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1 {York Stenographic Services, Inc.}
2 RPTS MEYERS
3 HIF251.030

4 LEGISLATIVE HEARING ON H.R. 2250, THE ``EPA REGULATORY RELIEF
5 ACT OF 2011''; AND
6 H.R. 2681, THE ``CEMENT SECTOR REGULATORY RELIEF ACT OF
7 2011''
8 THURSDAY, SEPTEMBER 8, 2011
9 House of Representatives,
10 Subcommittee on Energy and Power
11 Committee on Energy and Commerce
12 Washington, D.C.

13 The subcommittee met, pursuant to call, at 10:35 a.m.,
14 in Room 2322 of the Rayburn House Office Building, Hon. Ed
15 Whitfield (Chairman of the Subcommittee) presiding.

16 Members present: Representatives Whitfield, Sullivan,
17 Shimkus, Walden, Terry, Burgess, Bilbray, Scalise, McMorris
18 Rodgers, Olson, McKinley, Gardner, Pompeo, Griffith, Barton,

19 Rush, Inslee, Castor, Dingell, Markey, Green, Doyle and
20 Waxman (ex officio).

21 Staff present: Charlotte Baker, Press Secretary; Maryam
22 Brown, Chief Counsel, Energy and Power; Allison Busbee,
23 Legislative Clerk; Cory Hicks, Policy Coordinator, Heidi
24 King, Chief Economist; Ben Lieberman, Counsel, Energy and
25 Power; Mary Neumayr, Counsel, Oversight/Energy; Chris Sarley,
26 Policy Coordination, Environment and Economy; Peter Spencer,
27 Professional Staff Member, Oversight; Alison Cassady,
28 Democratic Senior Professional Staff Member; Greg Dotson,
29 Democratic Energy and Environment Staff Director; Caitlin
30 Haberman, Democratic Policy Analyst; and Alexandra Teitz,
31 Democrat Senior Counsel, Energy and Environment.

|
32 Mr. {Whitfield.} I would like to call this hearing to
33 order this morning. This is a hearing on two pieces of
34 legislation: H.R. 2681, the Cement Sector Regulatory Relief
35 Act of 2011, and H.R. 2250, the EPA Regulatory Relief Act of
36 2011.

37 [The information follows:]

38 ***** INSERTS 9, 10 *****

|

39 Mr. {Whitfield.} I would like to commend my colleagues,
40 Mr. Sullivan, who is also the vice chair of this
41 subcommittee, and he is sponsoring the cement bill, and then
42 Mr. Morgan Griffith of Virginia is sponsoring the boiler
43 bill, and I want to thank them for their work on these two
44 pieces of legislation, and of course, we are pleased that
45 Representatives Ross and Butterfield from the full committee
46 are joining as cosponsors on this legislation, and we look
47 forward to working with them as we move forward.

48 Now, some people have characterized these pieces of
49 legislation as regulatory rollbacks, and I would say quite
50 the contrary. Both the cement and the boiler bills allow,
51 and in fact require, that new emissions controls be
52 implemented, but they replace unrealistic targets and
53 timetables with achievable ones, and we all know that the EPA
54 was acting under duress, a court order, and had to finalize
55 these rules much sooner than they had intended to do, and we
56 do not believe they had adequate time to consider all aspects
57 of the impact of these regulations.

58 I would also like to say that tonight President Obama is
59 going to be talking to us, and we know that high on his
60 agenda, he is looking at ways to create jobs in America, and
61 we just came back from our August work period, and it was

62 very clear out in the country that one of the reasons jobs
63 are not being created in America today is because of
64 uncertainty, and uncertainty is coming from three sources:
65 number one, the health care bill, of which 8,700 pages of
66 regulations have already been written but it doesn't go into
67 effect until 2014, so no one really knows what impact that is
68 going to have on companies; number two, the regulations
69 relating to the financial industry, the increase of capital
70 requirements has made it more difficult to obtain loans; and
71 then number three, this EPA has been so aggressive. I could
72 read the litany of regulations but there is great uncertainty
73 out there about these regulations. We know they are costly.
74 We know they are costing jobs, and all of this is creating
75 obstacles for our opportunities to produce jobs for America,
76 and so that is what this is all about, and so I look forward
77 to our testimony of our witnesses.

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

79 ***** COMMITTEE INSERT *****

|
80 Mr. {Whitfield.} At this time I would like to yield my
81 time to Mr. Barton.

82 Mr. {Barton.} How much time do I have, Mr. Chairman?
83 Is that 2 minutes? Am I supposed to yield to Mr. Sullivan?
84 Okay.

85 Well, thank you for holding the hearing today on these
86 two issues. I support both bills. I am glad we have our
87 Deputy Administrator from the EPA here. She is a very
88 knowledgeable person and has interacted in a positive manner
89 with the committee and the subcommittee, and we appreciate
90 her being here again today.

91 I do think, though, that these bills are necessary. I
92 do think that the EPA has issued a plethora of regulations,
93 whether intended or not, that have the actual effect of
94 reducing jobs and preventing jobs from being created in the
95 American economy. That is not to say that there might not be
96 some good that would come out of implementation of these
97 regulations, but I think it is yet to be determined that that
98 good would offset the negative immediate cost in terms of
99 economic decline and loss of jobs.

100 So I look forward to hearing from our witnesses and I
101 certainly look forward to hearing Ms. McCarthy's testimony.

102 With that, I yield the balance of my time to Mr.

103 Sullivan.

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

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

|
106 Mr. {Sullivan.} Thank you, Mr. Barton. Thank you, Mr.
107 Chairman.

108 Chairman Whitfield, thank you for holding this important
109 hearing today. Both the EPA Regulatory Relief Act and the
110 Cement Sector Regulatory Relief Act of 2011 seek to do what
111 we need most, and that is to put a stop to the overly
112 burdensome regulations that destroy jobs. Instead of a ``cut
113 your nose off to spite your face approach,'' these bills will
114 allow for rules that are both technically and economically
115 achievable.

116 Specifically, I introduced the Cement MACT legislation
117 to prevent U.S. cement plant shutdowns, which directly result
118 in job loss. The President is talking about jobs tonight,
119 and I want to be clear: this bill is jobs. If the EPA rules
120 go into effect, nearly 20,000 jobs will be lost due to plant
121 closures and inflated construction costs. EPA's current
122 rules threaten to shut down 20 percent of the Nation's cement
123 manufacturing plants in the next 2 years, sending thousands
124 of jobs permanently overseas and driving up cement and
125 construction costs across the country.

126 Cement is the backbone for the construction of our
127 Nation's buildings, roads, bridges, tunnels and critical
128 water and wastewater treatment infrastructure. For both of

129 these bills, our goal is to ensure effective regulation.

130 I have four letters I would like to introduce to this
131 committee, and they are from the International Brotherhood of
132 Boilermakers, Iron Ship Building and Blacksmith Forgers and
133 Helpers, the National Association of Manufacturers, 25
134 Members of the U.S. Senate, and the U.S. Chamber of Commerce,
135 and I would like to submit these four letters in support of
136 the Cement Sector Regulatory Relief Act for the record.

137 [The prepared statement of Mr. Sullivan follows:]

138 ***** COMMITTEE INSERT *****

|
139 Mr. {Whitfield.} Thank you.

140 At this time I recognize the ranking member of the full
141 committee, the gentleman from California, Mr. Waxman, for his
142 opening statement.

143 Mr. {Waxman.} Thank you, Mr. Chairman.

144 Cancer, birth defects, brain damage--we have long known
145 that toxic air pollutants such as mercury, arsenic, dioxin,
146 lead, and PCBs can cause these serious health effects.

147 So when Congress passed the Clean Air Act in 1970, we
148 included section 112 to address the public health threat
149 posed by hazardous air pollutants. EPA was required to
150 regulate substances that even at low levels of exposure cause
151 cancer, reproductive disorders, neurological effects, or
152 other serious illnesses.

153 Unfortunately, over the next 20 years, it became clear
154 that the 1970 law was not working. Out of the scores of
155 known toxic air pollutants, only eight pollutants were listed
156 as hazardous and only seven were regulated. In 1986,
157 industry reported that more than 70 percent of pollution
158 sources were using no pollution controls.

159 In 1990, we fixed section 112 on a bipartisan basis to
160 deliver the public health protection the American people
161 wanted. The new program was designed to make EPA's job

162 simpler. Instead of requiring laborious pollutant-by-
163 pollutant risk assessments, Congress listed 187 toxic air
164 pollutants and directed EPA to set standards for categories
165 of sources. The standards have to require use of the maximum
166 achievable control technology. For existing sources, this
167 means that the emission standard has to be at least as clean
168 as the average emissions levels achieved by the best
169 performing 12 percent of similar sources.

170 This approach has worked well. EPA will testify today
171 that industrial emissions of carcinogens and other highly
172 toxic chemicals have been reduced by 1.7 million tons each
173 year through actions taken by more than 170 industries. EPA
174 has reduced pollution from dozens of industrial sectors, from
175 boat manufacturing to fabric printing, from lead smelters to
176 pesticide manufacturing.

177 But a few large source categories still have not been
178 required to control toxic air pollution due to delays and
179 litigation. These include utilities, industrial boilers and
180 cement plants. EPA's efforts to finally reduce toxic air
181 pollution from these sources are long, long overdue.

182 The bills we consider today would block and indefinitely
183 delay EPA's efforts to make good on a 40-year-old promise to
184 the American people that toxic air pollutants will be
185 controlled. They would also rewrite the MACT standards once

186 again, this time to weaken the protections and set up new
187 hurdles for EPA rules. We are told that these bills simply
188 give EPA the time they requested to get the rules right. That
189 is nonsense.

190 EPA asked the court to allow them until April 2012 to
191 issue the boiler rules. The boiler bill nullifies the
192 existing rules and prohibits EPA from issuing new rules
193 before March 2013 or later, assuming enactment this year.
194 The bill also allows an indefinite delay after that by
195 eliminating the Clean Air Act deadlines for rulemaking and
196 setting no new deadlines. The cement bill contains the same
197 nullification of existing rules, prohibition on rulemaking,
198 and indefinite delay of new rules, even though the rules are
199 already final and in effect, and EPA never asked for
200 additional time for those rules. On top of these delays,
201 the bills would delay air quality improvements for at least 5
202 years after any rules were issued and potentially far longer.
203 In fact there is no limit in the bill for how long sources
204 may have to comply. That means that infants and children in
205 our communities will continue to be exposed to mercury and
206 carcinogens from these facilities until 2018 or later.

207 And we are told that these bills provide direction and
208 support for EPA to add flexibility and make the rules
209 achievable. In fact, the language is ambiguous, and an

210 argument could be made that section 5 of the bills overrides
211 the existing criteria for setting air toxic standards. If
212 so, those changes are dramatic. Instead of setting numeric
213 emissions limits, EPA could be required to set only work
214 practice standards, and EPA might be prohibited from setting
215 a standard if it couldn't be met by every existing source,
216 even if all of the better-performing similar sources were
217 meeting it. At a minimum, these changes guarantee
218 substantial additional uncertainty and litigation, which
219 benefits only the lawyers.

220 Forty years ago, Congress determined that we must
221 control toxic air pollution to protect Americans from cancer,
222 neurological effects and birth defects. Today, EPA is
223 working to finally implement that directive for some of the
224 largest uncontrolled sources of mercury and other toxic air
225 pollution. These bills would stop those efforts, allowing
226 Americans to continue to breathe toxics for years or decades.
227 That would be shameful.

228 I hear my Republican colleagues say jobs, jobs, jobs.
229 Let me repeat: birth defects, cancer, neurological diseases,
230 unborn babies that will be killed from mercury, newly born
231 babies that will be poisoned by these toxic air pollutants.
232 If that is the legacy the Republicans want, it is a legacy I
233 want no part of. Yield back my time.

234 [The prepared statement of Mr. Waxman follows:]

235 ***** COMMITTEE INSERT *****

|
236 Mr. {Whitfield.} At this time I recognize the gentleman
237 from Virginia, Mr. Griffith, for a 5-minute opening
238 statement.

239 Mr. {Griffith.} Thank you, Mr. Chairman. I would like
240 to yield 1 minute of my time to the gentlelady from
241 Washington, Ms. McMorris Rodgers.

242 Ms. {McMorris Rodgers.} Thank you for yielding.

243 Like my colleagues, I have spent the last 5 weeks
244 holding town halls, roundtable discussions, talking with
245 small business owners, farmers, manufacturers, technology
246 companies, and my take away is, people are quite concerned
247 that our country is headed in the wrong direction, and
248 whether I was up in Colville or down in Clarkston, the
249 message is clear: the federal government is making it harder
250 to create jobs in America. The frustration and uncertainty
251 caused by the federal government's regulatory overreach is
252 smothering any possible economic recovery.

253 According to a study conducted by the Council of
254 Industrial Boiler Owners, if left final, every billion
255 dollars, \$1 billion spent on mandatory upgrades to comply
256 with the boiler MACT rules puts 16,000 jobs at risk. The
257 full cost of these rules alone could be \$4.5 billion. That
258 is 224,000 jobs at risk.

259 In eastern Washington, one of the key employers,
260 Ponderay Newsprint, will be forced to spend \$8 million. That
261 is money that they won't spend hiring new workers.

262 I thank the chairman for moving forward to these bills
263 and look forward to the testimony.

264 [The prepared statement of Ms. McMorris Rodgers
265 follows:]

266 ***** COMMITTEE INSERT *****

|
267 Mr. {Griffith.} Claiming back my time, Mr. Chairman, I
268 would also yield 1 minute to the gentleman from Texas, Mr.
269 Olson.

270 Mr. {Olson.} I thank my colleague, and thank you, Mr.
271 Chairman, for holding this hearing to discuss two important
272 pieces of legislation that would help rein in the
273 Environmental Protection Agency that is out of control and
274 out of touch with reality.

275 The EPA continues to move at full speed ahead with their
276 politically motivated agenda to eliminate affordable and
277 reliable fuel for our Nation's energy portfolio. The overly
278 burdensome regulations that we will discuss today truly
279 reveal this Administration's disregard for our jobs crisis.
280 Left unchecked, these EPA regulations will result in more
281 businesses closing their doors and even more American jobs
282 shipped overseas.

283 This is why I am an original cosponsor of one of the
284 bills before us, H.R. 2250, the EPA Regulatory Relief Act of
285 2011. This bill would give EPA the time that they requested
286 to correct the seriously flawed boiler MACT rules and keep
287 American jobs here at home.

288 I thank my colleague for the time and yield back.

289 [The prepared statement of Mr. Olson follows:]

290 ***** COMMITTEE INSERT *****

|

291 Mr. {Griffith.} Claiming back my time, Mr. Chairman, I
292 would like to introduce into the record the following letters
293 in support of H.R. 2250, the EPA Regulatory Relief Act of
294 2011, and I have my copy here but I believe staff has a copy
295 for you, Mr. Chairman, and if I might, Mr. Chairman, go over
296 those letters. We have a list of 31 different letters in the
297 packet. The first one is the National Association of
298 Manufacturers, which has 292 signatories from different
299 industry groups, the American Chemical Council, the American
300 Forest and Paper Association--these are separate letters I am
301 going over now--the American Forest and Paper Association,
302 American Wood Council, Americans for Prosperity, American
303 Home Furnishing Alliance, American Municipal Power Inc., Ohio
304 Municipal Electric Association, Association of American
305 Railroads, Biomass Power Association, Boise Inc. a Business
306 Roundtable statement on the introduction of the bill, Chamber
307 of Commerce, Corn Refiners Association, Council of Industrial
308 Boiler Owners, Domtar, the Florida State Council, the Florida
309 Sugar Industry, Industrial Energy Consumers of America, the
310 International Brotherhood of Electrical Workers,
311 International Paper, Louisiana Pacific Corporation,
312 MeadWestVaco Corporation, National Association of
313 Manufacturers, National Construction Alliance, National

314 Federation of Independent Businesses, National Oilseed
315 Processors Association, National Solid Waste Management
316 Association, Society of Chemical Manufacturers and
317 Affiliates, South Carolina Manufacturers Alliance, Texas
318 Forest Industry Council, the Virginia Manufacturers
319 Association and the Wisconsin Paper Council.

320 Mr. Chairman, may those be introduced into the record?

321 Mr. {Whitfield.} Without objection.

322 [The information follows:]

323 ***** COMMITTEE INSERT *****

|
324 Mr. {Griffith.} Further, Mr. Chairman, I would like to
325 introduce into the record a September 2011 study entitled
326 ``The Economic Impact of Pending Air Regulations on the U.S.
327 Pulp and Paper Industry.'' May that be introduced into the
328 record, Mr. Chairman?

329 Mr. {Whitfield.} Without objection.

330 [The information follows:]

331 ***** COMMITTEE INSERT *****

|
332 Mr. {Griffith.} Mr. Chairman, all of these groups are
333 concerned because of jobs. There is no question about that.
334 And in fact, the study that I just put in shows that a threat
335 that the bills if not enacted, boiler MACT threatens 20,000
336 jobs, 18 percent of the industry and roughly 36 pulp and
337 paper mills. As you know, my district includes pulp and
338 paper mills, chemical processors. We have employees who work
339 at cement factories.

340 These are extremely important bills. The EPA has gotten
341 to a point where they are killing jobs, whether they mean to
342 or not. They may not see that as a concern, but to the
343 American people, it is a great concern.

344 In regard to the health concerns, Mr. Chairman, we are
345 not unsympathetic to health concerns but we would like to see
346 evidence that actually shows that these regulations would in
347 fact, not extrapolated theories or models, but would in fact
348 cause the problems that the previous gentleman referenced,
349 and then there is the concern that I am always raising and in
350 fact had a little amendment in that many of my colleagues on
351 the other side agreed to that would actually ask for a study
352 of what the impacts are of the pollution coming from overseas
353 in the air stream to the United States of America and in part
354 because we have put so many regulations on our businesses,

355 many of those jobs have moved to countries where the
356 regulations are nowhere near what we have.

357 Thank you, Mr. Chairman, and I appreciate the time.

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

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

|
360 Mr. {Whitfield.} Mr. Rush is on his way here. His
361 plane was delayed, and when he arrives, we will give him an
362 opportunity to make an opening statement, but at this time I
363 would like to proceed with the panel.

364 On our first panel, we have the Hon. Gina McCarthy, who
365 is the Assistant Administrator, Office of Air and Radiation,
366 U.S. Environmental Protection Agency. Ms. McCarthy, we
367 welcome you here today. I would like to say that John
368 Shimkus and I do appreciate your taking time to have a
369 conference call with us relating to some specific problems of
370 the Prairie State plant, and we thank you for working with us
371 on that important project.

372 Now, I would also point out something else to you. On
373 Wednesday, August 24, over 2 weeks ago, we talked to EPA
374 about this hearing today, and you all had plenty of advance
375 notice about this hearing. We also accommodated the request
376 that EPA would be the sole witness on the first panel of this
377 hearing. The two pieces of legislation that we are
378 considering today are a mere 15 pages total so there is not
379 that much to prepare for, and our committee has expressed
380 requested and required that witnesses' testimony be submitted
381 2 working days in advance of the hearing to give us an
382 opportunity to review it completely and make these hearings

383 more meaningful, and we received your testimony last night at
384 7:00, and this really is not acceptable. It does not allow
385 us the time to prepare, and I hope that you would talk to
386 your staff or whoever is responsible for this to make sure in
387 the future when we have these hearings that we are able to
388 get the testimony at least 2 days in advance.

389 So at this time, Ms. McCarthy, I would like to recognize
390 you for your opening statement.

|
391 ^STATEMENT OF HON. GINA MCCARTHY, ASSISTANT ADMINISTRATOR,
392 OFFICE OF AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION
393 AGENCY

394 } Ms. {McCarthy.} Thank you, Chairman Whitfield.

395 First of all, you are more than welcome for the work on
396 Prairie State. Thank you, and thank Congressman Shimkus for
397 bringing that to my attention. It worked out very well, I
398 think for the environment and the company, so thank you so
399 much.

400 And let me apologize for the tardiness of my testimony.
401 Regardless of who is responsible, it is my responsibility to
402 see that we meet the needs of the committee, and I will take-
403 -my personal attention will go to that in the future, so I
404 apologize for that.

405 So Chairman Whitfield and members of the subcommittee,
406 first of all, thank you for inviting me here to testify. The
407 Administration has major concerns with these two bills. They
408 are a clear attempt to roll back public health protections of
409 the kind that have been in place as part of the Clean Air Act
410 for decades. For 40 years, the Clean Air Act has made steady
411 progress in reducing air pollution. In the last year alone,
412 programs established since 1990 are estimated to have reduced

413 premature mortality risks equivalent to saving over 160,000
414 lives. They have also enhanced productivity by preventing 13
415 million lost workdays and kept kids healthy and in school,
416 avoiding 3.2 million lost school days.

417 History has shown repeatedly that we can clean up
418 pollution, create jobs and grow our economy. Since 1970, key
419 air pollutants have decreased more than 60 percent while our
420 economy has grown by over 200 percent. Every dollar we spend
421 cleaning up the air has given us over \$30 in benefits.

422 EPA standards to limit air toxic emissions from boilers,
423 incinerators and cement kilns continue that success story.
424 Today's bills, which directly attack the core of the Clean
425 Air Act, raise a number of serious issues. Most importantly
426 they would indefinitely delay the important health benefits
427 from national limits of air toxics, toxic pollution including
428 mercury, which can result in damage to developing nervous
429 systems of unborn babies and young children, impairing
430 children's ability to think and to learn. These bills do not
431 simply give EPA more time to finalize more rules. Rather,
432 they would prohibit EPA from finalizing replacement rules
433 prior to at least as early as March 2013 at best. It would
434 prohibit EPA from requiring compliance until at least 5 years
435 after the rules are finalized and it would fail to set any
436 new deadlines for either EPA action or for compliance.

437 Combined, these provisions make it clear that the authors
438 have no time in mind for when these delayed public health
439 benefits would be delivered to American families.

440 Just to be clear, the timeline in the boiler bill is not
441 what EPA told the court we needed. We asked for an April
442 2012 deadline, not a prohibition on finalizing standards
443 prior to March 2013. We are currently reconsidering the
444 boiler standards for major sources. We have stayed those
445 standards. We have used the administrative process to do
446 that. We intend to finalize the reconsideration process by
447 the end of April 2012.

448 Both the boiler and cement bills would indefinitely
449 delay important public health protections and would create
450 minimum delays lasting at least 3 years for the boiler
451 standards and almost 5 years for the cement standards. As a
452 result, combined, even minimum delays in these bills would
453 cause tens of thousands of additional premature deaths, tens
454 of thousands of additional heart attacks, and hundreds of
455 thousands of additional asthma attacks that would be avoided
456 under the existing boiler and cement standards that we have
457 either promulgated or will promulgate in the very near
458 future.

459 We also have serious concerns with section 5 of each of
460 these bills. The language is unclear but we certainly

461 anticipate that some in industry would argue that this
462 section would substantially weaken the act by overriding the
463 current provisions for setting minimum MACT standards. So
464 the mere assertion that EPA regulations are job killers
465 should not justify sacrificing these significant public
466 health benefits.

467 Some studies have found that the Clean Air Act actually
468 increased the size of the U.S. economy because of lower
469 demand for health care and a healthier, more productive
470 workforce. Another study found a small net gain in jobs due
471 to additional environmental spending in the four industries
472 studied. EPA standards under the Clean Air Act will
473 encourage investments in labor-intensive upgrades that can
474 put current unemployed Americans back to work.

475 These standards at issue today will provide public
476 health benefits without imposing hardship on American economy
477 or jeopardizing American job creation. It is terrifically
478 misleading to say that implementation of the Clean Air Act
479 costs jobs. It does not. Families should never have to
480 choose between a job and healthy air. They are entitled to
481 both. And as the President recently said, the Administration
482 would continue to vigorously oppose efforts to weaken EPA's
483 authority under the Clean Air Act or dismantle the progress
484 we have made.

485 I look forward to taking your questions, and thank you
486 for the opportunity.

487 [The prepared statement of Ms. McCarthy follows:]

488 ***** INSERT 1 *****

|
489 Mr. {Whitfield.} Thank you, Ms. McCarthy.

490 Of these five rules, of course EPA itself went to the
491 courts and asked for additional time in three of them, and
492 all this legislation does, it gives you 15 months to re-
493 propose and finalize these rules, so it is not like we are
494 saying never implement them.

495 But let me ask you a question. In your time at EPA, has
496 there ever been a time when a proposed regulation that the
497 cost exceeded the benefits that you are aware of?

498 Ms. {McCarthy.} In hindsight, I do not know of one, no.
499 And you asked me about the exact cost, the cost as it is born
500 out?

501 Mr. {Whitfield.} Yes, and as far as you know, you are
502 not aware of one?

503 Ms. {McCarthy.} The bills that I am familiar with have
504 proven to be much less expensive than anticipated and the
505 benefits have been significant.

506 Mr. {Whitfield.} Now, you made the comment that these
507 regulations do not cost jobs, and I maybe missed part of it,
508 but even your own estimate on the cement rule says that it
509 will cost up to 1,500 jobs.

510 Ms. {McCarthy.} Well, let me clarify the job numbers
511 because what we see is that because of the sensitivities of

512 the modeling, we both project that there could be some losses
513 and some gains but we look for the central estimate of what
514 we actually anticipate will be the end result.

515 Mr. {Whitfield.} How do you calculate the cost of a job
516 lost?

517 Ms. {McCarthy.} There are actually peer-reviewed models
518 and standards that we use and we go through the interagency
519 process to ensure--

520 Mr. {Whitfield.} Do you know what the--

521 Ms. {McCarthy.} --with the executive--

522 Mr. {Whitfield.} Do you know what the figure is?

523 Ms. {McCarthy.} I do not know, actually.

524 Mr. {Whitfield.} Do you consider the cost of lost
525 health benefits created by job loss?

526 Ms. {McCarthy.} I do not know the answer to that
527 question. What I do know, Mr. Chairman, is we do a complete
528 regulatory impact analysis that looks at direct economic
529 impacts in the immediate future. In the immediate past, this
530 Administration has really stepped up in terms of doing
531 additional job analysis.

532 Mr. {Whitfield.} Would you all sit down with us and go
533 over with us the models that you use and the process that you
534 use in determining cost and benefits?

535 Ms. {McCarthy.} I will. All of the processes that we

536 use are peer-reviewed. They are open to the public. They
537 have been identified by the Administration as those that are
538 most appropriate, and they are available to everyone to take
539 a look at.

540 Mr. {Whitfield.} Now, when you make these comments that
541 we are going to prevent 18,110 cases of asthma in the future,
542 that really sounds pretty subjective to me, and to most
543 people. So I think there are some legitimate concerns here
544 about cost-benefit analysis and particularly when you have
545 said yourself since you have been at EPA, the costs have
546 never exceeded the benefits.

547 On the boiler MACT, for example, the industry itself
548 says that it is going to be \$14.4 billion in new costs, there
549 are at risk 224,000 jobs. On the cement, they say capital
550 costs \$3.4 billion plus 4 billion additional capital costs
551 for the incinerator rule, threaten shutdown of 18 plants by
552 2013 and four additional plants by 2015. The two rules
553 combined directly threaten up to 4,000 jobs by 2015 and
554 indirectly 12,000 jobs. And all the literature that I have
555 ever read talks about when people lose jobs, it has an impact
556 on the health care of them and their families, and as far as
557 I know, EPA has never considered the cost of additional
558 health care required because someone loses a job, and I don't
559 understand how that is possible, why that is not a legitimate

560 cost.

561 Now, I know that in California and Oregon under this new
562 cement rule, EPA has recognized that two of these plants
563 cannot meet the new cement MACT standards even with the most
564 state-of-the-art pollution controls, and because of the type
565 of limestone in those areas, and I know that EPA has been
566 asked to create a subcategory for these two plants so that
567 the rules are at least technically achievable, and EPA has
568 refused. Now, why would EPA refuse to create a subcategory
569 for these two plants that cannot in any way meet the
570 standards?

571 Ms. {McCarthy.} Mr. Whitfield, I am happy to spend as
572 much time as you would like to go through the modeling that
573 we do and the analysis we do for costs as well as benefits,
574 but I think it is appropriate to talk about both costs and
575 benefits and to look at whether or not the benefits far
576 exceed the costs, which in these rules they do.

577 Secondly, in terms of the Portland Cement, there were a
578 couple of facilities that we actually worked with and we
579 continue to work with closely. We have identified that there
580 are significant opportunities for early reductions of mercury
581 for those technologies with currently available technologies,
582 and they are now working with us in terms of what other
583 technology advances may be available to them so that we can

584 ensure that they will be in compliance and we can make sure
585 that that rule for them becomes achievable. So we are
586 working with those two companies. There are many reasons why
587 we look at subcategorization but the Clean Air Act does limit
588 our ability to look at subcategorization and it does in order
589 to make sure that we are advancing the right technologies
590 moving forward where we are dealing with the most toxic
591 pollution that we have and the impacts associated.

592 Mr. {Whitfield.} I would just make one comment. My
593 time is expired. But you have talked about mercury, Mr.
594 Waxman has talked about mercury, and it is my understanding
595 the benefits of the reduction in mercury was not even
596 included in the benefits. The benefits come from the
597 reduction of particulate matter.

598 Ms. {McCarthy.} The benefits would--the benefits to
599 mercury were not calculated. The benefits to particulate
600 matter so outweighed the costs that it wasn't worth the
601 effort, frankly.

602 Mr. {Whitfield.} Okay. Mr. Rush, sorry your plane was
603 late. We are delighted you are here. Would you like to give
604 your opening statement now?

605 Mr. {Rush.} Yes, Mr. Chairman, since the line of
606 questioning that you were traveling I kind of don't
607 necessarily agree with, so I think I will give my opening

608 statement. I want to thank you for your indulgence, and I
609 want to thank you for allowing me to have the opening
610 statement and my questions.

611 Mr. {Whitfield.} The gentleman is recognized for 5
612 minutes.

613 Mr. {Rush.} Mr. Chairman, today we are holding a
614 hearing on two bills, H.R. 2250, the so-called EPA Regulatory
615 Relief Act of 2011, and H.R. 2681, the Cement Sector
616 Regulatory Relief Act of 2011.

617 Mr. Chairman, in the 1990 Clean Air Act Amendments,
618 Congress directed the EPA to take a technologically based
619 approach to reduce hazardous air pollutants, or HAPs, which
620 are pollutants known or suspected of causing cancer and other
621 serious health effects such as reproductive and birth
622 defects, neurological effects and adverse environmental
623 impacts. For example, mercury is a hazardous air pollutant
624 of particular concern because it is emitted into the air and
625 then deposited into bodies of water where it contaminates
626 fish and other aquatic life. Research shows that pregnant
627 and nursing women, women who may become pregnant and young
628 children who eat large amounts of fish that is mercury-
629 contaminated are especially at risk because mercury damages
630 the developing brain and reduces IQ and the ability to learn.

631 In order to address the entire suite of hazardous air

632 toxins relatively quickly and using readily available
633 technology, Section 112 of the Clean Air Act requires EPA to
634 develop regulations for distinct source categories such as
635 power plants and cement kiln that set specific emission
636 limits based on emission levels already being achieved by
637 other facilities. These regulations, or MACT standards,
638 require that for existing sources, the emission standard must
639 be at least as stringent as the average emissions achieved by
640 the best performing 12 percent of sources in that source
641 category.

642 As I understand it, the rules targeted by these two
643 pieces of legislation are already years behind of when they
644 were supposed to have been finalized, but yet these two
645 bills, H.R. 2250 and H.R. 2681, would further delay these
646 rules and push action on them further down the road even to
647 the point of indefinitely. Besides postponing issuance and
648 implementation of these rules indefinitely, these two bills
649 would also undermine EPA's authority to require application
650 of the best performing emissions control technology while
651 also weakening the more stringent monitoring, reporting and
652 pollution control requirements required in the Clean Air Act
653 under Section 129.

654 Mr. Chairman, for many constituents paying attention to
655 the action of this committee and this Congress, it will

656 appear that the intent of these two pieces of legislation is
657 not really to delay these rules but to kill them off
658 altogether to the benefit of some in the industry and to the
659 detriment of the American public as a whole. So Mr.
660 Chairman, I am waiting to hear some testimony from all the
661 panelists today because as of yet, it is still unclear why
662 Congress should force the EPA once again to halt or delay
663 implementation of rules that would protect the public health
664 when everyone including industry knows that these regulations
665 were coming down the pike for almost a decade now.

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

667 ***** COMMITTEE INSERT *****

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668 Mr. Chairman, that concludes my opening statement, and I
669 will now have my 5 minutes of questioning.

670 Mr. {Whitfield.} The gentleman is recognized for 5
671 minutes.

672 Mr. {Rush.} Ms. McCarthy, thank you so very much for
673 being here once again. You have a really tough job before
674 this subcommittee, and I empathize with you. You have been a
675 regular here on the witness panel for many hearings, and your
676 expertise and your honesty with this subcommittee is
677 commendable.

678 There seems to be a misinformation campaign going on
679 around precisely when these rules were scheduled to be issued
680 and implemented and when EPA actually promulgated them. For
681 the record, can you clear up this issue once and for all and
682 provide a timeline for when EPA was initially scheduled to
683 act on these rules by law and when EPA actually did issue
684 these rules. Were there regulations issued in secret so as
685 to surprise industry in order to knock them off guard, knock
686 them off their game and then you come in, the EPA, as a thief
687 in the night with a bunch of rules and regulations that would
688 have detrimentally affected industry, or did EPA take into
689 account any of the input from industry concerning costs or
690 other factors before reissuing these new rules?

691 Ms. {McCarthy.} I am happy to clarify. I always
692 appreciate the respect with which we work with one another,
693 so it is my honor to be here and answer these questions.

694 I would just clarify that the Administration actually
695 promulgated the rules associated with Portland Cement in
696 August of 2010. That means we can enjoy significant
697 reductions in toxic pollution as early as August of 2013.
698 Now, this rule would delay those benefits for a minimum of 5
699 years. It will push out both the timeline. It would
700 actually vacate those rules, require us to propose them, set
701 a timeline far in advance that is almost close to the
702 compliance timeline for when we might actually promulgate
703 those rules, and there is no sense of what the compliance
704 timeline might be for those. In terms of the boiler MACT
705 rules and the incinerator rules, those rules were finalized
706 in February of 2011. The agency took the unusual
707 administrative step to actually stay those rules. We
708 announced that in May. We are on target to re-propose those
709 rules in October and finalize them in April, April of 2012,
710 so we are going to enjoy the reductions in toxic pollution
711 from those rules as early as 2015. Again, this bill, these
712 bills would push that benefit and those benefits out to at
713 least 3 more years and so there is no question that this is
714 not the bill or the timeline that EPA was seeking or asked

715 for or is welcoming.

716 Mr. {Rush.} So was industry made aware, were they at
717 the table or did you do this in a backroom with no input from
718 industry?

719 Ms. {McCarthy.} Unfortunately, these are a series of
720 rules that were tried before and brought to court. They are
721 rules that have been long overdue. The 1990 Clean Air Act
722 expected them to be done in 2000, and here we are in 2011
723 continuing to debate just the timeline. And so I would--
724 these went through normal public comment and notice. We have
725 had considerable discussion. The boiler MACT rules will go
726 through another public notice and comment process but we can
727 get these done, and we can get these done without any
728 assistance needed from the legislature using the
729 administrative process.

730 Mr. {Rush.} So these bills that are before this
731 committee right now, these bills would not in any way assist
732 the EPA or the American public in terms of having a set of
733 standards that both industry and the EPA agree on and that
734 will benefit the American public in terms of having known
735 standard. Is that correct?

736 Ms. {McCarthy.} That is correct. We are on target to
737 deliver substantial public health benefits with the Portland
738 Cement rule that's already been finalized. It would vacate

739 that rule entirely. We are on target to finalize the boiler
740 rule after public comment next year, early next year in
741 April. We did not ask for this. We do not need this. It is
742 in the administrative process. We are continuing to use
743 administrative remedies to address any concerns associated
744 with these rules. And also, the significant concern that the
745 rule doesn't just deal with timing, it does deal with
746 substance. It raises concern about what the standards are
747 that we are supposed to achieve, the compliance timelines
748 associated with that. It raises significant uncertainty
749 about whether or not we can move this forward and what
750 standards would need to be applied.

751 Mr. {Rush.} Thank you, Mr. Chairman. I yield back the
752 balance of my time.

753 Mr. {Whitfield.} As this time I recognize the gentleman
754 from Texas for 5 minutes for questioning, Mr. Barton.

755 Mr. {Barton.} Thank you.

756 Madam Administrator, in your written testimony you
757 acknowledge some report that specifically mentions pulp and
758 paper, refining, iron and steel and plastic in this report or
759 study shows that they can't find any significant change in
760 employment because of increased spending on environmental
761 issues. Have you driven through Ohio or Pennsylvania
762 recently?

763 Ms. {McCarthy.} Actually, I have, yes.

764 Mr. {Barton.} Is there any community you went through
765 that you didn't see a plant that had been shut down?

766 Ms. {McCarthy.} I can't say that I traveled the roads
767 that you are talking about but there is no question that
768 there has been significant challenges--

769 Mr. {Barton.} So you did--

770 Ms. {McCarthy.} --in the manufacturing sector.

771 Mr. {Barton.} You saw plants that were shut down?

772 Ms. {McCarthy.} The question is whether or not they are
773 attributable to environmental regulations or to economic
774 issues in general.

775 Mr. {Barton.} Of the industries that are mentioned
776 specifically in your testimony, pulp and paper, refining,
777 iron and steel and plastic, are there any of those industries
778 that employment is up as, say, compared to 20 years ago?

779 Ms. {McCarthy.} I don't know that answer.

780 Mr. {Barton.} Oh, you do know the answer. The answer
781 is no. Would you have your staff look at employment, let us
782 say, base case 1990? Do you want to go back to 1970 and
783 compare it to 2010 and provide that for the committee?
784 Because in every one of those instances, and you know this,
785 employment is not only down, it is significantly down, and
786 you know that. You are too smart of a person. So to sit

787 here and tell this subcommittee that we can do all these
788 great things in the environment and not have an impact on the
789 employment, my good friend here, Mr. Walden from Oregon, just
790 told me that the pulp and paper industry in his State is
791 about 90 percent gone, 90 percent.

792 One of the rules that we are looking at is cement. I
793 have got three cements plants in my Congressional district.
794 I just met with one of the companies during the August break.
795 Their business is 40 percent down, 40 percent. They are
796 shutting one kiln, and this is just one company. The cement
797 rules that would be implemented if we don't move these bills
798 cost more to implement than the entire profit of the entire
799 industry, and you don't think that is going to have an impact
800 on jobs?

801 Now, on the other hand, the health benefits, my good
802 friend, Mr. Waxman, talked about all the potential negative
803 impacts of mercury and some of these other pollutants, and
804 those are real. Mercury is a poison. Mercury is a
805 pollutant. But because of all the things that we have done
806 over the past 40 years, the number of birth defects because
807 of mercury is, I would think, significantly down. Now, I
808 don't know that but that is my assumption. Do you know how
809 many birth defects in the last 10 years have been as a
810 consequence of mercury? Are there any facts on that?

811 Ms. {McCarthy.} I certainly could get back to you,
812 Congressman, but what we tend to look at is what the status
813 of the industry is now and what impact our rule might have on
814 that industry moving forward.

815 Mr. {Barton.} And I want to stipulate that I think you
816 and Mrs. Jackson are people of good character and integrity
817 and you are doing the best job that you can in your agency,
818 but over and over and over again we get these not really
819 science-based facts to justify these rules, and if we have a
820 problem with mercury, it would show up in birth defects and
821 premature deaths and you could go to the medical records and
822 prove it and justify it, but that is not the case. These are
823 all probabilistic models of what might happen, not what is
824 happening. Do you understand what I am--you know, we need--
825 there is not a member on either side of the aisle of this
826 committee or this subcommittee, if we have a problem, we will
827 address it, but let us at least be able to actually identify
828 the health problem and because of the successes in the Clean
829 Air Act and other environmental bills in the past, we don't
830 have--those numbers are not there.

831 And my time is expired by 40 seconds.

832 Mr. {Whitfield.} Thank you.

833 At this time I will recognize the gentleman from
834 California, Mr. Waxman, for 5 minutes.

835 Mr. {Waxman.} Thank you, Mr. Chairman.

836 Ms. McCarthy, if your regulations were not science-
837 based, would they stand up in court for 1 minute?

838 Ms. {McCarthy.} No.

839 Mr. {Waxman.} You must base your regulations on the
840 science, and you have to get your figures on the impacts
841 based on a peer-review process. Is that correct?

842 Ms. {McCarthy.} That is correct.

843 Mr. {Waxman.} Now, let me just say to you and everybody
844 else on this committee, the statements I have heard members
845 make and the numbers they have thrown out have not been
846 scrutinized by anybody except they have been given to the
847 members by the industry or they made them up out of whole
848 cloth. I would like to see some of those figures scrutinized
849 carefully.

850 But Mr. Barton talked about all these plants that are
851 now closed. Your regulations have not even gone into effect.
852 They are closed because of the recession. They are closed
853 because of, my Republican colleagues insist, the deficit,
854 which we inherited for the most part from the Bush
855 Administration. We also inherited the recession from the
856 Bush Administration. Our country is struggling, and to say
857 that the environmental rules are responsible, how could that
858 be if these rules have not yet been in effect? Can you

859 explain that to me?

860 Ms. {McCarthy.} In fact, Congressman, for the rules
861 that we are talking about today for mercury, there is no
862 national standard in these sectors. These are the largest
863 sources of mercury emissions from stationary facilities and
864 yet there are no national standards to date. So I don't
865 think you can attribute standards in the future that this
866 bill would make potentially way in the future for the
867 closures that you are seeing today.

868 Mr. {Waxman.} Well, Mr. Barton said that the cost of
869 compliance would be more than the entire profit of the whole
870 industry. I don't know where he got that figure, but do you
871 have any idea of that could be accurate?

872 Ms. {McCarthy.} I can give you the figures by sector of
873 what we believe the costs are associated with this bill. The
874 costs for the--

875 Mr. {Waxman.} Well, if you gave us those costs, would
876 that wipe out the profits that the industries have and they
877 would all have to close as a result?

878 Ms. {McCarthy.} In our assessment, we do not believe
879 there would be broad closures as a result of any of these
880 rules. We believe there would be job growth. We believe
881 that they are manageable, that they are cost-effective and
882 the technology is available to be installed.

883 Mr. {Waxman.} Mr. Barton just said, well, we have done
884 a lot of things to lower birth defects because of mercury,
885 and he asked you whether that is accurate or not. Now,
886 whether it is accurate or not, it sounds like we are ready to
887 celebrate fewer birth defects, not trying to reduce birth
888 defects even more. I don't ask that as a question, I just
889 ask it as a statement of incredulity.

890 Proponents of these bills suggest they are simply giving
891 the EPA the time it requested to get the rules right and
892 provide some additional flexibilities to reduce the burdens.
893 I would like to get your views on this. Could you explain
894 what the boiler bill that has been introduced does to the
895 timing of the boiler rules that you are proposing?

896 Ms. {McCarthy.} Yes, the timing of these rules in terms
897 of the boiler rules, as I indicated, we intend to finalize
898 them in April. That means they will be in effect and we will
899 be achieving these reductions in 3 years. This rule would at
900 the very earliest only allow us to finalize those rules
901 almost a full year later, which would delay compliance
902 considerably, and these rules would also call into question
903 and add uncertainty about how we establish the standards for
904 these rules, and in fact, it would take away any timeline for
905 compliance.

906 Mr. {Waxman.} In fact, the bill eliminates any deadline

907 for action, allowing indefinite delay. That is fundamentally
908 different from requesting a specific limited extension of
909 time. But this is not all the bills do. Section 5 of both
910 bills may complete change the criteria Congress established
911 in 1990 for how EPA must set limits for air toxics. I say
912 ``may'' because the language appears to be ambiguous.

913 Ms. McCarthy, what is the legal effect of this language
914 in EPA's view?

915 Ms. {McCarthy.} Well, we are clearly concerned that it
916 would raise legal uncertainty. We are concerned that
917 industry would argue that these provisions modify or
918 supersede existing Clean Air Act provisions that have
919 governed these toxic standards since 1990. In particular, we
920 anticipate that industry would argue that EPA would be
921 required to set standards below the current MACT floor and to
922 use a different process for setting that standard, one that
923 identifies the least burden option. I don't even know who
924 that burden would be assessed for. Would it be the regulated
925 industry or the breathing public.

926 Mr. {Waxman.} In the case of the bill, it says require
927 the least burdensome regulations including work practice
928 standards. Current law allows work practice standards only
929 if the Administrator decides a numeric emissions is not
930 feasible. Maybe you can help us to make heads and tail of

931 this. If the new language does not trump the current law,
932 would it have any effect? In other words, in the boiler
933 rule, is there a situation where you can determine a numeric
934 standard wasn't feasible but still refuse to work practice
935 standards?

936 Ms. {McCarthy.} No. In fact, between proposal and
937 final, we made a determination on the basis of comments that
938 there were boilers where limits were not feasibly achieved
939 and we have gone to work practice standards.

940 Mr. {Waxman.} And if it does trump the current law,
941 would EPA be able to set numeric emissions limits for any
942 pollutants from any boilers?

943 Ms. {McCarthy.} It is unclear.

944 Mr. {Waxman.} Thank you, Mr. Chairman.

945 Mr. {Whitfield.} At this time I recognize the gentleman
946 from Oklahoma, Mr. Sullivan, for 5 minutes.

947 Mr. {Sullivan.} Thank you, Mr. Chairman.

948 Ms. McCarthy, I disagree with your statement, with your
949 testimony that H.R. 2681 halts Clean Air Act achievements.
950 H.R. 2681 does not halt regulation of cement facilities. It
951 does take the policy position that EPA is regulating too
952 much, too fast and that we need commonsense rules that
953 protect our communities including the jobs they depend upon.
954 The cement sector has expressed major concerns with the work

955 ability and the timeline for implementing EPA's recent cement
956 MACT and related rules affecting cement kilns. Would you
957 agree there are legitimate concerns about technical aspects
958 of the cement sector rules?

959 Ms. {McCarthy.} I would agree that concerns have been
960 expressed but I believe that the final rule is appropriate
961 and necessary and can be achieved.

962 Mr. {Sullivan.} Would you agree there are legitimate
963 concerns with the compliance timeline for implementing the
964 rules?

965 Ms. {McCarthy.} I believe that a number of concerns
966 have been expressed, but again, I believe the timelines can
967 be achieved.

968 Mr. {Sullivan.} EPA stayed the major source boiler MACT
969 and the CISWI rule. Why have you not also stayed the cement
970 MACT rule as well, given it is so intertwined with the CISWI
971 rule?

972 Ms. {McCarthy.} The Portland Cement rule was finalized
973 earlier. We do not believe that there was significant
974 concern raised about any of the standards or how do achieve
975 those that would warrant a stay unlike the boiler rule and
976 the CISWI rule where we identified that there was significant
977 changes between proposal and final that deserve to have
978 additional public notice and comment. So that is why we have

979 stayed those rules in order to achieve that notice and
980 comment process and to finalize those expeditiously. That
981 was not the case with Portland Cement and it is highly
982 unusual for the agency to stay a rule, and clearly there was
983 no reason to do that for Portland Cement.

984 Mr. {Sullivan.} How could not have at least concerns
985 when you are going to shut down 18 plants, though? Why
986 couldn't you--

987 Ms. {McCarthy.} I am not exactly sure where those
988 numbers are coming from. I do believe in our economic
989 analysis we indicated that the industry itself was facing low
990 demand for its products, that there was significant
991 challenges associated with that. We certainly in no way
992 attributed closures of 18 facilities to these rules.

993 Mr. {Sullivan.} EPA's cement MACT rule published in
994 September 2010 affects 158 cement kilns located at cement
995 plants throughout the United States. How many of those
996 cement kilns currently meet the emission limits and other
997 requirements established by this rule? Are there any?

998 Ms. {McCarthy.} As far I know, there are new facilities
999 being constructed that will achieve those standards but at
1000 this point I do not believe there is a single facility that
1001 is meeting the standards, most notably because most of them
1002 have not been under national standards and they have not

1003 voluntarily decided to achieve these types of reductions.

1004 Mr. {Sullivan.} Does the Administration have any
1005 concerns about the potential importing of cement as a result
1006 of forcing the idling or permanent shuttering of U.S. cement
1007 plants? The President has stated that new infrastructure
1008 projects, roads and bridges, will be a big part of his jobs
1009 package. Together with EPA's cement rules, are we supposed
1010 to build those roads and bridges with Chinese cement? Did
1011 you know that China already makes 28 times more cement than
1012 the United States?

1013 Ms. {McCarthy.} We actually did look at this issue when
1014 we developed our economic analysis, and it is in the records.
1015 We are clearly concerned about the health of U.S. industry.
1016 There is no question about that. We did not believe that
1017 this rule would have a significant impact in terms of the
1018 amount of imported cement that would be coming into this
1019 country as a result of compliance.

1020 Mr. {Sullivan.} Thank you. I yield back.

1021 Mr. {Whitfield.} At this time I would like to recognize
1022 the gentleman from Michigan, Mr. Dingell, for 5 minutes.

1023 Mr. {Dingell.} Thank you, Mr. Chairman. I ask
1024 unanimous consent to insert into the record my opening
1025 statement, which I think everybody will find enlightening,
1026 well written, entertaining, and I believe, valuable from the

1027 point of information.

1028 Mr. {Whitfield.} Thank you for providing it to us.

1029 [The prepared statement of Mr. Dingell follows:]

1030 ***** COMMITTEE INSERT *****

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1031 Mr. {Dingell.} I find myself, Mr. Chairman, somewhat
1032 distressed here. I have heard general conclusions from the
1033 witness but I have heard nothing in the way of hard
1034 statements that relate to what it is this committee needs to
1035 know and justification for the legislation, and I have not
1036 heard any clear statements from the committee or its members
1037 about exactly what is the situation with regard to the impact
1038 of this legislation or the EPA's action with regard to the
1039 rules, and Madam Administrator, I find that to be somewhat
1040 distressing. So I will be submitting to you a letter shortly
1041 in which I hope we will get some better details on this. For
1042 example, are you able to make the categorical statement that
1043 none of these plants being closed are being closed because of
1044 the action of EPA? Yes or no.

1045 Ms. {McCarthy.} I apologize. I think I would indicate
1046 that we have in the record our economic analysis that looks
1047 at these issues. Because of the sensitivity of that, it will
1048 have different impacts--

1049 Mr. {Dingell.} Simplify my problem by telling me yes,
1050 that these will be closed because of the action of EPA, or
1051 no, they will not be closed because of the action of EPA.
1052 That is a fairly simple conclusion and I hope that you would
1053 be able to just give me yes or no on the matter.

1054 Ms. {McCarthy.} Well, we don't believe that there will
1055 be significant closures as a result. I cannot indicate
1056 whether it will impact a single closure.

1057 Mr. {Dingell.} You are under the law permitted to
1058 choose amongst the alternatives. You may not take action on
1059 the basis of cost alone. But once the question of the most
1060 effective way of addressing this from the scientific and
1061 health standpoint has been reached, you are then permitted to
1062 choose that rule or rather that approach which costs the
1063 least and which is most helpful in terms of the industry.
1064 Isn't that so? Yes or no.

1065 Ms. {McCarthy.} Yes.

1066 Mr. {Dingell.} Now, having said this, have you done
1067 that?

1068 Ms. {McCarthy.} Yes.

1069 Mr. {Dingell.} Where is it stated in the rule, if you
1070 please? Submit that for the record to us. And I ask
1071 unanimous consent, Mr. Chairman, that the record be kept open
1072 so we can get that information.

1073 Mr. {Whitfield.} Without objection.

1074 Mr. {Dingell.} Now, I know that our economy has grown
1075 over 200 percent since the Clean Air Act of 1970, and key
1076 pollutants have been reduced by 60 percent. I regard that as
1077 a good thing, and it is an example that we can count on the

1078 law to do both of the things that the Congress wanted when we
1079 wrote the original legislation. Now, we find that these
1080 things cause us considerable problems with regard to business
1081 certainty. I note that nobody seems to know about the
1082 certainty about how these rules are going to be enacted. Has
1083 the EPA given thought to establishing the certainty that
1084 business needs to accomplish its purposes? Yes or no.

1085 Ms. {McCarthy.} Yes.

1086 Mr. {Dingell.} All right. Now, am I correct that H.R.
1087 2250 would vacate the area source rules and require EPA to
1088 reissue them? Yes or no.

1089 Ms. {McCarthy.} Yes.

1090 Mr. {Dingell.} Area source boilers are smaller boilers
1091 such as ones at hospitals and other institutional and
1092 commercial facilities. What is it that they would have to do
1093 under this rule? I would like to have that submitted for the
1094 record in a clear statement, and I ask unanimous consent that
1095 the record stay open for that purpose, Mr. Chairman.

1096 Mr. {Whitfield.} Without objection.

1097 Mr. {Dingell.} Now, I also understand that some area
1098 sources have complained that they will not be able to meet
1099 the tune-up requirement by the deadline in your legislation,
1100 or rather in your regulation, and asked you to reconsider the
1101 deadline. Are you reconsidering the deadline? Yes or no.

1102 Ms. {McCarthy.} We are considering that comment and
1103 that petition, yes.

1104 Mr. {Dingell.} How soon will you come to a conclusion
1105 on that particular point?

1106 Ms. {McCarthy.} Well, we are clearly trying to do that
1107 very shortly.

1108 Mr. {Dingell.} It is very clear that if industry cannot
1109 meet the requirements, that you should consider this most
1110 seriously. Is that not so?

1111 Ms. {McCarthy.} Yes, and we will be considering it in
1112 the proposed rule, taking comment and--

1113 Mr. {Dingell.} Do you have the ability to move the
1114 deadline back as a result of the reconsideration process?
1115 Yes or no.

1116 Ms. {McCarthy.} Yes.

1117 Mr. {Dingell.} And you would make the clear statement
1118 that you would not rule out that action? Is that correct?

1119 Ms. {McCarthy.} No--that is correct. Sorry.

1120 Mr. {Dingell.} Now, in the testimony, he submitted, Mr.
1121 Rubright states several times that the regulation is
1122 unsustainable. Is that statement correct or not?

1123 Ms. {McCarthy.} No.

1124 Mr. {Dingell.} Should this legislation pass, what do
1125 you think the timetable should be to issue final rules

1126 regarding these industries?

1127 Ms. {McCarthy.} The timetable that is in the Clean Air
1128 Act and the timetable that we have agreed to and that we are
1129 on.

1130 Mr. {Dingell.} Now, you indicated you think that the
1131 regulation is unsustainable. Why do you make that statement?
1132 Or rather that the regulation is sustainable. Why do you
1133 make that statement?

1134 Ms. {McCarthy.} Because we have done a complete cost-
1135 benefit analysis. We have done the same health-based
1136 benefits assessment as we have always done, and we believe
1137 that the technology is in place. We have looked at the most
1138 cost-effective alternatives to achieve the best benefits that
1139 we can.

1140 Mr. {Dingell.} Have you considered his particular
1141 concerns and the points that he makes or is this a statement
1142 with regard to general findings by the agency?

1143 Ms. {McCarthy.} Both.

1144 Mr. {Dingell.} Okay. Now, one last question. Should
1145 this legislation pass, what do you think the timetable should
1146 be to issue the final rules regarding these industries? If
1147 you will give us a quick answer on that and then a more
1148 detailed answer for the record, please.

1149 Ms. {McCarthy.} The bill does not establish a

1150 timetable. It sets a time before which we cannot issue a
1151 rule.

1152 Mr. {Dingell.} What do you suggest should be done with
1153 regard to that particular matter?

1154 Ms. {McCarthy.} I think we should continue with the
1155 rules under the Clean Air Act as it currently exists.

1156 Mr. {Dingell.} Mr. Chairman, you have been most
1157 courteous. Thank you.

1158 Mr. {Whitfield.} Thank you.

1159 At this time I recognize the gentleman from Illinois,
1160 Mr. Shimkus, for 5 minutes.

1161 Mr. {Shimkus.} Thank you, Mr. Chairman, and I
1162 appreciate Assistant Administrator McCarthy. We have had a
1163 good working relationship on some issues, and I think a lot
1164 of the issue is time and being able to get people to move in
1165 a direction. I think the concern with a lot of these is, and
1166 I will do it based upon the numbers, and really it kind of
1167 follows up on what Mr. Dingell was talking about, is there
1168 will be no time and this will be a major change.

1169 You made a statement on the proposed health benefits.
1170 If all the major boilers stopped operating, if all the area
1171 source boilers were shut down, if we stopped waste
1172 incineration, based upon your opening statement, the proposed
1173 health benefits from the shutting down of these would go up.

1174 Is that correct?

1175 Ms. {McCarthy.} Mr. Shimkus, it is not intention to
1176 shut--

1177 Mr. {Shimkus.} No, I am just--I mean--but that is true
1178 based upon the opening statement. If we shut down every
1179 boiler--

1180 Ms. {McCarthy.} It is true that if--

1181 Mr. {Shimkus.} --that your--

1182 Ms. {McCarthy.} --there is no pollution, then--

1183 Mr. {Shimkus.} Your proposed health benefits--

1184 Ms. {McCarthy.} --would go away.

1185 Mr. {Shimkus.} Thank you. And these are your numbers.
1186 There are major source boilers, 13,840 major source boilers.
1187 Is that correct?

1188 Ms. {McCarthy.} That is right.

1189 Mr. {Shimkus.} Do you have an estimation of how many of
1190 these boilers will meet your proposed rules as we think they
1191 will come out?

1192 Ms. {McCarthy.} Actually, there are boilers in a
1193 variety of categories that already meet all of these
1194 standards.

1195 Mr. {Shimkus.} I have been told that there are 31 so
1196 that 18,809 major source boilers would not comply.

1197 Ms. {McCarthy.} The only thing I would remind you, Mr.

1198 Shimkus, is, we are in a reconsideration process. That rule
1199 will be re-proposed in October--

1200 Mr. {Shimkus.} So would it go up to--would there be 800
1201 then or maybe 1,000 of the 13,000?

1202 Ms. {McCarthy.} As you know, we established the
1203 standards because it deals with toxic pollution to try to--

1204 Mr. {Shimkus.} You understand my point that I am
1205 making--

1206 Ms. {McCarthy.} --look at the best performing and bring
1207 the others up.

1208 Mr. {Shimkus.} Okay. You understand the point--

1209 Ms. {McCarthy.} I do.

1210 Mr. {Shimkus.} --that I am making that of the area
1211 source boilers, you estimate there are 187,000 boilers. We
1212 can't get an idea, even industry has no idea based upon what
1213 we envision the proposed rules would be that a single one
1214 would meet the standard.

1215 Ms. {McCarthy.} On the area source boilers?

1216 Mr. {Shimkus.} Right.

1217 Ms. {McCarthy.} The vast majority of those have no
1218 emission standards. They have work practice standards. Most
1219 boilers out in commercial and hospital settings actually are
1220 natural gas and are governed by this. Of the remainder,
1221 unless it is a large coal facility, it--

1222 Mr. {Shimkus.} No, I am talking about, you know, just
1223 the area source boilers. Let us go to the--

1224 Ms. {McCarthy.} It just needs to do a tune-up every 2
1225 years.

1226 Mr. {Shimkus.} Let us go to the incinerators. You
1227 estimate 88 incinerators from your numbers, and do you know
1228 the percentage that probably meet the standard?

1229 Ms. {McCarthy.} Three currently meet all standards that
1230 I am aware of.

1231 Mr. {Shimkus.} So 85 do not?

1232 Ms. {McCarthy.} Eighty-five would have to make changes
1233 in their facilities--

1234 Mr. {Shimkus.} And those changes would be a capital
1235 expense outlay, and that kind of follows into this whole
1236 debate about your job calculations, because part of your job
1237 calculation is retrofitting these facilities. Retrofitting
1238 jobs, are they short term, 6 months, 12 months? How long is
1239 a major operating facility those jobs remain? I mean, they
1240 remain for decades. So that is long-term consideration of
1241 the length of that.

1242 My time is rapidly clicking away, and I want to make
1243 sure I raise this issue on the science-based debate. We have
1244 had this in my subcommittee hearing, Mr. Chairman, and that
1245 the court give deference to the federal government when there

1246 is a court case over any other advocacy in the court case,
1247 and the standard of proof is very high and it is arbitrary
1248 and capricious. So for my colleagues here, part of this
1249 debate on reform would be a debate on judicial reform in the
1250 courts to give the complainants equal standing as the federal
1251 government when they have litigation. Currently now, the
1252 courts assume that the federal government is correct and so
1253 the plaintiffs have a higher burden, and I think that is one
1254 of the major reforms that has to be done. I yield back my
1255 time.

1256 Mr. {Whitfield.} Thank you.

1257 At this time I recognize the gentlelady from Florida,
1258 Ms. Castor, for 5 minutes.

1259 Ms. {Castor.} Thank you, Mr. Chairman.

1260 Good morning, Ms. McCarthy.

1261 Ms. {McCarthy.} Good morning.

1262 Ms. {Castor.} I think I would like to start by saying
1263 how proud I am to live in a country that for decades has
1264 protected the air that all Americans breathe, for decades.
1265 And I remember very well as a youngster in the 1970s the
1266 improvement in air quality in my hometown in Florida. I
1267 remember smoggy mornings early in the 1970s, especially
1268 during these hot summer months where the air was just
1269 stifling and we weren't getting much of a breeze off of the

1270 Gulf of Mexico, and the air stunk, but over the years it
1271 improved. It got a lot better. And the health of the
1272 community improved. And then in 1990, the Congress came back
1273 based upon science and everything they had learned and
1274 adopted Clean Air Act Amendments, and that was over 20 years
1275 ago and those Clean Air Act Amendments required EPA to
1276 establish emission standards for particular sources, and
1277 Congress said to the EPA back in 1990, okay, you have 10
1278 years to adopt standards for these particular sources, so
1279 that is by the year 2000, right? Eleven years ago. And they
1280 gave them a few years after the adoption of those regulations
1281 for these particular sources to have some basic standards.
1282 But it took EPA many years. EPA first targeted these
1283 particular sources, adopted some standards for boilers in
1284 2004. It got caught up in court challenges, and pursuant to
1285 a court-ordered deadline EPA finalized rules for industrial,
1286 commercial and institutional boilers and other particular
1287 sources of air pollution in February of this year.

1288 This has a long history, and I think it is time to bring
1289 it in for a landing rather than continuing to delay it. The
1290 Congress gave very clear direction in 1990, and we have been
1291 grappling with this. We understand now the science involving
1292 the public health when you clean the air and the impact on
1293 our families.

1294 So I am very concerned that the bills at issue today
1295 appear to be hazardous to the health of the Nation and our
1296 economy because they delay vital health protections and they
1297 create great uncertainty for everyone. So let us look at
1298 H.R. 2250 which indefinitely delays the rules to reduce toxic
1299 air pollution. Based upon the evidence, the rules if
1300 finalized as scheduled would provide tremendous health
1301 benefits to Americans by cutting emissions of pollutants
1302 linked to a range of serious health effects, developmental
1303 disabilities in children, asthma, cancer. EPA estimates that
1304 these rules will avoid more than 2,600 premature deaths,
1305 4,100 heart attacks and 42,000 asthma attacks every year. I
1306 don't know about you all but this is an epidemic in our
1307 country, the rates of asthma and heart disease, and people,
1308 we are all part of the solution. And I don't think we can
1309 turn a blind eye to this evidence.

1310 Ms. McCarthy, after the years that EPA has been
1311 gathering evidence from all corners, from industry, how would
1312 nullifying these rules now affect the public health in your
1313 opinion?

1314 Ms. {McCarthy.} It would leave incredible public health
1315 benefits on the table, benefits that are significantly
1316 important to American families, and it would do so in clear
1317 recognition that for every dollar we spend on these rules, we

1318 are going to get \$10 to \$24 in benefits for people in terms
1319 of better health for them and for individuals and their
1320 families. There is no reason for it. We have administrative
1321 processes that we are going through. We are following the
1322 same notice and comment process that Congress intended. We
1323 should be allowed to proceed with these rules and to get the
1324 public health benefits as delayed as they are finally deliver
1325 them for the American family.

1326 Ms. {Castor.} And the statutory deadline originally
1327 that the Congress directed in 1990 was 2000.

1328 Ms. {McCarthy.} It was, and I will tell you it would be
1329 inexcusable to not deliver these knowing the health benefits,
1330 knowing the impacts associated with these toxic pollutants
1331 and knowing that we can do this cost-effectively and actually
1332 at the same time increase jobs. These are not job-killing
1333 bills. These are bills that will require investments that
1334 will put people back to work and that will grow the economy.

1335 Ms. {Castor.} Thank you very much.

1336 Mr. {Whitfield.} The gentleman from Oregon is
1337 recognized for 5 minutes, Mr. Walden.

1338 Mr. {Walden.} I thank the chairman very much and I
1339 welcome our witness today. I want to make a couple of
1340 comments.

1341 First of all, I would say up front that one of the two

1342 cement plants that your regulations put great burdens on are
1343 in my district, Durkee, Oregon, so I would like you to submit
1344 for the committee within a week or so these specific health
1345 issues that you have identified relating to mercury
1346 poisoning, asthma and all as it relates to Oregon
1347 specifically, because you must have them broken down by
1348 region, I would assume, or by county.

1349 Ms. {McCarthy.} We certainly look at exposures around
1350 facilities.

1351 Mr. {Walden.} So if you could provide those, it would
1352 be most helpful. I have got a chart here somewhere that
1353 shows the percent of mercury deposition that originates
1354 outside the United States, and I believe that your own data
1355 indicate that most of this comes from China or foreign
1356 sources, most of the mercury coming into the United States.
1357 Is that accurate?

1358 Ms. {McCarthy.} It also is emitted by us and comes back
1359 at us.

1360 Mr. {Walden.} Indeed. Now, you said in your testimony
1361 or in response to a question that there have been no mercury
1362 control MACT standards for mercury?

1363 Ms. {McCarthy.} I said national standards. That is
1364 correct.

1365 Mr. {Walden.} Right, and that nobody had really

1366 invested ahead of those standards.

1367 Ms. {McCarthy.} No, I indicated that for the most part
1368 the investments weren't sufficient to get compliance with the
1369 standards that we have.

1370 Mr. {Walden.} So in the case of Ash Grove in my
1371 district in Durkee, they have spent about, I think it is \$20
1372 million. They have reduced their emissions by 90 percent,
1373 and my information--correct me if I am wrong--is there a more
1374 advanced technology they can use than what they are using
1375 today with the carbon injection system?

1376 Ms. {McCarthy.} Actually, they have been very
1377 responsive to the needs of the State and working with them
1378 and--

1379 Mr. {Walden.} No, they would have met the State
1380 standards. It is your new federal standards that is causing
1381 them the problem is my understanding.

1382 Ms. {McCarthy.} We are working with them on that, yes.

1383 Mr. {Walden.} So my question, though, is yet to be
1384 answered. Is there an achievable control technology
1385 available today that is better than the one they are
1386 implementing?

1387 Ms. {McCarthy.} I do not know, but they are working on
1388 that.

1389 Mr. {Walden.} Now, I want to know from you because you

1390 are writing the rules. Because the rules in the Clean Air
1391 Act talk about achievable control technology, right? And in
1392 the committee report in 1990 in the Clean Air Act Amendments,
1393 the House report itself on page 328 of part 1 stated, ``The
1394 committee expects MACT to be meaningful so that MACT will
1395 require substantial reductions in emissions from uncontrolled
1396 levels. However, MACT is not intended to require unsafe
1397 control measures or to drive sources to the brink of
1398 shutdown.'' So I guess the question is, if you have got two
1399 plants because the mercury levels in the limestone next to
1400 them exceed these standards you are setting, you may be
1401 driving them to the brink of shutdown. I mean, they have
1402 reduced 90 percent, but under your rules proposed, it would
1403 be 98.4 percent.

1404 Ms. {McCarthy.} The facility that you are talking about
1405 has made substantial investments in technologies--

1406 Mr. {Walden.} Yes, they have.

1407 Ms. {McCarthy.} --to achieve these mercury reductions.
1408 They are continuing to do that.

1409 Mr. {Walden.} I understand that.

1410 Ms. {McCarthy.} I have ever reason to believe that the
1411 Clean Air Act in this instance will behave exactly as history
1412 has shown us, which is to drive new technologies into the
1413 market and to successfully achieve--

1414 Mr. {Walden.} And today there is no technology superior
1415 to what they are using, is there?

1416 Ms. {McCarthy.} There are technologies that will
1417 achieve these. The challenge, as you know--

1418 Mr. {Walden.} To the 98.4 percent?

1419 Ms. {McCarthy.} The challenge, as you know, for this
1420 particular facility is the limestone quarry that they are
1421 using and the mercury content there.

1422 Mr. {Walden.} And I believe also in the conference
1423 committee report from the 1990 Clean Air Act, it talked about
1424 substituting orinol, and it said, ``The substitution of
1425 cleaner ore stocks was not in any event a feasible basis on
1426 which to set emission standards where metallic impurity
1427 levels are variable and unpredictable both from mine to mine
1428 and within specific ore deposits.'' So there was a
1429 recognition, as I understand it, in the Clean Air Act about
1430 different ore levels in different places.

1431 Here is the deal. You know, we are going to listen to
1432 the President tonight, and as Americans, we are all concerned
1433 about losing jobs. I represent a very rural district that is
1434 suffering enormously from federal regulation, whether it is
1435 on our federal forest and the 90 percent reduction in federal
1436 forestlands that by the way are burning--we can get into that
1437 whole discussion and what that does to health quality--or

1438 whether it is this boiler MACT standard. I have got three
1439 letters, Mr. Chairman, that I would like to submit into the
1440 record from--

1441 Mr. {Whitfield.} Without objection.

1442 [The information follows:]

1443 ***** COMMITTEE INSERT *****

|
1444 Mr. {Walden.} And these are about the uncertainty that
1445 is out there in the marketplace over your boiler MACT
1446 standards. While you may have some improvements, these
1447 companies in my district are saying we continue to have major
1448 ongoing concerns regarding achievability, affordable and lack
1449 of accounting for variability within our operations for newly
1450 released rule. Boise Cascade in this case, Boise will need
1451 to spend millions of dollars in new investments for multiple
1452 control technologies which can conflict with other existing
1453 control technologies. There is also an issue they raise
1454 about how they use every bit of the wood stream back into
1455 their facilities, which we used to applaud them for doing, no
1456 waste, and apparently in some of the other rules that are
1457 coming out of your agency, they now would have to treat some
1458 of that resin that they now burn in their boilers as solid
1459 waste and put it in landfills and replace that with fossil
1460 fuels. I mean, this is why--and I understand unless you are
1461 out there you don't get this, this is why a lot of Americans
1462 are not investing in their own companies because there is
1463 such uncertainty in the marketplace over all these rules and
1464 regulations, and I hear it every day I am out in my district,
1465 and my time is expired.

1466 Mr. {Whitfield.} Thank you, Mr. Walden.

1467 At this time I recognize the gentleman from Texas, Mr.
1468 Green, for 5 minutes.

1469 Mr. {Green.} Thank you, Mr. Chairman.

1470 Ms. McCarthy, good to see you again.

1471 Ms. {McCarthy.} You too as well.

1472 Mr. {Green.} Like my colleague, Joe Barton, we
1473 appreciate your working with us on a lot of issues.
1474 Obviously sometimes we don't get to the end result that each
1475 of us can agree to.

1476 In the boiler MACT rule, you make a change in the
1477 definition of waste because the courts found in 2000 the
1478 definition was not strict enough. This change has meant that
1479 some traditional fuels in many of these plants are now
1480 classified as waste and now the facilities in a regulatory
1481 sense become commercial industrial solid waste incinerators.
1482 I have a couple questions.

1483 Are you sympathetic to the argument from the cement
1484 companies they are in a bind because they are being forced to
1485 comply with the new NESHAP rule but then might end up being
1486 regulated as a commercial industrial solid waste incinerator,
1487 then some of their compliance investment would be for nothing
1488 and they will have to completely start over. It seems like
1489 that would be an economic waste, and to me, it seems they are
1490 really in a bind for the planning side. How would you work

1491 with them on this and given the massive job losses in the
1492 sector they really can't afford to apply for permits for one
1493 designation and then take these costs and then turn around
1494 and have to start over?

1495 Ms. {McCarthy.} We are actually working with these
1496 companies right now. The rule has been finalized and they
1497 are making investment decisions and we are more than willing
1498 to sit down. The good news is that the incinerator rule,
1499 they can either decide to be regulated as a cement facility
1500 or they can decide to burn solid waste, which would allow
1501 them to be regulated and require them to be regulated under
1502 the incinerator rule.

1503 Mr. {Green.} So they have a choice to make which one
1504 they come under?

1505 Ms. {McCarthy.} They do, and depending upon what they
1506 want to do, they make that choice themselves and we allow
1507 that, but the good news is that any technology investment
1508 they might make if they decide to be regulated under the
1509 Portland Cement rule is the same type of technology that they
1510 would have to put in place to be regulated under the
1511 incinerator rule. The main difference is that they would
1512 have to look at developing much more explicit monitoring
1513 requirements and doing things differently for that purpose
1514 under CISWI, which is an area that we are looking at under

1515 our reconsideration and that will clarify itself.

1516 Mr. {Green.} One of my concerns is that some of these
1517 plants, they burn tires, they burn construction debris, and
1518 particularly with tires because of instead of having them on
1519 the side of the road people dump, we can actually have a
1520 beneficial use, and so that is part of my concern.

1521 A couple of people on the second panel will talk about
1522 they cannot design, install and commission emission controls
1523 under existing coal-fired boilers within 3 years. They claim
1524 this is particularly true because third-party resources with
1525 the expertise to design and install these controls will be in
1526 high demand as multiple boiler rules are being implemented in
1527 a short time by both the industry and electric utility
1528 industries. Do you share that concern, that there may not be
1529 the available technology to get there in 3 years?

1530 Ms. {McCarthy.} We have certainly looked at it. Let me
1531 hit the solid waste issue very briefly for you, Mr. Green.
1532 We know that concerns have been raised. We are working and
1533 we have developed guidance to address the tire issue so that
1534 we eliminate any uncertainty and clarify those rules.

1535 In terms of the coal-fired boilers, each one gets 3
1536 years with the opportunity if there are technology problems
1537 to go to 4 years. We also know that there is fuel switching
1538 that is often done to achieve compliance because many of

1539 these coal boilers switch between biomass and coal, and it is
1540 a very effective strategy to achieve some of these compliance
1541 limits. So we are more than happy to work to ensure that
1542 compliance is achieved in a timely way.

1543 Mr. {Green.} Todd Elliott from Celanese Corporation is
1544 here to testify on the second panel. In his testimony, he
1545 talks at length about some of their boilers at the Narrows,
1546 Virginia, facility. I don't have Narrows, Virginia, but I do
1547 have Celanese plants in our district. These boilers are
1548 identified by the EPA as top-performing units and used to wet
1549 the proposed regulatory standards for hydrochloric acid and
1550 mercury emissions yet not even one of these top-performing
1551 units will meet the emissions standards for both mercury and
1552 hydrochloric simultaneously without installing costly
1553 emission controls. How is it they can be a top performer and
1554 yet not meet these new standards on a consistent level?

1555 Ms. {McCarthy.} Well, we know that that is an issue
1556 that has been raised to us. We have gathered more data. We
1557 are going through the reconsideration process and we fully
1558 believe that we will be able to assess that data and come up
1559 with standards that are meaningful and achievable.

1560 Mr. {Green.} Hopefully we will come to an agreement on
1561 some of our other issues.

1562 My last question is, we have a plant that in addition to

1563 burning natural gas burns refinery fuel gas, petrochemical
1564 processed fuel gas in their boilers and process heaters. In
1565 both these cases, their blends of methane, propane and butane
1566 are clean-burning fuels. Does EPA does intend to exempt both
1567 refinery and petrochemical processed fuel gases from the
1568 numerical standards similar to natural gas?

1569 Ms. {McCarthy.} Yes, we did establish a process for
1570 that. We heard loud and clear during the comment period that
1571 we shouldn't be segregating refinery gas any differently if
1572 it is as clean as natural gas. We have set a process to look
1573 at that. We are also looking at that again in the
1574 reconsideration process. So I feel very confident that we
1575 can come to a good understanding on that issue and have a
1576 very clear, well-defined process so that there is certainty
1577 in the business community, and I do believe that most of the
1578 refinery gas will most likely be required to do work practice
1579 standards as opposed to an emissions limit.

1580 Mr. {Green.} Thank you, Mr. Chairman.

1581 Mr. {Whitfield.} The chair now recognizes the gentleman
1582 from Louisiana, Mr. Scalise, for 5 minutes.

1583 Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate
1584 you having this hearing. I am proud to support the
1585 legislation that we are discussing today, and Ms. McCarthy, I
1586 appreciate you coming as well. I spent the last 5 weeks, as

1587 I am sure all my colleagues have, going throughout my
1588 district meeting with small business owners, middle-class
1589 families talking about the challenges that they are facing
1590 and things that we can do in Congress to get the economy back
1591 on track, to create jobs, and I have got to tell you, there
1592 was one recurring theme that came across with every single
1593 small business I met with, and they said the primary
1594 impediment to creating jobs today for them are the
1595 regulations coming out of this Administration, and EPA was at
1596 the top of the list of agencies that are bombarding them with
1597 regulations that have nothing to do with safety or improving
1598 the quality of life but in fact seem to be going through, I
1599 think, an extreme agenda of carrying out what is an agenda
1600 for some at the agency but is flying in the face of things
1601 that they want to do in creating jobs and investing. I mean,
1602 there is money on the sidelines. Anybody that follows
1603 markets today, that follows what is happening throughout our
1604 country will tell you there is trillions of dollars on the
1605 sidelines that could be invested right now at creating jobs,
1606 and the job creators, those people that have that money to
1607 invest, are telling us that it is the regulations coming out
1608 of agencies like EPA that are holding them back and so, you
1609 know, when you give your testimony, and I have listened to
1610 some of your testimony about the ability that you think your

1611 agency has to create jobs by coming out with regulations, you
1612 know, maybe you are living in a parallel universe to the one
1613 I am living in, but when I talk to people--and, you know, you
1614 gave a statement saying for every dollar in new rules that
1615 you then give back \$24 in health benefits, for example, with
1616 the regulations you are proposing. You are saying that the
1617 rules that will require investment, these rules that you are
1618 coming out with will require investments that will create
1619 jobs and put people back to work.

1620 You know, first of all, tell me, when you make rules, do
1621 you all really look and think that the rules you are making
1622 are going to create jobs?

1623 Ms. {McCarthy.} That is not their primary but we--

1624 Mr. {Scalise.} But do you--

1625 Ms. {McCarthy.} --certainly look at the economic
1626 impacts of our rules--

1627 Mr. {Scalise.} Because you have given some testimony--

1628 Ms. {McCarthy.} --looking at jobs.

1629 Mr. {Scalise.} So, for example, I think you had
1630 testimony that for every million or million and a half
1631 dollars a business spends to comply with rules, you said that
1632 creates a job?

1633 Ms. {McCarthy.} I certainly--I did not say that and I
1634 don't think I have submitted testimony to that effect.

1635 Mr. {Scalise.} I think that was your testimony, and I
1636 will go back and look, and--

1637 Ms. {McCarthy.} Maybe in the past, and that certainly
1638 does not sound unachievable. Oh, that is one of the studies
1639 that we use as a basis for our economic analysis. It
1640 indicates that.

1641 Mr. {Scalise.} So what does it indicate, if you can
1642 give me the exact indication, because I read that in one of
1643 your statements.

1644 Ms. {McCarthy.} I think it indicates that for every
1645 million dollars expended on control equipment. We find that
1646 increased environmental spending generally does not cause a
1647 significant change in employment, and this is referencing a
1648 Morgan Stearns study that has been peer reviewed, and the
1649 scientific literature says our average across all four
1650 industries is a net gain of 1.5 jobs per \$1 million in
1651 additional environmental spending.

1652 Mr. {Scalise.} So basically what you are saying is, if
1653 you force a company to spend another million dollars
1654 complying with some rule that you come up with, Congress
1655 didn't pass it but you all came with a rule, you are
1656 acknowledging that that is forcing businesses to spend money.
1657 So if you say a business is forced to spend a million dollars
1658 to comply with your rule, according to your metrics, that

1659 creates one and a half jobs. Is that one and a half jobs at
1660 your agency?

1661 Ms. {McCarthy.} I certainly don't want to give the
1662 impression that EPA is in the business to create jobs. What
1663 we--

1664 Mr. {Scalise.} You are definitely not.

1665 Ms. {McCarthy.} We are in the business--

1666 Mr. {Scalise.} From everybody I have talked to, you are
1667 in the business of putting people out of work right now.

1668 Ms. {McCarthy.} No, we are in the business of actually--
1669 -the Clean Air Act, its intend is to protect public health.

1670 Mr. {Scalise.} Well, let me ask you this--

1671 Ms. {McCarthy.} As a result of that, money gets spent
1672 and jobs get--yes.

1673 Mr. {Scalise.} And jobs get what?

1674 Ms. {McCarthy.} Jobs grow.

1675 Mr. {Scalise.} Again, maybe a parallel universe we are
1676 living in, but when you think jobs grow because of these
1677 regulations, I can show you small business after small
1678 business that can't grow jobs because of your regulations
1679 directly related to your regulations, not nebulous.

1680 And now we will get into the health issue because one of
1681 the things we hear and it was talked about in opening
1682 statements and yours as well is, you know, this has got to be

1683 done for health reasons. Let me bring you to a decision the
1684 President just made on the Ozone National Ambient Air Quality
1685 Standards where the President even acknowledged that EPA's
1686 regulations and specifically as it related just a couple days
1687 ago to ozone actually shouldn't go forward and asked you all
1688 to pull back. I would like to get your opinion, what is your
1689 reaction to the President saying your smog ruling is not a
1690 good move to make and asked you all to pull that back.

1691 Ms. {McCarthy.} The President issued a statement and it
1692 should speak for itself.

1693 Mr. {Scalise.} But you are the agency that is tasked
1694 with that rule. I mean, what is your opinion on it?

1695 Ms. {McCarthy.} Once again, the President made the
1696 decision and he asked the agency to pull back that rule, and
1697 clearly the agency will and we will work very aggressively on
1698 the next review, which is what he asked us to do, the most
1699 current science, and we will move forward in 2013 to look--

1700 Mr. {Scalise.} Hopefully you all take that approach
1701 with these other rules that are costing jobs.

1702 I yield back. Thanks.

1703 Ms. {McCarthy.} The chair now recognizes the gentleman
1704 from Virginia, Mr. Griffith, for 5 minutes.

1705 Mr. {Griffith.} Thank you, Mr. Chairman.

1706 I am a little concerned. Earlier today you said that

1707 you all are going through public comment and you didn't need
1708 any help with the legislature, and I am just curious about
1709 that statement. Did you really mean that?

1710 Ms. {McCarthy.} Well, what I meant was there an
1711 indication or an inference that this legislation was in
1712 response to a need that EPA expressed, and it is not.

1713 Mr. {Griffith.} So you understand that it is in fact
1714 the legislature's job that all of us, as many have already
1715 stated, it is our job to go out and listen to our
1716 constituents and then we face election each year. You
1717 understand that?

1718 Ms. {McCarthy.} And it is EPA's job to implement the
1719 laws that you enact.

1720 Mr. {Griffith.} And it is also our job then to review
1721 those laws to determine whether or not we believe it in the
1722 best interest of the United States and if the public believes
1723 that there is something we should do that we should change it
1724 which is why the Founding Fathers gave us a 2-year term and
1725 not a lifetime term. Do you agree with that?

1726 Ms. {McCarthy.} I would not presume to do your job.

1727 Mr. {Griffith.} And were you just getting a little
1728 testy with us when you said in Section 5 that you weren't
1729 sure who was being--who the burden was on, whether it was the
1730 industries or whether it was the air-breathing public. Was

1731 that just a little testy comment, or do you really believe
1732 that?

1733 Ms. {McCarthy.} I think I was trying to make a point
1734 about the lack of clarity in that language and the
1735 uncertainty that it would bring to the table and the
1736 potential it has to add uncertainty in the legal world that
1737 would preclude us from moving forward to achieve the benefit,
1738 the health benefits that the Clean Air Act intended.

1739 Mr. {Griffith.} But you wouldn't acknowledge that the
1740 line in section 5 that says the Administration shall impose
1741 the least burdensome refers back to the beginning of that
1742 paragraph where it says for each regulation promulgated?

1743 Ms. {McCarthy.} But whose burden should we look at?
1744 What we look at are the health benefits compared with the
1745 costs associated with the implementation of that rule and we
1746 maximize the benefits and we minimize the cost to the extent
1747 that we can.

1748 Mr. {Griffith.} But you said earlier, and I am just
1749 curious about it, because you said earlier that, you know,
1750 you weren't sure whether that--and the same thing you just
1751 said to me--you weren't sure who that applied to as to the
1752 burden and you said the air-breathing public, and I guess I
1753 am questioning that because the air-breathing public, we
1754 breathe out what you all have determined to be a pollutant,

1755 CO2, and I am wondering if that is some precursor to--I mean,
1756 I don't think so, I thought it was just a testy comment, but
1757 now I am getting some of the same stuff back. Is that a
1758 precursor to you all anticipating regulations on the air-
1759 breathing public because this paragraph clearly only deals
1760 with regulations promulgated in relationship to the Clean Air
1761 Act. Are you following me?

1762 Ms. {McCarthy.} I don't think so, but let me--

1763 Mr. {Griffith.} Okay. Let me state to you then that it
1764 looks very clear to me it applies to regulations that you
1765 all--I don't think there is any question that that paragraph
1766 deals with regulations that you all implement--

1767 Ms. {McCarthy.} Oh, I think I misinterpreted--

1768 Mr. {Griffith.} --in Section 2A in the Clean Air Act--

1769 Ms. {McCarthy.} --your comment. What I was--

1770 Mr. {Griffith.} --and so if you think it applies to the
1771 air-breathing public, you must be getting ready to regulate
1772 it.

1773 Ms. {McCarthy.} No, no. When the agency interprets
1774 burden, is it the burden to industry to comply or is it the
1775 health burdens associated with the pollution for the
1776 breathing public. That was my point. I apologize if I was
1777 indicating that I would be regulating individuals.

1778 Mr. {Griffith.} Well, I didn't think you were but then

1779 I have seen strange--

1780 Ms. {McCarthy.} That is certainly what I intended.

1781 Mr. {Griffith.} --things coming out of the EPA, so I
1782 wasn't certain. That being said, you all don't think that
1783 there are any time problems for these industries? You are
1784 dealing with a number of them. We heard about Oregon and
1785 other places and you don't think there are any time issues.
1786 You think that we should stay, and in your responses to
1787 Congressman Dingell, you indicated that you thought the
1788 timelines should remain exactly the same and go into effect
1789 in April notwithstanding other questions have come up and
1790 said there is a problem here and you say we are working with
1791 them. Do you still think the timeline that you all have laid
1792 out is perfectly reasonable?

1793 Ms. {McCarthy.} I would tell you that administratively,
1794 we have the tools available to us to address the timeline
1795 concerns and we will certainly be looking at these with three
1796 out of the four rules. We have stayed them ourselves, and we
1797 are going through a reconsideration process. All I am
1798 suggesting is--

1799 Mr. {Griffith.} But I am correct that that
1800 reconsideration process has actually been objected to by
1801 certain groups and the courts. Is that not true?

1802 Ms. {McCarthy.} That is true.

1803 Mr. {Griffith.} And so there is a possibility that if
1804 the court rules that your reconsideration was not proper,
1805 that we are stuck with the March 2011 regulations. Isn't
1806 that true?

1807 Ms. {McCarthy.} The agency believes that that the
1808 authority that Congress has afforded EPA allows us to stay
1809 the rules in exactly the way we have done it and that we are
1810 not at--

1811 Mr. {Griffith.} But that is currently in the courts
1812 being thought out, so--

1813 Ms. {McCarthy.} As is most of our rules, yes.

1814 Mr. {Griffith.} But we don't have any guarantee unless
1815 we do something that we are not going to get stuck with the
1816 March 2011 rules. Isn't that true? Knowing that the courts--
1817 --that we can disagree with the courts but sometimes they rule
1818 in ways that we don't anticipate. Isn't that true?

1819 Ms. {McCarthy.} I do not believe that you are at risk
1820 of having a court tell you that we should be stopping our
1821 reconsideration process and completing it by April of next
1822 year.

1823 Mr. {Griffith.} But you would agree that any good
1824 lawyer has been wrong at some point in time as to what the
1825 courts might do, would you not?

1826 Ms. {McCarthy.} I have pointed that out a few times.

1827 Mr. {Griffith.} I yield back my time, Mr. Chairman.

1828 Mr. {Whitfield.} At this time I recognize the gentleman
1829 from Massachusetts, Mr. Markey, for 5 minutes.

1830 Mr. {Markey.} Thank you, Mr. Chairman, very much.

1831 Forty-nine years ago in September of 1962, President
1832 Kennedy issued an urgent call to the Nation to be bold. He
1833 said that we shall send to the moon 240,000 miles away from
1834 the control station in Houston a giant rocket more than 300
1835 feet tall, the length of a football field, made of new metal
1836 alloys, some of which have not yet been invented, capable of
1837 standing heat and stresses several times more than have ever
1838 been experienced, fitted together with a precision better
1839 than the finest watch, and we did it, and we did it less than
1840 7 years after that speech.

1841 Today we are holding a hearing on Republican legislation
1842 that essentially exempts the cement industry and industrial
1843 boiler sector from having to install existing technologies.
1844 Nothing has to be invented at all to remove mercury and other
1845 toxics from their smokestacks because evidently the can-do
1846 Nation that sent a man to the moon in under 10 years just
1847 can't do it when it comes to cleaning up air pollution using
1848 commercially available technologies that already are on the
1849 shelf today.

1850 Now, shortly after the 1996 Telecommunications Act was

1851 passed out of this committee, it became the law. We were
1852 transformed as a Nation from a black rotary dial phone Nation
1853 to a BlackBerry and iPad nation. This committee say we can
1854 do it, but can we install the best available technologies in
1855 cement kilns to reduce the amount of mercury poisoning in
1856 children's brains? No, that is just too hard. We can't find
1857 anyone smart enough to figure it out. Instead of installing
1858 commercially available technology on cement kilns, cement
1859 plants, we will just install a Portland cement shoe on the
1860 EPA and throw it in the river, and if the EPA doesn't die
1861 from drowning, the mercury will definitely kill it.

1862 Ms. McCarthy, 2 months ago the House considered a bill
1863 to ban compact fluorescent light bulbs. During debate on
1864 that bill, we were repeatedly told by the Republicans that
1865 the mercury vapors from those light bulbs is dangerous, and
1866 even that ``exposing our citizens to the harmful effects of
1867 the mercury contained in CFL light bulbs is likely to pose a
1868 hazard for years to come.''

1869 Now, the cement rule that we are debating here today
1870 alone would reduce mercury emissions, which the Republicans
1871 really care about, by 16,600 pounds per year. Now, there are
1872 three 3 milligrams of mercury in one compact fluorescent
1873 light bulb, almost seven-millionths of a pound. So the
1874 cement rule will eliminate the same amount of mercury in one

1875 year as banning two and a half billion compact fluorescent
1876 light bulbs.

1877 Ms. McCarthy, what is the greater public health threat,
1878 the tons of mercury coming out of cement kilns that are being
1879 sent right up into the atmosphere or light bulbs?

1880 Ms. {McCarthy.} Based on the information provided, it
1881 is clear that it is cement.

1882 Mr. {Markey.} Cement. Well, I am glad that the
1883 Republicans can hear that. Cement is a greater threat
1884 because we have heard so much concern about light bulbs from
1885 them this year and mercury.

1886 Now, we have been told that all these bills do is to
1887 give EPA an extra 15 months to study and refine its proposals
1888 though, of course, that is on top of the 20 years it has been
1889 since Congress told the EPA to set these standards in the
1890 first place. Now, EPA asked the courts for an extra 15
1891 months to refine its boiler regulations. Did EPA also ask
1892 for an additional 15 months to refine its cement regulations?

1893 Ms. {McCarthy.} No.

1894 Mr. {Markey.} Now, isn't it true that these bills
1895 actually remove any deadline for finalizing the rules?

1896 Ms. {McCarthy.} Yes.

1897 Mr. {Markey.} Do you agree that if the EPA for some
1898 reason chose not to finalize them for years, it would be

1899 virtually impossible to force the EPA to act?

1900 Ms. {McCarthy.} It would be unclear how.

1901 Mr. {Markey.} Now, the way I understand this part of
1902 the Clean Air Act, EPA basically grades on a curve. To get
1903 an A, you just have to do what the other A students do by
1904 installing the same commercially available technologies that
1905 the cleaner facilities have. Is that not right?

1906 Ms. {McCarthy.} Yes.

1907 Mr. {Markey.} So no one has to invent anything new in
1908 order to comply with the rule?

1909 Ms. {McCarthy.} This is existing equipment that can
1910 achieve these standards.

1911 Mr. {Markey.} I thank the chairman.

1912 Mr. {Whitfield.} Thank you.

1913 At this time I recognize the gentleman from Texas, Mr.
1914 Olson, for 5 minutes.

1915 Mr. {Olson.} I thank the chair, and first of all, as a
1916 member who represents the Johnson Space Center, I appreciate
1917 my colleague from Massachusetts with his comments about human
1918 spaceflight and the Johnson Space Center, and for all of you
1919 out there, that is an example of bipartisanship on Capitol
1920 Hill, so thank you for those comments.

1921 Assistant Administrator McCarthy, great to see you
1922 again, and thank you so much for coming here today. I

1923 appreciate your willingness to testify, and I appreciate your
1924 apology about the tardiness of your written testimony for the
1925 committee members, but my point is, and my only comment about
1926 that is, apologizing to me is important but you should
1927 apologize to the people of Texas 22, the people I represent.
1928 They have got many, many questions about what EPA is doing
1929 there and how it is impacting their business, and because we
1930 got this testimony in a tardy manner, I am not doing the best
1931 job I can representing them, so I appreciate your apology and
1932 your commitment to making sure this never, ever happens
1933 again. And that is all I have to say about that, as Forrest
1934 Gump would say.

1935 But I do have other things I want to say, and I am
1936 concerned that the EPA did not do their homework when they
1937 determined the maximum achievable control technology floor,
1938 and as I understand it and as we are going to hear in the
1939 panel after you, in many cases these standards are not
1940 achievable by real-world boilers. The 1990 Clean Air Act
1941 Amendments require the EPA to promulgate technology-based
1942 emission standards but it allows for the possible
1943 supplementation of health-based standards. In your opening
1944 statement, and this is a rough quote, you said that every
1945 American is entitled to healthy air and a job. The committee
1946 agrees with that, but there has to be some balance, and

1947 again, the Clean Air Act Amendments of 1990 recognize that.
1948 Technology-based is the primary one balanced in some cases
1949 with supplementation by health-based standards. And so my
1950 question for you is, is there enough data out there to
1951 supplement health-based standards over technology-based
1952 standards for the hazardous air pollution sources?

1953 Ms. {McCarthy.} There is not enough information for us
1954 to make the decision under the law that using a health-based
1955 emissions limit would be sufficiently protective with an
1956 adequate margin of safety.

1957 Mr. {Olson.} Okay. So if there is not enough data, how
1958 does the EPA determine and monetize the health benefits,
1959 positive health benefits that can be attributed to the boiler
1960 MACT rule?

1961 Ms. {McCarthy.} I think it is a bit of apples and
1962 oranges. A health-based emissions limit is something that
1963 would be proposed to us to take a look at that would identify
1964 risks associated with a health standard as opposed to
1965 technology being installed. We can clearly and have assessed
1966 the health benefits the same way the prior Administration
1967 did. We assess the health benefits associated with our rule,
1968 taking a look at what technologies are available and how
1969 those rules could be achieved using that technology. A
1970 health-based emissions limit wouldn't establish a limit. It

1971 would simply say everything is okay at this facility if you
1972 manage it in a particular way. We did not certainly feel
1973 that with toxic pollutants that we could do anything other
1974 than have a complete assessment as to whether or not that
1975 health-based limit would actually achieve the kind of health
1976 protections that are required under the Clean Air Act, and we
1977 simply didn't have that information to make that judgment.

1978 Mr. {Dingell.} Would the gentleman yield?

1979 Mr. {Olson.} I have got a couple more questions and I
1980 will yield back the remainder of my time, but one more
1981 question following up on that. So you said there isn't
1982 enough data to determine and monetize the health benefits
1983 that can be attributed to the boiler MACT rule. Just
1984 following up on my colleague from Virginia's comments about
1985 foreign sources. As you know, Texas is a border State. I
1986 mean, one-half of the southern border is the great State of
1987 Texas, 1,200 miles, and I am very concerned that many of the
1988 emissions that are coming across the border standards that
1989 our businesses in Texas are being held to the Clean Air Act
1990 standards, and you say that there is not enough data to
1991 supplement the health standards yet we are promulgating
1992 standards. Why can't we determine some sort of health
1993 standard for the emissions coming from foreign sources? Why
1994 do our businesses in the great State of Texas have to be

1995 penalized because they are being required the emissions that
1996 are somehow coming across the border, they are going to in
1997 the line of fire. How come we can't separate that out and
1998 give them some sort of credit so we can keep the business
1999 right here in America?

2000 Ms. {McCarthy.} We actually do have a wealth of
2001 information and it is part of the public disclosure
2002 associated with this rule and others on what type of
2003 pollution is coming in from other parts of the world and we
2004 do not challenge our facilities to account for that or to
2005 reduce that but we do account for their own emissions and we
2006 do look at what technologies are available that are cost-
2007 effective that will achieve significant public health
2008 improvement.

2009 Mr. {Olson.} Well, just in summary, I will tell you
2010 that every time I go back home, the businesses back there,
2011 particularly the petrochemical businesses on the Port of
2012 Houston, feel like they are required to carry these emissions
2013 coming from foreign sources. It is unfair. It kills
2014 American jobs.

2015 I yield back the balance of my time.

2016 Mr. {Dingell.} Will the gentleman yield to me?

2017 Mr. {Olson.} I will yield, sir, but I have got a zero
2018 zero zero on the clock.

2019 Mr. {Dingell.} Madam Administrator, you are giving me
2020 in your comments to my colleagues the impression that you are
2021 going to come forward with decisions on rules, which you will
2022 put in place before the questions associated with those rules
2023 have been fully answered and before you can assure us that
2024 you are not going to have to run out very shortly and
2025 initiate a new set of rules. It strikes me that if that is
2026 the case, you are creating a serious problem both in terms of
2027 the administration of the law and politically for the agency.
2028 Can you assure me that you are not doing that and that when
2029 you conclude these rules that you will have then a rule which
2030 will be settled so that business can make the decisions and
2031 so that they will not have to run out and make new
2032 investments to satisfy a subsequent enactment of a new rule
2033 which will be made after the first rule has been completed?

2034 Ms. {McCarthy.} Mr. Dingell, perhaps I wasn't as clear
2035 in what I was speaking about. When I was talking about the
2036 health-based emissions limit, which is I think what you are
2037 talking about, I believed that we were talking about the
2038 cement rule, which has actually been finalized, and the fact
2039 that in that rule we did tee up comment and we solicited
2040 comment on whether or not we could do a health-based
2041 emissions limit, and we asked for the data necessary to
2042 ensure that an emissions limit could be established that was

2043 lower than a technology limit, a technology-based limit that
2044 would be sufficiently protective. I was not speaking to the
2045 rules that are going to be reconsidered.

2046 Mr. {Dingell.} You have given me no comfort, Madam
2047 Administrator. I am driven to the conclusion that you are
2048 telling me that when you have completed this, there is a
2049 probability that you will initiate new efforts to come
2050 forward with a new rule under perhaps different sections of
2051 the Clean Air Act. I regard that as being an extraordinarily
2052 unwise action by the agency in several parts.

2053 Mr. {Whitfield.} The gentleman from West Virginia, Mr.
2054 McKinley, is recognized for 5 minutes.

2055 Mr. {McKinley.} Thank you, Mr. Chairman.

2056 I am trying to grasp all this, and I appreciate your
2057 coming back in. We have had some interesting discussions
2058 here in this committee with you. Go back to the issue that
2059 we brought up a minute ago about 1962. I certainly wouldn't
2060 take offense to that because it is something taken out of
2061 context. We weren't in the middle or the tail end of a
2062 recession in 1962, were we?

2063 Ms. {McCarthy.} I don't remember.

2064 Mr. {McKinley.} But we were someplace, you and I. but
2065 that was a different time, and I don't think anyone is saying
2066 that there is not a can-do ability, but right now we have 9.1

2067 percent unemployment. We just got announced last month that
2068 there were no job increases whatsoever across America. So
2069 our businesses are trying to make some decisions. They know
2070 they can replace the boilers. If he is correct that they are
2071 on the shelf, for right now I will accept that. I am not
2072 sure I am going to completely buy that but I will accept that
2073 premise. But they have to make a decision. They have to
2074 make a decision right now in this economy. And over the
2075 break, I had an opportunity to visit two lumber producers in
2076 West Virginia, and both of them pleaded with me to give us
2077 time, more time. They have gone to--they are talking to the
2078 banks. First they are saying we meet some standards now, we
2079 are not polluting under the old standard, we are meeting some
2080 standards, we are meeting Clean Air Act, we are meeting the
2081 EPA standards, we are meeting those standards, and for
2082 someone to tighten the bolt right now in this economy is
2083 threatening them because there is already one other major
2084 manufacturer in West Virginia lumber that went out of
2085 business due to this economy.

2086 We are hearing because of Dodd-Frank, some of the banks
2087 are not as anxious to loan money to the lumber industry now
2088 in this economy because it is a risky loan in this economy so
2089 there is some reservation for that. So they are asking us--
2090 the one company was \$6 million, they have already got an

2091 estimate to make this replacement, and they are trying--how
2092 do I make this choice because their own analysis has said if
2093 they do make this investment, the likelihood of their company
2094 surviving over a period of time won't be. They know it is
2095 marginal right now. They have lost money for the last 2
2096 years, and to go out and borrow \$6 million more puts 600
2097 people at risk, 600 people.

2098 So I am asking you, if you had--if you were sitting in
2099 that boardroom and you know that your company has lost money
2100 the last numbers of years, but yet the EPA is saying we want
2101 you to buy something off the shelf and put it in place and it
2102 is going to cost you \$6 million and you probably are going to
2103 lose your 600 jobs, what do you do? What would you do under
2104 that--what is wrong with their business decision to ask for a
2105 delay until this economy gets a little stronger and they can
2106 be more competitive? What is the matter with that?

2107 Ms. {McCarthy.} Mr. McKinley, I will tell you that EPA
2108 is certainly not oblivious to the economic challenges that we
2109 are all facing. If you look at the rules and the way in
2110 which we are evaluating our rules, we are doing a better job
2111 every rule to try to understand the economics--

2112 Mr. {McKinley.} What does he do in that boardroom?

2113 Ms. {McCarthy.} --to try to understand the jobs.

2114 Mr. {McKinley.} Ms. McCarthy, you have to make a

2115 decision because you are breathing down his neck.

2116 Ms. {McCarthy.} We have successfully through the 40-
2117 year history of the Clean Air Act found a way to grow the
2118 economy with significant--

2119 Mr. {McKinley.} Oh, you all said that. You said that
2120 before. You came in here and you said yourself that the EPA
2121 has actually created jobs and you said it here again today,
2122 and I am still waiting. I asked you then back in February if
2123 you could provide that information of how the EPA regulations
2124 create jobs, and I still don't have it. This is now
2125 September and I still haven't received that report of how
2126 your regulations create jobs. You said it here today. You
2127 said you are expecting job growth if the EPA standards were
2128 put into effect.

2129 Ms. {McCarthy.} That is correct.

2130 Mr. {McKinley.} What are we talking about?
2131 Construction jobs that last for 6 months but then put the 600
2132 people out of work in my district? That doesn't work. I
2133 don't understand where you are going but you haven't still
2134 answered my initial--if you were in the boardroom, what would
2135 you do? Put your company under or would you let the people
2136 go?

2137 Ms. {McCarthy.} I firmly believe that we need to meet
2138 our economic challenges in a way that continues to grow the

2139 economy. That is my belief and I think we have done it and I
2140 think we can continue to do that.

2141 Mr. {Whitfield.} The gentleman from California, Mr.
2142 Bilbray, is recognized for 5 minutes.

2143 Mr. {Bilbray.} Thank you.

2144 Ms. McCarthy, how many years have you served at the
2145 local level administering the Clean Air Act?

2146 Ms. {McCarthy.} I served--well, I don't know whether I
2147 could say I administered the Clean Air Act but I worked at
2148 the local level for 11 years.

2149 Mr. {Bilbray.} Okay. You know, I was one of the few
2150 people on this side of the aisle to support Mr. Markey's
2151 position on the light bulb issue but let me tell you
2152 something, after 16 years as a local administrator with the
2153 best scientists in the world in California, which you would
2154 admit that California--

2155 Ms. {McCarthy.} They are good, but I came from
2156 Massachusetts.

2157 Mr. {Bilbray.} That is why you adopt our fuel standards
2158 and supported our action to eliminate the ethanol-methanol
2159 mandate.

2160 Ms. {McCarthy.} Fair point.

2161 Mr. {Bilbray.} But my point being, I was a little taken
2162 aback that somebody in your position did not take the

2163 opportunity to point out to Mr. Markey that to compare
2164 ambient air and indoor air exposures is really inappropriate,
2165 especially with the challenges we have seen. And can we
2166 clarify the fact that there are major challenges in indoor
2167 air and we shouldn't be mixing those two up and giving the
2168 impression that somehow from the health risk point of view it
2169 is all the same?

2170 Ms. {McCarthy.} They are very different exposures.

2171 Mr. {Bilbray.} Thank you. I am very concerned about
2172 that because of science.

2173 Now, my biggest concern, as I look at things like the
2174 solid waste emissions regs where a company has to address the
2175 emissions for that day, but if you take the same waste and
2176 you put it off and bury it, those emissions have to be
2177 mitigated per day for the next 60 to 70 years, but there is
2178 no penalty for the fact that you are basically sending the
2179 emissions off to your grandchildren. It is almost like the
2180 regulations encourage people to do the environmentally
2181 irresponsible thing because on paper it looks good for that
2182 24-hour period but in fact, in a lifecycle, you are actually
2183 having a cumulative impact and those emissions are going to
2184 be pollutant. It is that kind of regulation as an air
2185 regulator that I am just outraged that we are not brave
2186 enough to stand up and talk about and the environmental

2187 community activists and regulatory have walked away from it.

2188 I would ask you, what State has been more aggressive at
2189 moving regulatory oversight and mandates than the State of
2190 California when it has come to clean air?

2191 Ms. {McCarthy.} I would say that California has been
2192 very aggressive. It's air pollution challenges have been
2193 quite extreme.

2194 Mr. {Bilbray.} Okay. And I will say this as somebody
2195 who had the privilege of doing that. I think people on my
2196 side of the aisle are in denial of the health challenges of
2197 environmental risk, but I have got to tell you something,
2198 when you stand up and give us the same line that California
2199 has been using for decades, that this will be great for
2200 business, we have gone from being the powerhouse in this
2201 country and the world, the California economy, to a 12
2202 percent unemployment to the fact that you do not manufacture
2203 almost anything in California anymore, when we have gotten to
2204 the point where our scientists who are developing green fuel
2205 technology have to leave the State because they cannot get
2206 the permits or the ability financially to be able to produce
2207 it in the State. I just think that we are really in denial
2208 if you really think that California is wealthier, more
2209 prosperous and that the green technology is penciled out so
2210 much that it is now an example of the huge benefits of

2211 regulatory mandates actually helping the economy in the long
2212 run, and I just ask you to consider the fact that for those
2213 of us that don't have the cement manufacturing in my
2214 district--I don't. We are importing it from Mexico, the
2215 components for concrete. We don't talk about the mobile
2216 sources. And my question to you is this. Is there a
2217 consideration of the increased mobile sources if these plants
2218 break down? Because why not produce it in Kampichi and ship
2219 the cement up the river into these areas?

2220 Ms. {McCarthy.} There has not been a full lifecycle
2221 assessment of this, no.

2222 Mr. {Bilbray.} I bring up, we found out that by not
2223 doing a full lifecycle on things like ethanol, we realized we
2224 grossly underestimated the environmental impact because we
2225 did not do the full cycle. Don't you agree that there was a
2226 mistake made there?

2227 Ms. {McCarthy.} The only thing I would point out to you
2228 is that I think the comparison with California, looking at
2229 its National Ambient Air Quality challenges, and compare that
2230 to technology-based solutions that will drive toxic pollution
2231 down is not exactly an equal comparison.

2232 Mr. {Bilbray.} The equal comparison is the fact,
2233 though, that the projections of an economic boon from the
2234 enforcement of environmental regs was grossly overstated in

2235 California and historically has been overstated in the United
2236 States, and I will bring it up again: the great selling
2237 point of fuel additives that have been told by scientists in
2238 the 1990s that the federal government is making a mistake
2239 about, we continue to this day to follow that failed policy
2240 with the environmental damage and the economic damage caused
2241 by it, and we don't reverse it. My concern is not that we
2242 try new things or we make mistakes but when we try new things
2243 and make mistakes, we don't go back and correct it. It has
2244 been how many years since we put a clean fuel mandate out
2245 that everybody knows was a failure.

2246 Ms. {McCarthy.} We are moving forward with these rules
2247 because the Clean Air Act requires it. We are long delayed.
2248 There are significant public health benefits but we clearly
2249 look at the economy and ensure that we are doing it as cost-
2250 effectively as we can and to assess the impacts.

2251 Mr. {Bilbray.} And I think you are denying the economic
2252 impact as much as you damn the other side for denying the
2253 environmental impact.

2254 Mr. {Whitfield.} At this time the chair recognizes the
2255 gentleman from Colorado, Mr. Gardner, for 5 minutes.

2256 Mr. {Gardner.} Thank you, Mr. Chairman, and thank you,
2257 Madam Administrator for being here today.

2258 A couple of questions. I appreciate your support that

2259 you give in your testimony for meeting deadlines and the
2260 importance of deadlines in the Clean Air Act, but I am
2261 concerned that not all deadlines are equal in the eyes of the
2262 EPA. The Clean Air Act has an express 1-year deadline for
2263 taking final agency action on PSD permits. However, when you
2264 look at drilling in offshore Alaska, some of these permits
2265 continue to languish for 5 years. They have prevented us
2266 from accessing billions of barrels of oil that could make a
2267 long-term dent in gasoline prices in the United States. Why
2268 does the EPA pick and choose statutory deadlines that it
2269 feels to abide by?

2270 Ms. {McCarthy.} We actually try very hard to meet the
2271 statutory deadlines, and the 1-year deadline is one that we
2272 are doing everything we can to achieve. There are certainly
2273 challenges with ensuring that we get complete information so
2274 that the application can be assessed and we can move that
2275 forward. We work very hard with applicants to expedite
2276 permitting as much as possible.

2277 Mr. {Gardner.} Do you think some deadlines have more
2278 importance than other deadlines?

2279 Ms. {McCarthy.} I think that the law treats them all
2280 equally and I think we are equally obligated to do them.

2281 Mr. {Gardner.} But the EPA hasn't followed the law.

2282 Ms. {McCarthy.} We do our best to do that, to meet

2283 every deadline in the statute. Do we always succeed?

2284 Absolutely not.

2285 Mr. {Gardner.} Two months prior to announcing the
2286 boiler MACT rules, the EPA sought a 15-month extension to re-
2287 propose three of the rules. Do you believe it is accurate to
2288 assume that the EPA needed an extension because the rules
2289 needed more work?

2290 Ms. {McCarthy.} The rules actually changed
2291 significantly from proposal to final. We felt that they were
2292 legally vulnerable without entertaining more public comment
2293 and process associated with those changes.

2294 Mr. {Gardner.} So it needed more work?

2295 Ms. {McCarthy.} Say it again.

2296 Mr. {Gardner.} So it needed more work?

2297 Ms. {McCarthy.} It needed more public comment.

2298 Mr. {Gardner.} But just public comment, not more--okay.

2299 Ms. {McCarthy.} We are certainly opening up to more
2300 work because we solicited additional comment, and with more
2301 data, we will take a look at it.

2302 Mr. {Gardner.} In your statement, you stated in your
2303 statement that it is terrifically misleading to say that
2304 enforcement of the Clean Air Act costs jobs. Have you ever
2305 had a manufacturing facility tell you personally that it
2306 simply cannot comply with all the regulations coming out of

2307 the EPA?

2308 Ms. {McCarthy.} Many times.

2309 Mr. {Gardner.} Your testimony says that for every \$1
2310 million spent in environmental spending to comply with
2311 environmental rules, it creates 1.5 jobs. According to the
2312 forest products industry, \$7 billion it will cost to comply
2313 with the boiler MACT rule. Are you then saying that that
2314 will create 10,500 jobs?

2315 Ms. {McCarthy.} No, I am not, and I am also not
2316 indicating that--

2317 Mr. {Gardner.} Why would you--

2318 Ms. {McCarthy.} --I agree--I was actually quoting a
2319 study that looked at specific industry sectors, and that--

2320 Mr. {Gardner.} But you must agree with it if you put it
2321 in the statement.

2322 Ms. {McCarthy.} I agree that that literature has been
2323 peer-reviewed and it is sound science, yes.

2324 Mr. {Gardner.} So then for every \$1 million in
2325 spending, the--

2326 Ms. {McCarthy.} In those four sectors is what that--

2327 Mr. {Gardner.} And the paper and pulp industry, I
2328 believe, is one of the four sectors so you are saying that \$7
2329 billion--

2330 Ms. {McCarthy.} I am not indicating at all that I

2331 believe the numbers that industry has indicated it associated
2332 with the cost of these rules. These major source boilers
2333 will in no way is estimated using scientific peer-reviewed
2334 methods to cost anywhere near that figure.

2335 Mr. {Gardner.} Do you believe that these regulations
2336 altogether will put a number of operations out of business?

2337 Ms. {McCarthy.} I believe that there will be choices
2338 made by industry on how they will comply.

2339 Mr. {Gardner.} Including whether they stay in business
2340 or not?

2341 Ms. {McCarthy.} That is going to be their choice
2342 looking at a variety of factors, perhaps least of which is
2343 compliance with these regulations.

2344 Mr. {Gardner.} So the EPA's own number on boiler cost
2345 was \$5 billion, so that is just a little bit less than--

2346 Ms. {McCarthy.} No, actually the boiler cost was a
2347 little less than \$2 billion.

2348 Mr. {Gardner.} That is the information I have was \$5
2349 billion from the EPA.

2350 Ms. {McCarthy.} That was actually the proposal. We
2351 have cut that in half using flexibilities under the law and
2352 looking at new data.

2353 Mr. {Gardner.} So later we are going to hear the
2354 president and CEO of Lehigh Hanson talking about a loss of

2355 4,000 jobs. Do you believe that business owners are being
2356 disingenuous when they tell us that it is going to cost them
2357 4,000 jobs?

2358 Ms. {McCarthy.} I don't want to attribute motive to
2359 anything. All I can tell you is under the history of the
2360 Clean Air Act, industry has significantly overstated
2361 anticipated costs and they have not come to be.

2362 Mr. {Gardner.} In your testimony, I counted the number
2363 of times where you say things like "in contrast to doomsday
2364 predictions, history has shown again and again that we can
2365 clean up pollution, create jobs and grow the economy.
2366 Economic analysis suggests the economy is billions of dollars
2367 larger today.'" Let us see. ``Some would have us believe
2368 that job killing describes EPA's regulations. It is
2369 terrifically misleading. Investments in labor-intensive
2370 upgrades that can put current unemployed or underemployed
2371 Americans back to work as a result of environmental
2372 regulations. Jobs also come from building and installing
2373 pollution control equipment.'" Let us see. ``Contrary to
2374 claims that EPA's agenda will have negative economic
2375 consequences, regulations yield important economic
2376 benefits.'" Let us see. It goes on. You say, ``Moreover,
2377 the standards will provide these benefits without imposing
2378 hardship on America's economy or jeopardizing American job

2379 creation.''

2380 Late last month, President Obama withdrew the ozone
2381 standards. He said, ``I have continued to underscore the
2382 importance of reducing regulatory burdens and regulatory
2383 uncertainty, particularly as our economy continues to
2384 recover.''

2385 Mr. Sunstein's letter to your agency said, ``The
2386 President has directed me to continue to work closely with
2387 executive agencies to minimize regulatory costs and
2388 burdens.''

2389 Is he wrong then? Your testimony talks about
2390 creating jobs through environmental regulations. Was the
2391 President wrong in making that--

2390 Mr. {Rush.} Regular order, Mr. Chairman.

2391 Mr. {Whitfield.} The gentleman's time has expired. Did
2392 you want to respond?

2393 Ms. {McCarthy.} No, the President made a sound decision
2394 and the agency is following it.

2395 Mr. {Gardner.} A sound decision? He made a sound
2396 decision?

2397 Mr. {Whitfield.} At this time we will conclude the
2398 questions for the first panel, and Ms. McCarthy, we
2399 appreciate your being here today. As you remember, many of
2400 the members had questions and further comments that they
2401 would ask the EPA to respond to, so we look forward to your
2402 getting back to us with that information and our staffs will

2403 be working with you all to make sure that all of that is
2404 taken care of. So thank you very much.

2405 Ms. {McCarthy.} Thank you very much, Mr. Chairman.

2406 Mr. {Whitfield.} At this time I would like to call up
2407 the second panel. On the second panel today, we have Mr.
2408 Daniel Harrington, who is the President and CEO of Lehigh
2409 Hanson Incorporated. We have Mr. James Rubright, who is the
2410 Chairman and CEO of Rock-Tenn Company. We have Dr. Paul
2411 Gilman, who is the Chief Sustainability Officer and Senior
2412 Vice President, Covanta Energy Corporation. We have Mr. John
2413 Walke, who is the Clean Air Director and Senior Attorney for
2414 the Natural Resources Defense Council. We have Mr. Eric
2415 Schaeffer, who is the Executive Director for the
2416 Environmental Integrity Project. We have Dr. Peter Valberg,
2417 who is the Principal in Environmental Health at Gradient
2418 Corporation, and we have Mr. Todd Elliott, General Manager,
2419 Acetate Celanese Corporation.

2420 So thank all of you for being here today. We appreciate
2421 your patience, and we look forward to your testimony. Each
2422 one of you will be given 5 minutes for an opening statement,
2423 and then we will have our questions at that point.

2424 So Mr. Harrington, we will call on you for your 5-minute
2425 opening statement. Thank you.

|
2426 ^STATEMENTS OF DANIEL HARRINGTON, PRESIDENT AND CEO, LEHIGH
2427 HANSON, INC.; JAMES A. RUBRIGHT, CHAIRMAN AND CEO, ROCK-TENN
2428 COMPANY; PAUL GILMAN, PH.D., CHIEF SUSTAINABILITY OFFICER AND
2429 SENIOR VICE PRESIDENT, COVANTA ENERGY CORPORATION; JOHN
2430 WALKE, CLEAN AIR DIRECTOR AND SENIOR ATTORNEY, NATURAL
2431 RESOURCES DEFENSE COUNCIL; ERIC SCHAEFFER, EXECUTIVE
2432 DIRECTOR, ENVIRONMENTAL INTEGRITY PROJECT; PETER A. VALBERG,
2433 PH.D., PRINCIPAL, ENVIRONMENTAL HEALTH, GRADIENT CORPORATION;
2434 AND TODD ELLIOTT GENERAL MANAGER, ACETATE CELANESE
2435 CORPORATION

|
2436 ^STATEMENT OF DANIEL HARRINGTON

2437 } Mr. {Harrington.} Thank you, Mr. Chairman. I am Dan
2438 Harrington. I am the President and CEO for Lehigh Hanson,
2439 and we are one of the United States' largest suppliers of
2440 heavy building materials to the construction industry. Our
2441 products include cement, brick precast pipe, ready-mixed
2442 concrete, sand and gravel, stone, and many other building
2443 materials. We have 500 operations in 34 States and we employ
2444 about 10,000 people in the United States. Also, I am
2445 presently the Chairman of the Government Affairs Council of
2446 the Portland Cement Association, and our association

2447 represents 97 percent of the U.S. cement manufacturing
2448 capacity. We have nearly 100 plants in 36 States and
2449 distribution facilities in all 50 States. We also employ
2450 approximately 13,000 employees. I am here today to express
2451 strong support for H.R. 2681, the Cement Sector Regulatory
2452 Relief Act of 2011.

2453 The current recession has been too long and too deep,
2454 and it has left the cement industry in its weakest economic
2455 conditions since the 1930s. Domestic demand for cement has
2456 dropped by more than 35 percent in the past 4 years, and we
2457 have shed over 4,000 job in the United States. Although
2458 13,000 well-paying cement manufacturing jobs remain, and
2459 their average compensation of \$75,000 a year, there are three
2460 EPA rules in particular which could force the loss of an
2461 additional 4,000 jobs, as you heard a second ago.

2462 Specifically, the National Emission Standards for Hazardous
2463 Air Pollutants rule, or NESHAP, for the Portland cement
2464 industry, the commercial and industrial solid waste
2465 incinerator, CISWI, rule, and finally, the agency's change in
2466 the definition of solid waste.

2467 In the face of all the economic uncertainty that faces our
2468 great Nation, the industry welcomes the welcomes the
2469 introduction of H.R. 2681. It will mitigate regulatory
2470 uncertainty and place these rules on a more reasonable

2471 schedule. Second, it will enable or industry to continue to
2472 make capital investments in the United States that will
2473 preserve jobs. It will also give us time to resolve the
2474 differences with the EPA on individual compliance levels
2475 which will result in regulations that are fair, balanced and,
2476 most importantly, achievable. Moreover, it will provide the
2477 time necessary for the economy to recover to a point where
2478 the industry is able to invest in plant upgrades and cost
2479 reductions again.

2480 Earlier this year, the Portland Cement Association
2481 completed an analysis of the economic and environmental
2482 impacts of several final and proposed EPA rules, including
2483 those addressed by H.R. 2681. The study concluded that one
2484 rule alone would impose a \$3.4 billion capital investment on
2485 an industry that generated \$6.5 billion in revenues in 2010.
2486 Now, the EPA did its own cost analysis, and their statistics
2487 show that it would require a \$2.2 billion capital investment.
2488 So whether it is \$2.2 billion or \$3.4 billion, it is
2489 significant capital investment, and no one has addressed
2490 operating cost increases due to the new equipment, which will
2491 be plus 5 to 10 percent over our current cost structure just
2492 to operate our plants in the future.

2493 Also as you have heard, 18 of our plants could close,
2494 and although the EPA downplays the consequence of job loss,

2495 these job losses, the realities are that these jobs will not
2496 be readily absorbed in the communities where most plants are
2497 located. Therefore, the multiplier effect takes place in our
2498 communities where contractors, service employers, raw
2499 material suppliers who feed our cement plants with goods and
2500 services and consultants no longer will have employment
2501 either to support the towns and villages where our cement
2502 plants are located. The agency also does not account for the
2503 impact of these closures outside the cement sector.
2504 Disruptions to the availability of supplies will have adverse
2505 impacts on our construction sector, which, as you know, has
2506 an unemployment rate of nearly 20 percent. If the economy
2507 rebounds, a decrease in domestic production will require an
2508 increase in imported cement, probably up to as high as 50
2509 percent by the year 2025. All of that cement will be coming
2510 in from offshore sites from around the world.

2511 Two other rules, the so-called CISWI and related
2512 definition of solid waste, would force an additional four
2513 plant closures and add another \$2 billion in compliance costs
2514 by 2015. Ironically, these also actually undermine the
2515 rulemaking that is in place for NESHAP and cause conflict in
2516 the two standards for us to choose which way to go or how to
2517 invest.

2518 The basic elements of the Cement Regulatory Relief Act,

2519 a re-proposal of the rules followed by an extension of the
2520 compliance deadline, provide a win-win opportunity for
2521 American workers and for the environment. This bipartisan
2522 bill is also consistent with the President's Executive Order
2523 issued earlier this year calling for reasonable regulations.

2524 I thank you for this opportunity to testify, and I
2525 welcome any questions as we go through the day. Thank you.

2526 [The prepared statement of Mr. Harrington follows:]

2527 ***** INSERT 2 *****

|

2528 Mr. {Whitfield.} Thank you, Mr. Harrington.

2529 Mr. Rubright, you are recognized for 5 minutes.

|
2530 ^STATEMENT OF JAMES A. RUBRIGHT

2531 } Mr. {Rubright.} Thank you, Chairman Whitfield, Ranking
2532 Member Rush and members of the subcommittee. My name is Jim
2533 Rubright and I am the CEO of Rock-Tenn, and I am testifying
2534 today on behalf of the American Forest and Paper Association
2535 and Rock-Tenn. Rock-Tenn is one of America's largest
2536 manufacturers of corrugated and paperboard packaging and
2537 recycling solutions. We operate 245 manufacturing facilities
2538 and we employ 26,000 people, well over 22,000 of whom are in
2539 the United States. I am here today to express support of
2540 Rock-Tenn and the other AF&PA member companies for H.R. 2250.

2541 We need the additional time and certainty provided by
2542 the bill for many reasons. The EPA needs the time provided
2543 in this bill to write a boiler MACT rule that is achievable,
2544 affordable and based on sound science. Our companies need
2545 the time to develop compliance strategies which don't exist
2546 today in full and to implement the massive capital
2547 expenditure programs that will be required to comply with the
2548 rule and to do so once and to do so with certainty. Our
2549 country needs and deserves this bill in order to mitigate the
2550 adverse impact of boiler MACT and the related rulemakings on
2551 job growth and economic recovery.

2552 Please let me explain. First, a jobs study produced by
2553 the AF&PA by Fisher International finds that the boiler MACT
2554 regulations will result in significant job losses within the
2555 forest products industry. Specifically, the Fisher study
2556 concludes that the boiler MACT rules impose on top of the
2557 other pending regulations that will impact the forest
2558 products industry will put over 20,000 direct jobs only in
2559 the pulp and paper sector at risk. That is about 18 percent
2560 of the pulp and paper industry's total workforce. Adding the
2561 impact on suppliers and downstream spending manufacturing
2562 income puts the total number of jobs at risk at 87,000 jobs.
2563 When the boiler MACT rules are combined with other pending
2564 Air Act rules, and I have included an exhibit that shows 20
2565 rules that we face over the next few years, the jobs at risk
2566 rise to 38,000 direct pulp and paper jobs and 161,000 total
2567 jobs.

2568 The economic consequences of these rules will be felt
2569 most keenly in communities that cannot afford further job
2570 losses. Most of our mills are located in rural communities
2571 where there are few alternatives for employees who see their
2572 mills close, and since 1990, in answer to one of the
2573 questions that was asked earlier, 221 mills have closed in
2574 the United States, costing 150,000 jobs. We need Congress's
2575 help to avoid this outcome.

2576 I would also ask you to bear in mind that Rock-Tenn and
2577 its predecessors through mergers has already wasted \$80
2578 million trying to comply with the 2004 boiler MACT rule that
2579 was eventually vacated by the courts just 3 months before the
2580 compliance deadline.

2581 Let me cite the positive things that the bill does to
2582 help our companies. This bill will go a long way to see that
2583 the EPA has adequate additional time to promulgate a boiler
2584 MACT rule that is based on sound science. Earlier this year,
2585 as you know, the EPA was driven by court-imposed deadlines to
2586 issue a final boiler rule it knew was flawed. By giving the
2587 EPA time it needs to properly address this complex scientific
2588 and technological issues associated with boiler MACT to free
2589 us from the risk of litigation imposing an earlier effective
2590 date of that act, H.R. 2250 will actually help avoid further
2591 delays, reduce the uncertainty which is going to follow from
2592 the certain litigation that will follow the adoption of the
2593 final rule and therefore reduce the risk to us of further
2594 wasted capital expenditures.

2595 The EPA's non-hazardous secondary material rules, which
2596 is a companion to the boiler MACT rule, will make biomass and
2597 other alternative fuels commonly used for energy in the pulp
2598 and paper industry subject to regulation as a solid waste.
2599 Please remember, our virgin mills generate about 70 percent

2600 of their total energy requirements from biomass recovered in
2601 our paper making. Classifying a part of this biomass as
2602 waste will dramatically increase the cost of compliance with
2603 these unnecessary burdens, likely resulting in the closure of
2604 many mills and causing many others to switch from biofuels to
2605 fossil fuels. The 3-year compliance period is too short and
2606 will again force our member companies to make substantial
2607 capital expenditures inefficiently and based on our current
2608 best guesses of what the final rules will provide. We
2609 estimate the boiler MACT will cost our industry \$7 billion in
2610 capital, 200 for Rock-Tenn alone, and our annual operating
2611 costs will increase by \$31 million. Based on the rule the
2612 EPA is considering, our suppliers can't even assure us that
2613 this or any amount of capital will make us fully compliant.
2614 We don't have the excess capital lying around to have a
2615 replay of the 2004 boiler MACT rule fiasco. We need this
2616 bill to avoid this terrible result.

2617 Finally, we need this bill to make sure that the EPA's
2618 stay of the boiler MACT rule remains intact and is not
2619 reversed prematurely through court actions.

2620 Mr. Chairman and members of the subcommittee, I thank
2621 you for offering this bill.

2622 [The prepared statement of Mr. Rubright follows:]

2623 ***** INSERT 3 *****

|

2624 Mr. {Whitfield.} Thank you.

2625 Dr. Gilman, you are recognized for 5 minutes.

|
2626 ^STATEMENT OF PAUL GILMAN

2627 } Mr. {Gilman.} Thank you, Mr. Chairman and members of
2628 the committee. Thank you for the opportunity to be here. I
2629 speak to you today as an employee of Covanta Energy, which is
2630 one of the Nation's largest biomass-to-electricity producers.
2631 I also speak to you as a former Assistant Administrator of
2632 the EPA for Research and Science Advisor for the agency.

2633 We currently operate biomass facilities that will be
2634 affected by these MACTs. The fuel is largely agricultural
2635 and forestry residue, making us one of the more sustainable
2636 uses of biomass. Currently, we are walking an economic
2637 tightrope for those facilities. Two are in standby mode
2638 because we are having to balance high fuel prices with low
2639 power revenues. One of our facilities has been operating on
2640 an intermittent basis this year.

2641 As a company that operates under the Clean Air Act, we
2642 believe it is key to our being viewed as a good neighbor in
2643 our community, so we support it and we support its goals, but
2644 we do believe the EPA had a right to ask the courts for more
2645 time. We think the EPA had it right when they asked for more
2646 information, more data for the boiler and CISWI MACT rules.
2647 Not only did the paucity of data lead to some illogical

2648 outcomes in the regulatory process, it also meant that
2649 natural variation from boiler to boiler wasn't properly
2650 considered, and even sort of the breakdown of different
2651 technologies for comparison purposes wasn't done. Not only
2652 those things, but the method used by the agency to derive the
2653 emissions standard is seriously flawed. What they did was
2654 take pollutants on an individual basis and look at them
2655 across the various facilities, find the best emissions
2656 achievement and set that as a standard and then repeat the
2657 process. So the emissions standards were set really on a
2658 pollutant-by-pollutant basis as opposed to a facility-by-
2659 facility basis. This answers the question that Mr. Markey
2660 had as to why is it that achievable, currently existing
2661 technologies can't be used. It is because this pollutant-by-
2662 pollutant process has been undertaken as opposed to the plant
2663 by plant. It is like asking the Olympic decathlon champion
2664 to not only win the championship but then beat each of the
2665 individual athletes in the 10 individual contests to be
2666 beaten as well by that decathlete.

2667 The agency also applied some statistical treatment for
2668 the data that is really detrimental to our being able to
2669 achieve compliance under the standards. So for example, in
2670 evaluating the data, it set its emission levels what we call
2671 99 percent cutoff point. What that does for commercial

2672 industry solid waste incinerator is mean that a typical one
2673 with two units is likely in every single year to have a 20
2674 percent probability that they are going to fail one of the
2675 emission standards. Now, I can just tell you, that is not
2676 the way to be a good neighbor and that is not a way for me to
2677 keep my job if that is how I perform for my company. So it
2678 truly is achievable and it is not something that I think the
2679 agency would be pleased in the final outcome of.

2680 There are a set of issues that this bill would address
2681 in the question of the definitions of waste. One of the
2682 elements that is not under reconsideration by the agency and
2683 therefore can't be addressed in this process, Mr. Green and
2684 the gentleman from Oregon also spoke to these questions, we
2685 have facilities, biomass facilities in the central valley of
2686 California that will be made into incinerators by the rules
2687 because traditional fuels like stumps from orchards and
2688 construction and demolition debris would be reclassified as
2689 waste. What will be the outcome of that? We will send those
2690 C&D wastes off to landfills. It is actually something I was
2691 talking with the senior NRDC staffer about doing the exact
2692 opposite of just a week ago and we will leave the stumps in
2693 the fields for the farmers to burn. That is why the
2694 California Air Resources Board actually opined to the agency
2695 that it thought it was on the wrong track for these MACT

2696 rules, and I will submit their comments for your record and
2697 my statement at that point, Mr. Chairman.

2698 [The prepared statement of Mr. Gilman follows:]

2699 ***** INSERT 4 *****

|

2700 Mr. {Whitfield.} Thank you very much, Dr. Gilman.

2701 Mr. Walke, you are recognized for 5 minutes.

|
2702 ^STATEMENT OF JOHN WALKE

2703 } Mr. {Walke.} Thank you, Mr. Chairman and members of the
2704 subcommittee for the opportunity to testify today. My name
2705 is John Walke and I am Clean Air Director and Senior Attorney
2706 for the Natural Resources Defense Council.

2707 The two bills that are the subject of today's hearing
2708 weaken the Clean Air Act drastically to authorize the
2709 indefinite delay of toxic air pollution standards for
2710 incinerators, industrial boilers and cement plants. Worse,
2711 these bills rewrite the Clean Air Act and overturn multiple
2712 federal court decisions to eviscerate strong toxic pollution
2713 standards that under current law must be applied to control
2714 dangerous toxic emissions from these facilities. Industrial
2715 boilers and cement plants are some of the largest emitters of
2716 mercury and scores of other toxic pollutions that are still
2717 failing to comply with basic Clean Air Act requirements for
2718 toxic pollution over 2 decades after adoption of the 1990
2719 Amendments. That is not responsible public policy.

2720 Were these standards to be delayed by even a single year
2721 by these two bills, the potential magnitude of extreme health
2722 consequences would be as follows: up to 9,000 premature
2723 deaths, 5,500 nonfatal heart attacks, 58,000 asthma attacks

2724 and 440,000 days when people must miss work or school due to
2725 respiratory illness. Yet H.R. 2250 blocks mercury and air
2726 toxic standards for a minimum of 3.5 years, causing an
2727 additional 22,750 premature deaths, 14,000 nonfatal heart
2728 attacks and 143,000 asthma attacks beyond what current law
2729 will prevent.

2730 By the same token, H.R. 2681 blocks mercury and air
2731 toxic safeguards for a minimum of nearly 5 years, causing an
2732 additional 11,250 premature deaths, 6,750 nonfatal heart
2733 attacks and 76,500 asthma attacks beyond what current law
2734 will prevent. EPA estimates that the value of the health
2735 benefits associated with the boiler standards and
2736 incinerators are between \$22 billion to \$54 billion compared
2737 with industry compliance costs estimated at only \$1.4
2738 billion. EPA has found the benefits of the cements standards
2739 to be as high as \$18 billion annually with benefits
2740 significantly outweighing costs by a margin of up to 19 to 1.
2741 Let me emphasize in the strongest possible terms that these
2742 bills are not mere ``15-month delays of the rules as EPA
2743 itself has requested'' as some have cast this legislation.

2744 First, the bills embody the complete evisceration of the
2745 substantive statutory standards for achieving reductions in
2746 toxic air pollution. The final sections of both bills
2747 eliminate the most protective legal standard for reducing

2748 toxic air pollution that has been in the Clean Air Act for
2749 nearly 21 years. The two bills replace this with the
2750 absolute least protective measure even mentioned in the law.
2751 It is not defensible policy and represents overreaching
2752 beyond the representations of the bills' timing features.
2753 This single provision in both bills would have the effect of
2754 exempting incinerators, industrial boilers and cement plants
2755 from maximum reductions in toxic air pollution emissions in
2756 contrast to almost every other major industrial source of
2757 toxic air pollution in the Nation. Second, the bill
2758 eliminates any statutory deadlines for EPA to reissue
2759 standards to protect Americans. Both steps are unprecedented
2760 in this committee or in any other legislation introduced in
2761 Congress, to my knowledge.

2762 I hope you will not vote for these bills, but if members
2763 have already decided to do so, I respectfully appeal to your
2764 sense of honesty and decency to do at least this: please
2765 explain clearly to your constituents, to the church
2766 congregations in your districts, to all Americans, why you
2767 are voting to actively eliminate protections for children and
2768 the unborn against industrial mercury pollution and brain
2769 poisoning. Especially those among you that are on record for
2770 protecting children and the unborn in other contexts, please
2771 explain why there is a double standard where it is acceptable

2772 to actively dismantle existing protections for children and
2773 the unborn against industrial mercury pollution.

2774 In closing, I urge you not to weaken the Clean Air Act
2775 so profoundly and cause so much preventable premature deaths,
2776 asthma attacks and mercury poisoning. I welcome any
2777 questions about my testimony, especially regarding any
2778 disagreements about factual or legal characterizations
2779 concerning the two bills. Thank you.

2780 [The prepared statement of Mr. Walke follows:]

2781 ***** INSERT 5 *****

|

2782 Mr. {Whitfield.} Thank you, Mr. Walke.

2783 Mr. Schaeffer, you are recognized for 5 minutes for an

2784 opening statement.

|
2785 ^STATEMENT OF ERIC SCHAEFFER

2786 } Mr. {Schaeffer.} Thank you, Mr. Chairman and members of
2787 the committee for the opportunity to testify. I am Eric
2788 Schaeffer, Director of the Environmental Integrity Project,
2789 an organization dedicated to improving enforcement of our
2790 environmental laws. I support the testimony of my colleague,
2791 John Walke, who has spent so many years fighting for the
2792 Clean Air Act.

2793 My own comments can be summarized as follows. As has
2794 been explained I think a number of times, the proposed
2795 legislation would do much more than delay standards for 15
2796 months. They would prohibit EPA from setting any standards
2797 in less than 5 years after enactment of the legislation.
2798 They would authorize EPA to delay those standards
2799 indefinitely as in never, virtually do eliminate the
2800 deadlines, and they also change the basis for setting the
2801 standards, and those changes use language that the industry
2802 hopes will give them softer standards. These were arguments
2803 made in court that were rejected. The bill would give
2804 industry a second bite of the apple and change the way
2805 standards themselves are set, so this is not a short-term
2806 extension to deal with an economic emergency, it is a

2807 fundamental change to the law. I do not question the right
2808 of Congress to do that. It is absolutely the prerogative of
2809 the legislature. I just think it is important to be clear
2810 about what the bills would do.

2811 I also, to the extent--a suggestion has been made that
2812 the decisions reflect a rogue or runaway agency. I think
2813 that is unfair. The regulations that have been attacked in
2814 this hearing were generated by EPA after EPA first went to
2815 court to try to give industry in the last Administration much
2816 of what they wanted. Those earlier decisions were rejected
2817 by the D.C. Circuit Court of Appeals. They were rejected by
2818 judges appointed by President Reagan and by President George
2819 H.W. Bush, so this is not a sort of wild tear that EPA is on,
2820 this is an attempt to respond to decisions that have come
2821 down over the last decade made by pretty conservative
2822 jurists. Again, Congress has the right to respond to those
2823 by changing the law. I just think it is unfair to say that
2824 the EPA is somehow off the reservation by doing what the
2825 courts have in fact required them to do.

2826 Perhaps most importantly, I want to call into question
2827 this idea that if we relax standards and allow, you know,
2828 mercury emissions to stay the same or even increase, allow
2829 toxic emissions to increase, somehow that will be a
2830 significant force in reviving manufacturing, creating jobs,

2831 keying the economic recovery and conversely if we don't do
2832 that we are going to hemorrhage jobs, you know, lose
2833 manufacturing competitiveness, see a flood of imports,
2834 threaten the economic recovery. I think the effects are
2835 much, much more complicated than that. There big, big
2836 macroeconomic forces at work. If you look at the cement kiln
2837 in particular using statistics from the U.S. Geological
2838 Service, who carries these numbers in their minerals yearbook
2839 and updates them every year, in the early 1990s we produced
2840 about 75,000 tons of cement with 18,000 workers. That
2841 production rose about 30 percent by 2006 to nearly 100,000
2842 tons. What happened to payroll? Ten percent of the
2843 employment in the industry was cut, the point being that the
2844 manufacturers did fine, employees not well. Jobs were cut at
2845 those plants.

2846 Second, the industry has suggested that somehow these
2847 rules would drive the price of cement up and that will
2848 threaten the economic recovery. I just want to point out
2849 that the price rose about 50 percent at the beginning of the
2850 decade over a several-year period. It didn't seem to have
2851 any impact on the construction boon, so I would treat that
2852 claim skeptically. Clearly, manufacturing has declined at
2853 these plants and so has employment over the last few years
2854 but imports have declined even faster, so this idea that

2855 imports are going to come rushing in where production is
2856 constrained is not borne out by the facts. I am just trying
2857 to make the point that the bottom-line problem is lack of
2858 demand. Until the demand recovers, until the housing market
2859 recovers, this industry will not, and the rules have little
2860 to do with that.

2861 I just want to close by saying that while this bill
2862 gives certainty to the industry that they won't have to do
2863 anything for at least 5 years and maybe never, it provides no
2864 certainty to people who live around these plants that
2865 something will be done about toxic emissions. I have not
2866 heard that concern expressed today at the hearing. I hope
2867 you will give it careful consideration.

2868 [The prepared statement of Mr. Schaeffer follows:]

2869 ***** INSERT 6 *****

|
2870 Mr. {Whitfield.} Dr. Valberg, you are recognized for 5
2871 minutes for an opening statement.

|
2872 ^STATEMENT OF PETER A. VALBERG

2873 } Mr. {Valberg.} Thank you. Good afternoon, Mr. Chairman
2874 and members of the subcommittee. Thank you for inviting me
2875 to testify this morning. I am Peter Valberg, Principal at
2876 Gradient, an environmental consulting firm in Boston. I have
2877 worked for many years in public health and human health risk
2878 assessment. I have been a faculty member at the Harvard
2879 School of Public Health and I was a member of a National
2880 Academy of Sciences panel that worked on evaluating public
2881 health benefits of air pollution regulations.

2882 At the outset, let us remind ourselves that by every
2883 public health measure from infant mortality to life
2884 expectancy, we are healthier today and exposed to fewer
2885 hazards than ever before. Our present-day air is much
2886 cleaner than it was years ago thanks to EPA, and our air
2887 quality is among the best in the world.

2888 I am here today to address the method by which EPA uses
2889 in their projection of benefits from reductions in outdoor
2890 air particulate levels, called PM 2.5, or ambient PM 2.5.
2891 The dollar value of EPA's calculated benefits is dominated by
2892 promised reductions in deaths that EPA assumes to be caused
2893 by breathing PM in our ambient air. Asthma is also monetized

2894 by EPA as an ambient air concern.

2895 In understanding health hazards, the solidity of our
2896 scientific knowledge like the solidity of a three-legged
2897 stool is supported by three legs of evidence. One leg is
2898 observational studies or epidemiology, another leg is
2899 experimental studies with lab animals, and the third leg is
2900 an understanding of biological mechanism. If any leg is weak
2901 or missing, the reliability of our knowledge is compromised.

2902 EPA uses the observational studies that examine
2903 statistics on two factors which in small part seem to go up
2904 and down together. These studies correlate changes in
2905 mortality, either temporally on a day-by-day basis or
2906 geographically on a city-by-city basis with differences in
2907 ambient PM from day to day or from locale to locale.
2908 Statistical associations are indeed reported, and EPA assumes
2909 PM mortality associations are 100 percent caused by outdoor
2910 PM no matter what the PM levels you may breathe in your own
2911 home, car or workplace.

2912 My points are, one, the mortality evidence doesn't add
2913 up; two, most of our PM exposure is not from outdoor air;
2914 three, the PM statistical studies cannot identify cause; and
2915 four, outdoor PM is recognized as a minor, not a major cause
2916 of asthma.

2917 The evidence doesn't add up. Lab experiments have

2918 carefully examined both human volunteers and animals
2919 breathing airborne dust at PM levels hundreds of times
2920 greater than in outdoor air without evidence of sudden death
2921 or life-threatening effects. Moreover, we have studied the
2922 chemicals that constitute the particles in outdoor air, and
2923 no one has found a constituent that is lethal when breathed
2924 at levels we encounter outdoors. Remember that the basic
2925 science of poisons, toxicology, has shown that the dose makes
2926 the poison.

2927 Where do people get exposed to airborne dust? The
2928 majority of our time is spent indoors. Homes, restaurants,
2929 malls have high levels of PM from cleaning, cooking, baking
2930 and frying. When you clean out your attic or basement, you
2931 are breathing much higher PM levels than outdoors. We are
2932 exposed to high levels of PM when mowing lawns, raking
2933 leaves, enjoying a fireplace. Yet in spite of these vastly
2934 larger PM exposures, we have no case reports of people who
2935 died because of the dust they inhaled while cleaning or
2936 barbecuing. We can identify who died from car accidents,
2937 food poisoning, firearms and infections, but out of the tens
2938 of thousands of deaths that EPA attributes to breathing PM
2939 outdoors, we can't pinpoint anyone who died from inhaling
2940 ambient PM.

2941 The models require intricate statistical manipulations.

2942 The computer models require many assumptions and adjustments.
2943 The results you get depend on the model you use, how you set
2944 it up and how many different tests you run. You need to
2945 correct for many non-PM pollutants as well as non-pollutant
2946 factors that may confound those PM mortality associations.
2947 It is not clear that all confounders have been taken into
2948 account, and mere associations cannot establish causality.
2949 For example, increased heat stroke deaths are correlated with
2950 increased ice cream sales but none of us would suggest that
2951 ice cream sales cause heat stroke. In fact, there are many
2952 examples where spurious associations have been observed and
2953 dismissed.

2954 Finally, on asthma, medical researchers recognize that
2955 respiratory infections, mildew, dust, dust mites, pet dander
2956 and stress each play a far greater role in asthma than
2957 pollutants in ambient air. Among urban neighborhoods sharing
2958 the same outdoor air, both childhood and adult asthma vary
2959 considerably by location, and doctors investigating these
2960 patterns point to risk factors such as obesity, ethnicity,
2961 age of housing stock, neighborhood violence. Most
2962 importantly, over past decades, asthma has gone up during the
2963 very same time period that levels of all air pollutants
2964 outdoors have markedly gone down. This is opposite to what
2965 you would expect if outdoor PM caused asthma.

2966 Finally, taken together, there are major questions about
2967 EPA's calculations of lives saved by small PM reductions in
2968 our outdoor air. Most importantly, neither animal toxicology
2969 or human clinical data validate these statistical
2970 associations from the observational epidemiology. How can it
2971 be that lower levels of exposure to outdoor PM are killing
2972 large numbers of people when our everyday exposures to higher
2973 levels of PM are not?

2974 Thank you. Thank you very much for this opportunity and
2975 I look forward to your questions.

2976 [The prepared statement of Mr. Valberg follows:]

2977 ***** INSERT 7 *****

|

2978 Mr. {Whitfield.} Thank you, Dr. Valberg.

2979 Mr. Elliott, you are recognized for 5 minutes.

|
2980 ^STATEMENT OF TODD ELLIOTT

2981 } Mr. {Elliott.} Thank you, Chairman Whitfield, Ranking
2982 Member Rush and members of the subcommittee for allowing me
2983 this opportunity to testify before the subcommittee on a
2984 topic of substantial importance to my company and to the
2985 manufacturing sector. Again, my name is Todd Elliott. I
2986 represent the Celanese Corporation, where I have worked in a
2987 variety of positions for over 23 years.

2988 Celanese is a Dallas, Texas-based chemical company with
2989 a worldwide presence and a workforce of more than 7,250
2990 employees. I am the General Manager of our global acetate
2991 business. Our acetate fibers plant in Narrows, Virginia, has
2992 been in operation since 1939 and is the largest employer in
2993 Giles County. The facility currently employs more than 550
2994 skilled workers and an additional 400 contractors. The
2995 acetate facility in Narrows, Virginia, operates seven coal-
2996 fired boilers today and six boilers and furnaces that burn
2997 natural gas. The site is impacted by the cumulative and
2998 costly impacts of the boiler MACT and other State and federal
2999 air quality regulations.

3000 While we fully intend to comply with this regulation, it
3001 is very important for Congress and the EPA to understand that

3002 we compete in a global marketplace. If our costs become too
3003 high, we must look at other options, other alternatives, or
3004 otherwise we can no longer compete effectively in the
3005 marketplace.

3006 A recent study conducted by the Council of Industrial
3007 Boiler Owners suggested that the boiler MACT regulation could
3008 impact almost a quarter-million jobs nationwide and cost our
3009 country more than \$14 billion. We respectfully encourage you
3010 to promote cost-effective regulations that help create a U.S.
3011 manufacturing renaissance that preserves jobs our Nation so
3012 badly needs.

3013 My remarks today will focus on two key ways in which
3014 H.R. 2250 addresses industry's concern with the boiler MACT
3015 and directs EPA to develop requirements that are more
3016 reasonable but still will achieve the objectives of the rule.
3017 First, the compliance deadline of the boiler MACT should be
3018 extended to 5 years. The current rule essentially requires
3019 boilers and process heaters at major facilities to comply
3020 with stringent new air emissions standards for hazardous air
3021 pollutants within 3 years. Our engineering studies concluded
3022 that we will need to add emissions controls to our existing
3023 coal-fired boilers or convert those boilers to natural gas.
3024 Either alternative would require a very significant capital
3025 investment and time investment and could necessitate an

3026 extended plant outage while changes are implemented. The 3-
3027 year compliance window is too short a time to design, to
3028 install and commission the required controls or to convert to
3029 natural gas, particularly because the third-party resources
3030 with the necessary expertise will be in high demand as
3031 thousands of boilers would require modifications at the same
3032 time.

3033 At present, our Virginia facility has an existing
3034 natural gas line. However, this is too small as designed to
3035 deliver enough gas to meet anticipated demand if we convert
3036 to natural gas. Prior to operating new natural gas boilers,
3037 we would need to secure new gas sourcing, pipeline delivery
3038 contracts, design and permit and construct a new pipeline.
3039 This would be particularly difficult for a facility like ours
3040 which is located in a rural and mountainous area and would
3041 take at least 3 years to install. Once natural gas is
3042 available to the facility, it could take another year to
3043 transition from coal to gas and to avoid a complete facility
3044 shutdown and the associated lost production and revenue.
3045 Extending the boiler MACT compliance deadline from 3 to 5
3046 years as proposed in H.R. 2250 would help ensure that
3047 Celanese and the manufacturing sector can achieve compliance.

3048 Second, the emissions standards must be achievable in
3049 practice. The current rule does not consider whether

3050 multiple emissions standards are achievable realistically and
3051 concurrently nor does it adequately address the variability
3052 of fuel supply or the real-world challenges of compliance
3053 with multiple standards at the same time. Under current
3054 requirements, compliance with these standards becomes an
3055 either/or exercise as it is often impossible to source a fuel
3056 that enables a manufacturer to meet all emissions standards
3057 at once. For example, we have been able to identify coals
3058 that meet either the hydrochloric acid or mercury emissions
3059 standards but not both. In addition, variations in the
3060 constituents of coal from the same mine or the same seam can
3061 further undermine efforts to meet stringent and inflexible
3062 standards.

3063 In summary, we support H.R. 2250 for the following
3064 reasons. It extends the compliance deadline to 5 years,
3065 which provides industry with enough time to identify and
3066 implement appropriate and economically viable compliance
3067 strategies and control operations and it requires the EPA to
3068 take a more reasoned approach that emissions standards must
3069 be capable of being met in practice concurrently and on a
3070 variety of fuels before they are implemented.

3071 So on behalf of Celanese and our Narrows, Virginia,
3072 facility, thank you for the opportunity to provide these
3073 comments.

3074 [The prepared statement of Mr. Elliott follows:]

3075 ***** INSERT 8 *****

|
3076 Mr. {Whitfield.} Thank you, Mr. Elliott, and thank all
3077 of you for your testimony. I will recognize myself for 5
3078 minutes of questions.

3079 All of you heard the testimony of Ms. McCarthy, and I
3080 would ask each one of you, is there anything in her testimony
3081 that you particularly would like to make some comment about?
3082 Dr. Valberg?

3083 Mr. {Valberg.} Yes. Well, I think that I want to just
3084 emphasize that I think EPA has done a very good job in
3085 cleaning up the air and so on and I am very much in favor of
3086 regulations that reduce air pollution. However, I think the
3087 problem is the monetization method. I mean, saying that
3088 these deaths are occurring as a consequence of small changes
3089 in outdoor air when in fact if you go to the medical
3090 community, we all have diseases that we get, all of us are
3091 going to die and so on, it is that monetization that I think
3092 is flawed and needs to include more of the scientific
3093 evidence besides just the statistical associations.

3094 Mr. {Whitfield.} Have you ever made those arguments
3095 with EPA that you question the way they calculate these
3096 benefits?

3097 Mr. {Valberg.} Yes, I have. I have testified before
3098 EPA on some of the Clean Air Science Advisory Committee

3099 meetings that they have had together with EPA staff, and I
3100 think that they have become quite enamored of the statistical
3101 associations.

3102 Mr. {Whitfield.} And how widespread is the concern
3103 about the community that you are involved with on the
3104 validity of the EPA studies?

3105 Mr. {Valberg.} Well, the statistical associations are
3106 just a correlation between numbers, so I don't know that
3107 there is necessarily a question about is the statistics being
3108 done wrong. I think if you look at the original studies by
3109 the authors themselves, you will see in the beginning that
3110 they say the hypothesis is that there is a causal effect
3111 between ambient particulate and mortality, and they all treat
3112 it in the original literature as a hypothesis that is being
3113 tested. I think what EPA has moved these associations to is
3114 into this regulatory arena where they are using them as
3115 reliable.

3116 Mr. {Whitfield.} But if there is no causal connection,
3117 that would really invalidate their claims of benefits,
3118 wouldn't it?

3119 Mr. {Valberg.} Yes, it would

3120 Mr. {Whitfield.} And that is a major issue, and I read
3121 your biography and you are a real expert in this area, and
3122 you have genuine concerns about that. Is that correct?

3123 Mr. {Valberg.} I think that the toxicology of the
3124 ambient air needs to be given more weight and that in fact
3125 our exposure to almost anything is dominated by other sources
3126 at school, at work, at home and so on, and ambient air needs
3127 to be as clean as possible. We in fact open the windows when
3128 we want to clean out the air in our offices or in our homes.
3129 But I think that attributing these hundreds of thousands of
3130 deaths to outdoor air is only supported by the statistical
3131 association.

3132 Mr. {Whitfield.} Well, you know, I think that is a very
3133 important point because we have had many hearings on these
3134 environmental issues and every time the representatives of
3135 the EPA will immediately run to the health benefits that you
3136 are going to prevent this thousand deaths, you are going to
3137 prevent premature deaths, you are going to prevent this many
3138 cases of asthma, you are going to prevent all of these things
3139 and yet from your testimony the very basis of a lack of
3140 causal effect would basically invalidate all the benefits
3141 that they are really depending upon.

3142 Mr. {Valberg.} Exactly, and in fact, there are some
3143 recent papers that refer to taking panels of people where you
3144 take them into the clinical setting, expose them to 100 or
3145 200 micrograms per cubic meter, see if you see any kinds of
3146 effects, and then you also look at people in the ambient

3147 environment where the concentrations are 10 to 20 micrograms
3148 per cubic meter, you still see the associations in the
3149 ambient environment but it is an effect that is occurring for
3150 other reasons besides the particulate matter itself because
3151 those people in the laboratory did not show the effects.

3152 Mr. {Whitfield.} You know, another concern that many of
3153 us have is that we have a very weak economy right now. We
3154 are trying to stimulate that economy, and while it is true
3155 that these boiler MACT and cement have not caused weakening
3156 of the economy, I have here a list of 13 new rules and
3157 regulations that EPA is coming out with, and the cumulative
3158 impact of that, it seems to me would definitely have an
3159 impact on our ability to create jobs. We are not arguing
3160 that it caused the loss of jobs but we are making the
3161 argument that at this particular time it creates obstacles in
3162 our ability to create new jobs. Would you agree with that,
3163 Mr. Harrington?

3164 Mr. {Harrington.} Yes, I certainly would. I definitely
3165 agree with that, that from my standpoint, back to your
3166 original question, there are two areas that we would
3167 disagree. First of all, MACT is not available across our
3168 sector. There are no proven engineering technical solutions
3169 to achieve the NESHAP standards. That is point one.

3170 Point two is, there is absolutely not going to be job

3171 growth due to NESHAP or CISWI, absolutely not, not
3172 sustainable. There will be--there might be a short-term
3173 change to a bunch of consultants or a bunch of laboratories
3174 who will do some tests as we begin our permit and the process
3175 that we always follow to comply and to do better than we
3176 possibly can hope to do but at the end of all that transfer
3177 moving around, there will be less plants, period.

3178 Mr. {Whitfield.} Mr. Rush, you are recognized for 5
3179 minutes.

3180 Mr. {Rush.} Thank you, Mr. Chairman.

3181 Mr. Walke and Mr. Schaeffer, Dr. Valberg made some
3182 pretty controversial conclusions there. What do you have to
3183 say, each one of you? How do you respond to some of his
3184 assertions?

3185 Mr. {Walke.} Mr. Rush, I would be happy after the
3186 hearing to submit numerous, dozens upon dozens of peer-
3187 reviewed statements showing effects, associations between
3188 particulate matter and premature mortality that contradict
3189 the testimony of Dr. Valberg. There are National Academy of
3190 Science studies that contradict it. The Clean Air Science
3191 Advisory Committee peer-review process and reports contradict
3192 those views. Those views are controversial because they are
3193 outlier views within the clean air scientific community.
3194 They were not accepted by the Bush Administration. They were

3195 not accepted by the Clean Air Science Advisory Council. They
3196 were not accepted by the Health Effects Institute
3197 reexamination of those associations. And I think it is
3198 important that that copious record of peer-reviewed studies
3199 be included in the record, and we could also invite Dr.
3200 Valberg to include studies since there wasn't a single one
3201 cited in his testimony that I saw.

3202 Mr. {Rush.} Mr. Schaeffer?

3203 Mr. {Schaeffer.} If I could briefly provide some
3204 context for the particulate matter decision-making at EPA.
3205 The science that EPA is proceeding from, again with an
3206 epidemiological study looking at particulate levels in 26
3207 cities and comparing that to especially premature mortality
3208 and screening out the confounding factors that Dr. Valberg
3209 raised--diet, income, the other things that can step in and
3210 interfere with trying to establish a relationship between
3211 pollution and disease--the benefits in EPA's rulemaking you
3212 actually see in the hundreds of millions of dollars, those
3213 come from avoiding premature deaths. We can argue about what
3214 a life is worth, and I don't know if Dr. Valberg wants to go
3215 there, but those premature mortalities occur over a long
3216 period of time. You can't put somebody in a room and gas
3217 them with particulate matter in 15 minutes or even a day and
3218 draw any conclusions from that. The point is the long-term

3219 exposure.

3220 Congress ordered EPA to get those epidemiological
3221 studies peer reviewed. The agency went to the Health Effects
3222 Institute at the end of the last decade, late 1990s. The
3223 Health Effects Institute did an exhaustive review of the PM
3224 science, concluded it was solid, that is, that the link
3225 between PM exposure, particulate exposure, mortality was very
3226 strong. The Bush Administration looked at the same issue in
3227 2005, did an exhaustive review, reached the same conclusions.

3228 So to suggest that this is something that is being done
3229 with a pocket calculator or the confounding factors aren't
3230 being considered or that you can, you know, put a balloon
3231 over somebody's head and fill it with particulate matter or
3232 that because nobody has, you know, died from sitting in front
3233 of a fireplace, that means fine particles aren't a problem,
3234 honestly, those are outlandish statements. They are
3235 completely inconsistent with decades of science, not just a
3236 recent decision. You know, I challenge the witnesses to
3237 produce peer-reviewed studies that show that, and we will
3238 certainly provide you with the data that EPA has gathered
3239 under three Administrations to establish that very strong
3240 connection between fine particles, not big chunky particles
3241 from barbecuing steak, fine particles, and death.

3242 Mr. {Rush.} I just want to really remind the committee

3243 that the Bush Administration did draft a report that was
3244 finalized by the Obama Administration, and it is called the
3245 Integrated Science Assessment for Particulate Matter, and
3246 this report evaluated the scientific literature on human
3247 health effects associated with exposure to particulate
3248 matter. It was based on dozens of peer-reviewed studies. It
3249 had more than 50 authors and contributors and literally
3250 scores of peer reviewers, and this report was also subject to
3251 extensive external review and commentary, and this scientific
3252 effort provides the basis for EPA's analysis of the effects
3253 of particulate matter. Were you referring to this report?

3254 Mr. {Walke.} Yes, Mr. Rush. It is dated 2009. I would
3255 be happy to submit it to the record, and it finds ``there is
3256 a causal relationship between PM-2.5 and mortality both for
3257 short-term and long-term exposures.'' That is in an EPA
3258 report dated 2009, but as you said, it reaffirms studies that
3259 were undertaken first under the Bush Administration.

3260 Mr. {Rush.} Thank you, Mr. Chairman. I yield back.

3261 Mr. {Whitfield.} Mr. Sullivan, you are recognized for 5
3262 minutes.

3263 Mr. {Sullivan.} Thank you, Mr. Chairman. I was going
3264 to see if Dr. Valberg would like to comment on what was just
3265 said.

3266 Mr. {Valberg.} Yes, I would. I think the associations

3267 that are reported by the statistics are indeed out there but
3268 I think that there are a lot of problems with those
3269 associations even beyond the fact that they are not reflected
3270 in laboratory experiments and even in clinical experiments.
3271 I think that the actual associations are after all on a day-
3272 by-day basis. The so-called time series studies look at day-
3273 by-day changes in particulate levels and look at day-by-day
3274 changes in mortality so they are looking at short-term
3275 things, and when you try to take that hypothesis to the
3276 laboratory, you can't validate it.

3277 The associations themselves have peculiar
3278 characteristics such as the steepness of the association. In
3279 other words, what kind of increment do you get with a given
3280 increment of particulate matter actually gets steeper as the
3281 air concentrations get cleaner. In other words, as
3282 particulate levels go down, this is reported time and time
3283 again in these associations, and this goes contrary to what
3284 you would expect on a toxicological basis. The association
3285 should in fact get stronger as the air gets dirtier and so
3286 that as you get the higher levels, then you are getting a
3287 larger effect because the dose makes the poison.

3288 So I think I don't disagree that there are many
3289 associations out there and in fact the very reporting of such
3290 associations in such a variety of diverse circumstances where

3291 the actual chemical composition of the particulate is quite
3292 different in a way is also something that actually does more
3293 to undermine their plausibility than to support it.

3294 Mr. {Sullivan.} Thank you.

3295 And this next question is for Mr. Rubright, Dr. Gilman
3296 and Mr. Elliott. EPA has maintained that boiler MACT rules
3297 will result in a net gain of jobs. Do you agree with the EPA
3298 that the net effect of EPA's boiler MACT rules as written
3299 will be to jobs in the United States?

3300 Mr. {Rubright.} Thank you for asking that question
3301 because we observe the jobs that will be created are
3302 temporary jobs associated with the installation and capital.
3303 The jobs that will be eliminated with the closure of
3304 facilities are permanent losses. So the net change is
3305 dramatically worse.

3306 Mr. {Gilman.} My observation would be, as they were
3307 promulgated, they won't have that effect. Our eight plants
3308 are sort of a microcosm of that. I would like to think that
3309 a dialog between yourselves and the agency would do, as has
3310 happened so many times in the Clean Air Act, result in a path
3311 forward that indeed could have least impact on jobs and
3312 provide for a cleaner environment as well.

3313 Mr. {Sullivan.} Mr. Elliott?

3314 Mr. {Elliott.} We would agree and echo the comments of

3315 the other panelists that we think about capital investment in
3316 various categories. We think about EHSA, or environmental
3317 health and safety capital, maintenance of business capital,
3318 revenue generation capital. We would categorize this capital
3319 as non-discretionary and it would be in a different league.
3320 So perhaps jobs on a temporary basis for engineering
3321 consultancy and potentially jobs outside of the United
3322 States.

3323 Mr. {Sullivan.} Thank you.

3324 Mr. Chairman, I would like to submit for the record an
3325 analysis referenced by Mr. Harrington, which was prepared by
3326 Portland Cement Association regarding the impacts of EPA's
3327 rules on the cement sector.

3328 Mr. {Whitfield.} Without objection.

3329 [The information follows:]

3330 ***** COMMITTEE INSERT *****

|
3331 Mr. {Sullivan.} Mr. Harrington, you have testified that
3332 EPA's recent rules affecting the cement sector could force
3333 the closure of 18 out of nearly 100 U.S. cement plants, or 20
3334 percent of the U.S. cement production capacity. Where are
3335 most of these cement plants located? Are they like in small
3336 towns, rural areas?

3337 Mr. {Harrington.} Yes, they are mostly in small towns
3338 in rural areas, and they are sprinkled throughout the United
3339 States. I mean, there is one in upper California. There
3340 might be one in Ohio. There could be one in upper New York
3341 State. There could be one in Illinois. So they are spread
3342 throughout the United States. They are always in small rural
3343 areas, as Mr. Rubright said, and it is a company town. It is
3344 not quite like it was in the 1930s and 1940s but that is sort
3345 of the environment that our plants are in.

3346 Mr. {Sullivan.} Will the employees at these facilities
3347 be likely to find new work elsewhere in their communities?

3348 Mr. {Harrington.} Anything is possible, and of course,
3349 we would like that to be the case, but the opportunities are
3350 very limited because they are high-wage jobs. Most of our
3351 employees are represented by collective bargaining agreement
3352 so they are union employees and they are well paid. They are
3353 highly skilled and they are very specialized for the plants

3354 and the equipment that we run, so just transferring that job
3355 knowledge is difficult. So it will be devastating to those
3356 communities.

3357 The other thing that we lose, and I am sorry to keep
3358 rambling here, but there are a series of small businesspeople
3359 and large industry that service our plants--contractors,
3360 engineers--sorry.

3361 Mr. {Whitfield.} No, go ahead.

3362 Mr. {Harrington.} Contractors, engineers, local wall
3363 material suppliers who may not be employees of our plant but
3364 who exist--Pennsylvania, for sure--who exist because of our
3365 plants.

3366 Mr. {Sullivan.} Also--

3367 Mr. {Whitfield.} Your time is expired.

3368 Mr. Doyle, you are recognized for 5 minutes.

3369 Mr. {Doyle.} Thank you, Mr. Chairman, and thank you to
3370 our witnesses today. I think it is important that we have a
3371 well-informed debate on these regulations with inputs from
3372 all sides.

3373 As many of you know, I represent Pittsburgh, which is in
3374 Allegheny County in southwestern Pennsylvania. Allegheny
3375 County is home to manufacturing industry, chemical industry,
3376 steel industry, energy industry and much, much more, and like
3377 all of you, many of these companies have voiced concerns to

3378 me with some of the regulations coming out of the
3379 Environmental Protection Agency. Most specifically, I have
3380 heard a great deal about the boiler MACT rules that we are
3381 discussing today.

3382 But let me first give you a little background on
3383 Allegheny County. Last year, the Pittsburgh Post Gazette ran
3384 a series of air pollution effects in the region called
3385 Mapping Mortality. In it, they told us in Allegheny County
3386 air pollutants are generated by 32 industries and utilities
3387 classified by the county health department as major sources
3388 because they emit or have the potential to emit 25 tons or
3389 more a year of a criteria pollutant, or 10 times or more of
3390 hazardous air pollution. The Post Gazette article went
3391 further to detail in Allegheny County and research mortality
3392 rates not only in our county but in the 13 counties
3393 surrounding Allegheny County in and around Pittsburgh. This
3394 is what they found: that in all 14 counties that have heart
3395 disease, all 14 counties have heart disease mortality rates
3396 exceeding the national average. Twelve of the 14 counties
3397 have respiratory disease mortality rates exceeding the
3398 national average. Three of the 14 counties have lung cancer
3399 mortality rates exceeding the national average, and 13 of 14
3400 have a combined mortality rate for all three diseases in
3401 excess of the combined national expected rates for the three.

3402 So as you can see, I have cause to take these
3403 regulations very seriously. I recognize that the boiler MACT
3404 rule issued in February wasn't perfect. I know that the
3405 industries in southwestern Pennsylvania are providing good-
3406 paying jobs for my constituents. But the mortality rates due
3407 to heart, respiratory and lung disease can't be ignored. For
3408 me and my constituents, the issue is not a political football
3409 that we should toss around in Washington. This is real and
3410 it is a matter of life and death.

3411 So I just have one question for Mr. Rubright, Mr. Gilman
3412 and Mr. Elliott. The Clean Air Act already gives you 3 years
3413 to comply with the possibility of a fourth year. If you
3414 can't do it in three, you can petition your State. I don't
3415 think the folks in my district believe that it should take 5
3416 years or, in the case of this bill, 5 years being the minimum
3417 and we don't know what the maximum would be, to deal with
3418 reining in some of these pollutants, and I understand there
3419 are specific issues with the final rule and I think they need
3420 to be worked out, and I am for doing that, for EPA, sitting
3421 with you and working out these issues sufficiently when they
3422 re-propose the final 15 months.

3423 My question is, once that is done, would you be willing
3424 to accept a deadline within the Clean Air Act of 3 to 4
3425 years?

3426 Mr. {Rubright.} I would like to--there are a couple of
3427 things. First, relative to your indication of the health
3428 risks, please understand that particulate matter is already
3429 regulated under the National Ambient Air Quality Standards,
3430 and nine of the 10 virgin mills that we operate are currently
3431 in attainment zones and yet they are being regulated under a
3432 statute that wasn't intended to regulate particulate matter
3433 as a health risk as a particulate matter without regard to
3434 whether they are in an attainment zone or a non-attainment
3435 zone. So it is a rule that really is inapplicable in many
3436 respects to the current environment.

3437 Mr. {Doyle.} My question is, once they do this re-
3438 proposing of the rules and address some of these concerns, do
3439 you need more than 4 years to comply?

3440 Mr. {Rubright.} Well, certainly. I have already
3441 indicated we wasted \$80 million to comply with the rule that
3442 was rescinded. You heard Ms. McCarthy testify that she
3443 doesn't know of a cement plan that can comply with the rules
3444 today. We know that 2 percent of the pulp and paper mills
3445 today can comply with the standards that apply. Now, my
3446 understanding of the act is that maximum achievable control
3447 technology is what 12 percent of the existing mills can
3448 comply with. So do you think there is going to be litigation
3449 of this rule? I think this rule is going to be litigated and

3450 I think Ms. McCarthy's testimony is going to be admitted in
3451 that litigation. So we are going to have some period of time
3452 where again we are going to be required to spend money on a
3453 rule which is in litigation.

3454 So apart from the fact that our best technological
3455 people are telling me we can't do it in 3 years, I certainly
3456 know I am going to be doing in advance of the resolution of
3457 this rule. So think it just doesn't make any sense to spend
3458 money that in the face of--

3459 Mr. {Doyle.} Do you think it should be addressed at
3460 all? Do you think there is a health concern and that the
3461 concern over health warrants your company doing something to
3462 reduce these pollutants?

3463 Mr. {Rubright.} Please understand, where we understand
3464 that there is an identifiable health risk, we do everything
3465 we can today. What I am saying to you is, there is nothing
3466 we know we can do to comply with these rules, but I also have
3467 indicated that I think there is a scientific debate with
3468 respect to specific effects of particulate emissions of our
3469 plants in rural attainment areas.

3470 Mr. {Doyle.} Dr. Gilman?

3471 Mr. {Gilman.} I would say yes if one of those things
3472 that isn't part of the reconsideration process now because
3473 the agency feels constrained by prior judicial decisions,

3474 that is, the pollutant-by-pollutant approach versus the
3475 plant-by-plant approach. That is what makes these
3476 unachievable. That is what introduces a technological
3477 barrier to implementing achievable standards.

3478 Mr. {Doyle.} Mr. Chairman, you have been generous with
3479 my time. I appreciate it.

3480 Mr. {Whitfield.} Thank you.

3481 We have two votes on the floor and we only have like a
3482 minute left, Morgan, and I know some other members want to
3483 ask questions, so you all might as well just spend the day
3484 with us. So if you wouldn't mind, we will recess. We only
3485 have two votes, and the time is expired on the first one, so
3486 we will back, I would say in about 15 minutes, and we will
3487 reconvene and finish up the questions at that time. Thank
3488 you.

3489 [Recess.]

3490 Mr. {Whitfield.} I am going to now recognize the
3491 gentleman from Virginia, Mr. Griffith, for his 5 minutes of
3492 questions and then when you all come in we will go to you.

3493 Mr. {Griffith.} Thank you all very much for your
3494 patience with us. Sometimes we have to run off and cast
3495 votes, and I appreciate you all waiting.

3496 I do want to say that this is important legislation.
3497 Both pieces are extremely important to my district. I don't

3498 want to underestimate it but I also have to point out that in
3499 the hearings that we had earlier this year and the hearings
3500 that we have now, we have had testimony from people who
3501 employ folks in Giles County. Thank you, Mr. Elliott, as the
3502 largest employer in that county, which is in the 9th district
3503 of Virginia, which I am very proud to represent. We have had
3504 testimony from Titan America, which is a Roanoke cement
3505 facility, employs people who live in the 9th district of
3506 Virginia. We have had testimony from MeadWestVaco at their
3507 Covington facility, which employs people in the 9th district
3508 of Virginia. And we had testimony earlier today from Mr.
3509 Rubright of Rock-Tenn, which employs people in the
3510 Martinsville area, which include people in the 9th district
3511 of Virginia.

3512 So when folks say to me, you know, why do you get worked
3513 up about this and why do you charge in on some of these
3514 things, all I can say is that a lot of these folks didn't
3515 actually come from the 9th district of Virginia but they
3516 represent jobs in the 9th district of Virginia and they
3517 represent people who work there and people who are in the
3518 areas where we have double-digit unemployment and, you know,
3519 I came off this break doing the Labor Day parade in
3520 Covington, which is sponsored by the union there, and last
3521 year they had the parade route lined with signs about fixing

3522 boiler MACT, so amongst all the political signs were, you
3523 know, we have got to fix boiler MACT, and so I am trying to
3524 do what my constituents want and what I think my constituents
3525 need in order to create jobs not only in the United States of
3526 America but in particular in the 9th district of Virginia,
3527 and I think that that is what the boiler MACT does, that is
3528 what the cement MACT bill that we have before us today for
3529 testimony.

3530 So, you know, I understand all of want to be careful in
3531 the health side of it but when you face extensive
3532 unemployment in the regions that I have just mentioned and
3533 already have had announced lost jobs from other rules of the
3534 EPA in Giles County in particular and in Russell County
3535 within the 9th district of Virginia within the last 2 or 3
3536 months, there are serious matters.

3537 And so I would ask you, Mr. Elliott, in regard to jobs,
3538 if you don't have the 5 years to comply--and you touched on
3539 it in your statement some about the fact that you don't have
3540 a big enough gas line to flip over to natural gas and you
3541 have a big river beside your facility as well. Exactly, you
3542 know, do you need the 5 years or is there a significant
3543 potential that those jobs because of costs may go elsewhere?

3544 Mr. {Elliott.} Well, I think all business management is
3545 tasked with continuous evaluation of options, you know, what

3546 are the best cases for growing and protecting our business,
3547 so we always look at alternatives, whether that is
3548 alternatives for our facilities in the United States or
3549 throughout the world. We like to focus on timelines. I know
3550 that is important. But that is part of the issue here.
3551 There was a lot of testimony about flexibility around fuel
3552 source, at least I talked about the unknown questions still
3553 or answers with respect to fuel source, fuel variability.
3554 That is very specific to coal. So we still--we are operating
3555 several coal-fired boilers today so we want to resolve
3556 whether we can sort out whether we can use certain coals to
3557 meet certain standards, so that is going to take some time.
3558 So I am happy to get into the specifics once we hear back
3559 from the EPA exactly how we will resolve that.

3560 That then sets the stage one way or the other whether we
3561 then have to look at Plan B. Plan B might be installation of
3562 natural gas boilers. That is yet another exercise, another
3563 engineering effort to then go into the work that would
3564 require a 30-odd-mile natural gas line through the mountains
3565 of Virginia ultimately. So that is another phase of work
3566 that requires engineering, requires estimates and timing and
3567 right-of-ways and factors in as well.

3568 Then we get to the ultimate question which I think is
3569 where you are going, Mr. Griffith, and that is then what do

3570 you do, and really depends on the certainty around those
3571 choices, the costs and capital associated with those, the
3572 resulting operating costs of those decisions.

3573 Mr. {Griffith.} My time is running out, so let me cut
3574 to the chase.

3575 Mr. {Elliott.} Yes.

3576 Mr. {Griffith.} If you only get the 3 years, is it not
3577 true that you are more likely to have to make a decision to
3578 reduce jobs in Giles County than if you have the 5 years
3579 proposed in the bill?

3580 Mr. {Elliott.} Yes, I am not sure we could address the
3581 regulation as written within the time--

3582 Mr. {Griffith.} As written, you might have no choice
3583 but to move those jobs somewhere else no matter the
3584 longstanding commitment to Giles County which exceeds, what,
3585 79 years?

3586 Mr. {Elliott.} Or significantly scale back operations,
3587 change operations, look at a footprint alteration.

3588 Mr. {Griffith.} Thank you, Mr. Chairman. I yield back.

3589 Mr. {Whitfield.} At this time I will recognize Mr.
3590 Olson from Texas for 5 minutes.

3591 Mr. {Olson.} I thank the chairman, and I have just got
3592 a couple of questions I just would like to pose to all the
3593 panelists, and a lot of this was targeted to Mr. Rubright,

3594 and of course he had to leave, but I have some concerns.

3595 Again, thank you guys for coming.

3596 Just to let you guys know where I am coming from, my dad
3597 spent his entire working career in the forest and paper
3598 industry, so I have seen, I know as Mr. Rubright said, that
3599 the industry has gone through some, quote, unquote in his
3600 testimony, trying economic times, and I have seen it
3601 firsthand. My father worked for a large paper company,
3602 Champion Papers. They had a mill there on the Houston ship
3603 channel. He worked for the longest part of his career at
3604 anyone place over a decade, and that facility no longer
3605 exists because it couldn't compete in the global market.
3606 Lots of reasons for that. But again, when I see the fact
3607 that they have lost thousands of jobs, they have this blank
3608 spot there along the Houston ship channel that is not being
3609 used to create jobs and turn our economy around, I get
3610 concerned. I get concerned that some of the regulations and
3611 that this Administration is pushing this Environmental
3612 Protection Agency, they are hurting our economy right here
3613 and inhibiting the growth of job creation that we were
3614 seeking to have.

3615 My question for all of you guys, are there any boilers
3616 in your facilities that in your experience are capable of
3617 complying with the boiler MACT standard issued by EPA in

3618 March of 2011? Anybody out there can hit the target right
3619 now? I will start at the end. Mr. Elliott?

3620 Mr. {Elliott.} I think it was acknowledged earlier, Mr.
3621 Green asked the question. In some cases we were actually
3622 identified by the EPA as having some of the top-performing
3623 units around that help set of the regulatory standards for
3624 hydrochloric acid and mercury. However, even our best
3625 performing boilers can't meet both simultaneously.

3626 Mr. {Olson.} But that was Mr. Green's point. You guys
3627 are the best performers and yet you can't hit the standards?

3628 Mr. {Elliott.} Yes, simultaneously.

3629 Mr. {Olson.} Dr. Valberg?

3630 Mr. {Valberg.} I would concede any type to the actual
3631 people who run the facilities.

3632 Mr. {Olson.} Well said. I do that a lot of times
3633 myself.

3634 Mr. Schaeffer?

3635 Mr. {Schaeffer.} I think you are addressing the
3636 question to companies that are operating boilers, so I will--

3637 Mr. {Olson.} Well, in your experience in the industry--
3638 I mean, you are obviously an expert witness. You are here to
3639 testify before this committee, so are you aware of any boiler
3640 out there that can comply with the standards right now?

3641 Mr. {Schaeffer.} Well, I went through the particulate

3642 matter standards, which are the surrogate for toxic metals,
3643 and it looked like an awful lot of facilities were currently
3644 meeting the standard. I haven't gone through all the limits
3645 to check that.

3646 Mr. {Olson.} Okay. Mr. Walke?

3647 Mr. {Walke.} EPA has identified boilers that can meet
3648 the standards, and I will be happy to get that information to
3649 supplement the record. Natural gas boilers under the
3650 standards for major sources and area sources can easily meet
3651 the standards. They are simple tune-up requirements, really,
3652 not emission limits, and so we can supplement the record with
3653 that information as well.

3654 Mr. {Olson.} That side comment there, that makes my
3655 argument for why we need to increase natural gas production
3656 here in this country. EPA is trying to thwart that, at least
3657 having some study done on hydraulic fracturing, the process
3658 that has basically revolutionized the gas resource we have in
3659 this country. I mean, that is a great, great point that you
3660 made, Mr. Walke.

3661 Dr. Gilman?

3662 Mr. {Gilman.} The agency is on the right track for the
3663 smaller boilers, the area source boilers. It is the large
3664 boilers and the problem goes back to this, you don't get to
3665 just pass one emissions standard, you have to pass them all,

3666 and you have to be the best at all, and none of our
3667 facilities--if we put in the best technology available today,
3668 I can't guarantee to my management that we will meet the
3669 standard. So as long as we are evaluating these emissions
3670 standards on this pollutant-by-pollutant basis rather than
3671 looking for the overall performance of the plant, we won't
3672 make it.

3673 Mr. {Olson.} That sounds like an issue we are having
3674 with the EPA in terms of flexible permitting process for our
3675 refineries and our power plants. We are basically--our
3676 system in Texas had five different regulated sources,
3677 emission sources. We could be over in one but we had to be
3678 significantly under in the other four so that the combination
3679 was what really matters and unfortunately EPA has taken that
3680 from us, and it sounds like that would be something very
3681 beneficial to you, Dr. Gilman, some system like that.

3682 Mr. Harrington, down at the end, last but certainly not
3683 least, sir.

3684 Mr. {Harrington.} I really can't comment on the boilers
3685 but I can comment on the cement, and there is not one plant
3686 in the United States that meets the NESHAP regulation because
3687 of the, as Dr. Gilman pointed out, the four specific
3688 elements. We might be good in one, bad on another, not too
3689 good here, good over there, and it varies from coast to coast

3690 from the top of the border to the bottom of the border across
3691 the United States.

3692 Mr. {Olson.} So a flexible permitting system like we
3693 had in Texas would address your concerns as well?

3694 Mr. {Harrington.} It would be a great help.

3695 Mr. {Olson.} And again, it has been demonstrably
3696 cleaner air since the system has been in process 15 years,
3697 and again, last year the EPA took it over from us.

3698 I have run out of time. I thank the chair. Yield back.

3699 Mr. {Whitfield.} Mr. Green, you are recognized for 5
3700 minutes.

3701 Mr. {Green.} Thank you, Mr. Chairman.

3702 Mr. Walke, in your testimony you write that it is
3703 important to recognize the EPA always has set maximum
3704 achievable control technology standards on this very same
3705 pollutant-by-pollutant basis for the over 100 MACT standards
3706 it has set under each Administration since adoption in the
3707 1990 Amendments. You go on to say that the plain language of
3708 the Clean Air Act compels the EPA pollutant-by-pollutant
3709 approach and industries' contorted arguments that have not
3710 succeeded in court or appeals to different Administrations
3711 should not be embraced by Congress to produce dramatically
3712 weaker emissions standards. But how do you reasonably do a
3713 pollutant-by-pollutant approach without ending up with what

3714 has been termed a Franken plant, a plant that even with some
3715 of the top performers like Mr. Elliott's in Virginia are not
3716 in compliance?

3717 Mr. {Walke.} Well, you do it with pollution control
3718 measures that are able to successfully meet all the limits as
3719 has been the case in those 100-plus standards including for
3720 oil refineries and chemical plants in Texas, Mr. Green, and,
3721 you know, this argument just strikes me as kind of a straw
3722 man since it is never been one even taken seriously by, you
3723 know, three Bush Administration terms or two Clinton
3724 Administration terms because those standards were all able to
3725 be met without resulting in the apocalyptic consequences that
3726 people are claiming.

3727 Mr. {Green.} Well, some of your colleagues on the panel
3728 talk about they cannot design, install and commission
3729 emissions controls on their existing coal-fired boilers
3730 within 3 years. They claim that it is particularly true
3731 because third-party resources with expertise to design and
3732 install these controls will be in high demand as multiple
3733 boiler rules are being implemented in a short-term period of
3734 time by both the industry and electric utility industries.
3735 Do you share that concern?

3736 Mr. {Walke.} Well, that is a very different concern,
3737 and if there are concerns about the ability to install the

3738 controls within 3 years, the Clean Air Act provides an
3739 additional year, an fourth year for that happen.

3740 I would like to note in responding to a question that
3741 Mr. Whitfield asked earlier of the panelists, EPA is slated
3742 to finalize this boiler stands in April of 2012. If you
3743 listen carefully to what Ms. McCarthy said, it is within
3744 their power to extend the compliance deadlines to start 3
3745 years from that period with an additional fourth year for
3746 this additional period of controls that I just mentioned. So
3747 we are already looking at 2016 under the Clean Air Act, which
3748 is exactly 5 years from now, from 2011. The Clean Air Act
3749 has the flexibilities and the administrative tools necessary
3750 to allow EPA to give sufficient time to comply with these
3751 standards, and I think we should let that responsible process
3752 work.

3753 Mr. {Green.} Mr. Harrington, some of my cement
3754 companies have talked about how the subcategorization of the
3755 fuels is the crux of the issue for their industry and that
3756 EPA should have used better discretion here. Do you agree
3757 with this statement, and if so, can you elaborate?

3758 Mr. {Harrington.} It is very much a plant-by-plant
3759 decision and issue. We do agree with subcategorization. A
3760 lot of the issue still comes back to uncertainty--will it be
3761 accepted, will it not be, is there a positive dialog where

3762 real, true information is passed back and forth and is
3763 accepted. So we can have dialog and we can propose different
3764 things and there is always politeness and a spirited and
3765 professional discussion but then we go back and then things
3766 don't happen. So we continue to look at the clock and look
3767 at the calendar and understand what the regulations are and
3768 have to go back and plan for our fuel sources, for our
3769 capital investment needs, even how we operate our kilns. So
3770 I do agree with that issue.

3771 Mr. {Green.} Mr. Elliott, in your testimony you say
3772 that making it cost prohibitive to burn alternative fuels,
3773 the current rule would force industry to pay excessive prices
3774 for natural gas will curtail production. I know that natural
3775 gas is the cheapest it has been for decades almost now and
3776 can you elaborate on that?

3777 Mr. {Elliott.} Well, this is a particular note around
3778 curtailment, and we would like it to be more clear ultimately
3779 in the regulation that if, for example, a plant like ours
3780 converts to natural gas, if we have to curtail for
3781 residential heating or something like that, that we would
3782 have the wherewithal to convert temporarily to a backup fuel
3783 like fuel oil, for example, and that we would not then have
3784 to meet specific regulation standards for that particular
3785 source of fuel. So it is a very specific point around

3786 curtailment and flexibility on a temporary basis to have that
3787 flex fuel option, and I think that is probably fairly common
3788 with industrial boiler operators.

3789 Mr. {Green.} Well, I would hope we have enough natural
3790 gas now that has been developed that we wouldn't have to
3791 worry about curtailment, particular in fuel oil, because I
3792 know that is also another issue on the East Coast.

3793 Mr. {Elliott.} It is just not crystal clear at this
3794 point that that flexibility exists.

3795 Mr. {Green.} Thank you.

3796 Thank you, Mr. Chairman.

3797 Mr. {Whitfield.} Thank you, and I see no one else, so I
3798 want to thank all of you for taking time and giving us your
3799 expert opinions on these pieces of legislation. We look
3800 forward to working with all of you as we consider whether or
3801 not we are going to move forward with them.

3802 With that, we will terminate today's hearing, and we
3803 will have 10 days for any member to submit additional
3804 material and questions.

3805 So thank you all very much for being with us today and
3806 we appreciate your patience.

3807 [Whereupon, at 2:23 p.m., the Subcommittee was
3808 adjourned.]