public health. We must fully understand the real risks and consequences of allowing more particulate pollution into our environment, which you all discussed in your testimony.

Dr. Bascom, how does pollution affect different age groups across our society? And is there a specific demographic most at risk with increased air pollution?

Dr. BASCOM. We are most concerned about children because they breathe more for their body weight, so they have a higher toxicant dose.

If you think about the wood-burning stove issue, this is a very important one for children because they spend a lot of their time at home. The wood-burning stove, in a sense, can create the wood-burning emissions, like a forest fire, within their home.

In Pennsylvania, where there is radon, people that have high particulate burdens in the home get more radon into the lungs, and that increases lung cancer risk over a lifetime.

So children are the people that we are most concerned about because of their increased dose and the long trajectory where the pollutant can exert its impact.

Mrs. DINGELL. Thank you.

Dr. Bascom, I am trying to give you your turn now. Many of the clean air standards we are discussing here today are already long overdue. What are your greatest long-term and short-term concerns, as a physician, if industries are granted specific exemptions or we continue to delay or circumvent EPA Clean Air Act standards moving forward?

Dr. BASCOM. One of my biggest concerns is that the technology that is currently available is not being used. I think that in the State of Pennsylvania, when it comes to the power plants that we talked about, again, I agree that the slag coal is bad, we need to get rid of it, but to get rid of it by dispersing it into the air is a bad idea.

People live a long time, and pollutant effects, actually, research shows, exert over the generations. So we have to clean up now as quickly as possible so that we are not causing these long-term burdens.

Mrs. DINGELL. So, as an experienced physician and professor, you have seen firsthand the harmful effects of pollution on public health caring for patients. What do patients tell you regarding air pollution? Are they concerned about how more pollution might impact their day-to-day lives or quality of life?

And since you have been anxious to make comments, I am going to say to you now: Are there stories you would like to share with the committee to help us understand the human side of unhealthy air?

Dr. BASCOM. Thank you for the opportunity.

My patients, when the VW story broke about the cheaters that were polluting and making air quality worse, people would come in with their asthma attacks, and they were furious. They couldn't believe that a company like VW was cheating.

So I don't think that we have airport sniffing dog equivalents for pollution technology on cars. And so I don't think we—I think my

patients would be furious at the thought that pollution was being allowed or that people were being allowed to cheat.

People are also very scared, when they have a chronic lung disease, about landing in the hospital and about dying. If they have a lung transplant, pollution makes it more likely that their lungs will be rejected, their new lung would be rejected.

The human cost of pollution on people's health and livelihoods is huge. If you are sick, you can't work. If you are young and you have asthma, that is the most common cause of missed schooldays, so you don't learn as well. Air pollutions cost. I see it all the time in my patients.

Mrs. DINGELL. So we have 50 seconds left. Are there any things that you have heard that you would like to respond to directly at this time, or do you have any final message you want to leave with members of this committee?

Dr. BASCOM. I think that the health cost is a huge cost for people. It is economic to the individual, and it is often hidden, that the individuals bear the cost. And please keep them in mind as you are doing your deliberations.

Thank you.

Mrs. DINGELL. Thank you.

It is not in the public's best interest to pass legislation that incentivizes frivolous litigation in an effort to stall or avoid compliance. Delaying important air quality standards ultimately hurts our quality of life.

Nor should we be passing legislation that would make exemptions or loopholes that weaken the Clean Air Act, make unnecessary delays, create inequities in the marketplace, or removes economic incentives to reduce pollution altogether. Public health is too important an issue to sacrifice.

I thank all of the witnesses for being here today.

I yield back my 5 seconds.

Mr. SHIMKUS. The gentlelady is over 5 seconds, but—

Mrs. DINGELL. Oh, I apologize.

Mr. SHIMKUS [continuing]. With my diligence, we allowed you to finish.

Mrs. DINGELL. Thank you, Mr. Chairman.

Mr. SHIMKUS. So the Chair recognizes the gentleman from North Carolina, Mr. Hudson, for 5 minutes.

Mr. HUDSON. Thank you, Mr. Chairman.

My question is for Mr. Page, president and general manager at Sonoma Raceway.

A 2005 study found approximately 27,252 North Carolina residents were employed in motorsports-related jobs, including employees working for suppliers of the equipment used in racing. I am certain that the number has gone up in the 10-plus years since a full-scale economic impact study was completed by economists at my alma mater, UNC-Charlotte.

The most recent estimate by the Specialty Equipment Market Association estimates that the motorsports parts industry contributes \$1.6 billion a year to the economy. Of course, that doesn't even include the financial impact of racing itself.

I had the great opportunity to visit your facility a number of years ago and want to commend you on a wonderful operation. It

is a terrific fan experience. Your track hosts major NASCAR and I believe very shortly will be hosting an IndyCar race. But please elaborate on the importance of amateur racing activities relevant here to your business.

Mr. PAGE. Well, amateur racing is really the foundation of what goes on at our track. And there is an enthusiast performance automotive community that is on our track using our facility day-in, day-out, year-round. And there are programs that are for unmodified street cars, but the majority of the club racing, which is vintage cars, sports cars, and a variety of different clubs that rent our track and promote events, are using cars that began as street cars that have been modified. They are clearly—you can see them; they arrive on trailers. One of our biggest logistical challenges we have at the facility is just parking all of the trailers that arrive for a major race weekend.

So these are not cars that are driving in off the street. As I mentioned before, they have roll cages, they have slick tires, they have sponsored decals on the side. Any of these cars that hit the street are very clearly identified as a car that shouldn't be out there.

But that amateur race community is really the foundation of what goes on in our facility.

Mr. HUDSON. I appreciate that.

The California Air Resources Board is famous, and some on the subcommittee might say infamous, for adopting extremely stringent environmental standards. But, in this case, it is fair to say that this board, unlike EPA, has made crystal-clear that it has no desire to target vehicles that have been modified for use exclusively on private racetracks.

Would the RPM Act conform Federal policy to the California State policy and create more uniformity and certainly for those involved in this amateur racing?

Mr. PAGE. Yes, it would. The CARB regulations essentially mirror what was the policy of EPA for the first 45 years of the Clean Air Act, which is that a car that is used exclusively on a racetrack can modify its exhaust system. That is the policy that is followed by CARB.

And the intent of this legislation is to simply clarify that that has been and always was the intent of the Clean Air Act. And it takes a cloud of illegality off of the thousands of people that use our facility on a year-round basis, that, based on the current interpretation of the law by the EPA, they are considered lawbreakers.

Mr. HUDSON. Well, and to that point, I mean, without the RPM Act, is it your testimony that there is some lingering doubt about whether the EPA may in the future choose to go after the owners of vehicles modified solely for competition as well as the businesses that serve them?

Mr. PAGE. Yes. And that cloud hangs as long as that is the stated—regardless of whether they are currently enforcing it, that is the stated policy of the EPA, so that all of these people who compete on our track, the 75 businesses that work on cars at our track, all of those are engaging in an illegal activity and that that the EPA simply isn't enforcing it.

Mr. HUDSON. Well, I appreciate your thoughtful responses today. I am sure many other racetrack operators share your concern.

And I guess it is obvious, then, you would prefer that this law clearly spell out that converting racing modified street vehicles is legal under the law rather than rely on the EPA not to enforce the law that exists. Is that correct?

Mr. PAGE. That is correct.

Mr. HUDSON. Well, thank you very much, sir.

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

Mr. SHIMKUS. The gentleman yields back his time.

The Chair now recognizes the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. Well, I thank the chairman for holding this hearing.

And I want to thank the witnesses. You all make a pretty good case, and it is going to be hard, really, with an objective viewpoint, to ferret out what the best pathway here is, at least with regard to my vote.

I am going to start out on the coal refuse issue.

Ms. Teitz, can emissions of the coal—burning coal refuse with limestone, can that be scrubbed to high standards, the emissions—the—

Ms. TEITZ. Yes. In fact, the coal refuse plants are actually—the controlled ones are actually some of the cleanest of the plants. And, as Mr. Brisini pointed out in his testimony, eight of them were used to help set the MATS standards, the technology-based standards.

So it is clear that these plants do have the technological ability to clean up. And, in fact, many of them already have scrubbers on; it is more a question of how they are operated, how often they are operated, and how much sorbent is used, et cetera.

Mr. MCNERNEY. OK.

Mr. Brisini, what is the waste product, then, of the process? And how is it disposed of, the solid waste?

Mr. BRISINI. When you combust the coal refuse with limestone—and I will correct something, in that there is one plant that has a post-combustion device. All of the other plants rely completely on the combustion of coal refuse with limestone and fabric filters, the most effective particulate control device there is to achieve the sulfur dioxide reductions.

The difference that you see isn't because they have different technologies. It is primarily because of the particular vintage of the plant and the particular sulfur of the coal refuse. Bituminous coal refuse has higher sulfur than anthracite coal refuse, which is exactly why the NSPS includes a performance standard as opposed to a single standard for coal refuse plants.

Now, what gets done with the beneficial use ash? And that is what is it in Pennsylvania. By regulation, it is called "beneficial use ash" under Chapter 290. So long as it meets a number of criteria relating to leachate. And that is tested and verified quarterly. That material is beneficially used in the reclamation of the sites where the coal refuse was removed and also in the reclamation of other mining-affected lands. And these are abandoned lands, in many cases, that have no one who has any environmental liability.

And something else that probably should be realized: In the re-mining process, by someone taking on the burden of re-mining coal refuse, they are accepting all of the burdens of the current mining regulations in terms of how it is done and how the reclamation of that area gets done.

Now, in terms of supporting the use, the—

Mr. MCNERNEY. I am going to reclaim my time here. I like your answer, but you are taking way too much of my 5 minutes.

Ms. Teitz—

Mr. BRISINI. Well, there is too much good story. Sorry.

Mr. MCNERNEY [continuing]. Will this process cause further emissions than other generators, other forms of power generation?

Ms. TEITZ. So it depends how—this is the ambiguity in how it is drafted. Mr. Brisini has testified that the intent of the regulation is to hold the caps constant, but it is not at all clear that it actually achieves that in practice. And it appears that it allows—overall emissions levels could be allowed to go up. I mean, it could be drafted to hold the cap constant, but it doesn't achieve that at this time.

Mr. MCNERNEY. OK.

Ms. TEITZ. In terms of the acid gas standards, in terms of MATS, the Mercury and Air Toxics Rule, it would allow increased emissions from these coal refuse plants.

Mr. MCNERNEY. Thank you.

Professor Bascom, the arguments in favor of weakening or delaying the Clean Air Act is that the cost of incremental improvements—in other words, improvements over improvements that have already been made—are not cost-effective. In other words, the cost exceeds the benefit. Could you address that?

Dr. BASCOM. One of the important lessons is that the current levels of particulate air pollution continue to exact an important health cost and that continuing reductions in particulate air pollution will cause important health benefits.

Furthermore, for people that have chronic respiratory conditions, these particulate levels cause tremendous costs in terms of suffering and healthcare costs.

So I think that the public health benefit continues to be—the arc of the public health benefit is toward reducing human suffering and reducing healthcare costs. And that is important to keep in mind. We have not solved the problem of air pollution, although we have made great strides.

Mr. MCNERNEY. So, in terms of dollars and cents, the dollars saved by not doing the additional pollution controls does not exceed the cost of health effects?

Dr. BASCOM. Well, I am not an economist, but the people in the EPA who are doing regulation and proposing things work in that area, and I would refer you to them.

Mr. MCNERNEY. All right. Thank you.

Dr. BASCOM. I can tell you about phlegm.

Mr. MCNERNEY. Thank you, Mr. Chairman.

Mr. SHIMKUS. The gentleman's time has expired.

The Chair now recognizes the gentleman from Mississippi, Mr. Harper, for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman. And I certainly want to thank you for holding this hearing today and for the invitation extended to Frank Moore to appear before the subcommittee to share his perspective.

Frank is a constituent of mine and is the owner and operator of Hardy Manufacturing in Philadelphia, Mississippi. And his father-in-law started the company, I believe, in 1976, and Frank and his wife bought the company back in 1992. And I think he offers a unique perspective, as an engineer, from Mississippi State University, I might add, and a small business owner, to see how the EPA regulation is affecting him and other small businesses.

And I am very proud to have you with us today, Mr. Moore. And I would like to ask you a few questions, if I may, to make sure that we are all on the same page here and that we come away with an understanding of how this impacts you and many others.

First of all, I think it is important just—you know, of course, I have been by your facility. I know what you mean there in Philadelphia, Mississippi. Explain to us what your company actually means, contributes, or how the local community benefits from you being there and employing some 50 people.

Mr. MOORE. Not only do we have the employees, as I was saying earlier, there are subcontractors, there are sales organizations that are located in Philadelphia. You know, we do the local banking. But, you know, vendors are not only all over Mississippi, they are all over the country. We buy stainless steel and we buy grates from a large area.

And, you know, I am just one small company. There are close to 60 manufacturers in the HPBA organization. And then there are thousands of dealers, installers, and retailers that, you know, sell these units.

And, you know, what we are asking today is, we just don't have enough time. And we do support the regulations; we just didn't want to be regulated out of business.

Mr. HARPER. Right.

Mr. MOORE. And this Step 2 essentially will regulate us out of business. And then, you know, without relief, our business owners and consumers, you know, will actually lose.

And, you know, when we change from a 90 to 98 percent, this is going to cause the consumer not to be able to change out their old high-emitting units. And a good example, in Libby, Montana, they had a change-out program there, and they had a 70 percent improvement in air quality. And we just feel like, by selling even the Step 1 units until we can develop our Step 2 units, that we are improving the environmental and air quality.

Mr. HARPER. Sure. And we appreciate that and what your company means to our State.

When you look at this, I know keeping the product affordable for families who have perhaps been pinched by the economy is very important. Who are the main consumers of your products?

Mr. MOORE. Most of them are farmers. They are rural workers that have access to their own firewood. And, you know, when they have access to their own firewood, it is not like having the high cost of energy. And, you know, energy is unstable when people are trying to heat their homes and just trying to make ends meet. So

being able to use your own firewood is an advantage, that they can make ends meet.

And so we are just trying to continue to make these wood-burning appliances available to them—and clean wood-burning appliances.

Mr. HARPER. And so what you are looking at is just more time to continue the development to get to that figure.

Mr. MOORE. Exactly. We are just asking for 3 more years. We are hoping that we—but we just got to get to that point. And we are hoping we will get there.

Mr. HARPER. So if you don't get to that point and you don't get that additional time, what do you think the impact on employment in your company would be?

Mr. MOORE. It would be over.

Mr. HARPER. OK.

Mr. MOORE. I mean, you know, the only thing we manufacture is an outdoor wood-burning furnace. And I am not the only manufacturer or dealer or installer or retailer who will be affected. I mean, this affects the whole wood-burning industry across the United States.

Mr. HARPER. Well, let's talk about this in the seconds that we have left. If you don't get that relief and if the new wood heaters becomes much more expensive, could this have an environmental impact that is negative or consequences that that would be negative if consumers decide to keep using older wood heaters or find other heating options?

Mr. MOORE. Absolutely. I mean, you know, if they don't have anything to buy or if they can't afford what is available to them, then what they are going to do is to repair their old units, somehow, somehow, in their shops. They are going to repair them, so then you have all those high-emitting units that are still out there.

We are trying to give them an option of having cleaner-burning units that they can replace their old higher-emitting units with.

Mr. HARPER. Thank you, Mr. Moore.

With that, I yield back, Mr. Chairman.

Mr. SHIMKUS. The gentleman yields back his time.

The Chair now recognizes Mr. Cárdenas for 5 minutes.

Mr. CÁRDENAS. Thank you very much, Mr. Chairman. I appreciate the opportunity to get some question and answers with our witnesses here today.

I used to be a small business owner before I became a full-time politician. I was a State-licensed business owner as well. So I appreciate right-sized regulations that balance public good, short-term and long-term, with economic cause and effect, short-term and long-term, as well.

I will take back us about a little bit. There was a time when humankind settled everything with a club, as in, you know, swinging a club. That is too simple of a way of dealing with things, and we hopefully, in this committee, can prove that we have evolved by, you know, tackling our everyday things that we have to do with a thoughtful, science-based, and sophisticated manner. I think that we have the capability of doing that.

And I think some of these bills in their form right now are just a little too simplistic, and they are ignoring something, such as

these bills are delaying EPA rules, and they are hurting—in my opinion, hurting companies by creating unpredictable changes in our standards.

My first question to Mr. Page is, I understand that California already has a similar regulation in place that mirrors this bill, which is the Recognizing the Protection of Motorsports Act of 2017. Can you talk about the regulations in California that are reflective of this issue?

Mr. PAGE. Yes.

The California Air Resources Board and California law allows for the conversion of a vehicle that was originally produced as a street vehicle to become a racecar, including the modification of the exhaust system. And, as I mentioned, that was the interpretation that the EPA adopted during the first 45 years of the existence of the Clean Air Act.

What this bill does is simply clarifies, for the people in our industry, that that intent is, in fact, what the Clean Air Act intends and that that would make it congruent with the policy of the California Air Resources Board.

Mr. CÁRDENAS. Thank you.

While California is certainly a leader on environmental issues, we do have a problem with individuals altering their vehicles to use them on the streets. The limit requiring transport on flatbeds is a good step in preventing bad actors from driving the altered vehicles on the street as well.

Ms. Teitz, I ask the same question of you. If you have knowledge of the California regulations, do you have the sense of how many bad actors there are in the State of California and how that number affects emissions?

Ms. TEITZ. I don't have that information, Congressman.

But there is a key point here that I think we keep missing in this discussion. The concern with the bill is not whether or not so much racing conversion should be allowed. The issue is whether the bill would remove EPA's authority to enforce against defeat devices that are sold to overcome motor vehicle emissions controls, as a general matter.

And the way the bill is currently drafted, it is much broader than just allowing for the kind of thing that California allows for. Because it goes to the purpose or the intent, any manufacturer could sell any device that is a kit to convert a car and get rid of the motor vehicle emissions controls or to put in a computer tweak which they sell to override the controls, and, as long as they say it is for the purpose of racing, EPA couldn't enforce.

Well, the practical reality is, once it is sold, California has a way to check and make sure that those vehicles are only used for racing, because they require inspection and maintenance programs; many other areas of the country do not have that safeguard. And EPA certainly isn't going out and checking individual vehicles' tailpipes.

Mr. CÁRDENAS. Certainly not.

Ms. TEITZ. So, as it is drafted, it could be incredibly damaging.

And just to provide an example of that, in recent years, there have been three big consent agreements where EPA enforced against manufacturers of defeat devices and they agreed that they

were manufacturing defeat devices that were designed to overcome air pollution emissions controls; they paid penalties. And in just one of those cases, in 2015, EPA estimated the emissions impact of those defeat devices on the road is over 71,000 tons of NOx.

For comparison, EPA just updated or relatively recently updated the Cross-State Rule to reduce NOx emissions from power plants across 22-something States to help Eastern States attain the ozone standards, and that was 80,000 tons of NOx. So this almost wipes out the entire benefit of EPA rulemaking, the defeat devices sold by one unscrupulous manufacturer—who is no longer in business, but other ones could arrive.

So EPA has to retain that authority. It is absolutely critical. Or we are going to have, sort of, you know, do-it-yourself VW scandals.

Mr. SHIMKUS. The gentleman's time—

Mr. CÁRDENAS. Thank you.

I yield back. Thank you, Mr. Chairman.

Mr. SHIMKUS. The gentleman's time has expired.

The Chair now recognizes the gentleman from Georgia, Mr. Carter, for 5 years.

Mr. CARTER. Thank you, Mr. Chairman.

I am juggling subcommittee meetings, and my notes are upstairs, so I am going to go by memory.

Mr. Page, I am going to start with you. First of all, I represent south Georgia. We are NASCAR, we are racetracks, we are all about it. And one of the things that I am concerned with is how EPA has come and has essentially taken and incorporated you into something that originally you weren't intended to be included into.

Mr. PAGE. Well, that is the point I have been trying to make.

And I would actually like to address Ms. Teitz's point—

Mr. CARTER. Please do, but very quickly.

Mr. PAGE [continuing]. Because I think it helps to illustrate our case.

We fully support the EPA's aggressive enforcement of standards for cars that are driven on the road. And when manufacturers like the one she has identified are stopped from selling these kinds of parts to cars that are driven on the street, then we are fully supportive of it.

This simply clarifies that cars that are exclusively used on the track are not subject to that requirement. And I think this is an example that the EPA can enforce it.

Mr. CARTER. Absolutely. And this impacts you. It impacts the small speedways in my district, of which I have very many, and they add a lot to the economy. And something like this could have a devastating effect on them, and does have a devastating effect on them.

And I have a piece of legislation right now dealing with tractor trailers, that the interpretation of the engine on the truck is impacting the tractor trailers now. That is why we need to codify it. And that is what my legislation does to keep the overreach of EPA from impacting these companies like that.

But thank you, Mr. Page. I appreciate that.

Mr. PAGE. Thank you.

Mr. CARTER. Mr. Brisini, I want to talk to you for a second because I am very interested in what you are talking about with the coal refuse and what you are doing with that.

I want to ask you, what are your byproducts from that? What are your waste products that you get out of that as a result of what you do?

Mr. BRISINI. Well, the vast majority of the material is not determined to be waste. It is actually a beneficial-use material under the—for example, in Pennsylvania, we have regulations—

Mr. CARTER. I am not talking about your initial product. I am talking about after you are finished. Do you have coal ash?

Mr. BRISINI. No. It all becomes part of this beneficial-use ash. It actually is a material that has the ash, it has the unreacted limestone, it has pozzolanic characteristics, which is a technical way of saying it acts like cement. So when it goes back to the areas for reclamation, it would be mixed with whatever is left behind, and then it sets basically into cement.

Mr. CARTER. And so you don't have any residual material at all after your process?

Mr. BRISINI. Pretty much no. And the Department of Environmental Protection just produced a presentation—in fact, in our testimony, there is a link to that presentation—that identifies the reclamation of areas with beneficial-use ash. And it shows the reduced loadings from the area, and it shows the leachate. And it shows that this is absolutely the only permanent way to address the coal refuse pile issues in terms of fire or water pollution—

Mr. CARTER. OK. The reason I am going here and the reason I am asking this question is, in my district, they are trying to increase the amount of coal ash that is being shipped down there and put into the fills there, into the waste fills there. And I am wondering if the coal ash—you could be using this?

Mr. BRISINI. The ash from those areas, we don't use that. We produce our own. I can assure you, none of the ash from a coal-refuse-to-energy facility would go to Georgia, because it is too valuable in its use in West Virginia and Pennsylvania in reclaiming abandoned mine lands.

Understand that these coal refuse piles, unless they are burning and creating a safety and risk hazard from the emissions or there is subsidence of the pile—and these are right on the edge of towns. People's backyards back right up into a coal refuse pile. Unless you have an imminent danger, these are called a low-priority pile. None of the abandoned mine land—

Mr. CARTER. OK. I understand what you are saying, but my interest lies with coal ash, in particular. Because, you know, we have some fills down there that they are wanting to dump that into. And, obviously, there are environmental concerns about it getting into the water table, about it polluting our environment down there, and that is of major concern to us.

Mr. BRISINI. I understand that, and it should be a major concern to everybody. And that is why in my previous life with a previous company we had lined landfills for all of our disposal sites.

But, now, in terms of the SENSE Act, it is a very different kind of material than fly ash. In fact, you wouldn't see much bottom ash

from power plants because they use that to create under-drain systems and other efforts in their own disposal sites.

Mr. SHIMKUS. The gentleman's—

Mr. BRISINI. But our area, we have—

Mr. CARTER. I may follow up with some questions for you, if that is OK.

Mr. BRISINI. Sure. We would be happy to—

Mr. CARTER. Thank you, Mr. Chairman.

Mr. SHIMKUS. The gentleman can talk to me too. We will talk about coal ash and fly ash and all those good things.

The Chair recognizes the gentleman from California, Mr. Ruiz, for 5 minutes.

Mr. RUIZ. Thank you very much, Mr. Chairman.

As you all know, I am a physician, emergency medicine doctor, public health expert. So I understand very clearly the importance of the Clean Air Act and to having clear air to breathe, the direct relation from pollutants in the air to increase in asthma, COPD exacerbations, as well as morbidities that can—I have treated them in the emergency department. They come in gasping for air because of some worsening conditions in the air and the haze and pollutants and allergens and all that other stuff.

So that is why it is so very important that we monitor and get the data needed to determine what are things that pollute the air and that we also inform the public for behavioral changes and help protect the common good, which is clean air.

So I want to talk about the RPM. And, of course, the biggest concern here are those that want racecars and, you know, change their emissions and drive them in the streets. My understanding is that this RPM bill will clearly define that if you modify the car, then that car is to be used for racing, and that if they want to drive that car in the street, that they still have to comply with current emissions.

So, Mr. Page, in terms of the owners of these street cars that modify their cars, is your sense—do they have a problem with giving up their license plate for street driving?

Mr. PAGE. The intent of this bill is to focus purely on cars that are used on the track. So that is the intent. It would certainly seem like a reasonable stipulation that someone should give up their license plate if they are modifying the exhaust.

Mr. RUIZ. In your opinion, would they be willing to?

Mr. PAGE. I can't speak for the individual drivers, but, as a representative of the industry, it certainly seems like a reasonable stipulation.

Mr. RUIZ. Yes. And is this bill for if a car then wants to be a racecar—right? Is it for cars that only are for racecars?

Mr. PAGE. Correct.

Mr. RUIZ. Correct.

Mr. PAGE. This—

Mr. RUIZ. So you are not encouraging dual use—

Mr. PAGE. No.

Mr. RUIZ [continuing]. With this bill, correct?

Mr. PAGE. This is for cars that are used 100 percent on a race-track.

Mr. RUIZ. A hundred percent.

Mr. PAGE. There is nothing to remove the restrictions for cars that are used on the public roads.

Mr. RUIZ. OK. So the cars on public roads still have to comply with all the emissions—

Mr. PAGE. Absolutely.

Mr. RUIZ [continuing]. Tests and everything.

Mr. PAGE. Absolutely.

Mr. RUIZ. So my next question then, Ms. Teitz, is, you know, how do you regulate—or how does the EPA regulate emissions for any car? And is there any special things that you do for cars that are used for racing?

Ms. TEITZ. That is such a good question, Congressman.

I think we are really having a divide here between what everybody thinks would make sense, which is having provisions that apply to cars that are actually only used for racing, versus the way the bill is actually written, which is, unfortunately, far broader.

And it really is much less of an issue of car by car, because the EPA has never, to my knowledge, and won't be going out car-by-car enforcing against, you know, you didn't race this car or you didn't race this car. The issue is whether—

Mr. RUIZ. Well, let me ask you the same question differently, because I only have a minute left, mind you.

Currently, there is illegal street car racing. It happens, you know? They zoom at, you know, 2:00 in the morning, you know, in some rural area. How do we enforce that those cars are compliant and that that doesn't happen?

Ms. TEITZ. California, places that have vehicle emissions inspection maintenance programs can enforce that. Other States that don't have that don't have any practical way to enforce that most of the time.

The key here is that what EPA is really concerned about is not the individual cars. They are concerned about manufacturers that are selling in bulk, like 80,000 units or 100,000 units, of defeat devices over the internet to people to put on their cars and then they drive them. And there is absolutely no provision in the bill to turn in your license. There is no provision in the bill to stop people from driving once they have done that.

The bill's language turns on the purpose. If the purpose of the manufacturer is that it be used for racing, then it is fine to sell it. And if the individuals then do something entirely different with it, they are totally free to do that under this bill. And that is the problem here.

Mr. RUIZ. Well, the manufacturers could sell to anybody, correct?

Ms. TEITZ. That is right.

Mr. RUIZ. So, really, the onus is on the drivers of the car.

Ms. TEITZ. But there is no enforcement against that.

So the only way EPA has historically been able to enforce this, which they have enforced, is when people are—when you have manufacturers of these devices that make it cheap and easy—I mean, if someone wants to do it themselves, there is no way we can stop that.

But when you sell in bulk 100,000 units of a defeat device, as recently happened, you know, EPA can go after that manufacturer and say, you are enabling people to break the law, and that is ille-

gal. They can do that under the current Clean Air Act. Under this bill, I don't think they could enforce that.

Mr. RUIZ. I have more questions.

Mr. SHIMKUS. Your time has expired.

Mr. RUIZ. I know.

Mr. SHIMKUS. We appreciate your attendance and your focus on this issue.

All time has expired. Seeing no further Members wishing to ask questions for the first panel, I would like to—first of all, I want to say this was a very good hearing, and appreciate your participation. There were good questions, a good dialogue.

And for those who are supporters of these bills, I think the testimony of those who are opposed might give us an idea of how we might be able to look at that legislative language and try to get a little bit closer, and I would encourage that to happen.

I would like to thank you for being here today.

Before we conclude, I would like to ask unanimous consent to submit the following documents for the record.

One is a letter from the Hearth, Patio & Barbecue Association to leaders of the committee regarding H.R. 453; a letter from the Special Equipment Marketing Association and other organizations to leaders of the committee regarding H.R. 350; a letter from the Motor and Equipment Manufacturers Association to committee leaders regarding H.R. 350; a letter from the Western Pennsylvania Coalition for Abandoned Mine Reclamation to Congressman Rothfus regarding H.R. 1119, the SENSE Act; a letter from the Eastern Pennsylvania Coalition for Abandoned Mine Reclamation to Congressman Rothfus regarding H.R. 1119, the SENSE Act; testimony from Davis Henry, president of Henry Brick; statement for the record from Administrator Scott Pruitt; statement for the record from the U.S. Representative Keith Rothfus of Pennsylvania.

[The information appears at the conclusion of the hearing.]

Mr. SHIMKUS. And I think there are some additional letters from the minority.

Mr. TONKO. Mr. Chair, we ask unanimous consent that these also be included in the record, please.

Mr. SHIMKUS. The National Association of Clean Air Agencies. This is the American Council for an Energy-Efficient Economy; International Council on Clean Transportation. And it is a—written comments of the Manufacturers of Emission Controls Association on the U.S. EPA's agency's notice—da-da, da-da, da-da. You have given it to us.

Northeast States for Coordinated Air Use Management; and two letters dated September 12th from the Center for Biological Diversity, Earthjustice, Environment America, League of Conservation Voters, League of Women Voters of the United States, Natural Resources Defense Council, and Sierra Club; two letters from the same—oh, there is more on this one. Center for Biological Diversity, Earthjustice, Environment America, Environmental Defense Fund, Gasp, Incorporated, Green Latinos, Hip Hop Caucus—I still don't know what hip-hop is, so—League of Conservation Voters, the League of Women Voters for the United States, National Parks

Conservation Association, Natural Resources Defense Council, and the Sierra Club.

Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. TONKO. Thank you very much.

Mr. SHIMKUS. Pursuant to committee rules, I remind Members that they have 10 business days to submit additional questions for the record. And I ask that witnesses submit their responses within 10 business days upon receipt of the questions, if you can.

Without objection, the subcommittee is adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



115TH CONGRESS
1ST SESSION

H. R. 350

To exclude vehicles used solely for competition from certain provisions of the Clean Air Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2017

Mr. MCHENRY (for himself, Mr. ABRAHAM, Mr. BOST, Mr. BUCSHON, Mr. BURGESS, Mr. CARTER of Georgia, Mr. CRAMER, Ms. FOXX, Mr. GOSAR, Mr. GRIFFITH, Mr. GROTHMAN, Mr. HUDSON, Mr. HUIZENGA, Mr. JONES, Mr. LAMALFA, Mr. LOUDERMILK, Mr. MOOLENAAR, Mr. MULLIN, Mr. PITTENGER, Mr. POSEY, Mr. ROE of Tennessee, Mr. ROGERS of Alabama, Mr. ROKITA, Mr. RYAN of Ohio, Mr. WALBERG, Mrs. WALORSKI, Mrs. MIMI WALTERS of California, Mr. WESTERMAN, Mr. MCCLINTOCK, Mr. ZELDIN, Mr. NOLAN, Mr. HOLDING, Mr. BROOKS of Alabama, Mr. COOK, Mr. EMMER, Mr. RENACCI, Mr. COOPER, Mr. CUELLAR, Mr. LONG, Mr. SENSENBRENNER, Mr. BRAT, Mrs. WAGNER, Mr. TIBERI, Ms. JENKINS of Kansas, and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To exclude vehicles used solely for competition from certain provisions of the Clean Air Act, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Recognizing the Pro-
3 tection of Motorsports Act of 2017” or the “RPM Act of
4 2017”.

5 **SEC. 2. FINDINGS.**

6 The Congress finds that—

7 (1) at the time the Clean Air Act was written,
8 and each time the Clean Air Act has been amended,
9 the intent of Congress has been, and continues to
10 be, that vehicles manufactured for, modified for, or
11 utilized in organized motorized racing events would
12 not be encompassed by the Clean Air Act’s definition
13 of “motor vehicle”;

14 (2) when Congress sought to regulate nonroad
15 vehicles in 1990, it explicitly excluded from the defi-
16 nition of “nonroad vehicle” any vehicle used solely
17 for competition;

18 (3) despite the clear intent of Congress, the En-
19 vironmental Protection Agency has cited the Clean
20 Air Act as authority for regulating vehicles used
21 solely for competition; and

22 (4) the Environmental Protection Agency has
23 exceeded its statutory authority in its recent actions
24 to regulate vehicles used solely for competition.

1 **SEC. 3. EXCLUSION OF VEHICLES USED SOLELY FOR COM-**
2 **PETITION FROM THE ANTI-TAMPERING PRO-**
3 **VISIONS OF THE CLEAN AIR ACT.**

4 . Section 203 of the Clean Air Act (42 U.S.C. 7522)
5 is amended by adding at the end of subsection (a) the fol-
6 lowing: “No action with respect to any device or element
7 of design referred to in paragraph (3) shall be treated as
8 a prohibited act under that paragraph if the action is for
9 the purpose of modifying a motor vehicle into a vehicle
10 to be used solely for competition.”.

11 **SEC. 4. EXCLUSION OF VEHICLES USED SOLELY FOR COM-**
12 **PETITION FROM THE DEFINITION OF MOTOR**
13 **VEHICLE IN THE CLEAN AIR ACT.**

14 Section 216 of the Clean Air Act (42 U.S.C. 7550)
15 is amended by striking “.” at the end of paragraph (2)
16 and inserting “and that is not a vehicle used solely for
17 competition, including any vehicle so used that was con-
18 verted from a motor vehicle.”.

19 **SEC. 5. IMPLEMENTATION.**

20 Not later than 12 months after the date of enactment
21 of this Act, the Administrator of the Environmental Pro-
22 tection Agency shall finalize any regulations necessary to
23 implement the amendments made by this Act.

○



115TH CONGRESS
1ST SESSION

H. R. 453

To deem the Step 2 compliance date for standards of performance for new residential wood heaters, new residential hydronic heaters, and forced-air furnaces to be May 15, 2023.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 11, 2017

Mr. PETERSON (for himself, Mr. GOODLATTE, Mr. SMITH of Missouri, Mr. LONG, Mr. LEWIS of Minnesota, Mr. EMMER, Mr. SENSENBRENNER, and Mr. KIND) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To deem the Step 2 compliance date for standards of performance for new residential wood heaters, new residential hydronic heaters, and forced-air furnaces to be May 15, 2023.

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 “Relief from New
5 Source Performance Standards Act of 2017”.

1 **SEC. 2. STEP 2 COMPLIANCE DATE FOR STANDARDS OF**
2 **PERFORMANCE FOR NEW RESIDENTIAL**
3 **WOOD HEATERS, NEW RESIDENTIAL**
4 **HYDRONIC HEATERS, AND FORCED-AIR FUR-**
5 **NACES.**

6 (a) **IN GENERAL.**—The Step 2 compliance date (as
7 such term is used in the final rule entitled “Standards
8 of Performance for New Residential Wood Heaters, New
9 Residential Hydronic Heaters and Forced-Air Furnaces”
10 published at 80 Fed. Reg. 13672 (March 16, 2015)) is
11 deemed to be May 15, 2023

12 (b) **CONFORMING CHANGES.**—Not later than 60 days
13 after the date of enactment of this Act, the Administrator
14 of the Environmental Protection Agency shall make such
15 technical and conforming changes to rules and guidance
16 documents as may be necessary to implement subsection
17 (a).

○



115TH CONGRESS
1ST SESSION

H. R. 1119

To establish the bases by which the Administrator of the Environmental Protection Agency shall issue, implement, and enforce certain emission limitations and allocations for existing electric utility steam generating units that convert coal refuse into energy.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2017

Mr. ROTHFUS (for himself, Mr. THOMPSON of Pennsylvania, Mr. MCKINLEY, Mr. BARLETTA, and Mr. KELLY of Pennsylvania) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To establish the bases by which the Administrator of the Environmental Protection Agency shall issue, implement, and enforce certain emission limitations and allocations for existing electric utility steam generating units that convert coal refuse into energy.

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 “Satisfying Energy
5 Needs and Saving the Environment Act” or the “SENSE
6 Act”.

1 **SEC. 2. STANDARDS FOR COAL REFUSE POWER PLANTS.**

2 (a) DEFINITIONS.—In this Act:

3 (1) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Environ-
5 mental Protection Agency.

6 (2) BOILER OPERATING DAY.—The term “boiler
7 operating day” has the meaning given such term in
8 section 63.10042 of title 40, Code of Federal Regu-
9 lations, or any successor regulation.

10 (3) COAL REFUSE.—The term “coal refuse”
11 means any byproduct of coal mining, physical coal
12 cleaning, or coal preparation operation that contains
13 coal, matrix material, clay, and other organic and in-
14 organic material.

15 (4) COAL REFUSE ELECTRIC UTILITY STEAM
16 GENERATING UNIT.—The term “coal refuse electric
17 utility steam generating unit” means an electric util-
18 ity steam generating unit that—

19 (A) is in operation as of the date of enact-
20 ment of this Act;

21 (B) uses fluidized bed combustion tech-
22 nology to convert coal refuse into energy; and

23 (C) uses coal refuse as at least 75 percent
24 of the annual fuel consumed, by heat input, of
25 the unit.

1 (5) COAL REFUSE-FIRED FACILITY.—The term
2 “coal refuse-fired facility” means all coal refuse elec-
3 tric utility steam generating units that are—

4 (A) located on one or more contiguous or
5 adjacent properties;

6 (B) specified within the same Major Group
7 (2-digit code), as described in the Standard In-
8 dustrial Classification Manual (1987); and

9 (C) under common control of the same
10 person (or persons under common control).

11 (6) CROSS-STATE AIR POLLUTION RULE.—The
12 terms “Cross-State Air Pollution Rule” and
13 “CSAPR” mean the regulatory program promul-
14 gated by the Administrator to address the interstate
15 transport of air pollution in parts 51, 52, and 97 of
16 title 40, Code of Federal Regulations, including any
17 subsequent or successor regulation.

18 (7) ELECTRIC UTILITY STEAM GENERATING
19 UNIT.—The term “electric utility steam generating
20 unit” means either or both—

21 (A) an electric utility steam generating
22 unit, as such term is defined in section
23 63.10042 of title 40, Code of Federal Regula-
24 tions, or any successor regulation; or

1 (B) an electricity generating unit or elec-
2 tric generating unit, as such terms are used in
3 CSAPR.

4 (8) PHASE I.—The term “Phase I” means, with
5 respect to CSAPR, the initial compliance period
6 under CSAPR, identified for the 2015 and 2016 an-
7 nual compliance periods.

8 (b) APPLICATION OF CSAPR TO CERTAIN COAL
9 REFUSE ELECTRIC UTILITY STEAM GENERATING
10 UNITS.—

11 (1) COAL REFUSE ELECTRIC UTILITY STEAM
12 GENERATING UNITS COMBUSTING BITUMINOUS COAL
13 REFUSE.—

14 (A) APPLICABILITY.—This paragraph ap-
15 plies with respect to any coal refuse electric
16 utility steam generating unit that—

17 (i) combusts coal refuse derived from
18 the mining and processing of bituminous
19 coal; and

20 (ii) is subject to sulfur dioxide allow-
21 ance surrender provisions pursuant to
22 CSAPR.

23 (B) CONTINUED APPLICABILITY OF PHASE
24 I ALLOWANCE ALLOCATIONS.—In carrying out
25 CSAPR, the Administrator shall provide that,

1 for any compliance period, the allocation
2 (whether through a Federal implementation
3 plan or State implementation plan) of sulfur di-
4 oxide allowances for a coal refuse electric utility
5 steam generating unit described in subpara-
6 graph (A) is equivalent to the allocation of the
7 unit-specific sulfur dioxide allowance allocation
8 identified for such unit for Phase I, as ref-
9 erenced in the notice entitled “Availability of
10 Data on Allocations of Cross-State Air Pollu-
11 tion Rule Allowances to Existing Electricity
12 Generating Units” (79 Fed. Reg. 71674 (De-
13 cember 3, 2014)).

14 (C) RULES FOR ALLOWANCE ALLOCA-
15 TIONS.—For any compliance period under
16 CSAPR that commences on or after January 1,
17 2017, any sulfur dioxide allowance allocation
18 provided by the Administrator to a coal refuse
19 electric utility steam generating unit described
20 in subparagraph (A)—

21 (i) shall not be transferable for use by
22 any other source not located at the same
23 coal refuse-fired facility as the relevant
24 coal refuse electric utility steam generating
25 unit;

1 (ii) may be transferable for use by an-
2 other source located at the same coal
3 refuse-fired facility as the relevant coal
4 refuse electric utility steam generating
5 unit;

6 (iii) may be banked for application to
7 compliance obligations in future compli-
8 ance periods under CSAPR; and

9 (iv) shall be surrendered upon the
10 permanent cessation of operation of such
11 coal refuse electric utility steam generating
12 unit.

13 (2) OTHER SOURCES.—

14 (A) NO INCREASE IN OVERALL STATE
15 BUDGET OF SULFUR DIOXIDE ALLOWANCE AL-
16 LOCATIONS.—For purposes of paragraph (1),
17 the Administrator may not, for any compliance
18 period under CSAPR, increase the total budget
19 of sulfur dioxide allowance allocations for a
20 State in which a unit described in paragraph
21 (1)(A) is located.

22 (B) COMPLIANCE PERIODS 2017 THROUGH
23 2020.—For any compliance period under
24 CSAPR that commences on or after January 1,
25 2017, but before December 31, 2020, the Ad-

1 administrator shall carry out subparagraph (A) by
2 proportionally reducing, as necessary, the unit-
3 specific sulfur dioxide allowance allocations
4 from each source that—

5 (i) is located in a State in which a
6 unit described in paragraph (1)(A) is lo-
7 cated;

8 (ii) permanently ceases operation, or
9 converts its primary fuel source from coal
10 to natural gas, prior to the relevant com-
11 pliance period; and

12 (iii) otherwise receives an allocation of
13 sulfur dioxide allowances under CSAPR for
14 such period.

15 (c) EMISSION LIMITATIONS TO ADDRESS HYDROGEN
16 CHLORIDE AND SULFUR DIOXIDE AS HAZARDOUS AIR
17 POLLUTANTS.—

18 (1) APPLICABILITY.—For purposes of regu-
19 lating emissions of hydrogen chloride or sulfur diox-
20 ide from a coal refuse electric utility steam gener-
21 ating unit under section 112 of the Clean Air Act
22 (42 U.S.C. 7412), the Administrator—

23 (A) shall authorize the operator of such
24 unit to elect that such unit comply with ei-
25 ther—

1 (i) an emissions standard for emis-
2 sions of hydrogen chloride that meets the
3 requirements of paragraph (2); or

4 (ii) an emission standard for emis-
5 sions of sulfur dioxide that meets the re-
6 quirements of paragraph (2); and

7 (B) may not require that such unit comply
8 with both an emission standard for emissions of
9 hydrogen chloride and an emission standard for
10 emissions of sulfur dioxide.

11 (2) RULES FOR EMISSION LIMITATIONS.—

12 (A) IN GENERAL.—The Administrator
13 shall require an operator of a coal refuse elec-
14 tric utility steam generating unit to comply, at
15 the election of the operator, with no more than
16 one of the following emission standards:

17 (i) An emission standard for emissions
18 of hydrogen chloride from such unit that is
19 no more stringent than an emission rate of
20 0.002 pounds per million British thermal
21 units of heat input.

22 (ii) An emission standard for emis-
23 sions of hydrogen chloride from such unit
24 that is no more stringent than an emission
25 rate of 0.02 pounds per megawatt-hour.

1 (iii) An emission standard for emis-
2 sions of sulfur dioxide from such unit that
3 is no more stringent than an emission rate
4 of 0.20 pounds per million British thermal
5 units of heat input.

6 (iv) An emission standard for emis-
7 sions of sulfur dioxide from such unit that
8 is no more stringent than an emission rate
9 of 1.5 pounds per megawatt-hour.

10 (v) An emission standard for emis-
11 sions of sulfur dioxide from such unit that
12 is no more stringent than capture and con-
13 trol of 93 percent of sulfur dioxide across
14 the generating unit or group of generating
15 units, as determined by comparing—

16 (I) the expected sulfur dioxide
17 generated from combustion of fuels
18 emissions calculated based upon as-
19 fired fuel samples, to

20 (II) the actual sulfur dioxide
21 emissions as measured by a sulfur di-
22 oxide continuous emission monitoring
23 system.

24 (B) MEASUREMENT.—An emission stand-
25 ard described in subparagraph (A) shall be

1 measured as a 30 boiler operating day rolling
2 average per coal refuse electric utility steam
3 generating unit or group of coal refuse electric
4 utility steam generating units located at a sin-
5 gle coal refuse-fired facility.

○



115TH CONGRESS
1ST SESSION

H. R. 1917

To allow for judicial review of any final rule addressing national emission standards for hazardous air pollutants for brick and structural clay products or for clay ceramics manufacturing before requiring compliance with such rule.

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 2017

Mr. JOHNSON of Ohio (for himself, Ms. SEWELL of Alabama, Mr. BISHOP of Georgia, Mr. SESSIONS, Mrs. ROBY, and Mr. MURPHY of Pennsylvania) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To allow for judicial review of any final rule addressing national emission standards for hazardous air pollutants for brick and structural clay products or for clay ceramics manufacturing before requiring compliance with such rule.

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 “Blocking Regulatory
5 Interference from Closing Kilns Act of 2017”.

1 **SEC. 2. EXTENDING COMPLIANCE DATES (PENDING JUDI-**
2 **CIAL REVIEW) OF RULES ADDRESSING NA-**
3 **TIONAL EMISSION STANDARDS FOR HAZ-**
4 **ARDOUS AIR POLLUTANTS FOR BRICK AND**
5 **STRUCTURAL CLAY PRODUCTS MANUFAC-**
6 **TURING OR CLAY CERAMICS MANUFAC-**
7 **TURING.**

8 (a) EXTENSION OF COMPLIANCE DATES.—

9 (1) EXTENSION.—Each compliance date of any
10 final rule described in subsection (b) is deemed to be
11 extended by the time period equal to the time period
12 described in subsection (c).

13 (2) DEFINITION.—In this subsection, the term
14 “compliance date” means, with respect to any re-
15 quirement of a final rule described in subsection (b),
16 the date by which any State, local, or tribal govern-
17 ment or other person is first required to comply.

18 (b) FINAL RULES DESCRIBED.—A final rule de-
19 scribed in this subsection is any final rule to address na-
20 tional emission standards for hazardous air pollutants
21 (NESHAP) for brick and structural clay products manu-
22 facturing or clay ceramics manufacturing under section
23 112 of the Clean Air Act (42 U.S.C. 7412), including—

24 (1) the final rule entitled “NESHAP for Brick
25 and Structural Clay Products Manufacturing; and

1 NESHAP for Clay Ceramics Manufacturing” pub-
2 lished at 80 Fed. Reg. 65469 (October 26, 2015);

3 (2) the final rule entitled “NESHAP for Brick
4 and Structural Clay Products Manufacturing; and
5 NESHAP for Clay Ceramics Manufacturing: Correc-
6 tion” published at 80 Fed. Reg. 75817 (December
7 4, 2015); and

8 (3) any final rule that succeeds or amends the
9 rule described in paragraph (1) or (2).

10 (c) PERIOD DESCRIBED.—The time period described
11 in this subsection is the period of days that—

12 (1) begins on the date that is 60 days after the
13 day on which notice of promulgation of a final rule
14 described in subsection (b) appears in the Federal
15 Register; and

16 (2) ends on the date on which judgment be-
17 comes final, and no longer subject to further appeal
18 or review, in all actions (including actions that are
19 filed pursuant to section 307 of the Clean Air Act
20 (42 U.S.C. 7607))—

21 (A) that are filed during the 60 days de-
22 scribed in paragraph (1); and

23 (B) that seek review of any aspect of such
24 rule.

○

innovation
PERFORMANCE TECHNOLOGIES

September 12, 2017

Representative Richard Hudson
429 Cannon House Office Building
Washington, DC 20515

Dear Congressman Hudson,

After a life time of hard work working for others, we begin a new journey of the American Dream to start our own business. The foundation of most small manufacturing business is in a word: innovation. U.S. patents always name an individual, for even these United States recognize that individuals invent, not companies or governments. Innovation is always the thinking outside of the box that has fostered most of America's success, and small businesses run by individuals, not big business, have led the way.

It was an innovative idea to take and modify a fifty year old automotive model with modern, environmental-friendly drivetrains and offer them to customers. With no employees, we built the first prototype with surprising success. Since then, we have gone nowhere but up with several moves to accommodate growth and, of course, add new employees. Not a day goes by that we are not grateful to our families, friends, amazing employees, and to live in a country founded by individuals who knew and understood these dreams. They took extra care penning the Constitution of these United States, sworn to protect such rights free from government interference.

A day at our facility would be an education for anyone in problem solving, and those problems get solved by our employees each and every day. North Carolina is blessed by talented young women and men who innovate. The most gratifying part of my job is watching the process of invention. Whether it be mechanical, electrical, even chemical, these young minds simply overcome it.

It is heart wrenching to think this all may come to an end. It is my understanding that the EPA could adopt action that restricts any alteration to any vehicles...period. Such measures would create a ripple effect on the very industry responsible for the Industrial Revolution of our country. Put aside the loss of some 15,000,000 positions in the United States alone and think of that very young student in grammar school who picks up a Hot Rod magazine in the library and sparks their interest. Is she or he that inventive mind that could change our world? The Specialty Equipment Manufacturers Association is scheduled to hit \$680,000,000,000 by the year 2024.

I was asked by a young man this weekend at a car show attended by an estimated crowd of 10,000 people what his future should be to get into the automotive aftermarket. I told him that the future is bright if the government does not crush us with blind overreach.

We pray for our government leaders, hopeful that they will act with knowledge and clarity.

Most respectfully,
Jon Marshall
Jon Marshall
Innovation Performance Technologies Inc.



1901 NORTH MOORE STREET, SUITE 600
 ARLINGTON, VA 22209 USA
 P: (703) 522-0086 • F: (703) 522-0548
 hpbamail@hpba.org • www.hpba.org

September 13, 2017

The Honorable Greg Walden
 Chairman
 Committee on Energy & Commerce
 U.S. House of Representatives

The Honorable Frank Pallone
 Ranking Member
 Committee on Energy & Commerce
 U.S. House of Representatives

The Honorable John Shimkus
 Chairman
 Committee on Energy & Commerce –
 Subcommittee on the Environment
 U.S. House of Representatives

The Honorable Paul Tonko
 Ranking Member
 Committee on Energy & Commerce –
 Subcommittee on the Environment
 U.S. House of Representatives

Dear Chairman Walden, Ranking Member Pallone, Chairman Shimkus, and Ranking Member Tonko:

As the trade association representing manufacturers, retailers, distributors, and servicers of wood and pellet stoves and inserts, hydronic heaters, and wood furnaces, in addition to other sectors of the hearth, patio, and barbecue industries, we are writing to express our ardent support for the Relief from New Source Performance Standards Act (H.R. 453) during today's hearing entitled "Big Relief for Small Business: Legislation Reducing Regulatory Burdens on Small Manufacturers and Other Job Creators."

HPBA and its members have been long-time champions of woodburning product innovation through more efficient and cleaner burning technology. Biomass, such as wood, is an important renewable home heating option. HPBA takes every opportunity to ensure the general public has a wide variety of woodburning appliances available.

The New Source Performance Standards (NSPS) rule for new residential wood and pellet stoves, hydronic heaters, and wood furnaces was finalized in 2015 and has two sets of standards. Manufacturers already have met the Step 1 standards. However to meet Step 2 standards, manufacturers must research and develop new technologies, test them for durability, send them to an EPA lab for testing and approval, and then finally have their products certified by the EPA. To have these products in stores by the current Step 2 May 2020 deadline, the typical business cycle necessitates at least three years, meaning manufacturers currently need to complete the full process by summer 2018. Manufacturers need to have products for Step 2 ready to be pitched to retailers for the 2019-2020 heating season. Retailers aren't going to purchase products that can't be sold in the next heating season since it can sometimes take five years to sell a wood heater.

H.R. 453 would extend the effective date of Step 2 of the EPA's NSPS by three years, from May 15, 2020 to May 15, 2023. Without this extension, at least 6,500 manufacturing jobs in mostly rural communities across the country are at risk. The Step 2 standard will make wood heaters more expensive and less affordable for middle class families looking for a reliable and inexpensive heating option. More people will hang onto older, non-EPA-certified products due to the increase in prices, which is not good for air quality.

With only five EPA-approved test labs, the industry faces a log jam getting products tested by EPA-approved labs. As the deadline gets closer, hundreds of appliances will need EPA testing and certification in a very short timeframe. There is not enough capacity to get through the process in time. Once a valid test by an approved lab is complete and a manufacturer receives a certificate of conformity, EPA must review the certification application, which can take more than 60 days if there are questions. The surge in products needing testing will further slow down the process to final EPA certification.

There is no self-through provisions to allow Step 1 products already at retailers on May 2020 to be sold while EPA approves new Step 2 products. The effects would be devastating to small businesses. Many companies, both large and small, already are laying off workers to divert capital necessary to fund the expensive research and development costs. With research and development costs ranging from \$200,000 to \$500,000 per product (plus an additional \$20,000 fee per official laboratory test), companies are working to raise the capital needed to meet the new regulations with small companies being hit the hardest. For large companies that may have as many as 30 products, this investment could be more than \$10 million.

Rural communities would be particularly hard hit. Many impacted businesses developed in rural communities to meet home heating and business needs. If small businesses close, those communities will lose jobs. In addition, rural communities are primary users of woodburning appliances. They will be left with fewer choices and higher prices. A rule that does not afford manufacturers enough time to meet the Step 2 requirements may actually slow the very air quality improvements it intended to bring about. This is because, as products become more expensive or are not being put into commerce, consumers will hold onto their older, higher-emitting appliances.

An extension not only provides manufacturers with equal opportunity and necessary access to testing labs, but also would ensure stability in the retailer market, an important staple to healthy local economies. Additional time will allow for the continued development of more efficient and reliable woodburning hydronic heaters, wood and pellet stoves, and wood furnaces for American homes.

Thank you for your consideration of H.R. 453 and the testimony of Frank Moore, President and owner of Hardy Manufacturing. We look forward to further discussion and hope to be a resource to you and your staff in the future.

Sincerely,



Rachel Feinstein
Manager – Government Affairs
Hearth, Patio & Barbecue Association

September 11, 2017

The Honorable John Shimkus
 Chairman
 Subcommittee on Environment
 Committee on Energy & Commerce
 U.S. House of Representatives
 2125 Rayburn House Office Building
 Washington, DC 20515

The Honorable Paul Tonko
 Ranking Member
 Subcommittee on Environment
 Committee on Energy & Commerce
 U.S. House of Representatives
 2322A Rayburn House Office Building
 Washington, DC 20515

Dear Chairman Shimkus & Ranking Member Tonko:

The undersigned organizations respectfully thank the Subcommittee on Environment for its consideration of H.R. 350, the “Recognizing the Protection of Motorsports Act of 2017” (RPM Act). As representatives of race sanctioning bodies, motorsports participants, and companies that manufacture, sell and install race parts, we ask for your assistance in providing certainty to the racing community and the thousands of people who work in the industry.

The Clean Air Act (CAA) of 1970 established authority for the U.S. Environmental Protection Agency (EPA) to regulate motor vehicles used on the highways and prevent modifications that would take those vehicles out-of-compliance with emission regulations. However, Congress did not intend for the law to apply to race vehicles.

In 2015, the EPA included clarifying language within the proposed rule for greenhouse gas emissions from trucks and buses, stating that it is illegal to modify the emissions system of a motor vehicle out of its certified configuration even if it is converted exclusively for race use. This interpretation was inconsistent with 45 years of previous agency policy, practice and industry understanding of the law as it applies to dedicated race vehicles.

The EPA withdrew the clarification language from the final greenhouse gas rule, although the agency noted that it stands by its interpretation that the Clean Air Act does not permit performance modifications to race vehicles converted from a motor vehicle. Consequently, any business that makes or supplies the parts and services that modify the emissions system of these race vehicles is subject to EPA enforcement.

The RPM Act provides clarity to industry and the racing community that the Clean Air Act allows motor vehicles to be converted into dedicated race vehicles and that such conversions are not an act of tampering. The bill protects tens of thousands of jobs and racers’ ability to purchase the parts and equipment that enable them to compete. It also protects an American tradition.

If you have any questions, please feel free to contact Steve McDonald, SEMA's Vice President, Government Affairs at 202/783-0864 or stevem@sema.org.

Sincerely,

American Motorcyclist Association (AMA)
Auto Care Association (Auto Care)
Automotive Warehouse Distributors Association (AWDA)
California Automotive Wholesalers Association (CAWA)
Harley-Davidson Motor Company (Harley)
International Hot Rod Association (IHRA)
LKQ Corporation (LKQ Corp)
Motor and Equipment Manufacturers Association (MEMA)
Motorcycle Industry Council (MIC)
Motorcycle Riders Foundation (MRF)
North American Trailer Dealers Association (NATDA)
National Association of Trailer Manufacturers (NATM)
Off-Road Business Association (ORBA)
Service Station Dealers of America and Allied Trades (SSDA-AT)
Specialty Equipment Market Association (SEMA)
Tire Industry Association (TIA)

Motor & Equipment Manufacturers Association
 1030 15th Street, NW Suite 500 East Washington, DC 20005
 Tel 202.393.6362 Fax 202.737.3742 E-mail info@mema.org



September 11, 2017

The Honorable John Shimkus
 Chairman
 Subcommittee on Environment
 United States House of Representatives
 2125 Rayburn House Office Building
 Washington, D.C. 20515

The Honorable Paul Tonko
 Ranking Member
 Subcommittee on Environment
 United States House of Representatives
 2322A Rayburn House Office Building
 Washington, D.C. 20515

**RE: Big Relief for Small Business: Legislation Reducing Regulatory Burdens on
 Small Manufacturers – Support of Recognizing the Protection of Motorsports
 Act of 2017**

Dear Chairman Shimkus and Ranking Member Tonko:

The Motor & Equipment Manufacturers Association (MEMA) submits the following letter supporting the “Recognizing the Protection of Motorsports Act of 2017” (H.R.350) for the Subcommittee’s consideration. MEMA represents more than 1,000 companies that supply systems and components for use in the light- and heavy-duty vehicle original equipment and aftermarket industries. The motor vehicle components manufacturing industry is the nation’s largest direct employer of manufacturing jobs – employing over 871,000 workers in all 50 states – and contributes nearly \$435 billion in U.S. GDP. Suppliers invest heavily in vehicle research to develop a multitude of technologies and manufacture a wide-range of products, components and systems that make vehicles safer and more efficient.

MEMA supports the “Recognizing the Protection of Motorsports (RPM) Act of 2017” (H.R.350). The motor vehicle supplier industry relies on policies that enable the introduction of new technologies needed to facilitate sustainable mobility. Motorsport customers are early adopters of advanced vehicle technologies due to the competitiveness of the business. Consequently, motorsports often serve as a research laboratory by helping vehicle suppliers gather test data and performance data of these advanced technologies. These motorsports parts then help suppliers transition competitive racing products into production vehicle applications that improve vehicle emissions, performance and fuel economy.

Further, the RPM Act would provide much needed clarity for the aftermarket performance industry. An absence of certainty could put an end to most forms of amateur racing and car shows, adversely impacting the sport with minimal gains on GHG emissions.

Importantly, the Clean Air Act (CAA) exemption on vehicles used solely for competition has been in place for decades. According to statutory text and legislative history of the CAA, Congress never intended dedicated race vehicles to be within the jurisdiction of the CAA. The 1970 CAA Amendments included an exemption for anti-tampering provisions for the emission control



Support of the RPM Act (H.R. 350)
September 11, 2017
Page 2

devices of manufactured or modified racing vehicles, and the 1990 CAA Amendments clarified that EPA did not have authority to regulate "vehicles used solely for competition."

MEMA urges the Subcommittee to take prompt action on the RPM Act. Please contact Laurie Holmes, senior director of environmental policy at (202) 312-9247 or lholfmes@mema.org with any questions.



Senior Vice President, Government Affairs



Western Pennsylvania Coalition for Abandoned Mine Reclamation

226 Donohoe Road Suite 110, Greensburg, PA 15601

(724) 832-3625 (724) 832-3625 (fax)

andy@wpcamr.org www.wpcamr.org www.AMRClearinghouse.org

September 11, 2017

Representative Keith Rothfus
United States House of Representatives
1205 Longworth Building
Washington, DC 20515

Dear Representative Rothfus:

The Western Pennsylvania Coalition for Abandoned Mine Reclamation (WPCAMR) is a non-profit, non-partisan, local, state, federal, and industry partnership dedicated to improving water quality and endorsing the reclamation of abandoned mine lands in the region. WPCAMR is a coalition of 24 county conservation districts in the bituminous coal fields of Western Pennsylvania, watershed groups, and industry members. It was formed in 1981 to advance the cause of reclamation of abandoned mine lands and degraded waters in the region.

WPCAMR's Board of Directors voted to support The SENSE Act, which seeks to establish an additional alternative compliance standard for coal refuse facilities based upon the removal and control of SO₂ relative to the Mercury and Air Toxics Standards Rule (MATS). The SENSE Act also seeks to provide coal refuse-fired power plants with the same SO₂ allocations in Phase II as in Phase I of the Cross-State Air Pollution Rule (CSAPR) while ensuring that CSAPR does not increase the overall state-level CSAPR SO₂ budget.

The coal waste-to-power industry plays a major role in abandoned mine reclamation within the Commonwealth, providing environmental benefits by removing waste coal piles and reclaiming abandoned mine lands in our region. The industry has removed over 214 million tons of coal refuse from our land at no cost to the taxpayers and, by doing so, continue to eliminate a major source of acid mine drainage while removing dangerous waste coal piles and reclaiming land.

The MATS Rule and the CSAPR Rule pose a significant challenge to the continued operation of coal refuse-fired power plants and the beneficial environmental remediation that they support. The SENSE Act seeks to address these issues while at the same time, continuing to hold these facilities to a strict environmental standard.

"Take a stand for reclamation"



Western Pennsylvania Coalition for Abandoned Mine Reclamation

The SENSE Act will help the industry continue to be a valuable ally in Abandoned Mine Reclamation and an important part of the community, providing jobs and energy to the region.

WPCAMR supports the SENSE Act and continues to support the coal waste-to-power industry.

Sincerely,



Andy McAllister
Regional Coordinator

WPCAMR is a non-profit, non-partisan, local, state, federal, and industry partnership dedicated to improving water quality and endorsing the reclamation of abandoned mine lands in the region.



Eastern PA Coalition for Abandoned Mine Reclamation

Robert E. Hughes
EPCAMR Executive Director
101 South Main Street
Ashley, PA 18706
Phone: (570) 371-3523
rhughes@epcamr.org
Website: www.epcamr.org

September 11, 2017

Congressman Keith Rothfus
1205 Longworth HOB, Washington, DC 20515

Dear Congressman Rothfus:

On behalf of the Eastern PA Coalition for Abandoned Mine Reclamation (EPCAMR), we would like to inform you that we support HR #1119, The SENSE Act, which seeks to establish an additional alternative compliance standard for coal refuse facilities based upon the removal and control of SO₂ relative to the Mercury and Air Toxics Standards Rule (MATS). The SENSE act also seeks to provide coal refuse fired plants with the same SO₂ allocations in Phase II as in Phase I of the Cross-State Air Pollution Rule (CSAPR) while ensuring that CSAPR does not increase the overall state-level CSAPR SO₂ budget.

To date over 214 million tons of coal refuse have been converted into alternative energy by member ARIPPA plants. Circulating Fluidized Bed (CFB) technology, one of the cleanest methods available today, is used to convert coal refuse into electricity and an alkaline-rich ash by-product utilized for decades in a highly regulated, safe, and beneficial manner to fill and reclaim unsafe, abandoned mine lands; restore more than 1200 miles of streams damaged by abandoned mine drainage (AMD); amend soil at mining and reclamation sites for over 7000 acres, and serve as an additive in concrete/asphalt for construction and roadways.

The unique nature of ARIPPA's environmental efforts combined with the desire to coordinate these efforts with "hands on" environmentally oriented groups and governmental agencies symbolizes its commitment to improving our nation's landscape and environment. This industry needs exemption from heavy CO₂ restrictions to insure that PA can get the huge piles of coal waste around the Anthracite area and Bituminous region reclaimed over the next few decades. The environmental value of the industry to these abandoned mine sites is estimated to be around \$26 million a year.

The MATS Rule and CSAPR Rule pose a significant challenge to the continued operation of coal refuse fired power plants and the beneficial environmental remediation and reclamation that they support. The SENSE Act seeks to address these issues while at the same time, continuing to hold the facilities accountable to a strict environmental standard. The SENSE Act will help the industry continue to be a valuable partner and ally in abandoned mine reclamation across PA and an important part of our regional communities, providing jobs, economic redevelopment opportunities, land reclamation, cleanup of our land and waterways, and alternative energy to our region.

EPCAMR supports the SENSE Act and continues to support the coal refuse waste to power industries across our Commonwealth and ARIPPA.

Fully supportive,



Robert E. Hughes, EPCAMR
Executive Director

**Testimony of
Davis Henry
President
Henry Brick
Selma, Alabama**

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

**Date: September 13, 2017
Time: 10:00 A.M.
Location: Rayburn House Office Building
Washington, D.C.**

**Title: Big Relief for Small Business: Legislation
Reducing Regulatory Burdens on Small
Manufacturers and Other Job Creators**

Chairman Shimkus, Ranking Member Tonko, and distinguished Members of the Subcommittee, good morning and thank you for inviting me to testify on this important issue. My name is Davis Henry. I am the President of Henry Brick, which has manufactured clay bricks in Selma, Alabama for over 70 years. I represent the third generation of Henry's to operate this plant. I also currently serve as the Vice Chairman of the Board for the Brick Industry Association (BIA), the national trade association that represents manufacturers and distributors of clay brick and pavers. I am here today to speak on behalf of both my company and my industry.

Henry Brick currently employs 58 people, including our manufacturing, sales and support staff. That number will grow this year to about 95 when we bring Plant 2 back online. It has been idle since June of 2008 due to the economy. As you can imagine, the last 8 years have been a very trying time for our company as well as the rest of the brick industry. We are committed to doing our share to protect our environment, but with a finite amount of resources, we need to be sure that we know what is required of us and that the target will not change once those resources are committed. I am here today because we were directly impacted by a previous moving regulatory target and I want to ensure that my company—and all remaining brick companies—are not victimized again.

In 2003, the first maximum achievable control technology, or MACT, standard was promulgated for our industry. This rule applied only to major sources of hazardous air pollutants, or HAP, and only to the larger kilns in our industry. For our industry, with only two pollutants emitted in any large amount, the only definition of major source that really applies is a facility that has the potential to emit 10 tons or more of any single HAP. Henry Brick was a major source of HAP in 2003 and had two kilns considered to be large by the EPA. We had until 2006 to install and begin operating control devices to meet the limits, which we did. We installed limestone based systems, called dry limestone adsorbers or DLAs, on both of our kilns at a total cost of approximately \$1.5 million.

In 2007, almost a full year after our industry achieved compliance with the 2003 Brick MACT, it was vacated by the courts for deficiencies. Unfortunately, most of us, including Henry Brick, were unable to turn off our control devices because our existing air permits would not allow us to stop operating the controls. During the compliance time for the 2003 Brick MACT, the number of controlled kilns in our industry soared from just over 20 to more than 100 kilns.

In 2008, the EPA began developing the replacement MACT that eventually became the 2015 Brick MACT. To develop the standard, the EPA looked at the best performing kilns, including those brand new controls, to establish the limits.

Unfortunately, like many who installed DLAs, our kilns cannot meet these new, more stringent limits. We recently conducted a stack test at our facilities that confirmed our inability to meet the limits for two of three HAP categories with numeric limits. We cannot meet the mercury limit, nor the PM/non-mercury metals limit. To comply with the 2015 Brick MACT, we believe we would need to rip out the DLAs and install a new lime-based system called a DIFF, which the EPA estimates would cost approximately \$3.8 million per year. EPA believes that there may be a solution that would only cost \$1.65 million per kiln, but that is an untested control scenario and no one knows whether it will actually work on a brick kiln- so I am uncomfortable relying on that estimate. The EPA's estimated emission reduction for an average kiln for mercury and metals is less than 400 pounds per year for an uncontrolled source, so our incremental reduction from our controlled kilns would likely be lower.

There is a way to avoid MACT compliance. In fact, EPA's first listed option for "complying" with the rule is to avoid the rule by becoming a "synthetic minor" or "synthetic area" source. To become a synthetic area source, a facility accepts Federally enforceable limits that ensures that they never emit more than the 10 tons per year that makes you a major source. If you are like Henry Brick, and have both of your kilns controlled with air pollution control devices, EPA assumes that you can become a synthetic area source at little or no cost. If you follow EPA's approach to assigning costs, you would assign an annual cost of less than \$20,000 per year.

Unfortunately, our most recent tests also demonstrate that we cannot become a synthetic area source with our current controls. EPA's determination was based on faulty data. It appears that there was some kind of error in the test that made it appear we could reach the limit- or it is possible that this demonstrates that the performance of a new control system could not be maintained over time. We are still investigating our data.

Henry Brick simply cannot afford to try to hit another potentially moving target of Brick MACT compliance. We acted in good faith to comply with the 2003 Brick MACT and now face some of the steepest costs in the industry because we may need to rip out our DLAs and replace them with DIFFs. We need the BRICK Act to ensure that we are not required to invest again until we know that the standard is not going to change. This is not a hypothetical issue to me. It is real. It happened to me. Please do not let it happen again.

Thank you for introducing this bill and for taking the time to listen to me today. I am happy to answer any additional questions you may have.

**Statement for the Record
Administrator Scott Pruitt
U.S. Environmental Protection Agency**

**Hearing: Big Relief for Small Business: Legislation Reducing
Regulatory Burdens on Small Manufacturers and Other Job
Creators**

**Energy and Commerce, Environment Subcommittee
United States House of Representatives
September 13, 2017**

Chairman Shimkus, Ranking Member Tonko, members of the subcommittee, I appreciate the opportunity to provide written testimony on H.R. 1917, Blocking Regulatory Interference from Closing Kiln (BRICK) Act; H.R. 1119, Satisfying Energy Needs and Saving the Environment (SENSE) Act; HR 453, Relief from New Source Performance Standards Act; and HR 350, Recognizing the Protection of Motorsports (RPM) Act. Although the Administration does not have an official position on these bills, I am very supportive of the committee's efforts to provide additional flexibilities, extensions, and clarifications for industries complying with various Clean Air Act regulations.

To put these four significant bills in perspective, the U.S. Environmental Protection Agency (EPA) recently released its annual report on air quality, showing the significant progress the United States has made to improve air quality across the country. "Our Nation's Air: Status and Trends Through 2016" documents the steady and significant progress made in improving air quality across America, over more than 45 years under the Clean Air Act. This progress is often overlooked; the Association of Air Pollution Control Agencies has called it "The Greatest Story Seldom Told," explaining that "Through the Clean Air Act's framework of cooperative federalism, hard-working state

and local air agencies have been responsible for tremendous progress in virtually every measure of air quality."

EPA's most recent report highlights that, between 1970 and 2016, the combined emissions of six key pollutants dropped by 73 percent. This progress occurred while the U.S. economy continued to grow, Americans drove more miles, and population and energy use increased. A closer look at more recent progress shows that between 1990 and 2016, national concentration averages of harmful air pollutants decreased considerably:

- Lead (3-month average) ↓ 99 percent
- Carbon monoxide (8-hour) ↓ 77 percent
- Sulfur dioxide (1-hour) ↓ 85 percent
- Nitrogen dioxide (annual) ↓ 56 percent
- Ground-level ozone (8-hour) ↓ 22 percent
- Coarse Particulate Matter (24-hour) ↓ 39 percent and Fine Particulate Matter (24-hour) ↓ 44 percent.¹

I support the committee's legislative efforts to provide added flexibility and extended timelines that important local industries require to continue to thrive and power local economies, since they too are our partners in reducing emissions and improving air quality. Without businesses' compliance with Clean Air Act regulations, we would not be able to report nearly as much success and progress to date reducing concentrations of harmful air pollutants. EPA is familiar with the concerns these bills seek to address and continues to work with stakeholders on the parts that fall within existing authorities of the Clean Air Act. Having the committee provide legislative action, even in instances where the agency itself might review the existing regulation in the future, is helpful in our effort to determine Congressional intent. I believe that we as a nation can be both pro-energy and jobs, and pro-environment. We don't have to choose between the two. I

¹ Fine Particulate Matter monitoring began in 2000, so trend is between 2000-2016. See <https://gispub.epa.gov/air/trendsreport/2017/#highlights> for more information about air trends.

think our nation has done better than any nation in the world at making sure that we do the job of protecting our natural resources, and protecting our environment, while also respecting economic growth.

We at EPA are responsible for carrying out the will of the Congress with the authorities you provide us; the authority that EPA has, is the authority given to it by Congress. It is a critical responsibility for our great country, and I will ensure my agency faithfully implements these bills if enacted. I take this responsibility very seriously and am committed to working with our state, tribal and local partners to achieve meaningful health and environmental improvements with all available authority provided to EPA by law.

For example, I am working diligently to strengthen relationships with the states, tribes and affected industries and engage in a meaningful dialogue to support efforts to improve local air quality. Since being confirmed as Administrator, I have met with half of the governors across the country, from Alaska to Texas to Indiana to Guam, and numerous businesses and industry representatives. These meetings are critical for understanding the challenges facing state officials and their citizens, and hard-working business owners, and for working together towards our common goals. In response, I have instructed my staff to assess flexibilities for states, tribes and industries to comply with regulations in a manner that is supportive of air quality improvement efforts, without interfering with local decisions or impeding economic growth.

The EPA appreciates the opportunity to provide written testimony. We stand ready to offer our technical assistance to the Committee should the Committee have any further questions.

Statement for the Record by US Representative Keith J. Rothfus of Pennsylvania

To the House Energy and Commerce Committee, Subcommittee on Energy and Power

On behalf of the SENSE Act, H.R. 1119

2125 Rayburn House Office Building

10:00am, September 13, 2016

Thank you Mr. Chairman and the Subcommittee on Energy and Power for holding a hearing on an important piece of legislation, the SENSE Act (H.R. 1119). I also want to thank Vincent Brisini, Director of Environmental Affairs at Olympus Power for providing testimony and insight regarding my legislation, H.R. 1119. This Subcommittee previously held a hearing on the SENSE Act during the 114th Congress.

The SENSE Act stands for the Satisfying Energy Needs and Saving the Environment Act. This bill is a common-sense solution that allows innovative bituminous coal refuse-to-energy facilities to generate affordable, reliable energy while they continue their essential environmental remediation work in a responsible manner.

As many of you know, the coal industry has been a central part of the Pennsylvania and Appalachian regional economies for decades. Unfortunately, historic mining activity left Pennsylvania and a few other states with large piles of coal refuse, also referred to as waste coal. Coal refuse is a mix of lower quality coal, rocks, and dirt that remain after the mining and processing of coal. Before technology was invented to make use of this substance, it accumulated in open spaces alongside cities and towns. Many of these coal refuse piles are close to schools and neighborhoods, and many other places across coal country.

The piles have led to a number of environmental problems and public safety issues that plague affected communities. This includes air pollution, damage to vegetation and wildlife, and water pollution from acid mine drainage. I have been to several of these sites and seen firsthand the danger they pose. Coal refuse can also catch fire and burn for unacceptably long periods of time, polluting nearby neighborhoods and communities. Runoff from these sites can turn rivers orange and leave them devoid of life. According to Pennsylvania's environmental regulator, it would cost roughly \$2 billion to clean up these hazards in my state alone. Coal refuse poses a significant challenge, but it is one that Pennsylvanians and others in coal country are prepared to meet.

The coal refuse-to-energy industry has been a leader on solving this problem. With their advanced technologies, that industry has been able to use this previously worthless material to generate affordable and reliable energy. More importantly, they have removed over 200 million tons of coal refuse in Pennsylvania alone, and remediated many formerly-polluted sites.

Thanks to the dedicated people in this industry and their hard work, what used to be barren landscapes of coal refuse have been restored, rivers and streams brought back to life, and towns across coal country have been relieved from unsafe, unsightly waste coal piles. It should also be noted that private sector leadership on this issue has saved taxpayers millions of dollars in cleanup costs.

The work that this industry has done is remarkable, and it represents an environmental success story that should transcend partisan lines. I continue to advocate for compromise with the Environmental Protection Agency (EPA) to adjust the regulations that threaten to shut down many of the bituminous coal refuse-to-energy facilities, imperiling vital remediation efforts in Pennsylvania and West Virginia. The intensification of two existing rules, the Mercury and Air Toxics Standards (MATS) Rule and the Cross-State Air Pollution Rule (CSAPR), are especially concerning.

Though all coal-refuse fired power generators can meet the mercury standard under MATS, many bituminous coal refuse-fired facilities will be unable to meet either of the acid gas limits in the MATS rule for hydrogen chloride (HCl) or sulfur dioxide (SO₂). The SENSE Act provides operators with an additional SO₂ performance removal limit to comply with the acid gas standard. That limit is strict but achievable.

During Phase I of CSAPR's implementation, bituminous coal-refuse fired power generators were provided sufficient SO₂ allocations. Implementation of Phase II this year, on the other hand, left these facilities with insufficient allowances to account for their SO₂ emissions.

The SENSE Act will provide bituminous coal-refuse fired power generators with the same SO₂ allocations levels in Phase II as in Phase I. My bill contains provisions to ensure that this change preserves all health benefits ascribed to both CSAPR and MATS rules, and that these allocations will not create a profit center for this industry. SO₂ allowances allocated under the SENSE Act will only go to plants that use fluidized bed boilers utilizing a minimum of 75% bituminous coal refuse as fuel. Furthermore, those allowances must be used at the facility where the unit receiving the SENSE Act allowances is located, and cannot be sold or traded. Upon retirement of a generation unit, any unused SENSE Act SO₂ allowances must be retired as well.

The SENSE Act represents a common-sense compromise between the legitimate goals of controlling pollutants emitted from coal refuse-to-energy facilities and ensuring that regulations imposed on the industry are fair. These facilities are vital to coal refuse remediation and must be allowed to continue their work. The people who live near coal refuse piles and all of the communities downstream of these hazards expect us to find a solution that works for everyone. We owe it to them to pass the SENSE Act.

Again, I thank the Committee for holding this hearing.



April 1, 2016

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Washington, DC 20460

Administrator Mark R. Rosekind
U.S. Department of Transportation
National Highway Traffic Safety Administration
Docket ID No. NHTSA-2014-0132
Docket Management Facility, M-30
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Administrators McCarthy and Rosekind:

The National Association of Clean Air Agencies (NACAA) appreciates this opportunity to comment on the U.S. Environmental Protection Agency's (EPA) and the National Highway Traffic Safety Administration's (NHTSA) March 2, 2016 joint Notice of Data Availability (NODA) (81 Fed. Reg. 10,822) related to the July 13, 2015 proposed rule, *Greenhouse Gas and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2*. NACAA is a national, non-partisan, non-profit association of air pollution control agencies in 40 states, the District of Columbia, four territories and 116 metropolitan areas. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. These comments are based upon that experience. The views expressed in these comments do not represent the positions of every state and local air pollution control agency in the country.

NACAA submitted comments to EPA and NHTSA on the proposed Phase 2 rule on September 29, 2015.¹ The comments we offer below supplement those remarks and recommendations. With respect to the issues raised in the NODA, NACAA would like to comment on three in particular: 1) the February 19, 2016 EPA memorandum, *Additional Discussion of Selective Enforcement Audit and Confirmatory Testing for Aerodynamic Parameters for Combination Tractors and for Trailers*; 2) the February 2016 draft EPA Legal

¹ NACAA letter to EPA and NHTSA providing comments on the joint proposed rule, *Greenhouse Gas and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2* (September 29, 2015), http://www.4cleanair.org/sites/default/files/Documents/Phase2_NACAA_Comments_092915.pdf.

Memorandum Discussing Issues Pertaining to Trailers, Glider Vehicles, and Glider Kits under the Clean Air Act; and 3) December 28, 2015 comments submitted to the docket by the Specialty Equipment Market Association (SEMA) related to light-duty motor vehicles used for competition racing.

1. February 19, 2016 EPA memorandum, *Additional Discussion of Selective Enforcement Audit and Confirmatory Testing for Aerodynamic Parameters for Combination Tractors and for Trailers*

On February 19, 2016, EPA issued a memorandum, *Additional Discussion of Selective Enforcement Audit and Confirmatory Testing for Aerodynamic Parameters for Combination Tractors and for Trailers*, discussing potential approaches to applying the longstanding principles behind selective enforcement audits and confirmatory testing for aerodynamic measurements. In our September 29, 2015 comments on the Phase 2 proposal, NACAA urged EPA "to do everything feasible to implement in-use compliance." We believe firmly that the integrity of the Phase 2 program and achieving the associated emissions reductions rely upon strong enforcement and compliance tools and that it is imperative for EPA to finalize a program that is enforceable and auditable and includes confirmatory testing. We are, therefore, pleased that the agency has issued this memorandum to provide further insight into enforcement of and compliance with the Phase 2 program (and, potentially, the Phase 1 tractor program).

2. February 2016 draft EPA *Legal Memorandum Discussing Issues Pertaining to Trailers, Glider Vehicles, and Glider Kits under the Clean Air Act*

NACAA is a strong proponent of regulating greenhouse gas emissions associated with trailers. In our September 29, 2015 comments, we commended the agency for proposing such regulations for the first time at the national level. In fact, we noted our belief that EPA's proposed trailer provisions missed several opportunities to maximize fuel efficiency technologies in the heavy-duty trailer sector and urged the agency to consider our recommendations for additional provisions in the final rule. NACAA has also expressed support for the agency's proposal to close the existing loophole for glider kits and glider vehicles, under which pre-2013 engines – with no limit on age – may be installed into new glider kits without meeting applicable standards. We believe EPA has the environmental obligation to regulate trailers, glider vehicles and glider kits, as well as the legal authority to do so in the way it proposes and, in fact, could go further. NACAA, therefore, welcomes the agency's draft legal memorandum on this issue that provides clarification of the firm legal basis for its proposed actions.

3. December 28, 2015 comments from SEMA related to light-duty motor vehicles used for competition racing

NACAA is troubled by the December 28, 2015 comments submitted by SEMA to the Phase 2 docket, which we believe misconstrue EPA's intent, existing rules and policy and the Clean Air Act. In its comments, SEMA takes issue with language in the proposed Phase 2 rule where EPA seeks to clarify that certain regulatory provisions related to nonroad vehicles do not, and cannot under the Clean Air Act, apply to onroad vehicles. Under the Clean Air Act, EPA has discretion to allow certified nonroad vehicles to be modified and used for competition. The statute does not provide EPA discretion for certified onroad vehicles. Certified onroad vehicles that are outfitted with aftermarket parts such as those that defeat or delete emission controls are illegal under the Clean Air Act, even if the intention is to use such converted vehicles only for the purposes of competition.

The proposed language in the Phase 2 rule is intended to clarify this distinction; it does not, in any way, change any existing rule or policy. In explaining this provision, EPA is clear that it does not apply to dedicated racecar vehicles – such as NASCAR and Indy vehicles – originally manufactured for the purpose of competition (and, therefore, never certified for onroad use). EPA has also been clear that the Clean Air Act plainly prohibits tampering and the agency has always had the authority to enforce against individual vehicles/owners that violate this law. EPA has never pursued an enforcement case against an individual, as SEMA implies the agency will in the future. Instead, EPA's primary concern is the proliferation and increasing sales and installation of aftermarket parts that defeat or delete emission controls on cars and trucks used on the road in every state across the nation. These parts are readily available for sale online to anyone who wishes to purchase them for any purpose. (Though some of these conversions are intended for creating vehicles that will be used only for competition, many others are done on vehicles intended for continued use on the road. In either case, though, they are not allowed under the Clean Air Act.)

Once again, NACAA appreciates the opportunity to provide comments on these issues raised in the EPA-NHTSA NODA. If you have any questions, please contact me or Nancy Kruger, Deputy Director of NACAA, at (202) 624-7864.

Sincerely,



Nancy L. Seidman
Massachusetts
Chair
NACAA Mobile Sources and Fuels Committee

Environmental Protection Agency
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 Washington, DC 20590

April 1, 2016

American Council for an Energy-Efficient Economy | Environmental Defense Fund
 Natural Resources Defense Council | Sierra Club | Union of Concerned Scientists

**RE: Docket ID Nos. EPA-HQ- OAR-2014-0827 and NHTSA-2014-0132
 Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and
 Vehicles - Phase 2 - Notice of Data Availability**

Introduction

On behalf of our millions of members and supporters, the American Council for an Energy-Efficient Economy, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club and Union of Concerned Scientists applaud the Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA) for proposing Phase 2 standards that have the potential to significantly increase the efficiency of medium- and heavy-duty vehicles for years to come. Heavy-duty trucks are the fastest growing source of oil use in the transportation sector, and by 2030 global emissions from freight trucks are expected to exceed those of passenger vehicles.

Our organizations appreciate the opportunity to comment on new information made available by EPA and NHTSA. After reviewing the additional data and memoranda, it is clear that our original target of a 40 percent improvement in fuel consumption for new trucks in 2025 relative to new trucks in 2010 is achievable. These new data bolster our arguments that additional efficiency gains are possible throughout vehicles and across vehicle classes. It is critical that the agencies incorporate this new data and finalize more stringent standards than were proposed to ensure the greatest possible technically feasible and cost-effective reductions in carbon pollution and fuel consumption.

Below are analyses of key areas of the additional data and memoranda made available, along with recommendations for incorporating the new data into stronger final standards.

Tractor-trailers

Since the close of the public comment period, numerous new data on tractor-trailers have been submitted to the docket, including a revised report on fuel efficiency technologies¹ and additional information on tractor aerodynamics.^{2,3} These data continue to show that the agencies have underestimated the technology potential of tractor-trailers and, particularly, tractor engines. Based on this new data, the agencies should tighten the fuel consumption and emissions targets for tractor-trailers and tractor engines. Furthermore, the agencies should improve the aerodynamic testing procedures for tractors to ensure that benefits of the rule are not eroded.

Tractor Engine Technology Effectiveness

The Southwest Research Institute (SwRI) completed a comprehensive analysis of fuel consumption reduction technologies applicable to commercial medium- and heavy-duty trucks.¹ Despite downward revisions in technology potential between the draft version of the report available in the proposal and the final report

¹ EPA-HQ-OAR-2014-0827-1623/NHTSA-2014-0132-0185.

² EPA-HQ-OAR-2014-0827-1624/NHTSA-2014-0132-0186

³ EPA-HQ-OAR-2014-0827-1625/NHTSA-2014-0132-0188.

included in the NODA, this research indicates that tractor engines can improve their fuel consumption by at least 8 percent in 2027, nearly double the agencies' proposed target.

The revised benefit from friction reduction in the final SwRI report ranges from 1% to 2.9% for highway cruising, dependent upon vehicle loading and speed. The SET-weighted average of these friction reduction estimates is 2.1%, which is 50 percent higher than the agencies' estimate of friction reduction potential in the proposal (Appendix 1), indicating that friction reduction can contribute more efficiency benefit than the proposal indicates.

Furthermore, the final SwRI report⁴ confirms the significant benefit of downspeeding on the engine side, even taking into account the accompanying loss in friction reduction potential. Downspeeding benefits are not reflected in the proposed engine standards, despite the fact that manufacturers have repeatedly acknowledged moving engine operation to even lower speeds.⁵ The agencies also have noted the benefits of downspeeding when combined with downsizing, which they did refer to in setting the standard: "engine downsizing could be more effective if it is combined with downspeeding" (NPRM p. 40217). The SwRI report estimates savings ranging from 3% to 8% after lowering the engine speed from 1368 to 1051 rpm. This estimate includes the 50 percent discounting of friction reduction potential for the downsped engine. An SET-weighted average of downspeeding combined with friction reduction results in 3.3 percent improvement in 2027. As noted in other comments to the docket, the agencies should consider downspeeding improvements on the tractor engine test because of how it affects engine design.⁶

The agencies also should further consider their assessment of the penetration of advanced technologies like waste heat recovery (WHR). The SwRI report clearly illustrates the benefits of WHR, and a consultant report recently uploaded to the docket outlines how it is making its way into the fleet ahead of the rate of penetration that underlies the agencies' proposed targets.⁷ The report also makes clear that current research into even more efficient engines indicates the potential for a durable, reliable 50-percent brake thermal efficiency engine in the timeframe of this rule. Further evidence of the significant penetration possible for WHR can be found in a recent white paper that illustrates that the agencies have significantly overestimated the costs of WHR and therefore underestimated its cost-effectiveness and potential rate of penetration in the market.⁸

The finalized report from the Southwest Research Institute indicates that tractor engines are capable of achieving an 8 to 10 percent reduction in fuel consumption from the 2018 baseline when considering the agencies' technology penetration rates; further analysis shows that a 15 percent reduction is possible (Appendix 1).

Impact on proposal

The tractor truck engine stringency should be significantly strengthened in the final rule to reflect the most up-to-date data, which indicates that tractor engines can easily exceed the proposed 2027 target of 4.2 percent improvement.

Tractor aerodynamic performance

Some comments on the proposed rule stated that tractor aerodynamic drag levels assumed in the agencies' 2027 compliance package were not achievable, at least without a more aerodynamic standard trailer for testing.⁹ We are not aware of new information referenced in the NODA that relates directly to this matter; but given comments on the proposed rule, we note here that substantial, additional reductions in drag could be achieved by 2027 through co-optimization and integration of tractor and trailer. These additional drag reductions could be verified by using a more advanced trailer for testing and then correcting for the benefits of the trailer alone, as discussed in greater detail in Appendix 2.

⁴ EPA-HQ-OAR-2014-0827-1471.

⁵ E.g., EPA-HQ-OAR-2014-0827-1164, pp. 18-19; EPA-HQ-OAR-2014-0827-1298, p. 7; EPA-HQ-OAR-2014-0827-1254, p. 4.

⁶ EPA-HQ-OAR-2014-0827-1237, p. 27; EPA-HQ-OAR-2014-0827-1298, p. 8; EPA-HQ-OAR-2014-0827-1329, pp. 7-8.

⁷ EPA-HQ-OAR-2014-0827-1472.

⁸ Wall, John C. "A perspective on waste heat recovery for consideration for the Phase 2 GHG Rule." February 11, 2016.

⁹ EPA-HQ-OAR-2014-0827-1215.

Impact on proposal

There is no evidence provided in the NODA to support weakening of the 2027 aerodynamic targets for tractors. In fact, *increased* stringency could be achieved by redefining the standard trailer in later years to reflect future improvements to the average trailer and taking advantage of tractor/trailer co-optimization in the compliance package.

Tractor aerodynamic selective enforcement audit and confirmatory testing

In a memo referenced in the NODA, EPA clarified how a vehicle would be determined to pass or fail in selective enforcement audit (SEA) and confirmatory testing of its certified aerodynamic drag (CdA).³ The EPA memo is responsive to comments of the manufacturers and others regarding the proposed elimination of the compliance margin in these testing processes in Phase 2. It proposes that multiple coastdown tests be performed in SEA or confirmatory testing, and that the vehicle would fail if and only if the testing showed with high statistical confidence that the vehicle lay in a lower-numbered (higher drag) aerodynamic bin than the one to which it had been certified.

The proposed approach represents a significant improvement over the one-bin compliance margin in Phase 1. However, it should be further improved by setting the threshold in the statistical test at the bin midpoint, rather than at the upper limit of the bin. Bin limits in the proposal appear to be based on the range of benefits from defined improvements in aerodynamic design or equipment, so a bin midpoint might best represent the result of a typical implementation of those aerodynamic improvements, making it a suitable threshold for the statistical test. Moreover, the bin midpoint is the GEM CdA input for a tractor certified to the given bin, so the midpoint is the proper value for purposes of SEA and confirmatory testing. Using the proposed procedure, by contrast, CdA values could be expected to accumulate around the upper limits of the bins. Tractor bins cover a range of drag values of about 0.5 m², or roughly 10 percent of CdA values; so the half bin between the bin midpoint and upper bin threshold is roughly 5 percent of a typical CdA value. Five percent increase in long-haul tractor-trailer drag increases fuel consumption by about 2 percent. Hence using the upper bin limit in SEA or confirmatory testing would overstate tractor emissions reductions under the standards by about 2 percent.

Impact on proposal

The proposed SEA and confirmatory testing procedure would improve upon the current procedure but would still overstate the emissions reductions resulting from the standards. To ensure that the real world benefits of the rule are maintained, we recommend that the approach discussed in the EPA memo be revised to require that the average confirmatory or SEA test results be no higher (statistically) than the midpoint, rather than the upper limit, of the appropriate bin.

Updates to the Greenhouse Gas Emissions Model (GEM P2v2.1)

Significant changes have been made to the GEM model release that accompanies the NODA. These improvements enable more accurate modeling of the behavior of heavy-duty trucks and therefore can more readily capture technology improvements that were left on the table in the proposal. We support the changes to the GEM model and recommend that the standards be strengthened to reflect the additional fuel savings opportunities captured by the improved GEM.

New drive cycle weightings

As noted in the vocational vehicle section of these comments, the updated certification cycles both are more representative of vocational vehicle duty cycles and highlight further opportunities for fuel consumption reduction at high-speed (e.g., from aerodynamic improvements) and at low-speed through idle reduction (including automatic shut-down for parked idle).

Cycle-average map

Perhaps the biggest change to GEM is the replacement of the transient cycle modeling with the cycle-average mapping procedure to assess a vehicle's fuel consumption over the transient cycle. Most importantly, this replaces the "transient adjustment factor" of 1.05 with a value that more accurately captures the vehicle's transient behavior.

Impact on the proposal

The agencies used a transient adjustment factor of 1.05 so that leading engines with better transient response on a powertrain test would not receive undue advantage as a result of the test procedure. However, eliminating this factor would appropriately reward manufacturers who can prove better real world transient response. Replacing the transient adjustment factor may result in slightly higher baseline fuel consumption if the baseline reflects average performance, but it should allow the standards to drive leading-edge transient operation in the later years, creating a greater transient performance improvement from 2018 to 2027 than in the proposal.

Updates to modeled technologies

Changes to the representation of transmission, engine, and axle allow for more precise modeling of vehicle behavior in the GEM model. Additional vehicle technologies and greater acceptance of numeric parameters (instead of Y/N) for technology inputs allows manufacturers greater representation of the vehicles they are actually putting on the road.

Impact on the proposal

Modeling powertrain technology more accurately will help align GEM results with real world reductions. It will also allow for greater capture of incremental improvements. The proposal assumed fixed technology improvements—however, as is evident from sources like the Southwest Research Institute report,¹⁰ there will be continuous development of many of these technologies throughout the course of this rule. Because GEM can now better capture these more subtle technology improvements related to transmission efficiencies, etc., it is critical that the agencies tighten their 2024 and 2027 targets accordingly to ensure that the targets represent the "maximum feasible" and "technology forcing" standards. Similarly, the inclusion of technologies that the agencies did not originally model within the GEM model (e.g., tractor neutral idling) means that those targets should be tightened to recognize that these technologies *can* reduce fuel use from heavy-duty trucks.

Improved functionality

In the MATLAB version of the model, it is possible to obtain detailed outputs for the 55-mph, 65-mph, and transient modes that include average engine speed and torque; crankshaft, transmission, and axle work; number of shifts; and grams fuel, grams CO₂, and grams CO₂ per ton-mile. This "detailed output" option is a change noted in the documentation for GEM P2v2.1,¹¹ and we expect this functionality to be available in the final, executable version of GEM. We support this addition to GEM output options. The ability to view these results for individual modes will allow end users to better understand the benefits of technologies for their own duty cycles, which may be better represented by weighting the three drive cycles differently than they are weighted for certification purposes.

Vocational vehicles

Recent information included in the docket provides additional research on the diversity of the vocational vehicle fleet and the real world behavior of these vehicles, many of which may be certified as incomplete. It is our assessment that this new information not only strengthens the case for increasing the stringency of the regulation of this class of vehicles but necessitates it in order to ensure the environmental benefits of a "maximum feasible" and "technology forcing" standard. Specifics related to the data itself are discussed below.

¹⁰ EPA-HQ-OAR-2014-0827-1623/NHTSA-2014-0132-0185.

¹¹ EPA-HQ-OAR-2014-0827-1626/NHTSA-2014-0132-0181, "Summary_GEM_P2v2.1_Updates"

Duty cycles and segmentation

The National Renewable Energy Lab study utilizes its Fleet DNA database to show that vehicles largely fall into two classes of operation, high- and low-speed, with a much smaller fraction of vehicles bridging the two duty cycles.¹² The study finds that the high-speed vehicles spend a much higher fraction of time at cruise speeds above 55 mph than the weightings of the vocational regional category from the proposal, while all vehicles spend a much higher fraction of time at idle than the idle cycle weighting in the proposal.¹³

In addition to providing data on the characteristics of three overarching classes of vehicle, the Oak Ridge analysis provides a path for segmenting vocational vehicles in spite of the limited information that an incomplete chassis can provide.¹⁴ The full prediction model leads to an appropriate categorization of high- or low-speed behavior with 89 percent accuracy, with prediction of low-speed behavior 94 percent accurate. Limiting the model to engine speed at 65 mph provides less accuracy (81 percent) but may allow for more flexibility to changes to the fleet over time (such as a decreasing use of manual transmissions in all classes, or a change in fuel use for applications that were previously predominantly gasoline or diesel).

Impact on proposal

The ability for a manufacturer to more accurately project a new vehicle's likely duty cycle allows better assessment of both the regulatory category of the vehicle and technologies that are most applicable. Correctly identifying high-speed vehicles, particularly ones which now show even greater operation at highway cruise speeds than first proposed, would allow for greater application of aerodynamic improvements, since there would be a clear need and payback. Similarly, the ability to more clearly define low-speed operation, which now should also include greater idle operation time, would incentivize greater application of idle reduction technologies.

Hybrid modeling

The agencies recently uploaded a physics-based simple hybrid model, which can be used to quickly estimate the potential fuel savings for different vocational hybrid designs.¹⁵ It is clear from this model that there is a wide range of hybrids that can result in significant fuel savings, even those with relatively small batteries as would be found in a mild hybrid.

Impact on proposal

Mild hybrids were not discussed in the proposal as part of the compliance package; however, as is evident from this modeling, these cheaper hybrid variants could offer much of the same benefit in certain applications at reduced cost. We strongly encourage the agencies to include mild hybridization as part of its compliance package in addition to cost-effective full hybrid application, as already identified in the proposal.

Custom chassis certification

While not part of the NODA, an agency memorandum on alternative approaches to certifying specialty vocational vehicles, or custom chassis, has recently been added to the docket.¹⁶ The two approaches are a simplified model of GEM similar to Phase 1 and a minimum applied technology package. The vehicles that these could be applied to are motor homes, intercity coaches, school buses, transit buses, refuse trucks, cement mixers, and emergency vehicles. These vehicles together represent around 20 percent of vocational vehicle sales, with motor homes being the largest contingent.

¹² EPA-HQ-OAR-2014-0827-1621/NHTSA-2014-0132-0187, Figures 5 and 6.

¹³ *Ibid.*, Table 4.

¹⁴ *Ibid.*, Section 3.1.

¹⁵ EPA-HQ-OAR-2014-0827-1725.

¹⁶ EPA-HQ-OAR-2014-0827-1719.

Impact on proposal

The standard for these vehicles proposed in the memorandum is significantly weaker than the proposal for every single class of vehicle, by an average of between 5 and 7 percent.¹⁷ This means that if manufacturers take advantage of this approach for the 20 percent of the fleet that is eligible, the vocational vehicle standard would need to be strengthened by more than 1 percent, on average, to offset the application of these standards and maintain the environmental benefits of the proposal.

If manufacturers are able to identify these specialized classes of vehicle as would be required to take advantage of this proposal, then they should also then be able to take advantage of the most appropriate fuel-saving technologies for that unique duty cycle (e.g., aerodynamic improvements for motorcoaches that spend extensive time at high speed cruise). The ability for manufacturers to identify these applications should therefore result in a *more* stringent vocational vehicle target for these custom chassis, not less.

Furthermore, the simplified compliance pathway eliminates incentives for technologies directly applicable to these vehicles, including transmission improvements and hybridization. This is especially concerning for intercity buses, school buses, and refuse trucks, all of which are ideal applications for powertrain improvements that would not be captured or incentivized under this approach. This could significantly undermine the vocational vehicle target and erode benefits of the rule.

Vocational engine certification

Since the public comment closed on the proposal, certification data for a number of new heavy-duty engines have been made public. Conventional diesel engines from Cummins,¹⁸ Detroit Diesel,¹⁹ Hino,²⁰ and PACCAR²¹ in medium- and heavy-duty vocational applications could all be certified in 2016 to the proposed 2027 standard.

Impact on proposal

That an assortment of engine families certified for the 2016 model year from a breadth of manufacturers already achieve the 2027 fleet-average standard in their respective classes indicates that the agencies have set far too weak a standard for vocational engines. This, in turn, leads to weakened vocational vehicle standards, since these engines are incorporated into GEM for compliance. We expect based on careful examination of recent engine certification data that the agencies will adjust greenhouse gas emission and fuel consumption targets downward in 2027 to more appropriately account for where the technology is *today* and what it can achieve more than a decade hence.

Gasoline engines

Both boosted and naturally aspirated gasoline engines for vocational vehicles show considerable improvement potential in the revised SwRI report. Valve and EGR technologies were found to offer substantial benefit in gasoline engines, especially at high load.

¹⁷ Simulating the technology packages identified in the memo with GEM P2v1.1 resulted in a shortfall for the vehicles ranging from 3 to 17 percent, which yielded an approximate sales-weighted average of 7 percent. Accounting for the reweighted drive cycles would reduce this average to 5 percent, with only motor homes having a standard that is as strong as the proposed vocational vehicle target for its class.

¹⁸ Cummins 2016 8.9L MHDD diesel engine (GCEXH05040LAV): FCL = 553 g/bhp-hr, compared to a proposed 2027 MHDD standard of 553 g/bhp-hr. Certified to vocational applications (ISL9).

¹⁹ Detroit Diesel 2016 14.8L HHDD diesel engine (GDDXH14.8EAD): FCL = 517 g/bhp-hr, compared to a 2027 HHDD standard of 533 g/bhp-hr. Certified to vocational and tractor applications (DD15).

²⁰ Hino 2016 7.7L MHDD diesel engine (GHMXH07.7JWU): FCL = 538 g/bhp-hr, compared to a proposed 2027 standard of 553 g/bhp-hr. Certified to vocational applications (J08E-WU).

²¹ PACCAR 2016 10.8L HHDD diesel engine (GPCRH10.8M01): FCL = 509 g/bhp-hr, compared to a proposed 2027 standard of 533 g/bhp-hr. Certified to vocational and tractor applications (MX-11).

Impact on proposal

The Phase 2 proposal did not call for improvement of the gasoline engines used in vocational vehicles. The benefits of valve and EGR technologies for these engines, especially at higher loads, as found in the revised SwRI report²², make a strong case for strengthening the standards for these engines.

Heavy-Duty Pickups and Vans

The SwRI report²³ updated the benefits of mild and full (parallel) hybrids for heavy-duty pickups and vans. The cycle weighted effectiveness of mild hybrids at ALVW (test weight) was 40% higher than the agency estimate, while full hybrids had a small increase in benefit. The aero and tire benefits for these vehicles were also higher than the agency estimate.

Impact on proposal

The agencies should strengthen the standards for heavy-duty gasoline pickups and vans to reflect a reasonable penetration of mild and full hybrids in 2027.

EPA's Clean Air Act Authority*Reducing Emissions through Trailer Improvements*

We support EPA's interpretation of its authority to regulate trailer manufacturers, namely, that the trailer manufacturer is a motor vehicle manufacturer subject to compliance with emission standards under section 202 of the Clean Air Act. EPA's prior regulations affecting the manufacturers of major components of the motor vehicle demonstrate the agency's tradition of addressing mobile sources as systems of components that contribute to vehicle emissions. The trailer manufacturer is the entity with control over the design of the trailer - the load-carrying component of the heavy-duty vehicle, and thus a major contributor to that vehicle's emissions. As such, it is eminently reasonable for EPA to devise standards that harness the emissions-reducing opportunities inherent in trailer design.

Protecting Against Defeat Devices

Comments submitted in response to the Notice of Data Availability and raised in the media have expressed concern about EPA's authority to regulate aftermarket modification of vehicles. Our organizations strongly support EPA's long-standing authority to prevent tampering with emissions control systems, including the installation of defeat devices, on vehicles used on public roads. Many such technologies that alter or bypass emissions control systems are sold under the guise of competitive racing, but marketed for use on vehicles that are used on public roads. Such defeat devices lead to increased emissions of a range of pollutants which threaten public health. Going forward, EPA should continue to ensure that aftermarket defeat devices do not lead to increased emissions of health-threatening pollution from on-road vehicles. We note that EPA's record of enforcement has focused on technologies that are being sold to defeat emission control devices in vehicles that are being used on public roads, not competitive racecars used off public roads.

Conclusion

Our organizations appreciate the substantial work by EPA and NHTSA to propose the second phase of efficiency and emissions standards for medium and heavy-duty vehicles and the opportunity to comment on the Notice of Data Availability. We urge the agencies to incorporate new data and strengthen the final rule to ensure the greatest possible reductions in carbon pollution and fuel consumption.

²² Reinhart, T. E. (2016, February). *Commercial medium- and heavy-duty truck fuel efficiency technology study – Report #2*. (Report No. DOT HS 812 194). Washington, DC: National Highway Traffic Safety Administration

²³ Reinhart, T. E. (2016, February). *Commercial medium- and heavy-duty truck fuel efficiency technology study – Report #2*. (Report No. DOT HS 812 194). Washington, DC: National Highway Traffic Safety Administration

Appendix 1: Efficiency Improvement Potential for Tractor Truck Engines in 2027
Southwest Research Institute Report²⁴

SET-weighted improvement

Improvements in efficiency measured on the drive cycles simulated in the SwRI report do not directly correspond to the improvements these technologies would achieve on the engine cycle. To estimate the improvements that would be achieved on the SET cycle, we have utilized specific drive cycles to represent the A, B, C, and idle points, weighting the improvements achieved on these cycles in accordance with the SET regulatory weighting (Table 1).

Table 1: Analogous weighting of drive cycles to represent SET engine cycle

SET cycle point	Analog drive cycle	Weighting
Idle	0% ARB Transient	12%
A, 100%	100% 55-mph	9%
B, 50%	50% 65-mph	10%
B, 75%	½ 50% 65-mph, ½ 100% 65-mph	10%
A, 50%	50% 55-mph	12%
A, 75%	½ 50% 55-mph, ½ 100% 55-mph	12%
A, 25%	½ 0% 55-mph, ½ 50% 55-mph	12%
B, 100%	100% 65-mph	9%
B, 25%	½ 0% 65-mph, ½ 50% 65-mph	9%
C, 100%	½ 100% 65-mph	2%
C, 25%	¼ 0% 65-mph, ¼ 50% 65-mph	1%
C, 75%	¼ 50% 65-mph, ¼ 100% 65-mph	1%
C, 50%	½ 50% 65-mph	1%

The A speed and B speed are most similar to 55 mph and 65 mph, respectively. This can be confirmed with the drive ratio assumed in the SwRI report. However, the C speed represents an engine speed that is not easily represented by any of the drive cycles measured. Because we are primarily concerned with friction reduction, which we know will show diminished improvement at high speed, we have chosen to halve the improvement of the 65 mph cycle to represent a stand-in. The idle cycle is represented by the unloaded ARB transient cycle. Because the engine test is run at 25, 50, 75, and 100 percent loading, we have averaged the 0 and 50 percent loaded cycles to represent 25 percent loading, and the 50 and 100 percent loading to represent 75.

Comparison of SwRI report and the NPRM: engine friction reduction

After assessing how to model the engine technologies in the SwRI report, we can compare these results to those of the NPRM (Table 2). Here, the fuel consumption reduction of each individual technology is shown as well as the agencies' assumed penetration of this technology in 2027, yielding a weighted reduction.

The revised effectiveness represents the SwRI SET-weighted value. In combining the technologies, the final value reflects some assumption about how the technologies interact, which we refer to as dis-synergy. Such interaction should be based on considerations specific to the technologies being combined—for example, the effectiveness of a waste heat recovery will be lower in combination with technologies that reduce the amount of waste heat available. However, we are unaware of other overlapping benefits among the particular technologies in the agency engine package. Therefore, while the agencies used a representative value of 15 percent for the dissynergy factor, we have reduced this value to 4 percent to reflect only the 25 percent of the fleet for which this the agencies applied this technology.

²⁴ EPA-HQ-OAR-2014-0827-1623/NHTSA-2014-0132-0185.

Table 2: Tractor truck engine fuel consumption reduction in 2027 (without downspeeding/downsizing benefit)

Technology	Phase 2 proposal (p. 40197)			Revised effective-ness	Weighted estimate	
	FC reduction	Penetration in 2027	Weighted reduction		With agency penetration for MY 2027	With increased penetration for WHR in MY 2027
Improved combustion	1.1%	100%	1.1%	2.0%	2.0%	2.0%
Engine controls	N/A			1.0%	1.0%	1.0%
Engine friction/parasitic reduction	1.4%	100%	1.4%	2.1%	2.1%	2.1%
Aftertreatment improvement	0.6%	100%	0.6%	0.6%	0.6%	0.6%
Engine downspeeding	N/A					
Engine downsizing	0.3%	30%	0.1%	N/A	N/A	N/A
EGR/airflow/turbo improvement	1.1%	100%	1.1%	1.7%	1.7%	1.7%
WHR (Turbocompounding)	1.8%	10%	0.2%	3.0%	0.3%	0.9%
WHR (Rankine cycle)	3.6%	15%	0.5%	4.4%	0.7%	1.4%
Discount for overlapping benefits (dis-synergy)			15%		4.0%	9.3%
Total reduction with dis-synergy			4.2%		7.8%	8.5%

Comparison of SwRI report and the NPRM: downspeeding

Downspeeding offers additional gains that are not included in Table 2. Higher brake mean effective pressure that results from downspeeding does interact with engine friction reduction; however, the SwRI report clearly showed that benefits from downspeeding were achieved beyond the levels outlined in Table 2. Table 3 outlines the additional benefits that are achievable when including downsizing on the engine standard, based upon the SwRI report.

Table 3: Tractor truck engine fuel consumption reduction in 2027 (with benefits from downsizing/downspeeding)

Technology	Revised effective-ness	Weighted estimate	
		With agency penetration for MY 2027	With increased penetration for WHR in MY 2027
Improved combustion	2.0%	2.0%	2.0%
Engine controls	1.0%	1.0%	1.0%
Engine friction/parasitic reduction and downspeeding	3.3%	3.3%	3.3%
Aftertreatment improvement	0.6%	0.6%	0.6%
Engine downsizing	0.3%	0.1%	0.1%
EGR/airflow/turbo improvement	1.7%	1.7%	1.7%
WHR (Turbocompounding)	3.0%	0.3%	0.9%
WHR (Rankine cycle)	4.4%	0.7%	1.4%
Discount for overlapping benefits (dis-synergy)		4.0%	9.3%
Total reduction with dis-synergy		9.0%	9.6%

*Feasibility Assessment of Future Efficiency Improvement for Class 8 Diesel Tractor Engines*²⁵

In addition to the SwRI report, a presentation was uploaded to the docket from Dr. Stephen J. Charlton that outlines a path forward for the heavy-duty truck industry over the timeframe of the rule, taking into account ongoing research, product development cycles, and the breadth of technologies that could be available in the timeframe of this rule.

Table 4 summarizes the findings of this report, illustrating a path to an engine standard in 2027 that would achieve a 15 percent reduction from the current 2018 baseline engine on the SET test. Notable differences between the agencies' proposed targets are: 1) greater penetration of WHR; 2) recognition that downspeeding will lead to efficiency improvements on the SET cycle as well as on the vehicle; 3) greater potential improvements from model-based controls; and 4) increased stringency of the 2018 baseline itself to reflect the updated SET weighting.

²⁵ EPA-HQ-OAR-2014-0827-1472.

Table 4: Derivation of revised engine standards²⁶

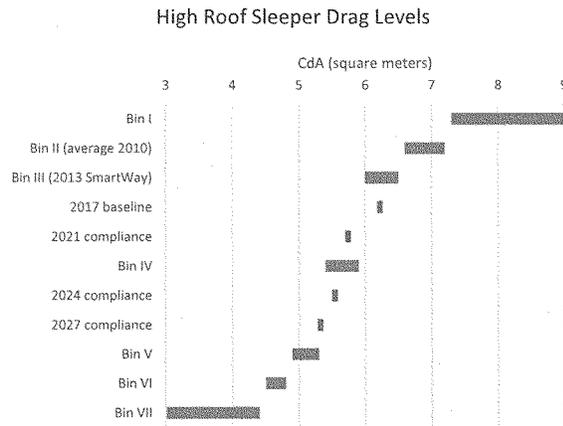
Technology	SET-Weighted Reduction 2020-2027	Market Penetration		
		2021	2024	2027
Turbocompounding	1.8%	5.0%	10.0%	10.0%
Waste Heat Recovery	5.5%	0.0%	20.0%	75.0%
Parasitic/friction—Cylinder kit, lube, etc.	1.4%	45.0%	95.0%	100.0%
Aftertreatment—efficiency, delta-P, and optimization of engine-out NOx	1.0%	45.0%	95.0%	100.0%
EGR, manifolds, ports, turbocharger	1.1%	45.0%	95.0%	100.0%
Combustion, fuel-injection optimization, model-based control	4.0%	45.0%	95.0%	100.0%
Engine downsizing	0.3%	5.0%	7.5%	10.0%
Engine downspeeding	3.5%	50.0%	75.0%	90.0%
Advanced combustion	0.5%	15.0%	75.0%	85.0%
SET reweighting	1.5%	100.0%	100.0%	100.0%
Dis-synergy multiplier		100.0%	95.0%	95.0%
Weighted reduction for engines without turbocompounding or WHR		6.54%	10.56%	11.39%
Weighted reduction for engines with turbocompounding		8.22%	12.08%	12.89%
Weighted reduction for engines with waste heat recovery		11.68%	15.21%	15.99%
Total weighted reduction (%)		6.62%	11.6%	15.0%
Brake-specific CO₂ (g/bhp-hr)	460	430	406	391

²⁶ Ibid., p. 32.

Appendix 2: Additional Savings from Tractor-Trailer Co-optimization and Integration

The agencies' compliance package for high roof sleeper cabs in the Phase 2 proposal includes aerodynamic improvements that reduce drag by 14% and fuel consumption by 6% in 2027. Manufacturers raised concerns about these levels of drag reductions in their comments, claiming that the expected tractor drag levels are not achievable using the prescribed "standard" trailer. We do not believe that this concern provides a basis for weakening the aerodynamic performance of high-roof sleeper cabs assumed in the agencies' compliance scenario. In fact, SuperTruck results indicate that greater aerodynamic improvements than those assumed in the Phase 2 proposal are achievable.

Aerodynamic drag (CdA) values and bin levels are shown below for reference.



Test trailer

The comments of Volvo Trucks (p.20) state: "Either the Agencies must reduce the aerodynamic targets for tractors or provide for a test trailer with advanced aerodynamics, including, at a minimum, an efficient boat-tail and side skirts." While we do not support the view that the proposed aerodynamic targets are too demanding when the prescribed test trailer is used, making the standard trailer for testing tractors more aerodynamic makes sense. As Volvo says (p.27), "The test trailer should represent an advanced aerodynamic design that meets the 2027 trailer targets so that future tractors are designed to operate efficiently with future trailers and the combinations can achieve the desired aerodynamic performance." Yet, by 2021, the average trailer will have better aerodynamics (delta CdA = 0.66) than the proposed standard trailer (delta CdA = 0.5). By 2027, the average trailer will achieve delta CdA = 1.1. This trailer would reduce the drag of the 2027-compliant tractor (high roof sleeper with standard trailer, CdA = 5.32) by more than 20%.

An insufficiently aerodynamic standard trailer forgoes an incentive for manufacturers to pursue certain improvements in the tractor and elsewhere in the vehicle. As one example, Daimler notes that lower vehicle drag allows greater benefits for its eCoast technology (http://energy.gov/sites/prod/files/2015/07/f24/arravt080_vss_rotz_2015_o.pdf slide 8). As another example, an aerodynamic trailer will reduce vehicle load, which may permit the use of a smaller engine. A more representative standard trailer will also yield better estimates of the benefits of various technologies.

Updating the standard trailer to include an Advanced Combination (skirt and boat tail) gives delta CdA = 1.0 on average (RIA Table 2-70), which approaches the standard for box trailers in 2027. Alternatively, rather than specifying additional aerodynamic devices for the standard trailer, the agencies could simply increase the required delta CdA for the standard trailer to 1.0 and leave it to the manufacturers to select a test trailer.

When updating the standard trailer, the agencies will need to make a corresponding (downward) adjustment to the CdA of the tractor-trailer in the compliance package and hence increase the stringency of the tractor truck standard. Otherwise, the effect of updating the trailer would be to demand less improvement from the tractor, which is counterproductive and not the intent of our comment. If the test trailer had delta CdA = 1, for example, rather than the proposed standard trailer of delta CdA= 0.5, then the high-roof tractor compliance package for 2021 should achieve CdA = 5.24, rather than the CdA = 5.74 of the proposal. This adjustment offsets the aerodynamic benefit from the trailer alone, but recognizes any savings achieved through co-optimization of the tractor and trailer.

In addition to incentivizing co-optimization, this change to the standard trailer would make it feasible to achieve drag levels better than those in the compliance package. Volvo asserts (comments p.27; table replicated below) that its SuperTruck tractor would reach only bin IV (CdA = 5.43) with the proposed Phase 2 standard trailer, falling slightly short of the 2027 target (CdA = 5.32). However, the table shows that Volvo's SuperTruck tractor paired with its Super Trailer would achieve CdA = 4.31. A Volvo SuperTruck presentation (http://energy.gov/sites/prod/files/2014/07/f17/vss081_amar_2014_o.pdf, slide 10) suggests that this result is achieved through trailer add-on devices followed by co-optimization. The graphic (replicated below) suggests that co-optimization alone reduces CdA by about 0.27, which is more than sufficient to meet the 2027 target, even after the target has been adjusted to reflect the trailer add-on devices.

Table 3 of § 1037.520—Bin determinations for Phase 2 High-Roof Tractors Based on Aerodynamic Test Results (CdA in m²)

Tractor Type	Bin I	Bin II	Bin III	Bin IV	Bin V	Bin VI	Bin VII
Day Cabs	7.3	6.8-7.4	6.2-6.7	5.6-6.1	5.1-5.5	4.7-5.0	4.6
Sleeper Cabs	7.3	6.6-7.2	6.0-6.5	5.4-5.9	4.9-5.3	4.5-4.8	4.4

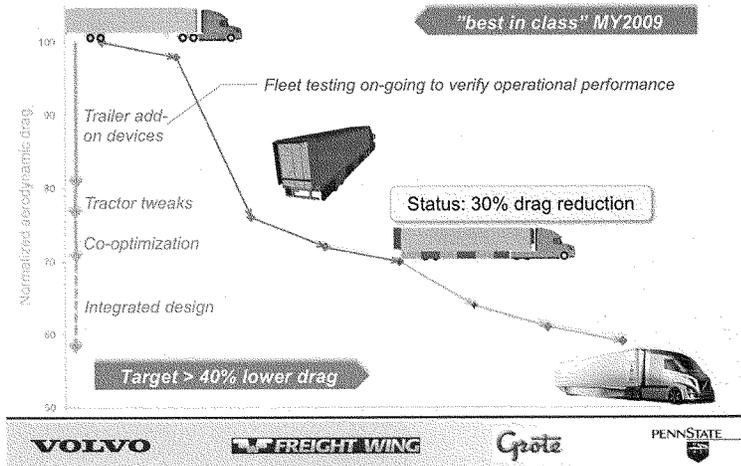
RIA example (Table 3-19) (CdA = 6.3)

SuperTruck with Phase 2 Trailer (CdA = 5.43)

SuperTruck with Super Trailer (CdA = 4.31)

Source: Volvo comments on Phase 2 proposal, p.27

10 Complete Vehicle Aerodynamic Optimization



Source: Volvo http://energy.gov/sites/prod/files/2014/07/f17/vss081_amar_2014_o.pdf

Beyond bringing the standard trailer up to date, the agencies should consider allowing manufacturers to test tractors with still more advanced trailers; this would promote integration of tractor and trailer. In this case, the modeled fuel efficiency of the tractor would need to be adjusted upward to reflect the delta CdA of the aerodynamic trailer (relative to the standard trailer).

Hence, we recommend that the agencies redefine the standard trailer as one having delta CdA matching the average for the appropriate model year. The tractor standard stringency should then be adjusted accordingly. In addition, the agencies should consider allowing testing with more advanced/integrated trailers.

Certainty of savings from matching tractor and trailer

The fuel savings benefits of co-optimization and integration of tractor and trailer will not be realized if the equipment is not appropriately paired in real-world operation. Because tractors may tow a variety of trailers, ensuring such pairings would be difficult. This raises a question of whether it is prudent to provide credit for the benefits of tractor-trailer co-optimization and integration as recommended above.

Manufacturers and purchasers of co-optimized or integrated tractors and trailers presumably would seek to ensure that the correct pairings were made as a matter of course. The agencies note (p.40245) that "tractor-trailer pairings are almost always optimized." While this observation was made in the context of roof height and trailer type, the same considerations should apply here. In the case of integration, manufacturers and researchers are clearly working towards designs that would necessitate, or strongly favor, appropriate pairings. Furthermore, it is important to weigh the potential for unearned credits for tractor-trailer pairing against the value of the incentive to accelerate the aerodynamic integration of tractors and trailers.

In any case, the likelihood of reasonable agreement between compliance credit for tractor-trailer pairings and the real-world benefits could be increased for example by:

- Giving manufacturers credit only for vehicles sold to fleets with well-documented estimates of the percentage of miles traveled with matched set. (Credit computed case by case)
- Giving a fixed, partial credit to provide an incentive for co-optimization while recognizing the possibility of mismatches. (Partial credit across the board, e.g. 50%)
- Certifying tractors to be used only with certain trailers; this requirement would be shown on the tractor label. (100% credit)
- Awarding full credit to tractors having hardware to ensure pairing with appropriate trailers. (100% credit)

The agencies could adopt a combination of these approaches. Most fleets at present may be unwilling to accept the loss of flexibility required by the 3rd and 4th approaches, especially given the constraint this may impose on resale of the tractor. However, acceptance should increase over time, as integrated designs demonstrate major fuel savings, and trailer fleets are managed and optimized in real time.



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March 31, 2016

RE: Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles; Phase 2; Notice on Data Availability

The International Council on Clean Transportation (ICCT) welcomes the opportunity to provide comments on the U.S. Environmental Protection Agency and the National Highway Traffic Safety Administration's *Phase 2 Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles*. The ICCT is an independent nonprofit organization founded to provide unbiased research and technical analysis to governments in major vehicle markets around the world. Our mission is to improve the environmental performance and energy efficiency of road, marine, and air transportation, as well as their fuels, in order to benefit public health and mitigate climate change.

We welcome this chance to comment on the Notice on Data Availability (NODA) associated with the Phase 2 rulemaking. We commend the agencies for their continuing efforts to promote a more efficient and lower carbon economy. In this NODA context, we especially appreciate the agencies' world-class data collection, analysis, and transparent dissemination of their work to underpin their regulatory development.

We would be glad to clarify or elaborate on any points made in the attached comments. If there are any questions, EPA and NHTSA staff can feel free to contact our U.S. program co-Lead, Dr. Nicholas Lutsey (nic@theicct.org).

Best regards,



Drew Kodjak
Executive Director
International Council on Clean Transportation

ICCT Comments on U.S. Heavy Duty Vehicle Phase 2 regulation Notice on Data Availability

The International Council on Clean Transportation (ICCT) provides these comments to build upon its earlier public testimony and written public comments in 2015 on the proposed Phase 2 Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles (referred to as Phase 2 standards in the following).

The comments pertain to Notice on Data Availability (NODA) that was issued as part of U.S. Environmental Protection Agency Docket ID: EPA-HQ-OAR-2014-0827 and National Highway Traffic Safety Administration NHTSA Docket ID: NHTSA-2014-0132.

Data sharing. We commend the agencies for continuing to conduct rigorous analysis and share detailed data that underpins their regulatory development work. The level of testing, analysis, and data sharing by regulatory agencies within the regulatory process, as exemplified in the NODA, is commendable. For example, the data on the engine maps, model development, powertrain procedures, aerodynamics testing is all very helpful in describing important underlying factors related to the agencies' movement from the proposal and final rule.

Confirmatory testing. The U.S. EPA memo on Selective Enforcement Audit and Confirmatory Testing provides a welcome addition to the regulatory development of protocols to monitor compliance with the regulation. Previously, there were limited such details on questions about aerodynamic testing protocols, allowable measurements, thresholds, and margins, so the memo provides helpful guidance and also helps narrow the testing and compliance margins. This opens up a broader set of questions regarding how the agencies will confirm the regulatory compliance data, such as the GEM inputs for various technology-specific drop-down menus, tire low rolling resistance, etc. We would ask that the agencies consider sharing similar details in the Final Rule and/or in guidance memos on how all regulatory input data will be confirmed as valid for vehicles in real-world settings. Confirmatory testing of aerodynamics and GEM inputs, and production vehicle chassis testing, is key to ensuring CO₂ and fuel use reductions over the certification tests correlate with reductions in the real world (Sharpe et al, 2014; ICCT, 2015). In order for the real-world testing program to be successful, it will be critical that the emission results from the testing program are shared publicly and that the testing program starts as soon as possible (i.e., in 2016 ideally) to discern ongoing and future trends from the earliest possible time.

Protection against defeat devices. Commenters in the rulemaking and NODA docket have raised a concern about the issue of modifying vehicles emission control equipment. It is important that EPA affirms its long-standing authority and continues to refine the specific regulatory language to prevent the proliferation of defeat devices for vehicles that are driven on public roads. Enforcement cases such as the one with Casper's Electronics' 44,000 defeat devices (see US EPA, 2015) highlight the importance of monitoring and enforcing which companies are developing the devices, and especially ensuring the devices are not being used on public roads. As such, we believe it is important that EPA continue to recognize that there is a legitimate concern about illegal aftermarket devices being used on public roads, and the EPA act to prevent their use (e.g., see US EPA, 2015). Such actions include ensuring that defeat devices are not sold under the guise of competitive race cars while being used on public roads.

Compliance data sharing. We would also like to take this opportunity to express how the data sharing about *compliance* of regulated vehicles does not appear to be nearly as detailed or as regular as that of the *regulatory development* data availability as indicated in this NODA. As stated in our previous comments, we recommend that the agencies make all GEM inputs and outputs fully available to the public. Just as actual emission certification results are made public, these GEM data are the certification compliance data and therefore should be made publicly available. Making the full certification database publicly available is critical to let truck fleets who purchase the technologies, fleet consultants who advise on the technology purchases, researchers, and citizen groups transparently see what otherwise only is available to a select few government officials. In addition, we ask that the

agencies include data on the sales (or production volume) by model year of each certified engine and vehicle, as regulatory compliance is based on a sales-weighted average of the results, and sales is a critical compliance determinant and a missing link to see industry and within-segment average CO₂ and efficiency performance.

We especially point out this compliance data question because the EPA began a process to be more forthcoming about the compliance data (US EPA, 2014). The ICCT and other stakeholders provided detailed comments (e.g., see ICCT, 2014). This process has apparently been halted. To date, compliance data for model year 2014 (i.e., "Phase 1") heavy-duty vehicles' GEM inputs, CO₂ outputs, and critically the production volume of all the vehicles and engines, has not been made available, when it would be key in allowing stakeholders to understand the ongoing Phase 2 analysis. Similarly, in other compliance areas, full data availability has been lacking. For example, light-duty vehicle CO₂ emissions are based on vehicle model-specific CO₂ emissions, footprint, off-cycle credits, and production volume of vehicles; however, EPA only shares parts of this data without allowing stakeholders to see or understand all the compliance calculations. In addition, to our knowledge EPA has not shared the data to demonstrate heavy-duty diesel in-use compliance (e.g., Portable Emissions Measurement System data) for model year 2010- through 2014-compliant vehicles.

We understand that this NODA is about Phase 2 regulatory development data. Nonetheless, we think data availability on compliance is at least as important as regulatory development data to ensure there is follow-through on the commitments and expectations put forth within each rulemaking. As a result, a full reporting of all model year 2014 vehicle and engine simulation input, testing, and output data needed to determine companies' compliance standing, within the 2016 heavy-duty vehicle Phase 2 final rulemaking release, would clearly seem warranted. Clear statements in the 2016 Final Rule about the timeline and details for future year (i.e., model year 2015-2027) public compliance data availability would also seem appropriate.

For more particular comments on the powertrain testing, simulation modeling, technology availability, and other factors related to the rulemaking, we would point the agencies to the ICCT's already submitted comments (ICCT, 2015).

References

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- U.S. Environmental Protection Agency (US EPA). (2015). Casper's Electronics Inc. Clean Air Act. <https://www.epa.gov/enforcement/caspers-electronics-inc-clean-air-act>

**WRITTEN COMMENTS OF THE
MANUFACTURERS OF EMISSION CONTROLS ASSOCIATION
ON THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S NOTICE OF DATA
AVAILABILITY CONCERNING GREENHOUSE GAS EMISSIONS AND FUEL
EFFICIENCY STANDARDS FOR MEDIUM AND HEAVY-DUTY ENGINES AND
VEHICLES – PHASE 2
DOCKET ID NO. EPA-HQ-OAR-2014-0827-1469-A1**

March 30, 2016

The Manufacturers of Emission Controls Association (MECA) is pleased to provide comments in response to the U.S. EPA's request for public comments on their Notice of Data Availability covering the prohibition against tampering or disabling of emission controls on motor vehicles used for competition (Docket ID No. EPA-HQ-OAR-2014-0827-1469-A1). MECA supports the agencies position that the Clean Air Act expressly prohibits the tampering with the emission controls on certified motor vehicles that may be used for racing but may also find their way to occasional use on public roads.

MECA is a non-profit association of the world's leading manufacturers of emission control technology for motor vehicles. Our members have over 40 years of experience and a proven track record in developing and manufacturing emission control technology for the entire spectrum of internal combustion engines and mobile sources for gasoline, diesel, and alternative-fueled engines. A number of our members have extensive experience in the development, manufacture, and application of aftermarket emission control technologies for existing gasoline and heavy-duty engines to insure that emission controls originally certified on motor vehicles continue to operate beyond the vehicles emission warranty period.

To protect public health, as intended by the Clean Air Act, it is imperative that the emission control systems that were originally certified on motor vehicles remain on these vehicles over their full operating life even once the OEM emissions warranty expires. Some MECA members develop and manufacture aftermarket converters that are legal to replace a damaged OEM converter on a vehicle outside of the OEM emissions warranty. Over the past 40 years, catalytic converter technology has advanced significantly to where the exhaust exiting the tailpipe is 99% cleaner than that coming out of the engine.

Many states have implemented inspection and maintenance (I/M) programs to periodically inspect the emissions from passenger cars to insure that the emission controls continue to operate properly. There are many areas of the country that do not require I/M inspection and once a vehicle is sold, it may never be checked. The air quality is not confined to any particular area and pollution travels downwind to other parts of the country that may not benefit from up-wind clean air. Without I/M programs, emission controls may be tampered on a motor vehicle under the guise that the vehicle is used for racing. Such activity may be limited to weekends and the vehicle continues to operate on public roads during the week. Furthermore, there are manufacturers that offer exhaust modification kits for competition vehicles. Without an active I/M program there is no way to insure that these devices are not being misapplied to vehicles that may occasionally operate on public roads. Many of these purchases occur over the

internet so there is no way to insure that the vehicle that is being tampered is used solely for the purpose of racing competition and never driven on public roads. The California Air Resources Board requires aftermarket parts manufacturers to inform the installer of the legal and proper installation of their parts and to retain records of the owner and vehicle where the parts have been installed.

MECA members are avid car enthusiasts and many enjoy racing, however, our members believe that emission standards need to be enforced and emission controls should not be defeated. We support the EPA's long standing policy against tampering or disabling emission control systems on roadworthy passenger cars from their originally certified configuration. We also believe that the sale of devices that defeat emission control systems should be banned on competition racing vehicles that may be periodically operated on public roads. Thank you for consideration of our comments.

Contact Person:

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Executive Director
Manufacturers of Emission Controls Association
2200 Wilson Blvd. Suite 310
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Tel.: (202) 296-4797 ext. 106
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Northeast States for Coordinated Air Use Management

89 South Street, Suite 602 Boston, MA 02111
 Phone 617-259-2000 Fax 617-742-9162
 Arthur N. Atam, Executive Director

March 31, 2016

Administrator Gina McCarthy
 U.S. Environmental Protection Agency
 Air and Radiation Docket and Information Center
 Docket ID No. EPA-HQ-OAR-2014-0827
 Mail Code: 28221T
 1200 Pennsylvania Avenue, NW
 Washington, DC 20460

Administrator Mark R. Rosekind
 U.S. Department of Transportation
 National Highway Traffic Safety Administration
 Docket ID No. NHTSA-2014-0132
 Docket Management Facility, M-30
 1200 New Jersey Avenue, SE
 Washington, DC 20590

Re: *Docket ID Nos. EPA-HQ-OAR-2014-0827 and NHTSA-2014-0132*

Dear Administrators McCarthy and Rosekind:

The Northeast States for Coordinated Air Use Management (NESCAUM)¹ submits these comments in response to the joint *Notice of Data Availability (NODA)* issued by the U. S. Environmental Protection Agency (EPA) and the U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) on March 2, 2016 associated with the proposed rule – *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2* (81 Fed. Reg. 10822). NESCAUM's comments are limited to issues raised in a December 28, 2015 comment on the Phase 2 rule from the Specialty Equipment Market Association (SEMA) related to the use of certified light-duty motor vehicles for competition racing.

At issue is proposed new text in 40 C.F.R. §§ 86.1854-12² intended by EPA to clarify the existing statutory and regulatory distinction between *nonroad vehicles* and *certified motor vehicles* as it relates to disabling or tampering with air pollution control devices:

Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely

¹ NESCAUM is an association of the state air quality agencies in the six New England States, New Jersey, and New York. This letter reflects the majority views of NESCAUM as a state membership organization. Individual NESCAUM member states may hold views different from the NESCAUM states' majority consensus.

² EPA has proposed a corresponding amendment applicable to certified heavy-duty engines and vehicles in 40 CFR § 1037.601(a)(3), 80 Fed. Reg. 40650.

for competition or if they become nonroad vehicles or engines; anyone modifying a certified vehicle or motor vehicle engine for any reason is subject to the tampering and defeat device prohibitions[.] 80 Fed. Reg. 40565 (July 13, 2015).

In its comments, SEMA asserts that the proposed regulatory text represents a significant EPA policy change and, insofar as it would ban the conversion of motor vehicles originally designed and certified for onroad use into race cars, is contrary to congressional intent.

NESCAUM supports the proposed amendments, which are consistent with the Clean Air Act and do not change any existing EPA requirements or enforcement policy.

SEMA suggests that the proposed regulatory amendments will expose owners of modified motor vehicles converted solely for nonroad competition to enforcement actions and civil penalties. This suggestion is at odds with EPA's track record. EPA can and has consistently exercised its enforcement discretion by targeting *manufacturers* of defeat devices that sell their illegal products to vehicle owners who continue to drive their cars on public roads.³ The agency has not indicated any intention of expanding its enforcement effort to competition car owners or hobbyists.

In areas of the Northeast, as well as elsewhere in the nation, air quality does not meet national health-based air quality standards. Sales of aftermarket parts that defeat emission controls to owners of certified motor vehicles still operating on public roads further degrade air quality. Under present circumstances, EPA's enforcement approach to tampering with pollution control devices is a practical and straightforward application of the rule of law.

Thank you for the opportunity to provide comments on the Notice of Data Availability.

Sincerely,



Arthur N. Marin
Executive Director

³ See, e.g., *United States of America v. Edge Products, LLC*, <https://www.epa.gov/sites/production/files/documents/edgeproducts-cd.pdf>; *United States of America v. Casper Electronics, Inc.*, <https://www.epa.gov/sites/production/files/2013-09/documents/casper-cd.pdf>.

**Center for Biological Diversity * Earthjustice * Environment America
League of Conservation Voters * League of Women Voters of the United States
Natural Resources Defense Council * Sierra Club**

September 12, 2017

Dear Representative,

On behalf of our millions of members, the undersigned organizations urge you to oppose the Blocking Regulatory Interference from Closing Kilns Act of 2017, or BRICK Act (H.R. 1917). This bill is merely another bill in the trend of congressional efforts to delay needed health protections for as long as polluters can keep a legal case alive.

The Clean Air Act requires that the Environmental Protection Agency (EPA) set standards to limit toxic air pollution from brick manufacturing facilities. These facilities emit mercury, a dangerous neurotoxin that harms children's developing brains, and other dangerous toxins including arsenic and chromium, that are known to cause cancer.

Congress required the EPA to set these standards over 15 years ago. EPA finalized these standards in 2015, but the brick industry is still fighting to emit more toxic pollution. The BRICK Act aims to help the polluters avoid regulation, since it seeks to *further* delay implementation of toxic air pollution standards for brick facilities until every polluter's lawsuit has been fully litigated and appealed, including to the Supreme Court. This would have the effect of stalling these much needed and overdue health protections for as long as industry lawyers can keep a case alive.

The Clean Air Act already contains a mechanism to delay implementation of a rulemaking during a lawsuit if the litigants can prove valid reasons; judges have long handled this situation and are familiar with what factors to consider.

Not only would the BRICK Act delay needed health protections, exposing Americans to more deadly toxic air pollution, but the BRICK Act would also insert the legislative branch into ongoing litigation and interfere with the authority of our judicial branch of government.

Americans have been exposed to toxic pollution from this industry far longer than the law allows. We urge you to stand against further delay and oppose the BRICK Act.

Sincerely,

Center for Biological Diversity
Earthjustice
Environment America
League of Conservation Voters
League of Women Voters of the United States
Natural Resources Defense Council
Sierra Club

**Center for Biological Diversity * Earthjustice * Environment America
Environmental Defense Fund * Gasp, Inc. * GreenLatinos
Hip Hop Caucus * League of Conservation Voters
League of Women Voters of the United States
National Parks Conservation Association
Natural Resources Defense Council * Sierra Club**

September 12, 2017

Dear Representative,

On behalf of our millions of members, the undersigned organizations urge you to oppose the Satisfying Energy Needs and Saving the Environment Act, or SENSE Act (H.R. 1119). This bill would weaken health safeguards for Americans on behalf of special interests and result in more localized air pollution and health hazards.

The SENSE Act would pick winners and losers under EPA's signature air pollution program, the Cross State Air Pollution Rule (CSAPR), by favoring waste coal-burning power plants at the expense of other in-state coal power plants and the public. This would turn the neutral, performance-based legal standard maintained for 39 years under the Clean Air Act into blunt political favoritism and weaker standards, while replacing existing state decisions with new federal mandates.

CSAPR gives upwind states like Pennsylvania or West Virginia the legal right to craft their own state rules to achieve emission reductions, and these states have already chosen to follow neutral, emissions-based formulae that are founded on highly cost-effective technologies. The SENSE Act would not only overturn these state-chosen plans and replace them with federal dictates for enforcing state-level emissions allowances, but would also place the U.S. EPA Administrator in charge of decisions that the Clean Air Act today reserves to states – including forcing reduction allowances on other in-state coal plants.

Worse, this bill's attempt to maintain overall reductions while granting new exemptions is fatally flawed. The legislation grants an immediate legal right to waste coal plants to pollute above what today's law allows, but there is no guarantee or evidence that offsetting emission reductions will occur. The result will be dirtier air for communities. Indeed, the bill penalizes cleaner generation decisions by stripping valuable allowances from cleaner plants, creating an immediate disincentive to repowering coal units to natural gas or retiring older, inefficient units.

The SENSE Act also would create a weaker sulfur dioxide standard for waste coal plants, jettisoning more protective standards for toxic hydrogen chloride and sulfur dioxide. The bill thus overturns a federal appellate court decision that upheld the more protective standards against challenges by the waste coal lobby. The court had noted that many waste coal plants already met the standards and were “among the best performers” across all coal-burning plants.¹ The SENSE Act drags health standards down to the level of the laggards—resulting in greater harms for Americans living in states with waste coal plants as well as in downwind states.

This bill is bad policy and unjustified. It favors polluting industries at the expense of Americans and air quality, and will lead to greater pollution and health harms to Americans. We urge you to oppose the SENSE Act.

Sincerely,

Center for Biological Diversity
Earthjustice
Environment America
Environmental Defense Fund
Gasp, Inc.
GreenLatinos
Hip Hop Caucus
League of Conservation Voters
League of Women Voters of the United States
National Parks Conservation Association
Natural Resources Defense Council
Sierra Club

¹ See *White Stallion Energy v. EPA*, 748 F.3d 1222, 1250 (D.C. Cir. April 15, 2014).

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3541

September 29, 2017

Mr. Steve Page
President and General Manager
Sonoma Raceway
29355 Arnold Drive
Sonoma, CA 95476

Dear Mr. Page:

Thank you for appearing before the Subcommittee on Environment on Wednesday, September 13, 2017, to testify at the hearing entitled "Big Relief for Small Business: Legislation Reducing Regulatory Burdens on Small Manufacturers and Other Job Creators."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, October 13, 2017. Your responses should be mailed to Allie Bury, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Allie.Bury@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Spinkus
Chairman
Subcommittee on Environment

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment

Attachment



October 13, 2017

The Honorable John Shimkus
 Chairman
 Subcommittee on Environment
 Committee on Energy & Commerce
 U.S. House of Representatives
 2125 Rayburn House Office Building
 Washington, DC 20515

Dear Chairman Shimkus:

Thank you for your September 29 letter in follow-up to the Subcommittee on Environment's hearing on H.R. 350, the "Recognizing the Protection of Motorsports Act of 2017" (RPM Act). Below are my responses to the questions from Energy & Commerce Committee Ranking Member Frank Pallone and you.

The Honorable John Shimkus

1. **Would the RPM Act undermine EPA enforcement against illegal modifications of vehicles used on public roads?**

The RPM Act does nothing to diminish the EPA's ability to enforce against businesses and individuals that manufacture, sell or install defeat devices that render inoperative pollution control equipment on motor vehicles used on a street or highway. The bill simply confirms that it is legal to convert a motor vehicle into a dedicated race vehicle used exclusively for motorsports competition. The RPM Act also provides long-term certainty to the businesses that produce and sell the parts that enable racers to compete on dedicated tracks.

The Honorable Frank Pallone, Jr.

1. **Approximately how many certified cars are modified for racing purposes or converted into racing vehicles? If possible please give a breakdown of vehicle type: motorcycles, sedans, trucks.**

It is not possible to estimate the number of certified cars converted for racing or provide a breakdown of race vehicles by type. Motor vehicles are registered state-by-state rather than at the federal level. As vehicles are unregistered, vehicle owners are not required to disclose the vehicle's subsequent fate to state authorities (ex: scrapped, converted into a racing vehicle, etc.).

2. How many vehicles race in California?

- a. What percentage of them are cars that were designed and sold as racing vehicles, and what percent are cars that were modified for racing purposes or converted into racing vehicles? If possible, please give a breakdown of vehicle type: motorcycles, sedans, trucks.**

It is not possible to estimate how many race vehicles there are in the State of California for the reason provided in question 1. I can tell you that California is home to 60 racetracks, which represents 5% of the 1,300 racetracks across the U.S.

- b. Approximately what percentage of races at your track involved vehicles modified for racing purposes or converted into racing vehicles?**

There are 635 automotive programs of some kind scheduled at Sonoma Raceway on 317 days during calendar year 2017. Some of those are "races" that feature race cars competing on the track, but the majority of those programs fall into other categories such as race car testing and practice and driver training and development. While these may not meet a technical definition as "racing," I believe they are relevant to the committee's inquiry.

Below is a breakdown of the 635 automotive programs during 2017 by type:

- Activities involving street cars and motorcycles modified for use as race vehicles: 156 (25%).
- Activities involving unmodified street cars and motorcycles: 243 (38%).
- Activities involving purpose-built racecars and race motorcycles: 236 (37%).

Sonoma Raceway's calendar features more national-level professional racing series than any other facility in the state and perhaps the country. It is likely, therefore, that purpose-built racecars and race motorcycles are over-represented at Sonoma Raceway compared to other race venues throughout the country.

- 3. According to SEMA, the specialty equipment industry made over \$40 billion in sales in 2016. Approximately what percentage of industry sales are for equipment that will bypass, defeat or render inoperative a motor vehicle's EPA-certified emissions control system?**

SEMA estimates retail sales associated with racing to be \$1.57 billion annually, including \$278 million for Accessory and Appearance Products, \$754 million for Performance Products, and \$538 million for Wheels/Tires/Suspension. It is impossible to provide an answer with any kind of certainty on what percentage of performance product sales are for race products used for purpose-built and converted race vehicles versus vehicles used on a street or highway.

If you would like further clarification regarding any of the answers provided, please don't hesitate to contact me.

Sincerely,


Steve Page
President & General Manager