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4 LEGISLATIVE HEARING ON H.R. 1633, THE ``FARM DUST REGULATION
5 PREVENTION ACT OF 2011''
6 TUESDAY, OCTOBER 25, 2011
7 House of Representatives,
8 Subcommittee on Energy and Power
9 Committee on Energy and Commerce
10 Washington, D.C.

11 The subcommittee met, pursuant to call, at 10:06 a.m.,
12 in Room 2322 of the Rayburn House Office Building, Hon. Ed
13 Whitfield [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Whitfield, Sullivan,
15 Shimkus, Walden, Terry, Burgess, Bilbray, Scalise, McMorris
16 Rodgers, Olson, McKinley, Gardner, Pompeo, Griffith, Barton,
17 Upton (ex officio), Rush, Markey and Waxman (ex officio).

18 Staff present: Allison Busbee, Legislative Clerk; Cory

19 Hicks, Policy Coordinator, Energy and Power; Heidi King,
20 Chief Economist; Ben Lieberman, Counsel, Energy and Power;
21 Mary Neumayr, Senior Energy Counsel; Alison Cassady,
22 Democratic Senior Professional Staff Member; Kelley Greenman,
23 Democrat Legislative Associate; Caitlin Haberman, Democratic
24 Policy Analyst; and Alexandra Teitz, Democrat Senior Counsel,
25 Energy and Environment.

|
26 Mr. {Whitfield.} This hearing will come to order.

27 Today we will discuss H.R. 1633, the Farm Dust
28 Regulation Prevention Act of 2011. In most respects, this
29 hearing will be similar to many of the others our
30 subcommittee has held this year. As you know, we have
31 jurisdiction over EPA's Clean Air Act regulations, and we
32 have an obligation to the American people to ensure that new
33 regulations do not impose burdensome costs or obstruct job
34 creation, particularly at a time when our unemployment is
35 high, our economy is still struggling and uncertainty is
36 widespread.

37 EPA's unprecedented wave of stringent and inflexible
38 regulations poses a serious threat to the economy, on job
39 creation, in our opinion, which is why we have held an
40 unprecedented number of hearings to the plethora of
41 regulations issued by EPA. The only difference between
42 today's hearing and most of the others is the target of the
43 EPA regulation at issue. Many of the previous hearings dealt
44 with rules most directly impacting manufacturing and energy
45 production. Today, we discuss EPA's particulate matter
46 standards and their potential impact on family farms and
47 small businesses in rural America.

48 EPA is in the process of revising its National Ambient

49 Air Quality Standards for particulate matter. This includes
50 PM10, which is coarse particulate matter, also known as dust.
51 Although EPA has said it will not propose changes to its
52 existing dust standard, there are several reasons for
53 uncertainty about the outcome of EPA's ongoing review. EPA
54 has discussed further regulation of farm dust since 1996.
55 Most of us believe that the current PM10 standard of 150
56 micrograms per cubic meter is sufficient and should not be
57 changed, especially given the absence of evidence that farm
58 dust poses a health threat.

59 In April 2011, EPA issued a policy assessment that
60 recommends this standard either be unchanged or lowered to 65
61 to 85 micrograms per cubic meter. The assessment also
62 recommends a change in the way compliance is measured. Any
63 changes to the current standard would almost certainly force
64 States and localities to impose additional restraints on
65 farming and other operations in rural America in order to
66 comply.

67 It is possible that EPA will ultimately retain the
68 current PM10 standard in its pending review, but it should be
69 noted that the last time EPA considered revising its standard
70 for PM10 in 2006, the final version did not adopt an
71 exemption for agricultural dust that had been on the table at
72 an earlier stage.

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

74 ***** COMMITTEE INSERT *****

|

75 [H.R. 1633 follows:]

76 ***** INSERT 11 *****

|
77 Mr. {Whitfield.} At this time I would like to recognize
78 the gentleman from Kansas, Mr. Pompeo, who is the sponsor, I
79 believe, of this legislation for 1 minute.

80 Mr. {Pompeo.} Thank you, Mr. Chairman. Thank you for
81 holding this hearing on H.R. 1633.

82 You know, I represent an agricultural State and my
83 district has lots of production agriculture. It is part of
84 who we are. The issues that these folks face are like a lot
85 of other small businesses--crushing regulations and tax
86 burdens, but some have a very different flavor like this one.

87 The issue we are talking about today, the effort to
88 regulate farm dust as a particulate pollutant, is one of the
89 most concerning and potentially most burdensome regulations
90 coming from Washington, D.C., in my 10 months here so far.
91 Now, the EPA's recent announcement that it currently has no
92 intention of imposing new regulations on dust sounds to me
93 like a purely political and likely temporary decision and
94 frankly doesn't give our farmers in Kansas or across the
95 country the certainty they need. The fact remains that EPA
96 staff has suggested tightening this regulation, and that
97 tightening of the regulation would include farm dust.

98 Like many other sectors in our economy, we need long-
99 term planning. We need the ability for farmers to know what

100 they can and can't do. That is why I am proud to be a
101 cosponsor of the Farm Dust Regulation Prevention Act, and I
102 am pleased to have Congresswoman Noem and Congressman Hurt
103 here this morning to testify about it. Thank you both for
104 being here.

105 With that, I yield back my time.

106 [The prepared statement of Mr. Pompeo follows:]

107 ***** COMMITTEE INSERT *****

|
108 Mr. {Whitfield.} Thank you very much, and I will yield
109 back the balance of my time as well and I recognize Mr. Rush
110 for 5 minutes for his opening statement.

111 Mr. {Rush.} I want to thank you, Mr. Chairman, and I
112 also want to thank all the distinguished witnesses who will
113 be here at today's hearing and testifying.

114 Mr. Chairman, we are here to discuss the Farm Dust
115 Regulation Prevention Act of 2011, even though last week EPA
116 made the decision that it would not propose any changes to
117 the current standard of 10 PM or 10 micrometers for coarse
118 particulate matter. The basis of today's hearing is H.R.
119 1633, the bill introduced by Representative Kristi Noem of
120 South Dakota, who we are pleased to welcome to the
121 subcommittee for her testimony today.

122 H.R. 1633 would bar EPA from revising its rules for
123 coarse particulates for 1 year. It would also create a
124 permanent exemption for ``nuisance'' dust from farms and
125 country roads. I look forward to hearing from Assistant
126 Administrator of the Office of Air and Radiation, Gina
127 McCarthy, as well as other stakeholders testifying to better
128 understand the impact that this proposed legislation will
129 have on the Clean Air Act as well as on public health.

130 In particular, I have concerns over section 3 of H.R.

131 1633, which states that the Clean Air Act does not apply to,
132 again, I will quote, ``nuisance'' dust and would eliminate
133 EPA's authority under the Clean Air Act to regulate anything
134 that constitutes nuisance dust except narrowly defined
135 circumstances. As currently drafted, nuisance dust is
136 defined as particulate matter that is, one, generated from
137 natural sources, unpaved roads, agricultural activities,
138 earth-moving or other activities typically conducted in rural
139 areas, or, two, consisting primarily of soil, other natural
140 or biological materials or wind-blown dust. However, the
141 phrase ``other activities typically conducted in rural
142 areas'' is much too broad and could potentially include
143 industrial activities that are commonly located outside of
144 urban areas that will be exempt from the Clean Air Act
145 regulation including power plants, ethanol refineries, mines
146 and smelters, and pulp and paper mills. Section 3 raises
147 serious concerns over whether EPA could continue to implement
148 fine and coarse particle pollution programs or whether the
149 EPA could ever adopt or implement revised fine or coarse
150 particle standards.

151 However, H.R. 1633 takes certain types of particulate
152 matter out of the entire Clean Air Act altogether. This bill
153 could potentially forever prohibit EPA from regulating
154 mercury from coal-fired power plants based on the argument

155 that mercury is emitted as particulate matter from coal-fired
156 power plants and burning coal to generate electricity is an
157 activity typically occurring in rural areas. Additionally,
158 as written, section 3 is not limited to stationary sources so
159 H.R. 1633 calls into question EPA's ability to set tailpipe
160 emission standards for new vehicles or engines to limit their
161 fine particulate pollution as well as the ability to enforce
162 existing particulate standards for new vehicles or engines.

163 So I think it is important, Mr. Chairman, to clarify the
164 bill's language to avoid unintended consequences to the
165 overall Clean Air Act.

166 Mr. Chairman, I look forward to hearing from all of the
167 panelists on the merits and necessity of H.R. 1633, and with
168 that, I yield back the balance of my time.

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

170 ***** COMMITTEE INSERT *****

|
171 Mr. {Whitfield.} Thank you, Mr. Rush.

172 At this time I would recognize the full committee
173 chairman, Mr. Upton of Michigan, for 5 minutes.

174 The {Chairman.} Well, thank you, Mr. Chairman.

175 Today's hearing looks at a source of major concern to
176 the ag sector and rural America, which is EPA's regulation of
177 coarse particulate matter, otherwise known as dust.

178 H.R. 1633, the Farm Dust Regulation Prevention Act of
179 2011, provides relief from this regulatory threat, and I
180 welcome two of the cosponsors of this bipartisan legislation,
181 Kristi Noem of South Dakota and Robert Hurt of Virginia, who
182 are here today.

183 The very last thing that our struggling economy needs is
184 new costs and regulatory burdens on farmers and small
185 businesses across rural America. They already face indirect
186 consequences from EPA's costly regulatory agenda, and now
187 they are rightfully concerned about the threat of direct
188 regulation of their operations.

189 The EPA recently announced that it plans to propose
190 retaining the existing standard for coarse particulate
191 matter, and I appreciate those assurances. But like the
192 stakeholders that we will hear from today, I am not at all
193 satisfied with this step for the simple reason that

194 regulatory uncertainty will remain.

195 EPA's proposal could change throughout the review
196 process. The ag community's concerns may not be fully
197 addressed. And even if the final standard contains no
198 changes, it is always subject to court challenge. For these
199 reasons, EPA's insistence that it does not plan to change the
200 rule is far from a guarantee that such a change would never
201 come to pass.

202 In the face of this ongoing regulatory uncertainty, this
203 legislation makes good sense. The bill is targeted. It
204 prevents EPA from setting a new coarse particulate matter
205 standard for 1 year, and it also makes clear that State,
206 tribal, and local governments have authority to regulate so-
207 called nuisance dust common across rural America. The State
208 and local emphasis is appropriate for dust, which is a local
209 issue.

210 The bill gives EPA authority to regulate nuisance dust
211 in the absence of State or local action, and after both costs
212 and benefits are taken into account. That is common sense
213 and it protects the interests of our vital rural economy.

214 I commend our colleagues for putting together their
215 legislation on the table. If EPA is serious that it does not
216 intend to regulate farm dust, it should embrace this
217 legislation.

218 I yield to the gentleman from Texas, Mr. Barton.

219 [The prepared statement of Mr. Upton follows:]

220 ***** COMMITTEE INSERT *****

|
221 Mr. {Barton.} Well, thank you, Congresswoman Noem and
222 Congressman Hurt for introducing this and being here. We are
223 beginning to have some dust storms like we had back in the
224 1930s. We had a very bad one in Lubbock, Texas, last week.
225 There are differences of opinion as to the cause of the
226 storms but it appears that we are in a cycle where the
227 weather conditions are such that we are going to have dryer
228 weather and a little bit warmer temperatures and so we are
229 going to have dust storms.

230 EPA back in 2006 suggested that we shouldn't regulate
231 farm dust. I wish the EPA would dust that proposal off and
232 institute it instead of even thinking about regulating farm
233 dust. As the chairman just said, this legislation is
234 preemptive in nature and I would hope that we can move it
235 very expeditiously. We don't want to have a re-creation of
236 the 1930s, and because of farm practices and some of the dam
237 projects that have been constructed, we shouldn't, but we
238 also don't want to overreact something that God himself or
239 herself can't regulate.

240 So with that, I would yield the balance of the time to
241 Mr. Olson of Texas.

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

243 ***** COMMITTEE INSERT *****

|
244 Mr. {Olson.} I thank my colleague from Texas.

245 Mr. Chairman, I thank you for holding this hearing on
246 H.R. 1633, the Farm Dust Regulation and Prevention Act, of
247 which I am a proud cosponsor.

248 This hearing is critically important to my home State of
249 Texas. Texas has been battling and unprecedented drought.
250 In my hometown of Sugar Land, we are almost 2 feet behind our
251 annual rainfall. In addition, wildfires have burned 3.6
252 million Texas acres. Texas farmers and ranchers have been
253 hit particularly hard by the drought and the fires. And to
254 think that the EPA is attempting to regulate farm dust now or
255 in the future is simply out of touch with reality. This move
256 would impose devastating, unjustified and burdensome
257 regulations on farmers and ranchers already struggling in
258 this economy to provide food for an ever-growing population.

259 Mr. Chairman, as you know, farmers and ranchers are the
260 backbone of America. We must give them the tools and
261 certainty to plan for the future so they can succeed.

262 I welcome all of our witnesses here today, particularly
263 my colleagues from South Dakota and Virginia. I look forward
264 to your testimony. I yield back.

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

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

|
267 Mr. {Whitfield.} Thank you very much.

268 At this time I recognize the ranking member of the full
269 committee, Mr. Waxman of California, for 5 minutes.

270 Mr. {Waxman.} Thank you very much, Mr. Chairman.

271 Today's hearing considers yet another bill to allow more
272 air pollution, more asthma and more heart attacks, and once
273 again, it is a bait and switch. The bill's sponsors say the
274 legislation is narrowly targeted to help farmers. In fact,
275 the bill is drafted broadly and has sweeping anti-environment
276 effects.

277 We are going to hear today that we must pass H.R. 1633
278 to stop EPA from regulating farming. This isn't just
279 nonsense. It is pure fantasy. EPA does not regulate farming
280 practices to reduce dust and has expressed no intention of
281 doing so in the future. EPA has set standards for the levels
282 of coarse particulate matter in the ambient air because there
283 is scientific evidence that this pollution causes serious
284 health effects. Coarse particulate matter, or PM10, is
285 produced by uncontrolled burning of coal and oil,
286 construction and demolition activities, mining, and unpaved
287 roads, as well as farm activities. Once EPA sets the
288 standards for ambient levels of air pollution, it is up to
289 the States and localities to determine how to meet them. It

290 is the States and localities, not EPA, that decide which
291 sources must reduce pollution and by how much.

292 EPA set the current PM10 standards in 1987, during the
293 Reagan Administration. As required by the Clean Air Act, EPA
294 has recently reviewed the science supporting those standards.
295 Based on that review, the Administrator recently announced
296 that she intends to propose making no change to the Reagan-
297 era PM10 standards. Now we are being told that we need to
298 pass this bill because EPA could change its mind and do
299 something the agency has said it has no intention of doing.

300 If we adopt this standard for legislation, there is no
301 end to the bad ideas we could legislate. Should we pass a
302 law saying the United States cannot invade Canada? Or one
303 preventing the government from outlawing apple pie?

304 We are facing real and serious problems that are
305 happening right now. Millions of Americans are out of work;
306 our economy is stalling; fires, floods and droughts are
307 afflicting our Nation. We need to spend our time addressing
308 these real challenges, not squandering it on imaginary
309 problems.

310 But even though this bill stops something that won't
311 happen anyway, that doesn't mean the bill has no effect.
312 H.R. 1633 is so broadly worded, it could invalidate EPA's
313 existing standards for both fine and coarse particulates.

314 This would have a devastating effect on clean air
315 requirements and public health.

316 The biggest problem is in section 3, which is not
317 limited to farm activities, rural areas, ambient air quality
318 standards or coarse particulate matter. It says the Clean
319 Air Act does not apply to anything that meets the bill's
320 definition of ``nuisance dust,'' unless a narrow exception
321 applies, and the definition of nuisance dust is sweeping. It
322 includes ``windblown dust,'' which is undefined and not
323 limited to rural areas, and it includes any particulate
324 matter ``generated from activities typically conducted in
325 rural areas.''

326 Well, mining is typically conducted in rural areas, and
327 mining operations have huge equipment that can generate large
328 quantities of particulate air pollution. Seventy percent of
329 the Nation's power plants are located in rural areas. The
330 particulate matter generated by power plants includes not
331 only fine and coarse particulate matter, but also particles
332 of mercury and lead and acid particles that form from
333 nitrogen oxides and sulfur dioxides. Children in rural areas
334 typically take the bus to school, and diesel buses generate
335 particulate pollution. Under this bill, EPA could have no
336 authority to regulate any of this pollution.

337 Now, the bill's sponsors will argue that they don't

338 intend to exempt mines, power plants or school buses from
339 regulation under the Clean Air Act. But as we have seen with
340 so many other bills this Congress, the bill language doesn't
341 match the stated intent. It is the legislative language that
342 matters, and the language could result in a massive increase
343 in dangerous air pollution.

344 This year, the subcommittee has reported bills to allow
345 more carbon pollution, more air pollution from offshore
346 drilling, more air pollution from power plants, more air
347 pollution from industrial boilers and incinerators, and more
348 air pollution from cement kilns. Today's bill is more of the
349 same. Americans want their kids to breathe clean and healthy
350 air, not another bill to let polluters off the hook.

351 Thank you, Mr. Chairman. I yield back my time.

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

353 ***** COMMITTEE INSERT *****

|
354 Mr. {Whitfield.} Thank you, and at this time I would
355 like to recognize our members on the first panel,
356 Congresswoman Kristi Noem from South Dakota, and Congressman
357 Robert Hurt of Virginia, the primary sponsors of this
358 legislation, and we genuinely appreciate your being here with
359 us today, and I will recognize each of you for 5 minutes for
360 your opening statement, and Congresswoman Noem, we will begin
361 with you.

|
362 ^STATEMENTS OF HON. KRISTI NOEM, A REPRESENTATIVE IN CONGRESS
363 FROM THE STATE OF SOUTH DAKOTA; AND HON. ROBERT HURT, A
364 REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

|
365 ^STATEMENT OF KRISTI NOEM

366 } Mrs. {Noem.} Sounds great. Thank you, Mr. Chairman and
367 the ranking member, who is not with us right now, but the
368 rest of the committee members, I appreciate you for having
369 this hearing today and for letting us bring forward H.R.
370 1633, the Farm Dust Regulation Prevention Act of 2011.

371 I introduced this commonsense bill on April 15th of this
372 year with my colleagues, Representative Robert Hurt, Larry
373 Kissell and Leonard Boswell because of the regulatory
374 uncertainty that is facing rural America.

375 We certainly have challenges in front of us. My bill is
376 a bipartisan approach to ending the EPA's regulation of farm
377 dust in rural America while still maintaining the protections
378 of the Clean Air Act to the public health and welfare. It is
379 not a Republican and it is not a Democrat issue. There is
380 broad bipartisan support with over 100 colleagues on both
381 sides of the aisle sponsoring this bill. And the committee
382 will see in the record that there is also over 100

383 agriculture- and research-based organizations who have
384 written in support of the bill as well.

385 As this committee knows, there is growing concern that
386 excess regulations are hampering economic growth and job
387 creation across the country. In my home state of South
388 Dakota, this is a huge concern for farmers and for ranchers
389 and small business owners who are struggling to stay afloat
390 in an already stressed economy. One of the most overwhelming
391 concerns that I hear about from farmers every day and
392 ranchers back home is the overbearing regulations coming out
393 of the EPA, including the regulation of farm dust. Their
394 concern is certainly not unwarranted.

395 Under the Clean Air Act, the EPA is responsible for
396 setting the National Ambient Air Quality Standards for
397 certain pollutants. This includes particulate matter, which
398 is broken down into both fine and coarse particulate matter,
399 commonly known as dust. The Administrator of the EPA, Lisa
400 Jackson, must set the National Ambient Air Quality Standards
401 that States must meet or be designated as nonattainment
402 areas. The goal of these standards is to protect the public
403 from harmful pollutants like industrial soot and car
404 emissions common in urban areas, which I certainly support.
405 The EPA measures the amount of particulate matter, or dust,
406 in the air through monitoring devices that are placed

407 throughout the country. At least every 5 years, the
408 Administrator must review those standards and decide if they
409 want to keep the current standard, or potentially adopt a
410 more stringent standard. As this committee is aware, the EPA
411 is currently in the process and in the midst of another
412 review.

413 Under current law, the EPA's standards include all kinds
414 of dust, including dust generated from ag activities and the
415 dust that is typical in rural America. This type of dust is
416 naturally occurring and includes soil, windblown dust or dust
417 that comes off of dirt roads. I call it farm dust. This is
418 completely different than the type of dust typical in urban
419 areas which has been shown to have adverse health effects.

420 My legislation specifically focuses on rural dust. It
421 allows the standard to apply unchanged in urban areas. Farm
422 dust is a fact of life in rural America and, unlike urban
423 dust, has not been shown to have a significant health
424 concern. Including farm dust in the National Ambient Air
425 Quality Standards regulations causes great concern and
426 uncertainty for farmers and other resource-based industries
427 in rural America.

428 I would like to clear up the myth that EPA currently
429 does not regulate farm dust. Farmers and ranchers are
430 already subject to the standard for dust in nonattainment

431 areas like Arizona. There are people in Arizona that
432 certainly know the impact that this has on businesses. It
433 can cost some producers in that State over \$1,000 a day to
434 comply with dust standards.

435 On September 17, 2011, a Des Moines Register story tells
436 the story of Kevin Rogers, who is going to testify here later
437 today and tell his personal story. He is a farmer from
438 outside of Phoenix, Arizona. If the wind is blowing too
439 much, he has to park his tractors, he has to park his
440 combines so that he doesn't kick up too much dust. As a
441 lifelong farmer and rancher myself, I certainly understand
442 the impact this can have when you have a job to get done and
443 you have a business to run. And as Kevin puts it, ``It is a
444 difficult thing when the government is in the middle of every
445 single thing that we are doing.'' We need to put an end to
446 regulation of farm dust and prevent its expansion into the
447 future.

448 Regulation of farm dust is a problem today and will be
449 more of an issue if the EPA continues to have opportunities
450 to make more stringent standards into the future. The
451 inclusion of farm dust in the EPA's National Ambient Air
452 Quality Standards will continue to be a problem until
453 legislation is enacted to ensure that farm dust is treated
454 differently. EPA is well aware that it cannot under current

455 law differentiate between dust coming from rural areas or
456 urban areas, and while officials in the EPA continue to say
457 that they have no intention of regulating farm dust, the EPA
458 does regulate farm dust and has no plan to exempt naturally
459 occurring farm dust from their regulations.

460 This bill certainly provides a solution. It gives us
461 the ability to differentiate between naturally occurring
462 rural dust and that that is typically occurring in urban
463 areas, and also, what it does is, it provides immediate
464 relief for farmers in rural areas by preventing any changes
465 to the current standards for 1 year. Secondly, it provides
466 flexibility for States, localities and tribes to regulate
467 farm dust and nuisance dust themselves.

468 I certainly appreciate the opportunity to testify before
469 you today, and I will certainly stick around and answer any
470 questions that the committee may have for me.

471 [The prepared statement of Mrs. Noem follows:]

472 ***** INSERT 1 *****

|

473 Mr. {Whitfield.} Thank you very much.

474 Mr. Hurt, you are recognized for 5 minutes.

|
475 ^STATEMENT OF ROBERT HURT

476 } Mr. {Hurt.} Thank you, Mr. Chairman. It is an honor to
477 be with you, and I thank you for the invitation to be here to
478 talk about H.R. 1633. It is an honor to be here with
479 Representative Noem, and I appreciate her leadership on this
480 as well.

481 I represent Virginia's 5th District, a primarily rural
482 area which includes most of central and Southside Virginia,
483 and is larger than the State of New Jersey. In the 5th
484 District, we have a proud heritage in agriculture,
485 manufacturing and other resource-based industries that
486 provide good-paying jobs for thousands of Virginians.

487 Dust is a necessary byproduct of the hard work the
488 farmers and businesses in my rural district perform every
489 day. These are the people who are struggling to survive, to
490 grow, and to create jobs during this stalled economic
491 recovery. That is why the EPA's national standard for
492 fugitive dust, which falls under the Clean Air Act's National
493 Ambient Air Quality Standards for coarse particulate matter
494 is so troubling to the people that I represent. It is yet
495 another example of the expansion of federal government and
496 the uncertainty that Washington continues to impose upon our

497 family farms, our small businesses and our rural communities.

498 That is why H.R. 1633 is necessary. The bipartisan
499 legislation will help create a better economic environment
500 for job creation by replacing the current federal standard
501 for dust that comes from driving on unpaved roads, working in
502 agricultural fields and similar activities in rural America.

503 H.R. 1633 provides relief from the more stringent
504 federal standard for coarse particulate matter recommended in
505 the April 2011 policy assessment prepared by the EPA staff.
506 It also gives States and localities the flexibility to set a
507 standard for dust if they choose. More important, it keeps
508 the federal government out of the business of over-regulating
509 naturally occurring dust unless the EPA can prove substantial
510 adverse public health effects caused by dust and can provide
511 a rigorous cost-benefit analysis on the need for such
512 regulation.

513 While I applaud EPA Administrator Lisa Jackson's recent
514 promise that she will not propose a more stringent standard
515 for coarse particulate matter, I remain concerned about the
516 uncertainty of the rulemaking process where these rules can
517 be modified. I am also troubled by the comments of some
518 officials in the Administration to discredit the issue of
519 federal dust regulation, including Secretary of Agriculture
520 Tom Vilsack who wrote that the ``regulation of farm dust is

521 another frequently repeated myth.' ' After reviewing the
522 EPA's 2006 federal standards for coarse particulate matter,
523 which by definition includes dust, I respectfully disagree
524 with the statement that this is a myth.

525 I know that farmers and business owners in the 5th
526 District disagree with this assessment of dust regulation as
527 well. When traveling the 5th District last year, I spoke
528 with a small business owner who was warned by a State
529 regulator about the amount of dust that was coming off of his
530 property. When this business owner questioned further about
531 the regulator's concern over fugitive dust, the regulator
532 replied that the business needed to take active measures to
533 decrease the dust coming from the dirt driveway leading in
534 and out of his facility.

535 It also appears that the Sierra Club would take issue
536 with the Administration's statements that federal dust
537 regulations are a myth as well. When discussing a petition
538 it filed with the Virginia Air Pollution Control Board in my
539 home State, which was ultimately dismissed, by the way, the
540 Sierra Club alleged that the levels of dust it measured on a
541 road in southwest Virginia were above the national health-
542 based standard promulgated by the EPA. It is difficult to
543 understand why the Sierra Club would take such action if the
544 federal government mandates for fugitive dust are a myth.

545 While it is true that the EPA and State regulatory
546 agencies have not set up monitors at every family farm and
547 every unpaved road, the Sierra Club has shown one way in
548 which these national standards for dust regulation continue
549 to provide uncertainty for rural America.

550 Because of these dust regulations, rural farming and
551 business operations can face the threat of unnecessary
552 harassment, regulation and litigation by private actors or
553 State and federal regulators. Additionally, companies
554 throughout the 5th District and the country are required to
555 comply with the federal standard for dust in order to obtain
556 permits, such as those issued by the Virginia Department of
557 Environmental Quality as required in its State Implementation
558 Plan with the EPA.

559 This is why Congress must act in a bipartisan fashion to
560 pass H.R. 1633 and assure our farmers and our rural
561 industries that naturally occurring dust will not be subject
562 to expanded federal regulation. When it comes to dust, the
563 EPA and the federal government should not mandate a one-size-
564 fits-all standard that could eventually lead to lost
565 production. With unemployment rates nearing 20 percent in
566 some areas of Virginia's 5th District, we simply cannot
567 afford to continue to perpetuate unnecessary regulations and
568 uncertainty for the farmers and businesses in our rural

569 communities.

570 I thank the chairman and I thank the ranking member
571 again for inviting us to appear. I thank the subcommittee
572 for considering our bill. I appreciate the opportunity to
573 testify this morning and look forward to any questions.

574 [The prepared statement of Mr. Hurt follows:]

575 ***** INSERT 2 *****

|
576 Mr. {Whitfield.} Well, thank both of you for your
577 testimony. We appreciate your taking time to talk about your
578 legislation, and I was delighted to hear Ms. Noem indicate
579 that you do have bipartisan support. How many cosponsors of
580 this bill do you have?

581 Mrs. {Noem.} Well, there are 100 cosponsors that are
582 signed on to the bill. There also has been a lot of support
583 shown over in the Senate side as well. I mean, it is a
584 commonsense bill that we certainly recognize could be
585 addressed--the concerns could be addressed through this
586 legislation.

587 Mr. {Whitfield.} And has a similar bill been introduced
588 on the Senate side?

589 Mrs. {Noem.} You know, there has been a bill that has
590 been talked about. I am not certain if the sponsor is
591 continuing to pursue it.

592 Mr. {Whitfield.} But when we say that EPA is not
593 regulating coarse particulate matter, of course, in any
594 nonattainment area, if the State does not have a State
595 implementation plan, the federal government certainly has the
596 authority to step in. Is that correct, Mr. Hurt?

597 Mr. {Hurt.} Absolutely, and I would like to maybe
598 address some of the concerns raised by Mr. Rush and Mr.

599 Waxman, that section 3, it does allow for the federal
600 government to come in but under circumstances that I think
601 any American would find very reasonable, and that is, when it
602 is proven that there are substantial health risks and after a
603 cost-benefit analysis that this makes sense, and I think that
604 from what I have heard across my district, that is exactly
605 the kind of view that Americans and 5th District Virginians
606 would like to see going on here in Washington. And it is
607 also important to note that this does nothing to change the
608 particulate matter 10 and PM2.5 standards, the emissions that
609 the ranking member and Mr. Waxman discussed, would still be
610 regulated under or viewed through those different standards.

611 Mr. {Whitfield.} You know, it is interesting we find
612 ourselves here discussing the regulation of dust. I know
613 that there are some studies that say well, there's some
614 correlation between particulate matter, coarse particulate
615 matter, and health, and then there are other studies that
616 indicate there is no causal relationship whatsoever, and yet-
617 -and I know we have a gentleman from Arizona, I believe, in
618 the next panel, but it is my understanding that under the
619 State implementation plan of Arizona, in some instances on
620 windy days the farmers are literally prevented from farming.
621 Is that your understanding?

622 Mrs. {Noem.} Mr. Chairman, yes, it is my understanding,

623 and that would be the facts that they face every single day,
624 and I think there is a clear definition and difference
625 between urban dust, which is the kind of dust that has been
626 proven scientifically to create the adverse health effects
627 that a lot of the questioning has come from. There hasn't
628 been that kind of scientific research and data that has shown
629 the detrimental effects of this nuisance dust, which we are
630 addressing in this piece of legislation. We are talking
631 about dirt, soil, matter that occurs naturally through the
632 course. Some of the concerns that were brought up in
633 previous statements did happen to come from coal-fired
634 plants, from mining, other situations such as that,
635 scientific research has proven that that is very different
636 than the type of rural dust that we are talking about with
637 this piece of legislation.

638 Mr. {Hurt.} If I could just comment on that, I think
639 also one of the things that I have discovered in working on
640 this legislation is that at some--we have standards, but at
641 some level at the end of the day, if you can't abate the
642 dust, the only way to stop it is to stop production or stop
643 driving on the roads, and what does that translate to? That
644 translates to lost jobs.

645 Mr. {Whitfield.} Well, one thing that I think also is
646 beneficial in your legislation, my understanding under the

647 Clean Air Act, there really is no definition of nuisance air
648 so it could be whatever it could be. At least in this
649 legislation make an attempt to define it, which may not suit
650 everyone but that would be an area that we would have an
651 opportunity to work with others to at least have a definition
652 of that, which I think it is important.

653 Mrs. {Noem.} Yes, Mr. Chairman, I would agree. I think
654 this piece of legislation the EPA should have no problem
655 with. I really do. I think they should be very supportive
656 of this because it simply says that they are not going to
657 change their standards for a year, which they have already
658 said that they are not going to do, and then it provides that
659 definition. Rural dust and urban dust is not the same thing,
660 and I think it would be very helpful to them and their
661 processes and how they evaluate the ways that they approach
662 enforcing the Clean Air Act to have that definition in place
663 because they are very different, and the research behind them
664 shows that.

665 Mr. {Whitfield.} Well, some people make the argument
666 well, EPA is not going to regulate it anyway so we don't need
667 this legislation, but we know for a fact that entities file a
668 lot of lawsuits over at EPA, and whether EPA intends to do
669 something or not, they frequently find themselves in lawsuits
670 and frequently they enter into consent decrees in many

671 instances agreeing with the plaintiff and then it becomes a
672 court order and that is another frustrating thing. We find
673 the court in many of our environmental regulations, their
674 decisions as we do regulations coming out and initiated by
675 EPA.

676 Mrs. {Noem.} Yes, Mr. Chairman, this bill provides
677 certainty and it provides certainty to a risky business that
678 a lot of farmers and ranchers engage in and the people in
679 rural areas are trying to keep their doors open and provide
680 for their families, and this shows them that we are going to
681 give them the certainty they need to be protected from those
682 types of sudden regulations that may come up because of
683 lawsuits and environmental issues.

684 Mr. {Whitfield.} Well, thank you all very much.

685 At this time I recognize Mr. Rush for 5 minutes.

686 Mr. {Rush.} I want to thank you, Mr. Chairman, and I
687 want to also thank my colleagues, Representative Noem and
688 Representative Hurt, for being here today, and I want you to
689 know that my grandfather was a farmer. I was raised in my
690 early years on a farm, and I am pro-farmer, and I see you are
691 the sponsor of this bill, and I want to focus my questions on
692 the bill.

693 Representative Noem, many on the minority side are
694 concerned with some of the language that is not clearly

695 defined in section 3. Specifically, the ``nuisance dust'' as
696 defined by ``other activities typically conducted in rural
697 areas'' is causing concern for me and others because it may
698 exempt many other industrial activities from Clean Air Act
699 regulations. You are the sponsor of H.R. 1633, and is it
700 your intention to provide exemptions for other activities not
701 associated with standard agricultural practices in section 3,
702 and if not, would you be amenable to modifying this language
703 in order to make clear the bill's intention?

704 Mrs. {Noem.} Well, thank you for the question,
705 Representative Rush, and I certainly believe that the title
706 of the bill and the language of the bill is very clear that
707 it means to address farm dust and nuisance dust throughout
708 the piece of legislation. I think that some of the
709 interpretation that it goes too far and might include things
710 such as coal ash and other harmful pollutants is that my bill
711 simply does not exempt anything from regulations. It simply
712 gives States and localities the flexibility to regulate dust
713 in rural areas on their own. Now, if there are no local
714 regulations that address in this place federal regulations
715 will certainly apply if the EPA--if the dust proves that it
716 has negative health benefits and if it does rigorous cost-
717 benefit analysis. So I believe the legislation as it stands
718 today with the title that it has and with the language it has

719 within it clearly defines nuisance dust and what is to be
720 regulated and that the States and local governments certainly
721 have the opportunity to address the concerns that may be
722 particular in one area.

723 Mr. {Rush.} Well, you feel quite strongly that your
724 bill is necessary in light of the fact that EPA has already
725 come out and publicly stated that it would not propose any
726 changes to the current standard of 10 PM or 10 micrometers
727 for coarse particulate matter. Can you explain why you feel
728 so strongly?

729 Mrs. {Noem.} I feel so strongly because I think the
730 fact that if there is a piece of legislation out there that
731 guarantees that EPA will not take any action for the next
732 year, that that is a benefit to our small farmers and
733 producers across this country. It is not that they wouldn't
734 trust the EPA, but I certainly think that they would
735 appreciate knowing that there is a guarantee on no changes
736 for the next year.

737 The second part of this bill is that it actually does
738 define the difference between rural dust, nuisance dust and
739 urban dust simply because of some of the testimony that I
740 gave earlier, that there is a big difference between the
741 nuisance dust and that it has proven to not have the negative
742 side effects and health benefits, or detrimental effects that

743 some of the urban dust does that you referenced when you gave
744 your opening statement. There is a big difference between
745 those two different types of dust that occur in this country,
746 and that definition and clarity between the two will
747 certainly help the industry as well.

748 Mr. {Rush.} Is there any, besides industrial dust and
749 particulate matter, is there any other dust classification
750 that are exempted or included in your legislation?

751 Mrs. {Noem.} Well, I don't believe so. As far as what
752 this simply does is to put that definition into place in
753 statute that there is a nuisance dust definition and what is
754 included in that is the naturally occurring dust particles
755 that would happen and the difference between urban dust, and
756 this gives clarity to the EPA. This makes their job easier.
757 They can look at each of these two different types of dust
758 and know specifically how to define them and what the adverse
759 health effects are on those, and then it also allows them the
760 opportunity to come into area if the State and local
761 governments do not.

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

763 Mr. {Whitfield.} Thank you, Mr. Rush.

764 It is the custom of this committee that the chairman and
765 ranking member will ask other members question, so we have
766 completed that, and I want to thank you all once again for

767 introducing the legislation and for--

768 Mr. {Waxman.} Mr. Chairman, you are not going to allow
769 other members to ask questions of this panel?

770 Mr. {Whitfield.} Would you like to ask some questions?

771 Mr. {Waxman.} I would like to ask some questions.

772 Mr. {Whitfield.} Without objection, then I recognize
773 the gentleman for 5 minutes.

774 Mr. {Waxman.} I just want to take issue with some of
775 the things that have been said because I think you
776 oversimplified it to the point where I think your conclusions
777 are incorrect. First of all, the title of the bill has no
778 legislative effect. What has legislative effect is the
779 wording of the bill. And you made a couple statements,
780 Representative Noem, that I take issue with. You said there
781 is no proven difference between--there is a proven difference
782 between urban and rural dust.

783 Mrs. {Noem.} I said--thank you, Representative Waxman.
784 I appreciate that. What my statement was or should have been
785 was that the scientific research is very different showing
786 the detrimental effects of urban dust versus rural dust, that
787 there is much different research data that is available on
788 the detrimental health effects of urban dust as where--

789 Mr. {Waxman.} The Clean Air Act doesn't regulate dust.
790 The Clean Air Act regulates harmful pollutants, and in this

791 case, we are talking about two kinds of pollutants. We are
792 talking about fine particulates and coarse particulates. The
793 standard was originally set when President Reagan was
794 President, and it has been reviewed but the basic standard
795 has been in place.

796 Now, you said that there is no proven adverse health
797 effect from rural dust. If that rural dust is produced by
798 farm machinery, that could have harmful impact, couldn't it?

799 Mrs. {Noem.} It could, but we could speculate all day.
800 What I prefer to operate with is the facts that we have in
801 front of us.

802 Mr. {Waxman.} Well, the facts we have in front of us is
803 your bill defines this nuisance dust which is a new term in
804 law that you would propose to put in law, and it says
805 particulate matter generated from natural sources, okay,
806 unpaved roads, agricultural activities, earth moving or
807 activities typically conducted in rural areas, and I
808 mentioned in my opening statement that a lot of things are
809 conducted in rural areas, which could add to the particulate
810 matter which particularly in the area of fine particulates,
811 there is a genuine threat to human health.

812 The point that I am raising is that your intentions seem
813 to be, both of you, pretty reasonable. You don't want the
814 dust in rural areas regulated, as Congressman Hurt said. If

815 you are going to try to stop the dust coming from farms, you
816 would have close down the farms and lose the jobs. That
817 doesn't make any sense at all. But the problem is, nobody is
818 proposing to do the things that you fear might happen. If
819 you had a 1-year period of time in which there could be no
820 regulation on coarse particulates coming from dust in the
821 rural areas, well, that could give somebody certainty for a
822 year. Nobody is planning to do it anyway. But I fear that
823 your bill is drafted in a way that goes much further, and it
824 doesn't sound like that that is your intention.

825 Representative Noem, I mentioned in my opening statement
826 that it is a nonexistent problem and we have so many real
827 ones that should be addressed. There was an editorial my
828 staff brought to my attention from a newspaper. It is the
829 largest newspaper in South Dakota, and it said, ``There are
830 important issues at the federal level right now that will
831 have direct impact on our States so it is disappointing to
832 see Representative Kristi Noem continue her fight against a
833 made-up problem like the potential for farm dust regulations
834 by the Environmental Protection Agency. Dust has become a
835 lightning rod for some Republicans, drumming up fear in
836 farming communities that more federal government intrusion
837 and over-regulations coming to take money out of their
838 pockets. Noem proposed legislation that would ban the EPA

839 from regulating farm dust for a year, and similar legislation
840 was advanced by Senator Mike Johanns. The problem is that
841 the EPA has repeatedly and at every turn said it has no
842 intention of regulating farm dust. On Monday it went as far
843 as to write a letter to Congress stating it would not be
844 regulating dust kicked up by combines. That should put the
845 issue to rest.''

846 With those multitude of assurances that this is a
847 phantom issue, what is your response to this editorial?

848 Mrs. {Noem.} Well, Representative Waxman, that editor
849 of that newspaper certainly doesn't represent my farmers and
850 ranchers across South Dakota, and it is clear that he doesn't
851 understand the bill, because in that editorial he didn't
852 address the fact that it is going to provide a clear
853 definition between nuisance dust, rural dust and urban dust.
854 He simply--

855 Mr. {Waxman.} Let me take exception to--

856 Mrs. {Noem.} One of the--

857 Mr. {Waxman.} Excuse me. Let me take exception. You
858 state that as a fact but there is nothing in the law that
859 says this dust is from rural areas, this dust from urban
860 areas, it is different. The difference is only the amount of
861 particulate matter in the region and particularly if it's
862 nonattainment, which is not attaining what is the health

863 standard.

864 When I was a young member of the State assembly in
865 California, I heard that there might be a freeway coming
866 through--I ask for 30 seconds more--and I went out of my way
867 to make sure that we fought that freeway and it was stopped.
868 It turned out they never intended it but the people in my
869 district thought I stopped it anyway. That is a good thing
870 to do politically, but when you change something like the
871 Clean Air Act, a lot of unintended consequences, I fear for
872 that. If there is a chance to go through this legislation,
873 maybe we can change it in some way, but I fear that your bill
874 goes too far.

875 Thank you, Mr. Chairman.

876 Mr. {Whitfield.} Mr. Waxman, your question--oh, yes,
877 Ms. Noem.

878 Mrs. {Noem.} Well, I just wanted to make a statement
879 that certainly the people in South Dakota recognize,
880 widespread they recognize the need for this piece of
881 legislation or else I wouldn't be bringing it, but they have
882 been talking to me about it every single meeting that I have
883 that people deal with rural industries in South Dakota. And
884 I think when you hear the personal story of Kevin Rogers a
885 little bit later you will really--

886 Mr. {Waxman.} But that is another State where there is

887 a nonattainment.

888 Mrs. {Noem.} But certainly right now--

889 Mr. {Waxman.} When people are fearful, you ease the
890 fears.

891 Mr. {Whitfield.} Okay.

892 Mr. {Waxman.} Whether it is realistic or not.

893 Mr. {Whitfield.} We all get excited about dust, but let
894 us calm down here a minute.

895 Mr. {Waxman.} Settle the dust.

896 Mr. {Whitfield.} Yes, let us settle the dust here.

897 But Mr. Waxman raised some dust, and now I would
898 recognize Mr. Shimkus for 5 minutes of questions.

899 Mr. {Shimkus.} Thank you, Mr. Chairman.

900 A couple things. Kristi, how far is your home from a
901 paved road?

902 Mrs. {Noem.} Well, my home particularly is not too far.
903 It is about a quarter of a mile from a paved road. But our
904 farm is about 8 miles from a paved road.

905 Mr. {Shimkus.} And is that chaff, as I would call it,
906 or is it dust? Is it a dirt road or is it limestone rock
907 road?

908 Mrs. {Noem.} Oh, it is a dirt road. It is a gravel
909 road.

910 Mr. {Shimkus.} So it is gravel, and if there is an air

911 monitor placed on that gravel road, which is 8 miles from a
912 paved road, the gravel road probably would not be in
913 attainment on the PM10 standard when the big four-wheel-drive
914 hemi pickup truck with the horse-drawn trailer goes down that
915 road. Isn't that correct?

916 Mrs. {Noem.} I would agree. I would say virtually
917 every single field during harvest time would be in
918 nonattainment.

919 Mr. {Shimkus.} And I have a photo that I showed
920 Administrator Jackson when she first testified, and I will
921 probably pull it up later on, and it is this time of the year
922 when we are finishing cutting of beans, and it shows a plume.
923 Now, some people would say--oh, there it is, right there.
924 That is right outside my hometown just north of Collinsville.
925 Now, if you had an air monitor right behind that, it would
926 probably set off. But that is not diesel, that is just
927 chaff. That is organic. That is leaves, that is stalk, and
928 that is what we call cutting of beans.

929 Mr. {Whitfield.} Is that natural dust?

930 Mrs. {Noem.} Yes.

931 Mr. {Shimkus.} So my point is, in rural America where
932 the air monitor is could determine it, and the difference
933 between urban America and rural America is that dust cloud
934 will disperse way before it is in any concentration that

935 would kick off. So a concern, and so the additional
936 regulation imposed is a severe threat to rural America. You
937 have how many agriculture groups in support of this bill?

938 Mrs. {Noem.} Over 100.

939 Mr. {Shimkus.} Are they just crazy? I mean, are they
940 just meddling? They have nothing else to do than be worried
941 about the EPA?

942 Mrs. {Noem.} Well, Representative Shimkus, if I could
943 say one thing that Representative Waxman continued to say
944 over and over is that dust is not currently regulated, and it
945 is. The EPA does regulate dust, and the staff did recommend
946 tightening those standards. So when he believes there is no
947 concern, there is valid concern in rural America.

948 Mr. {Shimkus.} Robert, do you want to add anything?

949 Mr. {Hurt.} Well, I would say a couple of things. You
950 know, when we were asked whether or not we need this bill, to
951 me, the question ought to be, why don't we use our
952 legislative prerogative to guide policy in this country. I
953 think if you talk to the people I represent, they say for far
954 too long the Congress has wholesale given its legislative
955 prerogative over to agencies like the EPA who are not
956 elected, who are not accountable to the people. So why on
957 earth would not we take our responsibility as being a voice
958 for the people seriously and what objection could one have to

959 exercising that legislative authority that has been given to
960 us by the people we represent?

961 Going back again to some of the questions that have been
962 asked about the actual standard, there is nothing
963 unreasonable about section 3 and the standard that is
964 proposed. It just says there must be shown substantial
965 health risk and that there is a cost-benefit analysis that
966 goes through and proves that the benefits outweigh the costs.
967 So I don't think anybody is suggesting that you have--and I
968 in my district, my rural district, we have power plants. No
969 one is suggesting that emissions from power plants be
970 exempted in any way, and this bill would not do that.

971 And then finally, as it relates to the fear mongering,
972 and I take issue and I wish Mr. Waxman was here, I take issue
973 with his suggestion that this is somehow politically
974 motivated. I talk to farmers in my district all the time
975 whose fears of government regulation are real and they
976 translate to lower productivity and fewer jobs, and all they
977 are trying to do--you know, I have a farmer in Nelson County,
978 he is a fruit grower. He says, you know, I get regulated by
979 the Department of Labor, Department of Transportation, the
980 IRS, the USDA, the EPA. He said all I am trying to do is
981 grow peaches, I have been doing that for five generations,
982 how hard can it be.

983 Mr. {Shimkus.} Let me reclaim my time and just
984 recognize Cory for a unanimous consent request.

985 Mr. {Gardner.} Thank you. And I just would like to ask
986 permission for the record to submit letters of support from
987 well over 100 different organizations that support H.R. 1633:
988 NFIB, Chamber of Commerces, ag groups, farm organizations,
989 business groups. Yield back my time.

990 Mr. {Whitfield.} Without objection. Thank you very
991 much.

992 [The information follows:]

993 ***** COMMITTEE INSERT *****

|
994 Mr. {Whitfield.} Once again, thank you all for taking
995 time to be with us. We appreciate it and look forward to
996 working with you on this issue. Thank you.

997 At this time I will call up the Hon. Gina McCarthy, the
998 Assistant Administrator for Air and Radiation, U.S.
999 Environmental Protection Agency. Ms. McCarthy, we welcome
1000 you back to Capitol Hill, which I am sure you enjoy coming up
1001 here a great deal.

1002 Ms. {McCarthy.} It is always my pleasure, Mr. Chairman.

1003 Mr. {Stearns.} Sorry we don't have some refreshments
1004 for you this morning.

1005 We do appreciate your being here very much to testify on
1006 H.R. 1633, and at this point I would recognize you for 5
1007 minutes for your opening statement.

|
1008 ^STATEMENT OF GINA MCCARTHY, ASSISTANT ADMINISTRATOR FOR AIR
1009 AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

1010 } Ms. {McCarthy.} Thank you, Chairman Whitfield, Ranking
1011 Member Rush, members of the subcommittee. I appreciate the
1012 opportunity to testify on the Farm Dust Regulation Prevention
1013 Act of 2011. This sweeping bill could roll back Clean Air
1014 Act protections and adversely affect public health in urban,
1015 suburban and rural areas.

1016 This bill has been sold as a narrow one. If all this
1017 bill is intended to do is prevent the EPA from tightening the
1018 coarse particle standard, the bill is simply unnecessary.
1019 Administrator Jackson committed in an October 14, 2011,
1020 letter that she is prepared to propose to keep the PM10
1021 standard, or coarse particle. The National Ambient Air
1022 Quality Standard will remain unchanged if the Administrator's
1023 proposal as intended is moved forward. I am hopeful that
1024 this announcement ends the myth that the agency plans to
1025 tighten the regulation of farm dust.

1026 Whether intended or not, we are concerned that this bill
1027 does far more than its sponsors have indicated. It could
1028 prevent EPA from regulating power plants or other major
1029 industrial sources of pollution in urban and suburban areas

1030 as well as in rural areas. This is because section 3A takes
1031 away Clean Air Act authority to regulate nuisance dust and
1032 then defines nuisance dust very broadly, and it includes
1033 particulate matter generated from activities typically
1034 conducted in rural areas. This exemption would cover both
1035 coarse and fine particles emitted from anywhere in the
1036 country. It might include pollutants like NOx and SOx that
1037 form fine particles. This would appear to preclude EPA from
1038 regulating particle pollution from activities such as power
1039 plants, mining operations, industrial operations and
1040 construction anywhere in the country because those activities
1041 are not atypical to occur in rural areas. It could even call
1042 into question EPA's ability to enforce tailpipe emission
1043 standards that would limit particle pollution from cars,
1044 trucks and buses because those same cars, trucks and buses
1045 typically drive in rural areas. In other words, the farm
1046 dust bill might forever bar the EPA from limiting emissions
1047 of coarse particles, fine particles, sulfur dioxide, nitrogen
1048 oxide and mercury from power plants, industrial sources and
1049 maybe even motor vehicles.

1050 We are also concerned that H.R. 1633 could block
1051 revision of fine particle standards and implementation of
1052 existing fine and coarse particle standards. Since the
1053 existing particle programs did not distinguish between

1054 nuisance dust and other particles, the bill raises the issue
1055 of whether the EPA could enforce or maintain existing fine or
1056 coarse particle pollution standards. The term ``nuisance
1057 dust'' is not a scientific term, which would make it very
1058 difficulty to incorporate an exclusion of nuisance dust into
1059 a scientifically based program. This could raise practical
1060 concerns. It is unclear how one would design a monitor that
1061 measured fine particles except for nuisance dust and it is
1062 unclear how the agency could implement particle pollution
1063 programs without a scientifically sound monitoring network,
1064 and it is certainly unclear what the costs would be to States
1065 or local communities to put in that type of a monitoring
1066 system could one be designed and developed.

1067 The existing fine and coarse particle pollution
1068 reduction programs are important for public health. While
1069 nuisance dust sounds like it is merely inconvenient, it
1070 includes particle pollution that is harmful to public health.
1071 When we breathe, both coarse and fine particle pollution can
1072 reach the deepest region of our lungs and move past our
1073 bodies' filtering systems. We have a health-based standard
1074 for particles smaller than 10 micrometers since 1987. That
1075 is 24 years. Coarse particles have been linked to a variety
1076 of adverse health effects including hospital visits related
1077 to cardiovascular and respiratory diseases and premature

1078 death. This is the standard that the Administrator has
1079 announced she is prepared to propose to retain, not propose
1080 to change.

1081 In 1997, EPA added a health-based standard for fine
1082 particles, which cause serious health effects. Nationally,
1083 EPA estimates that exposure to fine particles results in,
1084 among other effects, 130,000 to 320,000 excess deaths in
1085 adults, 110,000 emergency room visits by children, 2.5
1086 million cases of exacerbation of asthma, and 18 million lost
1087 workdays each year.

1088 I have briefly discussed some of the potential
1089 consequences of H.R. 1633. As written, this bill would
1090 significantly weaken EPA's authority under the Clean Air Act
1091 and significantly cause and preclude us from preventing
1092 public health protections that are necessary for the American
1093 people. If these consequences aren't intended, it would be
1094 best to revise the bill to avoid the confusion, litigation
1095 and the concerns that I have raised. I hope this information
1096 that I presented as well as the Administrator's October 14,
1097 2011, letter clarifies EPA's intentions and obviates the need
1098 for this legislation. It is simply not necessary at this
1099 time to block the tightening of the PM10 standard which the
1100 Administrator has very clearly indicated that she has no
1101 intention at this time of proposing.

1102 Thank you very much.

1103 [The prepared statement of Ms. McCarthy follows:]

1104 ***** INSERT 3 *****

|
1105 Mr. {Whitfield.} Ms. McCarthy, thank you for your
1106 testimony.

1107 You heard me say earlier that one of our concerns is
1108 that it doesn't make any difference what EPA decides or
1109 doesn't decide. Outside groups file lawsuits on a regular
1110 basis against EPA, and I think even you would admit and agree
1111 that frequently the courts' decisions determine what the
1112 interpretation of the EPA act is and what becomes law. So
1113 what our concern is, even though Lisa Jackson says no, are
1114 you convinced that a third-party environmental group or some
1115 other entity would not file a lawsuit?

1116 Ms. {McCarthy.} Mr. Chairman, as you know, the
1117 Administrator has made her intention clear but certainly she
1118 can't preclude the rights and responsibilities she has under
1119 the Administrative Procedures Act and the right to listen to
1120 comment that is received. I would, however, say that the
1121 Administrator is basing her decision on a wealth of
1122 scientific information. I have the Integrated Science
1123 Assessment right here. She has taken the advice of the Clean
1124 Air Act Science Advisory Committee. She has listened to the
1125 staff recommendations and she believes that the law gives her
1126 deference in making these determinations in terms of what the
1127 science said and what--

1128 Mr. {Whitfield.} But you do still understand our
1129 concern about--how many lawsuits are pending against the EPA
1130 right now?

1131 Ms. {McCarthy.} There are a number of lawsuits pending
1132 but in the--

1133 Mr. {Whitfield.} There is over 400, I believe, aren't
1134 there?

1135 Ms. {McCarthy.} In the case of PM10, the Administration
1136 has acted a number of times, first under President Reagan,
1137 second under President Bush and this Administration. We
1138 believe the science is clear and we believe that the
1139 Administrator's recommendation will hold true.

1140 Mr. {Whitfield.} Well, see, we agree with you. We
1141 think the science is clear also and that is why we think that
1142 moving forward with legislation would remove any ambiguity
1143 whatsoever. So that is where we stand on that issue.

1144 Now, as far as coarse particulate matter, does EPA have
1145 the authority to regulate coarse particulate matter now?

1146 Ms. {McCarthy.} Yes, it does, Mr. Chairman.

1147 Mr. {Whitfield.} And if the State implementation plan
1148 of a noncompliant area does not do so, EPA can step in. Is
1149 that correct?

1150 Ms. {McCarthy.} Well, the EPA would have an obligation
1151 to step in if a State implementation plan didn't effectively

1152 address attainment in the way the Clean Air Act requires.

1153 Mr. {Whitfield.} And how many States today are
1154 regulating coarse particulate matter because they are in
1155 nonattainment?

1156 Ms. {McCarthy.} There are only a very few number of
1157 States that are regulating PM10. It amounts to about 41
1158 counties. It is a very small area of the country at this
1159 point in time.

1160 Mr. {Whitfield.} Do you believe yourself from the
1161 evidence that you have read that coarse particulate matter
1162 does have an impact on a person's health?

1163 Ms. {McCarthy.} I do. I do believe that, and I think
1164 the scientific evidence is quite clear, and we have evidence
1165 not only that coarse particles that are emitted in urban
1166 areas cause problems but there is clear scientific evidence
1167 that distinguishes what we call--what people have called
1168 rural dust, that that also causes significant public health
1169 concerns.

1170 Mr. {Whitfield.} Well, if you do believe that even
1171 rural coarse particulate matter does impact health, why did
1172 you all decide not to strengthen the coarse particulate
1173 matter regulation?

1174 Ms. {McCarthy.} Well, the Administrator has to
1175 establish a standard that is requisite to protect public

1176 health with an adequate margin of safety. The Reagan
1177 Administration NAAQS standards set in 1987, 24 years ago,
1178 that was also revisited by the Bush Administration and that
1179 is now being reconsidered by this Administration, is actually
1180 a very sound standard. It is a standard that we believe is
1181 sufficient to protect public health. We believe that there
1182 is scientific uncertainty, which the Administrator has been
1183 looking at and considering that would lead her to retain the
1184 standard as it is proposed but certainly that information is
1185 rigorous enough to indicate that we should retain the current
1186 standard.

1187 Mr. {Whitfield.} Now, the current PM10 standard is 150
1188 micrograms per cubic meter. Is that correct? Is that the
1189 current standard?

1190 Ms. {McCarthy.} Yes.

1191 Mr. {Whitfield.} And then there is a threshold of 99
1192 percentile. What does that actually mean?

1193 Ms. {McCarthy.} Actually, that means--and that is one
1194 of the issues that has been most confusing because the Clean
1195 Air Act Science Advisory Committee actually proposed to
1196 change the standard and the form or actually ask the
1197 Administrator to consider a change in the standard and the
1198 form. The 99th percentile just really means that the area
1199 could be in nonattainment if they exceeded or had events that

1200 brought up the level of pollution to a certain amount just a
1201 few times a year and it would trigger National Ambient Air
1202 Quality Standards. If you lower that percentile, it means it
1203 needs to be more often and more frequent in order to trigger
1204 nonattainment.

1205 Mr. {Whitfield.} Okay. So the standard is 150
1206 micrograms per cubic meter and the form is 99 percentile, so
1207 if you exceed that 1 percent of the time, you are okay, but
1208 if you exceed 2 percent of the time--

1209 Ms. {McCarthy.} That is right.

1210 Mr. {Whitfield.} --you violate?

1211 Ms. {McCarthy.} That is right.

1212 Mr. {Whitfield.} Well, my time is expired.

1213 I recognize the gentleman, Mr. Rush, for 5 minutes.

1214 Mr. {Rush.} I want to thank you, Mr. Chairman, and Ms.
1215 McCarthy, I want to welcome you again to this subcommittee.

1216 I got a little bit confused during the questioning from
1217 the chairman here. It seemed that we were discussing the
1218 Farm Dust Regulation Prevention Act but it seemed to me like
1219 he was talking about the EPA litigation prevention act,
1220 trying to keep EPA from being in court, being litigated in
1221 court, and I just don't know, do you think that is what our
1222 legislative powers to keep the EPA out of court?

1223 Ms. {McCarthy.} Mr. Rush, I think that we actually are

1224 authorized to establish National Ambient Air Quality
1225 Standards. We certainly do that to the best of our ability
1226 based on the science and the law. Without question, it is
1227 often challenged, but without question, we win a considerable
1228 amount of time because we do our jobs well.

1229 Mr. {Rush.} And I agree with you, you do do your jobs
1230 quite well.

1231 We heard earlier from Representative Noem that the
1232 scientific research shows a clear distinction between ``urban
1233 dust'' and ``rural dust'', and H.R. 1633 will make it simpler
1234 and easier for EPA by defining what nuisance dust is. Does
1235 the scientific research show a clear distinction between
1236 urban dust and rural dust? Also, does H.R. 1633 make it
1237 easier for EPA by defining nuisance dust as it is defined in
1238 this bill?

1239 Ms. {McCarthy.} The definition of nuisance dust in this
1240 bill is very broad, and we are very concerned that it could
1241 have significant spillover impact in terms of our ability to
1242 regulate pollution from sources well beyond rural areas and
1243 well beyond agricultural sources, and we are concerned about
1244 that impact. I would also say that there are significant
1245 amounts of health studies, and they become more every time we
1246 look at the data and every time we visit that NAAQS that show
1247 that coarse particles, whether they are generated in the

1248 rural areas or they are generated in the urban areas have
1249 significant health consequences. They deserve to be
1250 regulated. The science demands it. The law requires it.
1251 EPA does that.

1252 Mr. {Rush.} Well, so let me just ask you, is the matter
1253 that is established in 1987 under the Administration of
1254 President Reagan, has that standard been a threat to the
1255 farming communities in this Nation or has it been helpful?

1256 Ms. {McCarthy.} We do not believe that there is any
1257 evidence that farming has been in any way significantly
1258 disrupted by any of the National Ambient Air Quality
1259 Standards. As you know, when we establish a NAAQS, it is a
1260 national standard. It is not targeted to a specific sector
1261 or a specific geographic area. I do know since 1987 when
1262 this was first proposed, there have been identified by States
1263 and local air quality districts when they implement in
1264 nonattainment areas, they implement their requirements to
1265 look at sources and identify what sources contribute to local
1266 health consequences. There have been times when they have
1267 worked with the USDA, they have worked with local farmers.
1268 They have identified best management practices, conservation
1269 measures that those farms can put into place that would
1270 reduce the amount of dust that they admit and still allow
1271 farming to continue unabated, and there have been instances

1272 where we have worked in a collaborative way to help that
1273 effort and that outcome, and it has been an enormously
1274 successful opportunity for all of us and to make sure that
1275 farming can continue, that it can continue unabated and we
1276 can work with them to reduce the amount of dust that is
1277 emitted and maintain the health standards that are required
1278 to protect public health.

1279 Mr. {Rush.} I only have a few more seconds. There
1280 seems to be--the 800-pound gorilla in the room seems to be
1281 the fear factor that is prevalent or that some have alluded
1282 to in previous testimony at today's hearing. Can you comment
1283 on what your understanding of the fear factor is and how
1284 great is it, how significant is it?

1285 Ms. {McCarthy.} Well, we heard quite a while ago, Mr.
1286 Rush, that there was concern in the farming community on the
1287 basis of the recommendations by the Clean Air Act Science
1288 Advisory Committee that the Administrator consider a change
1289 in the standard. What was misunderstood was they were asking
1290 for both a change in the standard as well as the form. It
1291 actually would have resulted in fewer counties. It would
1292 have been a little bit more flexible, not so much sensitive
1293 to the high levels as much as averaging a little bit in a way
1294 that would have provided more flexibility. We did six
1295 listening sessions with the agriculture community immediately

1296 to explain to them what the process was, that it wasn't the
1297 recommendation of the staff, that the Administrator didn't
1298 make a decision yet, and we also talked about all of the work
1299 that we have done together on farm dust since 1987 and the
1300 collaborative nature of that process and the impacts that
1301 hasn't happened as a result. And we will continue that
1302 effort, and now that the Administrator has made it clear that
1303 she is not intending to propose a change in that standard, we
1304 are certainly hoping that it puts those fears to rest.

1305 Mr. {Whitfield.} Mr. Shimkus, you are recognized for 5
1306 minutes.

1307 Mr. {Shimkus.} Thank you, and it is great to be with
1308 you, Assistant Administrator McCarthy.

1309 Ms. {McCarthy.} Good to see you too.

1310 Mr. {Shimkus.} We have a lot of fun here, and hopefully
1311 I will be kind and courteous, and again, I appreciate all the
1312 help that you have given in the past.

1313 A couple issues. It is true that tier 4 engine regs,
1314 which has created additional costs for the agricultural
1315 community in diesel engines. Is that correct?

1316 Ms. {McCarthy.} The tier 4 engine rules have been
1317 tightened and it does require that they look at particulate
1318 matter and other emissions--

1319 Mr. {Shimkus.} So when you have diesel engines

1320 operating in rural America, you cannot say there is no effect
1321 on cost and production and operations when you have ratcheted
1322 down diesel engine emissions on the clean air applications.

1323 Ms. {McCarthy.} The engines that we regulate are very
1324 large engines.

1325 Mr. {Shimkus.} I mean, large engines are used in
1326 agricultural America.

1327 Ms. {McCarthy.} I believe that I was referring to dust
1328 issues, so--

1329 Mr. {Shimkus.} Well, I am just trying to--

1330 Ms. {McCarthy.} There are definitely requirements in
1331 the farming community when you have large farms that are
1332 significant individual sources of pollution and they have to
1333 achieve the same kind of engine standards that--

1334 Mr. {Shimkus.} Right. Production agriculture is large
1335 operations and large engines, so I just want to put that on
1336 the record. There is an effect. To say there is no effect,
1337 that really can't be stated.

1338 You mentioned 41 counties that you know are in this, and
1339 I have one of the maps. There are other counties that
1340 continue to regulate particulate matter on their own. Is
1341 that correct? Virginia has fugitive dust regulations in
1342 Virginia?

1343 Ms. {McCarthy.} I am sorry, Congressman. I am not

1344 familiar with that, but these are the requirements that are
1345 attributable to the Clean Air Act.

1346 Mr. {Shimkus.} Just placing that into the record that
1347 there are States that are monitoring for dust in States on
1348 their own outside of the SIP and the requirements of the
1349 Clean Air Act.

1350 The fear factor that my friend mentioned, one of your
1351 statements in your opening statement said ``at this time.''
1352 Using that terminology ``at this time'' creates a fear factor
1353 in rural America because tomorrow you may. The importance of
1354 legislation is to codify that to say not at this time, no
1355 more PM10. In fact, the letter that the Administrator sent
1356 to Lisa Jackson says--I mean Lisa Jackson sent to Debbie
1357 Stabenow, ``I am prepared to propose retention with no
1358 revision of the current PM standard and form when it is sent
1359 to OMB for interagency review.''. Now, the question is, so
1360 the Administrator must believe that PM standard as it is
1361 currently operated under the EPA, that it protects public
1362 health. Is that correct?

1363 Ms. {McCarthy.} Yes, adequate with an adequate margin
1364 of safety.

1365 Mr. {Shimkus.} And you would agree with that?

1366 Ms. {McCarthy.} Yes.

1367 Mr. {Shimkus.} Good. I want to have that on the record

1368 because that is part of this whole debate of the concern of
1369 ratcheting it down. You heard during the opening
1370 questioning, and just the difference of concentration. A lot
1371 of our experience here on the committee is focusing on
1372 concentrated amounts that affect human health. Do you agree
1373 that concentrated particulate matter can be harmful to human
1374 health?

1375 Ms. {McCarthy.} I believe that exposure to particulate
1376 matter can be--

1377 Mr. {Shimkus.} In any concentration or in certain
1378 concentrations?

1379 Ms. {McCarthy.} It depends on both. It depends on the
1380 concentration as well as the size of the particle.

1381 Mr. {Shimkus.} But you just said PM10 is safe.

1382 Ms. {McCarthy.} No, no, I said that the National
1383 Ambient Air Quality Standard was appropriate as a safeguard
1384 for public health protection. That does not mean that I
1385 think that it is safe for exposures at all levels. Certainly
1386 our goal is to achieve the National Ambient Air Quality
1387 Standard that is required under the Clean Air Act. I am
1388 making no statement about my independent knowledge of health
1389 consequences associated with exposures beyond that.

1390 Mr. {Shimkus.} Thank you, Mr. Chairman. My time is
1391 expired.

1392 Mr. {Whitfield.} Yes, sir. At this time I will
1393 recognize the gentleman from California, Mr. Waxman, for 5
1394 minutes.

1395 Mr. {Waxman.} Thank you, Mr. Chairman.

1396 Ms. McCarthy, we heard from some people that the
1397 Republicans want to make commonsense changes to the Clean Air
1398 Act but in reality, I fear they may be making some radical
1399 changes and you said in your opening statement the bill does
1400 far more than prevent a change in the coarse particulate
1401 standard. We believe it could result in far-reaching damage
1402 to the bedrock public health protections in the Clean Air
1403 Act.

1404 Now, this includes a broad definition of so-called
1405 nuisance dust that would be exempt from EPA regulation. The
1406 bill lists several examples of what falls under the category
1407 of nuisance dust including ``earth moving.'' The bill
1408 doesn't limit these farms. Ms. McCarthy, could the
1409 operations of a large, open pit mine fall under the category
1410 of earth moving?

1411 Ms. {McCarthy.} Yes.

1412 Mr. {Waxman.} In fact, during the next panel, we are
1413 going to hear from the Coarse Particulate Matter Coalition,
1414 an industry association that supports this bill. One of the
1415 coalition's members is Kennecott Copper, which operates one

1416 of the world's largest copper mines. That company would like
1417 to expand its mine with fewer air pollution controls. So
1418 that is one way this bill goes beyond farms.

1419 The bill also includes ``windblown dust'' in the
1420 definition of what constitutes nuisance dust. Ms. McCarthy,
1421 could all particulate air pollution be viewed as windblown
1422 dust and does the bill distinguish because particulate matter
1423 from a farm or from a factory?

1424 Ms. {McCarthy.} It could, and there is no such
1425 distinction in the bill that you have asked me to comment on.

1426 Mr. {Waxman.} So the dust is undefined in the bill and
1427 commonly applies to small particles, so all particulate air
1428 pollution might fall under this phrase?

1429 Ms. {McCarthy.} It might.

1430 Mr. {Waxman.} The bill further includes as nuisance
1431 dust particulate matter that is generated from ``activities
1432 typically conducted in rural areas.'' This is extremely
1433 broad and could capture a range of industrial activity that
1434 often occurs in less populated areas. Ms. McCarthy, what
1435 activities could be covered by this definition?

1436 Ms. {McCarthy.} The generation of power at a power
1437 plant, large industrial sources like steel plants, gravel
1438 operations, mining operations, driving diesel buses to
1439 school, diesel engines. A variety of the same kind of

1440 sources that you would find in rural areas can be found in
1441 urban areas as well.

1442 Mr. {Waxman.} The bill is so broadly written that it
1443 could prevent EPA from ensuring that school buses don't spew
1444 dangerous air pollution in rural communities across the
1445 country. I think that is not common sense, I think that is
1446 ridiculous.

1447 Ms. McCarthy, given these broad definitions, how could
1448 this bill affect EPA's ability to limit emissions of particle
1449 pollution from all sources, not just farms, and what are the
1450 public health implications?

1451 Ms. {McCarthy.} This bill, if passed as written, could
1452 have serious implications on the major tenets of the Clean
1453 Air Act. It could preclude us from regulating PM fines as
1454 well as coarse. It could preclude us from regulating NOx and
1455 SO2 emissions from power plants, from mining operations, from
1456 large industries, from mobile sources. It could have serious
1457 unintended consequences.

1458 Mr. {Waxman.} If the Republicans want to reduce or
1459 eliminate existing controls on particulate pollution from
1460 industrial activities, they probably have the votes to do
1461 that, but if so, let us debate that on the merits. Let us
1462 not pretend that this bill is about stopping EPA from
1463 imposing new regulations on farms.

1464 I hear this all the time, and I have heard it all my
1465 career. I have got a simple bill, totally common sense. It
1466 only deals with a problem that is on people's minds. And
1467 then you look at the language and you find out that it is
1468 much broader and has a lot of consequences that we presume
1469 are unintended but they might even be intended. So I think
1470 we have to look at legislation as it is written, not as how
1471 people would say it is intended because their intentions are
1472 not part of the law that EPA enforces. Isn't that correct,
1473 Ms. McCarthy? Does EPA enforce intentions of the authors or
1474 the language of the bill?

1475 Ms. {McCarthy.} We have to enforce the language of the
1476 bill, Mr. Waxman.

1477 Mr. {Waxman.} Even if Congress intended something else?

1478 Ms. {McCarthy.} Often times, yes.

1479 Mr. {Waxman.} I yield back my time. Thank you, Mr.
1480 Chairman.

1481 Mr. {Whitfield.} At this time I will recognize Mr.
1482 Terry of Nebraska for 5 minutes.

1483 Mr. {Terry.} Thank you.

1484 Ms. McCarthy, while listening here and some of the
1485 discussion about whether or not we should even be having this
1486 discussion and EPA has already said they won't enforce the
1487 PM10 on agriculture was the statement I think Lisa Jackson

1488 made when I asked her about that and after she answered, dust
1489 happens as the answer, I thought that was rather flippant and
1490 insulting to our farmers. But the reality is, the fear
1491 exists and I do think it is real, not only because there was
1492 a recommendation to regulate dust on the farm and the roads
1493 but there has been a history with this EPA. For example, in
1494 the State Nebraska, under a proposed rule for CSAPR, Nebraska
1495 was not even given reasonable notice or opportunity to revise
1496 its implementation plan to react to requirements of the 206
1497 PM2.5 NAAQS, and it wasn't until August 2011 that Nebraska
1498 became aware that a level of emission control necessary to
1499 mitigate interstate transport.

1500 So the point is, those of us in Nebraska have already
1501 gone through a situation where the EPA said basically you
1502 weren't going to be recovered and then to our surprise we
1503 were covered, which resulted in a lawsuit. So there is a
1504 history with the EPA of making promises and then breaking
1505 them.

1506 Now, in regard to the specific of nuisance dust and
1507 PM10, the chairperson, Chairman Whitfield, hit on this and it
1508 has always been my saying that we are only one lawsuit away
1509 from you being forced to regulate dust particulates from
1510 farming activities or the roads, and in fact, there is a
1511 history with the EPA of their partners, Sierra Club and

1512 Natural Resources Defense Council, filing lawsuits and then
1513 you entering into a settlement agreement.

1514 So with that fear that I have that that is the ultimate
1515 plan here is to have one of your partners file suit,
1516 therefore it is not Lisa Jackson's or this Administrator's
1517 decision but the court's decision. I used the fictional
1518 because that is what happens. You enter into a settlement
1519 agreement. So my question to you is, to your knowledge, has
1520 Lisa Jackson, you or anyone with the EPA had any discussions
1521 with Sierra Club, the NRDC or any other environmental group
1522 about filing lawsuits on nuisance dust from farming
1523 activities and dirt roads?

1524 Ms. {McCarthy.} Absolutely not.

1525 Mr. {Terry.} No discussions?

1526 Ms. {McCarthy.} Absolutely not.

1527 Mr. {Terry.} No emails?

1528 Ms. {McCarthy.} Absolutely not.

1529 Mr. {Terry.} Okay.

1530 Ms. {McCarthy.} Mr. Terry, we can talk about the cross-
1531 state rule another time. I would really like that
1532 opportunity. But what I will say is that this whole issue
1533 arose because people were concerned about the Administrator
1534 going out and making a change in a standard that had never
1535 been brought to her. The rule has not been proposed. She

1536 has indicated what she intends to propose. It would go
1537 through a public process and then it would be finalized, and
1538 without doubt, it will be challenged. There is ample
1539 opportunity for this body to see whether the Administrator is
1540 actually going to live up to the letter that she wrote and
1541 whether or not the science and what the final rule looks
1542 like.

1543 Mr. {Terry.} Listening to the discussions that have
1544 occurred so far, you would agree that basic combining harvest
1545 or plant would create dust that would then in that instance
1546 violate the PM10?

1547 Ms. {McCarthy.} Actually, that is not how it works. We
1548 actually rely on monitoring technologies, not modeling from
1549 individual sources, to establish nonattainment areas, and we
1550 don't have farm dust standards.

1551 Mr. {Terry.} But we already have an example in Virginia
1552 where the monitoring said that at that particular time of the
1553 truck driving over the road violated the standard, and so the
1554 reality here is that we are only one lawsuit away from you
1555 being forced to enforce the rule on farming activities, and
1556 my time is up.

1557 Mr. {Whitfield.} Thank you. At this time I will
1558 recognize the gentleman from Massachusetts, Mr. Markey, for 5
1559 minutes.

1560 Mr. {Markey.} I thank you, Mr. Chairman, very much.

1561 In 1999, the public was outraged to learn that
1562 Congressman Tony Schnell had introduced bill 602P to allow
1563 the United States Postal Service to impose a 5-cent tax on
1564 every single email that was sent. Email action alerts were
1565 sent out with alarming instructions to read this if you
1566 intend to stay online and continue using email.
1567 Congressional offices were flooded by frustrated
1568 constituents. The issue even got raised at campaign debates
1569 where candidates predictably came out in opposition to this
1570 misguided scheme. There was just one problem. None of it
1571 was real. There was no bill 602P. There wasn't even a
1572 Congressman Schnell in the House of Representatives. The
1573 whole thing was an Internet hoax, and everyone should have
1574 just moved on.

1575 But Republicans forged ahead. They introduced the
1576 Internet Access Charge Prohibition Act of 1999, apparently
1577 because only by passing actual legislation to prohibit the
1578 goals of the imaginary legislation authored by a fictitious
1579 Congressman could we prevent these horrible surcharges from
1580 being imposed in the real world, but it didn't just do that,
1581 that piece of legislation. Then it went on further to
1582 actually include provisions which would have hurt poor and
1583 rural Americans to get phone service.

1584 So I am reminded of that legislation as we consider this
1585 bill to prevent the regulation of farm dust. Just like the
1586 email tax hoax, there is no plan to regulate farm dust any
1587 more than there is to regulate fairy dust. There is no
1588 attempt to accomplish that goal. Let me say that again: EPA
1589 has made it very clear that the so-called plan to regulate
1590 farm dust is a myth, but that hasn't stopped the Republicans
1591 from moving forward with this legislation, and just like the
1592 email tax bill, this bill goes well beyond its stated intent
1593 because it also blocks EPA from setting standards for the
1594 dirty soot that gets spewed out of coal-fired power plants,
1595 incinerators, refineries and chemical plants. That is the
1596 real agenda, not to stop something that isn't going to happen
1597 but to then switch in the middle of their legislation to move
1598 over to something that really would protect the public from
1599 public health hazards. This bill should be relegated to the
1600 dust bin of similar urban legends along with Congressman
1601 Schnell's imaginary email tax bill.

1602 Ms. McCarthy, can you tell me whether EPA has any new
1603 plan to specifically regulate farm dust?

1604 Ms. {McCarthy.} We do not.

1605 Mr. {Markey.} Isn't it true that this legislation goes
1606 beyond a simple prohibition on farm dust regulations by also
1607 preventing EPA from regulating any dust that is generated by

1608 activities that are typically conducted in rural areas and
1609 any dust that can be blown in the wind?

1610 Ms. {McCarthy.} That is true, Congressman.

1611 Mr. {Markey.} Even if that dust is actually coming from
1612 coal-fired power plants or other industrial sources?

1613 Ms. {McCarthy.} There is a grave concern that that is
1614 part of what the bill might do.

1615 Mr. {Markey.} And finally, since I am sure that many
1616 little girls all over America care about this deeply, can you
1617 commit to me that EPA will never try to regulate fairy dust
1618 or pixie dust? Because if not, we may just want to amend the
1619 legislation in order to protect us against that threat which
1620 could be posed by the EPA or other regulatory agencies
1621 seeking to move into other fictional areas such as the
1622 legislation which is being considered here by this committee.

1623 Ms. {McCarthy.} After we look at the complete
1624 scientific review, yes.

1625 Mr. {Markey.} You will make sure that you do not under
1626 any circumstances? Okay. Thank you.

1627 So I thank the chair very much and I yield back the
1628 balance of my time.

1629 Mr. {Whitfield.} At this time I recognize the gentleman
1630 from Texas, Dr. Burgess, for 5 minutes.

1631 Dr. {Burgess.} Thank you, Mr. Chairman, and I thank the

1632 gentlelady for being here with us today and answering our
1633 questions. You brought a lot of material with you there at
1634 your left hand. What is that compendium of documents?

1635 Ms. {McCarthy.} This is the Integrated Science
1636 Assessment for Particulate Matter that has recently been
1637 prepared that would underpin the decision of the
1638 Administrator in terms of moving forward with updating both
1639 the PM10 and the PM2.5 standards.

1640 Dr. {Burgess.} And there are health studies included in
1641 that?

1642 Ms. {McCarthy.} This is actually a peer-reviewed
1643 summary of peer-reviewed scientific literature that would
1644 have an impact and concern relative to particulate matter.

1645 Dr. {Burgess.} So are there available then health
1646 studies that have found that rural dust is a health concern?

1647 Ms. {McCarthy.} There are many, yes.

1648 Dr. {Burgess.} And will you leave those behind with us?

1649 Ms. {McCarthy.} Absolutely.

1650 Dr. {Burgess.} Has the EPA conducted a quantitative
1651 health risk assessment of coarse particulate matter?

1652 Ms. {McCarthy.} The EPA has not used that tool on
1653 coarse particulate matter, no.

1654 Dr. {Burgess.} Is the reason for that because you don't
1655 have enough scientific evidence?

1656 Ms. {McCarthy.} The reason for that is because coarse
1657 particulate matter, we don't have the kind of monitoring data
1658 that we have available relative to other pollution so it
1659 doesn't seem like it would be an appropriate tool to use, but
1660 we certainly have enough studies that look at coarse
1661 particles so that a linkage has been made in terms of the
1662 emissions of those particles and health impacts that would
1663 result.

1664 Dr. {Burgess.} Let me ask you this. There was another
1665 subcommittee of Energy and Commerce that asked Administrator
1666 to share with that subcommittee any studies that show a
1667 causal or associative relationship between fine particulate
1668 matter and deaths at levels below what the EPA calls the
1669 lowest measured level. Now, apparently that request has yet
1670 to be honored so can I ask you today that you will endeavor
1671 to help us receive those materials that Administrator Jackson
1672 promised another subcommittee and this full committee?

1673 Ms. {McCarthy.} I will assure you that we will provide
1674 all of the health studies that are the basis of these
1675 decisions.

1676 Dr. {Burgess.} We will get you the details on that, but
1677 I think it is important, and I appreciate your willingness to
1678 help us gather the information.

1679 Let me just ask you a question that is a little bit off

1680 topic for a moment. Now, it seems like Administrator Jackson
1681 and the EPA are very concerned about asthma and asthma
1682 deaths. Is that a fair statement?

1683 Ms. {McCarthy.} Yes.

1684 Dr. {Burgess.} It seems like almost every hearing we
1685 have on almost anything, asthma deaths are brought up as one
1686 of the metrics.

1687 Ms. {McCarthy.} Well, air pollution generally the
1688 health impacts of most concern are usually respiratory or
1689 cardiovascular, yes.

1690 Dr. {Burgess.} Well, one of the things that is just
1691 really perplexing to me, I am an asthma patient. I am on a
1692 long-term medication, and I also use a rescue inhaler. Now,
1693 occasionally, like anybody else, I will forget my medication.
1694 I travel a lot. And it is reassuring to know that I can go
1695 into any pharmacy in the country and buy Primatene Mist over
1696 the counter. I don't have to go to the emergency room. I
1697 don't have to get a doctor's prescription for it. I can just
1698 simply get the medication when needed and self-administer and
1699 avert a problem. But Primatene Mist is not going to be
1700 available after January 1st, is it?

1701 Ms. {McCarthy.} That is correct. If the FDA ban
1702 continues, yes, that is true.

1703 Dr. {Burgess.} Well, it is not just the FDA. I mean,

1704 EPA is playing a role in this as well because of the
1705 propellant, the vehicle, the CFC that actually propels the
1706 medication.

1707 Ms. {McCarthy.} Certainly we have been working closely
1708 with FDA for many years on this issue, yes.

1709 Dr. {Burgess.} But the fact remains that because of the
1710 EPA, this medication is no longer going to be available to me
1711 after January 1st.

1712 Ms. {McCarthy.} Well, the fact remains, I think that
1713 just to clarify, this is an issue where there are CFCs that
1714 actually are used in these inhalers, both in the ones you get
1715 by prescription and there is one remaining that is over the
1716 counter that has an impact on ozone layer, and as part of our
1717 obligation with the Montreal protocol--

1718 Dr. {Burgess.} I would submit that the volume of CFC
1719 that is released into the atmosphere from the contingent of
1720 asthma patients that uses an occasional rescue inhaler that
1721 they buy at 2:00 in the morning is vanishingly small and not
1722 responsible for the hole in the ozone layer. And I will tell
1723 you, my own comfort at 2:00 in the morning takes vastly more
1724 precedent than any potential theoretical enlargement of the
1725 hole in the ozone layer. I just have to say, here is an
1726 example of, we come in here and we talk about in lofty terms
1727 that we want to prevent asthma deaths, and yet at the same

1728 time the EPA and the FDA in concert are acting to keep the
1729 medication out of the hands of the patients who so
1730 desperately need them. It is irony to the nth degree, and I
1731 thank the chairman for allowing me the indulgence.

1732 Ms. {McCarthy.} I am happy to have the discussion and
1733 bring back the dialog relative to FDA's determination as to
1734 whether or not this inhaler is an essential use.

1735 Dr. {Burgess.} Look, you are not going to get me
1736 defending the FDA. I promise you that. But both federal
1737 agencies are playing a role in this, and the fact remains,
1738 January 1st, patients all over the country are not going to
1739 be able to get access to their medication. If we are
1740 concerned about asthma, we would fix that.

1741 Mr. {Whitfield.} Well, thank you, Dr. Burgess, and
1742 appreciate your raising that issue of sometimes unintended
1743 consequences.

1744 At this time I recognize the gentleman from Louisiana,
1745 Mr. Scalise, for 5 minutes.

1746 Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate
1747 you having this hearing, and I want to thank my two
1748 colleagues that were presenting the legislation that we are
1749 discussing today. I strongly support the legislation and
1750 what we are trying to do is I think bring some certainty to
1751 an area where is tremendous uncertainty, and unfortunately,

1752 the uncertainty has cost jobs. It has cost a lot of
1753 businesses, what we are seeing over and over from businesses
1754 in my district and other districts. When you talk to
1755 colleagues all around the country, you hear the same thing
1756 over and over. It is not only the uncertainty but the actual
1757 threats from real regulations or potential regulations coming
1758 down from agencies like the EPA that are impeding their
1759 ability to create jobs, that are impeding their ability to
1760 invest in their business, and I am looking forward to the
1761 next panel because we are going to hear from some people who
1762 are actually on the ground dealing with this, and while
1763 unfortunately some of my colleagues on the other side want to
1764 make fun of this and, you know, want to tell jokes about
1765 fairy dust, this is about real American jobs that are being
1766 lost because of these regulations, you know, and yet some
1767 people just want to make fun of that. They think it is funny
1768 that people in middle America, people in rural America are
1769 looking at these regulations that are coming down and looking
1770 at the threats.

1771 I want to read you to some--this is off of EPA's
1772 website. You know, you are talking about some potential
1773 diseases coming, respiratory irritation, lung function
1774 reduction, asthma, inflamed damage to lungs, aggravated lung
1775 disease, permanent lung damage, and I know you rattled off

1776 some other things in your opening testimony. I am not
1777 talking about dust particles. I am talking about the ozone
1778 ruling. These were all the same things that EPA said were
1779 threats that you need to have this ozone ruling, and even
1780 President Obama said you are out of control. He pulled it
1781 back. And so when you come before our committee and no
1782 matter what bill it is, if it is Cement MACT or Boiler MACT
1783 or dust or ozone, you rattle off the same things over and
1784 over about, you know, if we don't allow you to go forward
1785 with this or we bring a bill to prevent some radical
1786 regulation from EPA, it is going to send more people to the
1787 hospital and kids are going to get asthma and, you know. Lung
1788 disease, you know, you have been beating that drum for
1789 everything, and even the President said that you are out of
1790 line. And so I hope, you know, when you all come and oppose
1791 these commonsense bills to just put certainty in place, to
1792 prevent some regulations from coming in that aren't there now
1793 that would put people out of business, when you keep saying
1794 the same things over and over about threats to health, I
1795 mean, are you saying that the President doesn't support
1796 public health because the President said you went too far.

1797 Ms. {McCarthy.} I guess I am a little confused because
1798 I think this bill was initiated because the Administrator
1799 actually made it clear that she doesn't intend to propose a

1800 change in the PM10 standard at this time.

1801 Mr. {Scalise.} But then you should be okay with the
1802 bill because the bill just says that you won't go forward
1803 with it. You are saying you are not going to do it. The
1804 thing is, you have said you are not going to do it on other
1805 areas, not you personally but EPA has done this in the past,
1806 and the chairman brought this up. The chairman of the
1807 committee talked about these consent decrees, these consent
1808 agreements that some of these outside groups will come and
1809 sue the EPA, and we have seen it with energy production, we
1810 have seen it with other things, and then you all go into an
1811 agreement with them. It is not a law, it is not even a rule,
1812 and yet you can go into these consent agreements and all of a
1813 sudden there is a new standard on the books that nobody
1814 agreed to. It wasn't Members of Congress that agreed to it,
1815 the elected representatives of the people, it was some
1816 backroom deal cut either by a judge or, even worse, some
1817 outside group who is a specialist interest that got together
1818 with you all and you all came up with some kind of new
1819 agreement that everybody has got to comply with, and it puts
1820 people out of business. It kills jobs in this country. And
1821 we are just trying to say we are going to issue a preemptive
1822 strike before you all are forced in that position. You might
1823 not even want to do it, but if they bring you to court and

1824 all of a sudden some judge gives some ruling, everybody in
1825 America, rural Americans, all these farmers have to comply
1826 with this stuff. And I am trying to say, before you cost any
1827 more jobs, because you have already cost jobs, whether you
1828 agree with it or not. We can bring in business owner after
1829 business owner and job creators that can tell you thousands
1830 of jobs in each industry that have been lost because of EPA
1831 regulations. We are just trying to say enough is enough
1832 before this new one comes out. Let us stop it. What is so
1833 wrong about that when you look at all the outside groups who-
1834 -you are looking at over 100 farmer groups, U.S. Chamber,
1835 National Association of Manufacturers, all these farm groups.
1836 I mean, I saw a story from the Illinois Farm Bureau. I mean,
1837 do you think they are just making up stuff? Do you think
1838 they are having imaginations about fairy dust, as it was
1839 suggested? I mean, these are people that on the ground
1840 trying to just create jobs and they are scared to death of
1841 what is coming down the pike from EPA.

1842 Ms. {McCarthy.} Congressman, the language in this bill
1843 goes far beyond the interest that you have expressed in
1844 making sure that the Administrator's decision to not propose
1845 to change the--

1846 Mr. {Scalise.} All right. So if you don't like the
1847 language, then what you are saying is, you are okay with some

1848 kind of prohibition, you don't like this--

1849 Ms. {McCarthy.} All I am suggesting is that this law is
1850 not necessary.

1851 Mr. {Scalise.} I think a lot of hardworking farmers out
1852 there would--

1853 Ms. {McCarthy.} And the only other--

1854 Mr. {Scalise.} --disagree, but I yield back. I am out
1855 of time.

1856 Mr. {Whitfield.} The gentleman's time is expired.

1857 I recognize the gentleman from Colorado, Mr. Gardner,
1858 for 5 minutes.

1859 Mr. {Gardner.} Thank you, Mr. Chairman, and thank you,
1860 Ms. McCarthy for your time here today. I truly appreciate
1861 it.

1862 We have talked a lot today, EPA currently has a PM10
1863 standard, dust standard. Is that correct?

1864 Ms. {McCarthy.} Yes.

1865 Mr. {Gardner.} And that basically means 150 microns per
1866 cubic meter of air at the 99th percentile. Is that what it
1867 means?

1868 Ms. {McCarthy.} That is correct.

1869 Mr. {Gardner.} Which means you get about 3 days over
1870 the standard average over a 3-year period and you are still
1871 in compliance. Is that correct?

1872 Ms. {McCarthy.} Yes.

1873 Mr. {Gardner.} Okay. Does that standard apply across
1874 the country?

1875 Ms. {McCarthy.} Yes.

1876 Mr. {Gardner.} Are there areas of the country that are
1877 in nonattainment for PM10?

1878 Ms. {McCarthy.} There are.

1879 Mr. {Gardner.} And where are these areas?

1880 Ms. {McCarthy.} Well, I can certainly point them out to
1881 you. For the most part, they are in the western part of the
1882 United States. I would certainly be happy to share this with
1883 you. These--

1884 Mr. {Gardner.} Southern California, Arizona?

1885 Ms. {McCarthy.} --are the 45 areas. That is right.

1886 Mr. {Gardner.} Thank you. Do any of these
1887 nonattainment areas have any agriculture production?

1888 Ms. {McCarthy.} Yes, many of them do. I think there
1889 is--it is primarily around urban areas where we monitor we
1890 most closely.

1891 Mr. {Gardner.} What requirements are placed on those
1892 producers if they farm in a nonattainment area?

1893 Ms. {McCarthy.} It all depends. They may not be seen
1894 as contributing significantly to the nonattainment, in which
1895 case there is no obligation. In areas where they have been

1896 identified, which represent a couple of counties that I know
1897 about, there are a number of best management practices that
1898 have been developed with USDA and the farming community.
1899 They tend to choose what is most appropriate off that list
1900 and implement those measures.

1901 Mr. {Gardner.} Well, I am glad you mentioned that,
1902 because in fact, since there is nobody on this committee from
1903 Arizona, I do have where some of the nonattainment areas are.
1904 I would like to ask that these documents be submitted to the
1905 record, Arizona's mandatory BMPs, best management practices,
1906 for rural crop agriculture and mandatory BMPs for livestock
1907 producers.

1908 Mr. {Whitfield.} Without objection.

1909 [The information follows:]

1910 ***** COMMITTEE INSERT *****

|
1911 Mr. {Whitfield.} Thank you.

1912 Mr. {Gardner.} And it seems that based on these
1913 documents, the results of the PM10 standard that are set by
1914 the EPA that you currently regulate farm dust. That is what
1915 these documents are here for because of the regulations on
1916 dust that occurs in agriculture, farm dust. Now, I
1917 understand, I live in Colorado, it is very dry. I would love
1918 to ban dust. It seems like that is all we do is dust. We
1919 have worn the coffee table out with it. But I was just
1920 curious, your statement, and I have heard others say it is a
1921 myth that EPA is trying to regulate dust but you already do.
1922 Is that correct?

1923 Ms. {McCarthy.} Actually, we establish health-based
1924 standards. It is up to the States and the local communities
1925 to determine what is most appropriate to regulate.

1926 Mr. {Gardner.} But that is on dust, right? You do
1927 regulate dust?

1928 Ms. {McCarthy.} We establish National Ambient Air
1929 Quality Standards--

1930 Mr. {Gardner.} The answer is yes, you regulate dust? I
1931 mean, that is why you have these best management practices
1932 here that are about farm dust.

1933 Ms. {McCarthy.} I believe that that is a regulation in

1934 Arizona and it being--

1935 Mr. {Gardner.} So Arizona just has this regulation, not
1936 because of the EPA?

1937 Ms. {McCarthy.} No, it is very directly a linkage
1938 because of the health consequences associated with coarse
1939 particles, some of which may be from farms if they determine
1940 that there is significant--

1941 Mr. {Gardner.} Which is farm dust and so you are
1942 causing them to regulate farm dust?

1943 Ms. {McCarthy.} We could probably continue this for a
1944 while but I do not--we do not directly regulate farm dust.
1945 We have no farm dust regulations. What we have is National
1946 Ambient Air Quality Standards that regulate coarse and fine
1947 particles, which many businesses, industries as well as some
1948 agricultural--

1949 Mr. {Gardner.} So let me rephrase my question. Do you
1950 regulate dust from farms? Maybe that is a different
1951 question. You know, farm dust, maybe there is no specific
1952 category for defining farm dust but do you regulate dust from
1953 farms?

1954 Ms. {McCarthy.} I really am not trying to be evasive.
1955 Let me tell you how--

1956 Mr. {Gardner.} But, see, the problem here is that what
1957 my district sees. This district is the 11th largest ag-

1958 producing district in this Congress out of 435. It is not
1959 fairy dust to them. This is a very real issue.

1960 Ms. {McCarthy.} I am not suggesting this is not a
1961 serious issue.

1962 Mr. {Gardner.} EPA also suggested that they weren't
1963 going to regulate milk from dairies but they had to actually
1964 put something in there--milk spills at dairies but they had
1965 to put something in the federal regulations saying they
1966 weren't going to regulate milk spills. You can see the
1967 problem that we face when it comes to the EPA and how our
1968 farmers and ranchers are trying to deal with it. We have
1969 best management practices from States that are dealing with
1970 the regulation of dust from farms. Now, whether that is farm
1971 dust or not, maybe that is a point of distinction.

1972 Ms. {McCarthy.} In areas where farm dust contributes to
1973 nonattainment and imposes health concerns in those
1974 communities, there is certainly both a right and an
1975 obligation to take a look at those issues and to see if there
1976 are cost-effective practices that can be put in place that
1977 would reduce the health consequences associated with those
1978 emissions. But so I don't see anything wrong with that. In
1979 fact, I see that as a good practice to continue.

1980 Mr. {Gardner.} So do you think there should be
1981 regulations on dust from farms?

1982 Ms. {McCarthy.} I believe that there should be
1983 regulations on coarse particles, and coarse particles, no
1984 matter where they are emitted from, can be reduced in areas
1985 where they are causing a health burden that they should be
1986 reduced if they can be done cost-effectively--

1987 Mr. {Gardner.} So the answer is yes--

1988 Ms. {McCarthy.} --and practically.

1989 Mr. {Gardner.} --dust from farms ought to be regulated?

1990 Ms. {McCarthy.} I did not say that, no.

1991 Mr. {Whitfield.} The gentleman's time is up.

1992 At this time I recognize Mr. Pompeo of Kansas for 5
1993 minutes.

1994 Mr. {Pompeo.} Thank you, Mr. Chairman. Thank you, Ms.
1995 McCarthy, for being here today.

1996 I want to spend time on the statute but first I do want
1997 to clarify. Mr. Markey didn't take this very seriously. He
1998 talked about fairy dust. He talked about myths and fake
1999 Congressmen and fictitious things. Do you agree with him?
2000 Is this a myth? Are the 100 folks who signed that letter in
2001 support and everybody who talks to me back in Kansas, are
2002 they irrational, ignorant or just sadly misled?

2003 Ms. {McCarthy.} I think there are many
2004 misunderstandings here, and there are complexities here that
2005 people don't understand. I certainly understand--

2006 Mr. {Pompeo.} So they are ignorant?

2007 Ms. {McCarthy.} --that the agricultural community is
2008 concerned. I do recognize the importance of the agricultural
2009 community, and we certainly don't want EPA to look like it is
2010 adding burden on the farming community when in essence the
2011 Administrator has clearly said she has no intention of
2012 proposing a change in this PM standard. All of that is very
2013 real.

2014 Mr. {Pompeo.} I appreciate that. So you disagree with
2015 Mr. Markey? You take this seriously?

2016 Ms. {McCarthy.} I take my job very seriously.

2017 Mr. {Pompeo.} I appreciate that.

2018 I want to talk about what the proposed legislation does
2019 and what it does not do. Mr. Waxman talked about this
2020 eviscerating, gutting the Clean Air Act. I think that is the
2021 57th time I have heard that in 10 months. Everything we do
2022 guts the Clean Air Act. He talked about taking away,
2023 eliminating regulations. This doesn't eliminate any
2024 regulation. This just gives the States the ability to do it,
2025 and if they don't do it adequately, you can come in and clean
2026 up their mess. Isn't that right? As I read this language,
2027 isn't that exactly what it says? This doesn't deny anybody's
2028 ability to regulate this coarse particulate matter. It just
2029 says we are going to give that to the States, and if you

2030 don't get it right, we will come in and make an adverse
2031 health finding, we will do a cost-benefit analysis and Ms.
2032 McCarthy will come in and clean up the mess, right?

2033 Ms. {McCarthy.} I think that if what you are saying is
2034 right, what you are saying is rolling back national
2035 standards, health standards that are necessary for public
2036 health protection. You are talking about giving those to
2037 local communities or States that certainly don't have the
2038 scientific or the resource wherewithal to be able to make
2039 this happen. So I would say in essence you are actually
2040 gutting the Clean Air Act.

2041 Mr. {Pompeo.} Wow. So you think the States are
2042 completely incapable of making sure they can take care of the
2043 health of Kansas. My Governor, Governor brown, back in his
2044 Kansas Department of Health and Environment, are incapable of
2045 protecting the health of their citizens?

2046 Ms. {McCarthy.} Actually, I would--

2047 Mr. {Pompeo.} They don't have the resources. You said
2048 they don't have the resources or the scientific knowledge out
2049 in flyover country?

2050 Ms. {McCarthy.} I would say that the way in which
2051 nuisance dust is defined here in what you would need to do to
2052 regulate it is potentially beyond the wherewithal of EPA and
2053 our scientists at this point in time, and I certainly

2054 wouldn't want that burden imposed on States and local
2055 communities.

2056 Mr. {Pompeo.} Last point. So I think it was Mr. Waxman
2057 and you had a little colloquy about all the horrors that
2058 could follow. We could have school buses killing children,
2059 large open pit mining exemptions, and you said that this
2060 language might prevent the EPA from regulating those. This
2061 really isn't a question. This is a statement and my
2062 observation. You have never let statutory language get in
2063 the way of your efforts to regulate things. We have made
2064 things clear. We make them explicit and you run through stop
2065 signs. And so here we have got language which doesn't talk
2066 about school buses and yet you and Mr. Waxman say that this
2067 is going to allow school buses to do great harm. Do you
2068 really believe that this language would preclude you from
2069 doing those kinds of regulation for power sources and for
2070 school buses? My question is, do you believe that this
2071 language would preclude you?

2072 Ms. {McCarthy.} I believe that it very well could.

2073 Mr. {Pompeo.} It very well could?

2074 Ms. {McCarthy.} Yes.

2075 Mr. {Pompeo.} So you would sit with your team and you
2076 would say I don't think we can do that?

2077 Ms. {McCarthy.} Well, one of the issues is, I am trying

2078 to understand what it was intended to do. Was it intended to
2079 do that?

2080 Mr. {Pompeo.} Well, you said before, it doesn't matter,
2081 right? You said what does the language do. I think it is
2082 very clear what the language does. This language grants the
2083 rights to the States to regulate this and keep their folks
2084 safe, and then if there are health adverse health effects and
2085 if a cost-benefit analysis is completed, you all can go fix
2086 it. So I think it is very clear. We are trying to prevent
2087 EPA from doing not what an imaginary Congressman said they
2088 would do and not what some silly email chain that was
2089 fraudulent centered on but what your EPA staff said they were
2090 considering.

2091 Ms. {McCarthy.} So this bill is actually intended not
2092 just to prevent the Administrator from ever being able to
2093 advance or enhance regulation of farm dust or coarse
2094 particles, it is actually intended to roll back 24 years of
2095 history in regulating coarse particles that started with the
2096 Reagan Administration, that continued to the Bush
2097 Administration, that protects public health today. That is
2098 the intent of this bill.

2099 Mr. {Pompeo.} My time is up. It is intended to do
2100 precisely what it says it will do. It is intended to stop
2101 the EPA from regulating farm dust, and I yield back the

2102 balance of my time.

2103 Mr. {Whitfield.} At this time I recognize the gentleman
2104 from Virginia, Mr. Griffith, for 5 minutes.

2105 Mr. {Griffith.} Thank you, Mr. Chairman.

2106 All right. Let us get back into this and we will pick
2107 up right where we left off with Mr. Pompeo, because I am
2108 trying to figure it out, and I don't think that the intent of
2109 this bill is to do any of the things that you think it is
2110 intended or that you were trying to imply that Mr. Pompeo was
2111 saying it is going to do. I think it is regulating farm
2112 dust. That being said, would you all support this bill if
2113 you changed on line 15, page 3--do you have the bill in front
2114 of you, ma'am?

2115 Ms. {McCarthy.} I do have it in front of me somewhere.

2116 Yes, I have it.

2117 Mr. {Griffith.} If you changed on line 15--and I am not
2118 speaking for the patrons, I am just asking. On line 15, if
2119 you change the ``or'' to an ``and'', wouldn't that resolve
2120 all of your semantic problems or all of your language
2121 problems?

2122 Ms. {McCarthy.} I am really not prepared at this time
2123 to negotiate the bill. What I will say is that I think that
2124 in--

2125 Mr. {Griffith.} Just look at the plain language of the

2126 bill. If you put an ``and'' there, there is no way anybody
2127 on earth could interpret that that would allow mining. Isn't
2128 that correct?

2129 Ms. {McCarthy.} I do not know the answer. I can
2130 certainly go back and take a look at it.

2131 Mr. {Griffith.} All right. Let us talk about this--

2132 Ms. {McCarthy.} Could I just point out, one of the
2133 confusing things in the definition, it is--

2134 Mr. {Griffith.} I will take back my time, ma'am.

2135 Ms. {McCarthy.} Okay. I am sorry.

2136 Mr. {Griffith.} You know, I think most of us over here
2137 were offended by the fairy dust comment, and I was concerned
2138 about it enough that I got Representative Hurt to bring me
2139 his language, and apparently in his district, there was a
2140 farmer who has already been warned by a State regulator.
2141 Now, you indicated you weren't aware of State regulations in
2142 Virginia, and I am happy to share those with you, if you
2143 would like, and these are the regs, not the underlying law
2144 but the regs in Virginia which talk about fugitive dust, and
2145 I guess what I want to know is, is that based on your earlier
2146 testimony, my impression is, is that you have all indicated
2147 to the States that this is the direction that they should go
2148 in. Is that not correct? You have indicated to the States
2149 that they should be regulating fugitive dust from

2150 agricultural sites? Is that not correct?

2151 Ms. {McCarthy.} Not that I am aware of. In fact, even
2152 in the coarse particulate standard, our monitoring that we
2153 base our nonattainment decisions on is focused on urban
2154 areas. It is both focused on where there is the highest
2155 levels of pollution as well as where there is most population
2156 exposed. So we do not focus on rural areas as we implement
2157 that standard. So--

2158 Mr. {Griffith.} But as you have indicated, as time goes
2159 by, if there a coarse particulate matter issue, you all are
2160 going to go in and regulate that. And I guess one of my
2161 concerns is, is that in regard to another set of regulations,
2162 not this one, back when I served in the Virginia legislature
2163 on the Virginia Joint Commission on Administrative Rules and
2164 Regulations, we had an issue that came up and it looked like
2165 it was Virginia enacting something that we just thought was
2166 foolish, and when we pushed on it, they said well, we have
2167 been told by the EPA we have to do this. This was stormwater
2168 management. And we said well, bring them in, and the EPA
2169 came in and basically said that, you know, Virginia didn't
2170 have any rights even outside of the Chesapeake Bay area and
2171 that they were going to force us to do it one way or another.
2172 And so I want to know, are we dealing with the same kind of
2173 situation with dust? Are you all going to tell the States

2174 that they have to do this or you're going to come in and tell
2175 them how to do it?

2176 Ms. {McCarthy.} This is a National Ambient Air Quality
2177 Standard. That means that when States are implementing the
2178 program, they make their own judgments about what is cost-
2179 effective in terms of an implementation strategy for their
2180 States, and to the extent that it is lawful, EPA respects
2181 that judgment.

2182 Mr. {Griffith.} Since this bill at this time only has a
2183 1-year time limit or time period in it and you all have
2184 indicated that you are not planning to go forward with any
2185 new regulations on agricultural dust, why the opposition?
2186 Why don't you join in and support the bill?

2187 Ms. {McCarthy.} Actually, it has two sections. The
2188 first one is the one that talks about a 1-year limit, but it
2189 is really not limited to coarse particles. It really spills
2190 into our ability to regulate fine particles. And section 3
2191 really attempts to exempt nuisance dust from regulation
2192 altogether, and because of how broadly that is defined, it
2193 can certainly leak into all areas of the Clean Air Act and
2194 prevent us from being able to maintain the kind of health
2195 standards we have had for decades and the protections that
2196 the American people expect.

2197 Mr. {Griffith.} But you do understand why people, as

2198 Mr. Gardner pointed out and others, why people are a little
2199 gun-shy when it comes to the EPA because we have seen things
2200 that don't make sense and we had had, in fairness, the States
2201 have been run roughshod at times by the EPA, and so when we
2202 hear some of these things, we don't always necessarily feel
2203 comfortable with it and we may at some point reach a level of
2204 trust but we are always going to have to verify.

2205 Thank you. I yield back my time.

2206 Mr. {Whitfield.} At this time the chair recognizes the
2207 gentlelady Ms. McMorris Rodgers for 5 minutes from Washington
2208 State.

2209 Mrs. {McMorris Rodgers.} Thank you, Mr. Chairman. I
2210 appreciate the time and I appreciate Ms. McCarthy for being
2211 here. You know, I too am struggling with the long list of
2212 regulations that have been proposed by the EPA Administration
2213 this year, and at a time when unemployment in this country is
2214 at a record high, we continue to face one regulation after
2215 another that is making it, if not difficult, impossible for
2216 people to comply. I had someone in my office just the other
2217 day who said Cathy, the only way we can comply with the long
2218 list of regulations coming out of EPA is to simply not
2219 operate, and that is the fear that our farmers and ranchers
2220 face right now, and it seems that the Administration is
2221 moving forward without the scientific, proven health benefits

2222 of many of these regulations.

2223 Now, 5 years ago, EPA concluded that the current PM₁₀
2224 standard was appropriate, and yet today in many regions, they
2225 are still striving to comply with that standard. And that is
2226 why it makes us a little perplexed as to why earlier in the
2227 year EPA was recommending a stricter standard, and so in
2228 eastern Washington, whether we are working in the fields or
2229 herding our cattle or driving down a dirt road, dust is going
2230 to be kicked up, and that farm dust is a byproduct of
2231 American labor, not an air pollutant. So I understand that
2232 the Administrator has stated that the current standard, which
2233 has been in effect since 1987, will be continued. However, I
2234 too believe that farmers and ranchers in eastern Washington
2235 need more certainty. So I wanted to ask you, what made EPA
2236 go from earlier in the year proposing to exempt agriculture
2237 and mining to finalizing a standard that does not exempt
2238 them?

2239 Ms. {McCarthy.} Actually, that was an action that the
2240 Bush Administration proposed in 2005 when it was doing its
2241 NAAQS review of the PM standard. They did propose to exempt
2242 agriculture from regulation. On the basis of all the
2243 comments that the Bush Administration heard, they believed
2244 that the science was strongly indicating that it needed to be
2245 included within the definition of coarse particles and they

2246 didn't exempt it. That was not this Administration, that was
2247 the Bush Administration. And EPA has yet to propose
2248 anything. And if and when we do, the Administrator has made
2249 it clear what she intends to propose. When that is finalized
2250 if that is challenged and it goes to court, if we lose that
2251 challenge we re-look at the NAAQS, but you are in no
2252 immediate danger of actually happening.

2253 Mrs. {McMorris Rodgers.} But earlier in the year, you
2254 were proposing different standards, so what made you change--

2255 Ms. {McCarthy.} We actually had never proposed
2256 anything. What we were proposing on PM10 was to wait for the
2257 Integrated Science Assessment. The Clean Air Science
2258 Advisory Committee did propose that the Administrator
2259 consider changing both the standard and form, which really
2260 wouldn't have made the standard more stringent but it would
2261 have changed levels of protection in the country, and when
2262 the staff looked at that, they believed that the data wasn't
2263 certain enough to warrant a recommendation solely to revise
2264 so the staff actually proposed two recommendations, one to
2265 keep it and one to revise it. When the Administrator looked
2266 at that, as she indicated in her letter, her assessment was
2267 that the science wasn't certain enough to warrant a change in
2268 the form and standard and that she was going to propose
2269 retaining that standard. That is how it has worked out. And

2270 there has been a lot of misunderstanding. So I apologize,
2271 but we did not--we have not put out a proposal in this
2272 Administration relative to PM10 or 2.5.

2273 Mrs. {McMorris Rodgers.} It feels like the
2274 Administration continues to flip-flop, though, on where they
2275 are going to be on possibly proposing and when they might
2276 come, and so I guess I just want to also--it just begs the
2277 question, why are you opposing what is a very simple bill to
2278 clarify and send a clear signal to our farmers and ranchers
2279 that farm dust that is stirred up while they are working in
2280 the fields will not be regulated?

2281 Ms. {McCarthy.} I tried to make it clear that that is
2282 not what this bill says or does.

2283 Mrs. {McMorris Rodgers.} Would you be willing to--would
2284 you give us your recommendations on how we could write that
2285 bill?

2286 Ms. {McCarthy.} We would certainly provide any
2287 assistance we can to the committee and that the chairman asks
2288 us to provide. I will tell you that it is a little baffling
2289 to me, because generally I am here because we are proposing
2290 to do something that you disagree with. Now we are proposing
2291 to do something that you agree with, and I am still here.
2292 There is got to be something we can do that--

2293 Mr. {Whitfield.} We like you, Ms. McCarthy.

2294 Mrs. {McMorris Rodgers.} It is the fear of what you
2295 might do in this example.

2296 Ms. {McCarthy.} But in one case, the fear is that the
2297 Administrator will be proposing something and it is sure to
2298 happen. In this case, the Administrator may be proposing
2299 something and you don't think it is going to happen. The
2300 Administrator has been really clear. She is given this
2301 discretion under the law, and she will use that discretion
2302 wisely and she has made it clear the direction that we are
2303 heading.

2304 Mrs. {McMorris Rodgers.} We have heard you say many
2305 times today ``at this point in time'' and we don't know when
2306 that might change.

2307 I yield back.

2308 Mr. {Rush.} Mr. Chairman, on that note, I would, if I
2309 could, ask unanimous consent to enter into the record the EPA
2310 technical assistance letter requested by myself and Ranking
2311 Member Waxman.

2312 Mr. {Whitfield.} Without objection.

2313 [The information follows:]

2314 ***** COMMITTEE INSERT *****

|
2315 Mr. {Whitfield.} Thank you so much.

2316 At this time I recognize the gentleman from California,
2317 Mr. Bilbray, for 5 minutes.

2318 Mr. {Bilbray.} Thank you very much, Mr. Chairman.

2319 I was sort of taken back by comments made by the
2320 gentleman from Santa Monica that somehow there is no
2321 regulation on farming and nobody is proposing regulations on
2322 farming and that the whole concept of regulating farming is a
2323 myth, and I would like you to kind of, you know, bring me
2324 back up to speed. It has been a while since I have been in
2325 the clean air, you know, game. Wasn't there or isn't there
2326 an ongoing program to reduce silicone emissions in the
2327 western San Joaquin Valley?

2328 Ms. {McCarthy.} Yes, there is.

2329 Mr. {Bilbray.} And that is PM10, ma'am, and 2.5?

2330 Ms. {McCarthy.} Yes, that is true.

2331 Mr. {Bilbray.} Okay. So isn't there also an ongoing
2332 program to reduce or eliminate the use of gravel or the use
2333 of gravel roads in the Sierra Nevada because of the dust
2334 potential with serpentine being used as the gravel?

2335 Ms. {McCarthy.} I am not aware of that. I apologize.

2336 Mr. {Bilbray.} Okay. If you could ask your staff to
2337 take a look at that.

2338 And then the Owens Valley is a very rural, very isolated
2339 area. Have they abandoned their concept of particulate
2340 management in the Owens Valley?

2341 Ms. {McCarthy.} No, there are many areas in California
2342 that are out of attainment of those standards and that work
2343 with the agricultural and other communities to try to reduce
2344 dust.

2345 Mr. {Bilbray.} So for the record, there has been
2346 historically intervention in a rural area by regulatory
2347 agencies to control and regulate both PM10 and 2.5?

2348 Ms. {McCarthy.} Yes.

2349 Mr. {Bilbray.} Okay. I just want to make that clear
2350 because the reference was like nobody has ever done this, we
2351 are not talking about this, and the fact is, when somebody
2352 out in the West starts talking about this, you know, let me
2353 tell you, the gentleman from Santa Monica is saying in our
2354 own State we have had extensive impact on ag and rural area
2355 impacts in our clean air management, and I think it is
2356 disingenuous to tell the rest of the country that these
2357 things haven't happened and won't happen and don't be worried
2358 about it. I think there is a very real situation that we
2359 ought to be open and frank about and not try to deny the fact
2360 that there is a real potential, either now or in the future,
2361 that farming operations, that rural activities will be

2362 severely impacted in their traditional historical manner of
2363 operation because we are looking at addressing both of these
2364 particulate issues. Is that fair to say?

2365 Ms. {McCarthy.} I am sorry. I think I sort of--

2366 Mr. {Bilbray.} Is it fair to say that from the history
2367 of what we have done in other parts of this country to manage
2368 the particulate issue that it is unfair to tell the people in
2369 the rest of rural America that there is no way they are going
2370 to be impacted, no way that their operations may be modified?

2371 Ms. {McCarthy.} Ever? I certainly would never make
2372 that claim one way or the other.

2373 Mr. {Bilbray.} I just--farming has been curtailed in
2374 California in certain areas during certain times of the year.
2375 Farming has been impacted. The use of water and the way the
2376 water was distributed in a State that is dying for water has
2377 been impacted through this management practices on this, and
2378 I just think we need to clarify that, you know, there is this
2379 issue of once you justify taking action on the item, you do
2380 not say rural, urban has a different game. You do not say
2381 farming will be protected in our implementation. Everybody
2382 is thrown into the pile. There is no guarantee that
2383 traditional agricultural activities will not be severely
2384 impacted once you start implementing the programs, right?

2385 Ms. {McCarthy.} You look at all sources of pollution.

2386 I will say in terms of agriculture that how the States and
2387 local air districts have worked with USDA and the agriculture
2388 community has actually be very collaborative, and in the San
2389 Joaquin Valley, as far as I know, it has been enormously
2390 successful.

2391 Mr. {Bilbray.} Well, I think that if we see the impact
2392 and a lot of the concerns over there, and the Owens Valley is
2393 the other one that still is a real issue of do we use our
2394 water to feed our cities and our crops or do we use the water
2395 to spray over the Owens Valley to reduce the particulate
2396 matter. That is the kind of catch-22 that we get into.

2397 Ms. {McCarthy.} One of the reasons why we work with
2398 USDA is there are a number of strategies that the farming
2399 community can employ. Many of them are supported by--

2400 Mr. {Bilbray.} To interrupt, I want to make it clear.
2401 You made a statement that this impacts urban areas, and I
2402 think you want to correct that. It does not only urban
2403 areas. Rural areas are impacted severely with the PM10 and
2404 2.5 and the potential. A nonattainment area does not know if
2405 it is an urban area or rural area. Nonattainment areas are
2406 managed as one proposal.

2407 Ms. {McCarthy.} May I clarify the point I was trying to
2408 make?

2409 Mr. {Bilbray.} Yes.

2410 Ms. {McCarthy.} I am sorry.

2411 Mr. {Whitfield.} Go ahead.

2412 Ms. {McCarthy.} Very quickly. What I was talking about
2413 is how you identify nonattainment areas. We monitor
2414 nonattainment areas. We don't model them. Our monitoring is
2415 focused on areas where you have both high levels as well as
2416 high population density. So even in the areas that you are
2417 talking about, they are surrounding high population density
2418 areas, although the rural areas may come in as part of the
2419 nonattainment area.

2420 Mr. {Bilbray.} Excuse me, ma'am. The Central Valley is
2421 not an urban area, and the great majority is nonattainment.
2422 I yield back.

2423 Mr. {Whitfield.} Ms. McCarthy, you raised an
2424 interesting issue on the monitors. Would you provide the
2425 committee with a list of where monitors are located by State
2426 and how that is determined?

2427 Ms. {McCarthy.} Of course.

2428 Mr. {Whitfield.} Thank you.

2429 It looks like there are no more questions, so Ms.
2430 McCarthy, thanks very much for being with us today. We
2431 appreciate your time and look forward to working with you as
2432 we move forward.

2433 At this time I would like to call up the third panel.

2434 On the third panel, we have seven witnesses. First, Mr.
2435 Steve Foglesong, who is a ranch owner of the Black Gold
2436 Cattle Company and immediate past President of the National
2437 Cattlemen's Beef Association. We have Mr. Kevin Rogers, who
2438 is the President of the Arizona Farm Bureau, who is
2439 testifying on behalf of the American Farm Bureau. We have
2440 Mr. Pete Lien, who is the President of Pete Lien and Sons,
2441 Inc., who is testifying on behalf of National Stone, Sand and
2442 Gravel Association. We have Mr. Till von Wachter, PhD,
2443 Associate Professor of Economics at Columbia University. We
2444 have Mr. John Walke, who is Senior Attorney and Director of
2445 the Clean Air Program at the Natural Resources Defense
2446 Council. And we have Gregory Wellenius, who is Assistant
2447 Professor of Community Health at Brown University.

2448 So I want to thank all of you for joining us this
2449 afternoon to discuss H.R. 1633 and the regulation of
2450 particulate matter. We look forward to your testimony. Each
2451 one of you will be recognized for 5 minutes for your opening
2452 statement, and so Mr. Foglesong, we will start with you and
2453 you will be recognized for 5 minutes, and be sure and turn
2454 your microphone on.

|
2455 ^STATEMENTS OF STEVE FOGLESONG, RANCH OWNER, BLACK GOLD
2456 CATTLE COMPANY, AND IMMEDIATE PAST PRESIDENT OF NATIONAL
2457 CATTLEMEN'S BEEF ASSOCIATION, ON BEHALF OF NATIONAL
2458 CATTLEMEN'S BEEF ASSOCIATION; KEVIN ROGERS, PRESIDENT,
2459 ARIZONA FARM BUREAU, ON BEHALF OF AMERICAN FARM BUREAU; PETE
2460 LIEN, PRESIDENT, PETE LIEN AND SONS, INC., ON BEHALF OF
2461 NATIONAL STONE, SAND AND GRAVEL ASSOCIATION; KURT E. BLASE,
2462 PARTNER, HOLLAND & KNIGHT, ON BEHALF OF COARSE PARTICULATE
2463 MATTER COALITION; TILL VON WACHTER, PH.D., ASSOCIATE
2464 PROFESSOR OF ECONOMICS, COLUMBIA UNIVERSITY; JOHN WALKE,
2465 SENIOR ATTORNEY AND DIRECTOR, CLEAN AIR PROGRAM, NATURAL
2466 RESOURCES DEFENSE COUNCIL; AND GREGORY WELLENIUS, SC.D.,
2467 ASSISTANT PROFESSOR OF COMMUNITY HEALTH, BROWN UNIVERSITY

|
2468 ^STATEMENT OF STEVE FOGLESONG

2469 } Mr. {Foglesong.} There we go. Thank you for the
2470 technological advice. Us ranchers sometimes struggle with
2471 that.

2472 Mr. {Whitfield.} Well, everyone forgets.

2473 Mr. {Foglesong.} Oh, okay. I am feeling more
2474 comfortable all the time.

2475 Good morning, Chairman Whitfield and Ranking Member Rush

2476 and members of the subcommittee. Anybody that knows anything
2477 about cattle ranching and feeding knows that many operations
2478 are located where wind blows, and that makes dust a part of
2479 everyday life. The idea that the EPA may decide to require
2480 me and other cattle producers in every part of the country to
2481 somehow control that dust gives me cause to lose a lot of
2482 sleep at night. The fact is, farmers and ranchers want and
2483 need certainty about this issue.

2484 While I and ranchers across the United States are
2485 pleased the EPA has decided not to propose to lower the
2486 standard this year, we can't be 100 percent sure of that
2487 outcome of the rulemaking until it is final. In fact, in
2488 1996 the EPA proposed to remove the PM10 24-hour standard
2489 altogether only to bring it back in the final rule, and then
2490 again in 2006 the EPA proposed to exempt ag dust. That
2491 exemption also disappeared in the final rule. In addition,
2492 even if the EPA retains the current dust standard, the
2493 opportunity remains for that agency to tighten it in the
2494 future. Unless Congress passes the Farm Dust Regulation
2495 Prevention Act, that threat remains.

2496 Now, I know that the EPA currently regulates dust.
2497 Cattle operations have found it very difficult and expensive
2498 to comply. One operation that I know of in Arizona spent
2499 \$400,000 to comply with that current standard. That is

2500 \$1,000 a day just to control dust. Most of that is to
2501 sprinkle water in those pens, and that is just the current
2502 standard. Just think about how much it would cost if the EPA
2503 were to actually lower that standard in the future. If that
2504 happens, the simple fact is that many farms and ranches may
2505 be forced out of business.

2506 Ranchers have been concerned about that possibility for
2507 many years but most recently the fear surfaced when EPA
2508 revealed it is considering making the dust standard
2509 essentially twice as stringent as the current standard. NCBA
2510 and the Coarse Particulate Matter Coalition commissioned a
2511 study on the impact of the possible new dust regulation on
2512 rural America. The study determined that vast areas of the
2513 Midwest, Southwest and western parts of the United States
2514 would be thrown into the brink of nonattainment if not
2515 completely into that nonattainment altogether.

2516 It would be one thing if there were a good reason to
2517 regulate farm dust, but there is not. The regulation of dust
2518 under the Clean Air Act is supposed to be based on scientific
2519 evidence of adverse health effects. Historically, there has
2520 been no such evidence of adverse health effects from dust at
2521 ambient levels but EPA has decided to regulate it anyway.
2522 Why? In 2006, EPA based its decision on the precautionary
2523 principle. That is right. EPA's dust regulation is not

2524 based on science but on supposition. Let me explain.
2525 Particulate matter is separated into two distinct sizes and
2526 kinds of matter. Fine PM is combustion-driven material and
2527 the size range of 2.5 microns and smaller, known as PM2.5.
2528 That is cigarette smoke. Coarse particulate matter, or dust,
2529 on the other hand, is bigger particles in the range of 10
2530 microns and smaller down to 2.5 microns. PM10 includes both
2531 sizes and kinds of particles. The reason I mention particle
2532 size and composition is because, incredibly, the EPA is
2533 regulating dust using scientific studies that show adverse
2534 health effects that may all be caused by combustion-type fine
2535 PM, not dust. The studies EPA reviewed are studies looking
2536 at the health effects of PM10 from urban areas that are
2537 contaminated with combustion-type fine PM. Any adverse
2538 health effects the studies reveal may well be caused by the
2539 fine PM, not the coarse PM.

2540 Use of these studies to identify health effects for
2541 purposes of establishing a coarse PM dust standard is
2542 inappropriate, especially for rural areas, where urban
2543 contaminants are not a concern. Nevertheless, EPA uses a
2544 single standard to regulate dust in urban and rural areas.
2545 The contaminant issue I mentioned is just one of many
2546 problems with the EPA's PM10 studies.

2547 I am not a scientist or a medical doctor but I want a

2548 confirmation, so we asked Dr. Jonathan Borak, Clinical
2549 Professor of Epidemiology and Public Health at Yale
2550 University School of Medicine, to review EPA's health
2551 studies. Dr. Borak is a highly respected scientist and in
2552 fact was one of the founding members of EPA's own Scientific
2553 Advisory Committee. He found many problems with the studies
2554 on which EPA relies and determined that those studies do not
2555 establish risk from a health basis for dust regulation. I
2556 have attached his comments to my testimony for the record.

2557 In an effort to bring a little common back into this
2558 process, cattlemen believe that the best solution is for
2559 Congress to pass the Farm Dust Regulation Prevention Act of
2560 2011. Regulatory uncertainty is unnecessary and
2561 unproductive. If EPA follows through and does not revise the
2562 dust standard, this action would to some degree provide us
2563 with certainty but for no more than 5 years. It provides no
2564 relief to producers who are spending over \$1,000 a day on
2565 dust control measures right now. We need immediate,
2566 permanent relief from federal dust regulations on farms and
2567 cattlemen believe the best way to achieve that is by passing
2568 the Farm Dust Regulation Prevention Act.

2569 Thank you, sir.

2570 [The prepared statement of Mr. Foglesong follows:]

2571 ***** INSERT 4 *****

|

2572 Mr. {Whitfield.} Thank you, Mr. Foglesong.

2573 Mr. Rogers, you are recognized for 5 minutes.

|
2574 ^STATEMENT OF KEVIN ROGERS

2575 } Mr. {Rogers.} Thank you, Mr. Chairman. Members of the
2576 subcommittee, my name is Kevin Rogers. I am a fourth-
2577 generation farmer. I farm with my family over 7,000 acres of
2578 land in Arizona. We produce cotton, alfalfa, wheat, barley
2579 and corn silage. I am currently the President of the Arizona
2580 Farm Bureau and I also serve on the USDA Air Quality Task
2581 Force, which advises the Secretary of Agriculture on federal
2582 clean air policies that affect farmers.

2583 I am pleased today to testify on behalf of the American
2584 Farm Bureau Federation in support of H.R. 1633, the Farm Dust
2585 Regulation Prevention Act. My farm in Arizona lies in one of
2586 the worst areas for dust PM 10 in the Nation. Within the
2587 past couple of months, four huge naturally occurring dust
2588 clouds rose from the desert floor and swept over Phoenix.
2589 Also, some of that happened in Texas as well. It covered
2590 Tucson in southern Arizona as well. This is the dust that
2591 EPA regulates under the coarse particulate matter with the
2592 National Ambient Air Quality Standard. H.R. 1633 provides a
2593 reasonable and commonsense approach to controlling ambient PM
2594 in a way that recognizes the natural occurrence of farm dust
2595 while also recognizing the public health mandate the Clean

2596 Air Act requires. By excluding nuisance farm dust from
2597 regulation, the bill allows EPA to continue regulating
2598 manmade emissions of particulate matter while at the same
2599 time not trying to regulate natural occurrences. The
2600 exclusion focuses EPA's attention on things that EPA can
2601 control rather than trying to regulate nature.

2602 The bill does not roll back any EPA protections afforded
2603 under the Clean Air Act. Rather, it reinforces the idea that
2604 regulatory decisions should be based on sound science.

2605 The record here is clear that scientific data on
2606 possible health effects of PM10, or dust, is highly
2607 uncertain. The bill provides the necessary flexibility for
2608 EPA to step in and regulate if the science more conclusively
2609 shows the naturally occurring farm dust causes adverse health
2610 effects. The bill recognizes the great disparity in the
2611 coarse PM10 ambient air quality levels from one part of the
2612 country to another, from rural to urban areas, by providing
2613 for State and local regulation of rural nuisance dust from
2614 farming areas. The bill allows management flexibility to
2615 deal with unique local circumstances.

2616 We do applaud the recent announcement by Administrator
2617 Jackson that EPA will not propose changes to the current PM10
2618 standard. That does not mean that farm dust is not or will
2619 not be regulated under the Clean Air Act. For those of us in

2620 a coarse PM10 nonattainment area, our activities have already
2621 been regulated and will continue to be regulated. The
2622 Phoenix area has not been in compliance with the coarse PM10
2623 NAAQS standard for many years.

2624 Arizona Farm Bureau participated with the State to
2625 develop a coarse PM10 permit to control agricultural PM10
2626 emissions and reduce our agricultural practices that produce
2627 PM. The program developed best management practices in three
2628 different categories. The farmers are required too adopt one
2629 BMP in each category. The program was recently amended to
2630 require two BMPs from each category. Now the EPA and the
2631 State, because we continue to be in a nonattainment area, are
2632 pushing for more restrictions and mandating restrictions
2633 against working the fields when winds reach a certain speed.

2634 All farms and ranches activities in a nonattainment area
2635 are regulated under the Clean Air Act. The program we have
2636 is a mandatory program, and all producers must participate.
2637 Those who do not participate in our BMP program must obtain
2638 an individual air permit, similar to those required by
2639 utilities and factories. BMPs include practices such as
2640 tillage based on soil moisture, not working the fields in
2641 windy conditions, modifying equipment to prevent PM
2642 generation, speed limits on unpaved roads, planning wind
2643 breaks and permanent cover crops, just to name a few. All

2644 these activities place restrictions on farming operations and
2645 have economic consequences.

2646 I can tell you that if I am required to park my tractor
2647 on windy days or when soil moisture is insufficient, it
2648 continues to cost me time and money in lost labor and
2649 productivity, or if I am required to have my employees drive
2650 15 miles an hour on my farm dirt roads, it will greatly
2651 increase the time we must spend on these roads, taking time
2652 away from engaging in other more productive activities.
2653 Others with similar restrictions suffer similar economic
2654 hardships.

2655 The fact that Administrator Jackson has determined to
2656 retain the current coarse PM10 standard for the next 5 years
2657 is very good news, but it only addresses one part of the dust
2658 problem facing rural America. H.R. 1633, by excluding
2659 naturally occurring nuisance farm dust from the Clean Air
2660 Act, unless the science is more conclusive, warrants it,
2661 addresses the other.

2662 I thank the committee for your time and look forward to
2663 answering questions when it is appropriate.

2664 [The prepared statement of Mr. Rogers follows:]

2665 ***** INSERT 5 *****

|

2666 Mr. {Whitfield.} Thank you, Mr. Rogers.

2667 Mr. Lien, you are recognized for 5 minutes.

|
2668 ^STATEMENT OF PETE LIEN

2669 } Mr. {Lien.} Chairman Whitfield and members of the
2670 subcommittee, thank you for inviting me to testify on behalf
2671 of the National Stone, Sand and Gravel Association at this
2672 hearing on the Farm Dust Regulation Prevention Act, which
2673 would prevent the harmful effects of EPA's regulations of
2674 nuisance dust.

2675 My name is Pete Lien. I am President of Pete Lien and
2676 Sons of South Dakota, which was started in 1944 by my
2677 grandfather. Representative Noem is my Congresswoman, and I
2678 am pleased to express NSSGA's support of her legislation.

2679 My association's members produce more than 90 percent of
2680 the crushed stone and 70 percent of the sand and gravel
2681 consumed annually in the United States. There are more than
2682 10,000 construction aggregate operations nationwide.

2683 Aggregates are the chief ingredients in asphalt, concrete and
2684 used in nearly all residential, commercial and industrial
2685 building construction and in most public works projects
2686 including roads, highways, bridges, dams, airports, water and
2687 sewage treatment plants, and tunnels

2688 The aggregates industry has experienced the most severe
2689 recession in its history. Production of aggregates has gone

2690 from 3 billion metric tons valued at \$21 billion in 2006 to 2
2691 billion metric tons valued at \$17 billion in 2010, a drop of
2692 \$4 billion. Of particular importance to this hearing is 70
2693 percent of NSSGA members are considered small businesses and
2694 many are located in rural area.

2695 NSSGA members are committed to full compliance with all
2696 pertinent environmental laws and regulations and emphasize
2697 sustainable practices. I am proud to say my own family
2698 business has reserves and plans for 200 years of operation
2699 into the future. We have also won numerous awards including
2700 a letter of commendation from the Bureau of Land Management
2701 for reclamation before reclamation was even required by law.
2702 We are the winner of the NSSGA's Environmental Steward Award,
2703 and the only quarry ever to win EPA's Earth Care Award, which
2704 was presented by Robert Redford.

2705 Like agriculture, resource-based industries such as
2706 aggregate producers have limited opportunities to reduce
2707 dust. To meet the current standard for dust, or PM10,
2708 aggregate facilities are required to have permits with State
2709 environmental agencies which seem to control dust by limiting
2710 production and requiring control technologies to limit dust
2711 on crushers and other equipment and road maintenance. Some
2712 dust is generated at an aggregates operation by crushing
2713 stone and truck traffic. However, most of it is from

2714 uncontrollable sources such as from roads and windblown dust,
2715 particularly in our rural areas.

2716 There is no practical way to control natural dust
2717 sources in the West and Southwest and reduce the PM10 ambient
2718 air concentration. Nevertheless, EPA continues to promulgate
2719 unworkable standards that hurt job growth without any health
2720 benefits. For example, in Utah, if EPA would have reduced
2721 the standard by as much as a half, 23 of the 29 counties
2722 would go into nonattainment, which would result in extreme
2723 limits on production and/or facility closures and further
2724 threaten much-needed highway funding.

2725 One NSSGA member has calculated that in order to meet a
2726 lowered standard as contemplated by EPA, a typical facility
2727 would have to reduce production by more than two-thirds.
2728 This would substantially change the business model and lead
2729 to plant closure and the loss of 50 jobs or dramatic increase
2730 in the price of the product. Given the over 10,000
2731 operations in the United States and virtually every
2732 Congressional district is home to an aggregates operation,
2733 this could result in significant job losses.

2734 Taken further, a cut in aggregates production would lead
2735 to a shortage of stone, concrete and asphalt for State and
2736 federal road building and repair, commercial and residential
2737 construction, which in turn would cause an increase in the

2738 price of materials for those projects ranging from 80 percent
2739 to 180 percent and further suppress employment in the
2740 construction industry. Given that infrastructure investment
2741 is essential to economic recovery and growth, any change in
2742 the PM10 standard would impose an additional burden on the
2743 aggregates industry that is unwarranted and would adversely
2744 impact aggregate supply and vitally important American jobs.

2745 NSSGA appreciates this opportunity to speak on the
2746 devastating effects of over-regulating nuisance dust on the
2747 aggregates industry.

2748 Thank you, Mr. Chairman. I will be glad to respond to
2749 questions.

2750 [The prepared statement of Mr. Lien follows:]

2751 ***** INSERT 6 *****

|
2752 Mr. {Whitfield.} Thank you.

2753 And Mr. Blase, we appreciate your being with us. I
2754 failed to state that you are representing the Coarse
2755 Particulate Matter Coalition. You are recognized for 5
2756 minutes.

|
2757 ^STATEMENT OF KURT E. BLASE

2758 } Mr. {Blase.} Thank you. Good morning, Chairman
2759 Whitfield, Ranking Member Rush and members of the
2760 subcommittee. Thanks for inviting me to testify this
2761 morning. My name is Kurt Blase, and I am Counsel to the
2762 Coarse Particulate Matter Coalition.

2763 The coalition is an organization of industry groups with
2764 an interest in scientifically sound regulation of coarse PM
2765 and air. The current members of the coalition are listed in
2766 my written testimony.

2767 The past two reviews of the National Ambient Air Quality
2768 Standard for PM10 have focused increasingly on road dust as a
2769 potential public health threat. The theory has been that
2770 dust by urban roadsides can become contaminated by other
2771 materials that render them more toxic. In contrast, dust
2772 composed primarily of crustal material has been reported to
2773 be harmful only at ambient levels much higher than the
2774 current federal standard.

2775 Our coalition consistently has supported retention of
2776 the current PM10 standard while exploring avenues of relief
2777 for natural dust emissions. The current standard limits
2778 production and therefore employment by imposing stringent

2779 dust emission limits in permits and State plans. Compliance
2780 with the current standard is very difficult to maintain at
2781 our operations. We have been surprised by recent contentions
2782 that the regulation of dust is inconsequential.

2783 There is one extra point I would like to make here with
2784 respect to permits. We have talked a lot this morning about
2785 the effect of nonattainment areas where the monitors are
2786 placed. A couple of things there. I mean, even if you are
2787 in an unmonitored area now, if the feds change their
2788 monitoring criteria, their siting criteria, you can be
2789 monitored. If a private party such as the Sierra Club story
2790 that Mr. Hurt told wants to come and monitor you, they can do
2791 that. And more importantly, for our group, really
2792 nonattainment and monitoring is almost not an issue because
2793 we have to have permits and our permits have to show
2794 attainment of the standard at the fence line regardless of
2795 the attainment status of the area in concern. I mean, it is
2796 these permits even more than the nonattainment or attainment
2797 designation that are limiting our ability to produce right
2798 now on the basis of this standard.

2799 It is widely recognized that coarse PM concentrations
2800 vary widely on a local and regional basis. A recent study
2801 commissioned by our coalition, which was mentioned earlier,
2802 sheds further light on this issue. A copy of the report is

2803 attached to my testimony. I would like to emphasize several
2804 of the conclusions here.

2805 There are great differences in both the quantity and
2806 quality of coarse PM emissions throughout the United States.
2807 For example, PM10 in the West, Southwest and Midwest is
2808 composed primarily of coarse particulate matter while PM10 in
2809 the East is composed primarily of fine particulate matter.
2810 In the West, Southwest and Midwest, the variations among PM10
2811 within single counties are very high. By contrast, the
2812 within-county differences in the East are much smaller.

2813 The localized nature of dust impacts leads to a great
2814 disparity in the effects of a single federal standard on the
2815 different areas of the country. Our study focuses on the
2816 impacts of a potential new standard recommended for
2817 consideration in EPA's PM policy assessment. The potential
2818 new standard would be set somewhere within the range of 65 to
2819 85 micrograms per cubic meter with a change to the 98 percent
2820 statistical form. The policy assessment concludes that a
2821 standard of 85 with a change in the form would be roughly
2822 equivalent to the current standard, and I heard the Assistant
2823 Administrator repeat that several times this morning.
2824 However, our study concludes that such a standard would be
2825 much more stringent than the current standard, particularly
2826 in the West, Southwest and Midwest as a result of the nature

2827 of the PM10 emissions in those areas.

2828 Under the potential new standard, localized areas in
2829 virtually all of the West, Southwest and Midwest would be
2830 vulnerable to exceedances. This is depicted in a map taken
2831 from our report, which is attached to my testimony, and I
2832 don't have it handy but it covers--oh, there it is. Okay.
2833 You can see the extent of the country that it covers these.
2834 In these vulnerable areas, farmers, owners of dirt roads and
2835 operators of material storage and handling equipment will
2836 have few, if any, reasonable options to reduce emissions.
2837 Employment and businesses generating fugitive crustal dust
2838 will be impacted negatively. This impact would occur despite
2839 the conclusion in the policy assessment that the current
2840 federal standard can reasonably be judged to provide
2841 sufficient public health protection.

2842 Given the choice between the current and the potential
2843 new federal standards, we have consistently supported
2844 retention of the current standard. In that respect, we are
2845 encouraged by the Administrator's recent letter indicating
2846 that EPA will propose to retain the current standard.
2847 However, the reasons I have discussed, we believe that State
2848 and local regulation is a much more efficient and effective
2849 means of protecting public health against dust emissions that
2850 have a very localized impact. Accordingly, we strongly

2851 support H.R. 1633 and we urge the subcommittee to adopt it.

2852 I would be glad to answer any questions.

2853 [The prepared statement of Mr. Blase follows:]

2854 ***** INSERT 7 *****

|

2855 Mr. {Whitfield.} Thank you, Mr. Blase.

2856 Dr. von Wachter, you are recognized for 5 minutes.

|
2857 ^STATEMENT OF TILL VON WACHTER

2858 } Mr. {von Wachter.} Thank you, Chairman Whitfield,
2859 Ranking Member Rush and members of the subcommittee. It is a
2860 great honor to be with you today.

2861 Existing evidence suggests that air regulation provides
2862 important benefits in terms of improved air quality, improved
2863 health outcomes and improved housing values. However, it is
2864 also widely acknowledged that air regulation carries
2865 potential cost in terms of lower employment and lower
2866 productivity in regulated sectors. In my testimony, I will
2867 focus on current estimates of these costs and in particular
2868 on the costs for those workers most affected by the
2869 regulation, which are workers displaced when they are
2870 previously stable jobs.

2871 So current best estimates of the effect of the Clean Air
2872 Act suggest that the economic costs for workers present in
2873 regulated sectors at the time of regulation are non-
2874 negligible. Existing research has shown that employment and
2875 productivity in regulated sectors declines, at least in the
2876 short run. In addition, there are large and persistent wage
2877 reductions for workers induced to leave regulated firms,
2878 especially those who end up working in a different sector.

2879 Whether the costs of air regulation are of the same
2880 order of magnitude as the benefits in terms of improved
2881 health or housing values is likely to depend on the
2882 regulation and the environment which takes place. So for
2883 example, the most comprehensive study of the effects of the
2884 1990 Clean Air Act Amendment suggests that there was a loss
2885 in wages over the next 10 years of workers who went through
2886 nonattainment of about \$9 billion. Now, that is relative to
2887 the estimated benefits of the 1990 Clean Air Act Amendments.
2888 These losses appear to be temporary.

2889 However, it is important to keep in mind that the 1990
2890 Clean Air Act Amendments may have represented a best-case
2891 scenario. Why would that be? Well, this is because the
2892 amendments came into force not long before the high-pressure
2893 labor market in the mid to late 1990s, and this matters,
2894 because the cost of regulation in terms of lost wages and
2895 employment tends to mostly accrue to workers who are actually
2896 displaced due to the regulations, so it is job losers that
2897 lose their jobs as a consequence of regulation who bear most
2898 of the costs and job losses, especially for job losses for
2899 workers who had found a stable job at a good, stable firm can
2900 lead to very long-lasting large earnings losses. These
2901 earnings losses can last up to 10 to 15 to 20 years, and job
2902 loss is also followed by extended periods of job instability

2903 and earnings instability, and during these periods, job
2904 losers can experience decline in health. For example, in
2905 severe downturns, these health declines can lead to
2906 significant reduction in life expectancy over the next 20 or
2907 30 years after a job loss.

2908 The consequences of job loss are also felt by workers'
2909 children, who can suffer from the consequences even as adults
2910 and by their families, and job losses have also been
2911 associated with a higher rate of entry into potentially
2912 costly public programs such as Social Security disability
2913 insurance or early claiming of retirement benefits.

2914 The earnings costs of job displacement, and this is
2915 important, has found to be substantially higher in recessions
2916 than in booms. While we know that even displacement in good
2917 economic periods can lead to lasting earnings losses, the one
2918 exception is the mid to late 1990s where even job losers tend
2919 to recover a big chunk of their earnings losses. So workers
2920 displaced from the firms as a consequences of the 1990 Clean
2921 Air Act Amendments were placed in an ideal case scenario
2922 because a few years down the road a very high-pressure
2923 economy pushed up their earnings.

2924 To conclude, while many workers affected by air
2925 regulations are likely to be sufficient mobile to find a new
2926 job without major losses in employment and warnings, a subset

2927 of workers induced to move from their job due to the
2928 regulation either voluntarily or by layoff are at risk of
2929 experiencing quite large and lasting losses of earnings.
2930 Existing research suggests that these earning losses may be
2931 substantially larger in difficult economic environments.

2932 Based on these findings, the economic costs of air
2933 regulations are likely to depend very much on the economic
2934 circumstances in which the regulation is enacted. Hence, a
2935 case-by-case assessment of these costs and their dependence
2936 on the economic environment, the type of regulation and the
2937 type of workers affected are important aspects when
2938 considering the net gain of air regulation.

2939 Now, since I have a few seconds left, let me say, the
2940 results I quoted from the scientific studies mainly pertain
2941 to any reason the county could go into nonattainment that
2942 includes the PM10 standard, but it is not focused on this
2943 like PM3 to PM10 thus it could be due to coarse particulate
2944 matter. It could be just due to fine particulate matter or
2945 any other of the other criteria.

2946 Now, the question you are asking, namely, has coarse
2947 particulate matter differential effect in rural area that are
2948 engaging in agricultural production or where there is a power
2949 plant or mining as opposed to urban area is a very important
2950 question that academics potentially can answer, but it is a

2951 very difficult question that requires, as you can imagine, a
2952 very large amount of data. So this is sort of a call in my
2953 last seconds to provide this detailed amount of information
2954 so we can actually answer that important question you were
2955 asking.

2956 [The prepared statement of Mr. von Wachter follows:]

2957 ***** INSERT 8 *****

- |
- 2958 Mr. {Whitfield.} Thank you, Dr. von Wachter.
- 2959 Mr. Walke, you are recognized for 5 minutes.

|
2960 ^STATEMENT OF JOHN WALKE

2961 } Mr. {Walke.} Thank you, Mr. Chairman and members of the
2962 subcommittee. My name is John Walke and I am Clean Air
2963 Director for the Natural Resources Defense Council.

2964 As the hearing today has shown, H.R. 1633 is premised on
2965 a problem that does not exist, that is, nonexistent EPA
2966 limits on farm dust. However, the devilish details of this
2967 poorly drafted bill actually create more real problems than
2968 the imaginary problems the bill purports to solve.

2969 The bill is sweepingly overbroad and it creates numerous
2970 damaging consequences that appear to be unintended but that
2971 would in fact harm Americans. The result would be increases
2972 in harmful soot pollution, not just coarse particulate matter
2973 but deadly fine particulate matter, and across the country,
2974 not just in rural America but urban and metropolitan areas
2975 too. The legislation inexplicably weakens, eliminates or
2976 blocks federal Clean Air Act authority over overwhelmingly
2977 industrial pollution from power plant, manufacturing
2978 facilities, mines and the like, again as a result of very
2979 overbroad and poor drafting.

2980 Before you consider voting for a bill under the
2981 misconception that you are just addressing so-called farm

2982 dust, I urge your staff to examine closely the testimony by
2983 Assistant Administrator McCarthy and my own testimony to see
2984 whether you find fault with any of this legal analysis or
2985 factual implications of the bill. I will note that none of
2986 the other witnesses here today have contradicted those legal
2987 interpretations in their written testimony.

2988 Finally, I urge your attention to a careful reading of
2989 the written testimony of most of the majority witnesses and
2990 Representative Noem's opening statement. Each time that
2991 testimony complains of existing regulations of farm dust,
2992 they are talking about State regulation, not EPA regulation,
2993 for example, in Arizona or Illinois. Isn't it paradoxical
2994 then that this bill does not eliminate State regulation of
2995 farm dust or its monitoring? By the same token, some have
2996 criticized the temporary relief provided by Administrator
2997 Jackson's pledge yet this bill provides a 1-year period of
2998 relief whereas Administrator Jackson's pledge provides a 5-
2999 year period of relief, equally paradoxical.

3000 H.R. 1633 has been presented under the legislation guise
3001 of blocking nonexistent and unplanned EPA regulations of farm
3002 dust. I invite any witness or member to identify an EPA
3003 regulation in the Code of Federal Regulations where EPA
3004 imposes limits on farm dust. There are none.

3005 Since Mr. Terry, who is not with us now, mentioned NRDC

3006 earlier, I invite him or any other member to identify any
3007 statutory authority to compel EPA to impose limits on farm
3008 dust. There is no such authority from me or any other
3009 environmental group to invoke.

3010 Finally, I invite any member to identify any job in
3011 America that has been eliminated due to EPA limits on farm
3012 dust. There is none.

3013 If Congress truly wants to address so-called farm dust
3014 with a simple bill, all it would take is a single sentence
3015 that says EPA shall not limit farm dust if States are doing
3016 so already yet this legislation does far more and far worse.
3017 As Mr. Pompeo correctly reads the bill, it removes federal
3018 Clean Air Act over deadly soot pollution from power plants,
3019 mines and the like if States if doing so already. Mr.
3020 Griffith does not read the bill that way, and I think it
3021 creates some genuine confusion about what the bill does, but
3022 Mr. Griffith does helpfully start to put his finger on things
3023 by pointing us to page 3 in line 15 of the bill where you
3024 could at least begin to address some of these problems in
3025 overdrafting with the addition of the word ``and.''' However,
3026 I would like to note that this would still allow the
3027 exemption of pollution if an activity typically occurs in a
3028 rural area. As Mr. Waxman said, 70 percent of power plants
3029 do so. I don't think that is what the committee intends. By

3030 the same token, it would allow the exemption of pollution if
3031 it is windblown. I hope that we can agree that all pollution
3032 is windblown, and we don't want to eliminate federal
3033 regulation by virtue of that fact.

3034 Section 3 really is the most problematic feature of the
3035 bill. I think my written testimony and Assistant
3036 Administrator McCarthy's testimony covers that, so I am not
3037 going to repeat that now. But I do have to say that this
3038 bill does produce what appear to be unintended consequences
3039 that I think could be corrected but not based upon the
3040 existing structure of the bill. I notice that elsewhere in
3041 the House this week the Judiciary Committee is considering
3042 the REINS Act, which purports to address and rein in
3043 excessive delegation of federal authority to federal
3044 agencies, and yet again, paradoxically, H.R. 1633 engages in
3045 excessive delegation of sweeping and vague authorities to
3046 deregulate industrial pollution across America. I don't
3047 think that is what the bill intends to do, and I would urge
3048 you not to pass H.R. 1633 in its present form. Thank you.

3049 [The prepared statement of Mr. Walke follows:]

3050 ***** INSERT 9 *****

|
3051 Mr. {Whitfield.} Thank you.

3052 Dr. Wellenius, you are recognized for 5 minutes.

|
3053 ^STATEMENT OF GREGORY WELLENIUS

3054 } Mr. {Wellenius.} Thank you, Mr. Chairman. Members of
3055 the committee, thank you for the opportunity to testify
3056 today. My name is Dr. Gregory Wellenius. I am Assistant
3057 Professor of Epidemiology at Brown University.

3058 I earned my doctorate in environmental health and
3059 epidemiology from the Harvard School of Public Health. I
3060 previously served on the faculty at Harvard Medical School.
3061 I have been conducting research on the health effects of air
3062 pollution for more than 10 years. I have authored or
3063 coauthored more than a dozen original studies in this area
3064 and contributed as an author for the EPA's 2009 Integrated
3065 Science Assessment for Particulate Matter. My research has
3066 focused on the effects of ambient air pollutants on
3067 cardiovascular disease, and it is my pleasure to provide
3068 testimony in this area today.

3069 There is a broad consensus in the scientific and medical
3070 communities that ambient particles are harmful to human
3071 health. For example, after reviewing the scientific
3072 evidence, the American Heart Association recently stated that
3073 exposure to fine particles, or PM2.5, is ``a modifiable
3074 factor that contributes to cardiovascular morbidity and

3075 mortality.''

3076 The external panel of independent scientists that make
3077 up the Clean Air Scientific Advisory Committee, or CASAC, and
3078 EPA scientists concluded that a causal relationship exists
3079 between ambient fine particles and both mortality and
3080 cardiovascular effects and a likely causal relationship
3081 between ambient fine particles and respiratory effects. This
3082 conclusion has been endorsed by a number of scientific
3083 organizations including the World Health Organization, the
3084 National Research Council, the American Medical Association,
3085 the American Lung Association, and the American Thoracic
3086 Society, to name a few.

3087 As has been pointed out, the coarse and fine fractions
3088 of particulate matter differ in their size, sources and
3089 composition. In my written testimony, I provide further
3090 details regarding the well-established health effects of
3091 ambient fine particles. While fewer studies have looked
3092 specifically at the health effects of coarse particles, the
3093 existing evidence suggests that these particles can also be
3094 harmful to people's health.

3095 In the 2009 Integrated Science Assessment for
3096 Particulate Matter, CASAC and EPA scientists concluded that
3097 the available evidence is suggestive for a causal
3098 relationship between coarse particles and mortality,

3099 cardiovascular effects and respiratory effects. The
3100 available science indeed supports an association between
3101 coarse particles and cardiovascular hospital admissions. For
3102 example, a recent study in 112 U.S. cities found that coarse
3103 particles were linked with higher risk of premature death
3104 from all causes, stroke and respiratory causes, even after
3105 accounting for levels of fine particles. Taken together, the
3106 existing evidence suggests that exposure to higher levels of
3107 coarse particles may increase the risk of death,
3108 cardiovascular hospitalization and respiratory effects.

3109 Now, most epidemiologic studies on coarse particles have
3110 been conducted in urban settings. However, agricultural dust
3111 can also be harmful to people. Field workers exposed to
3112 minimal dust from agricultural sources experience more acute
3113 and chronic bronchitis, chronic obstructive airway disease
3114 and interstitial lung disease. Agricultural workers exposed
3115 to organic dust have been found to have a higher risk of
3116 allergic reactions, asthma, hypersensitivity pneumonitis and
3117 organic dust toxic syndrome. A studying examining the lungs
3118 of California farm workers found that their bronchioles had
3119 accumulation of dust particles and thickening and
3120 inflammation in the respiratory tissues.

3121 Sandstorms and other dust events typically increase the
3122 concentration of coarse particles much more than fine

3123 particles. Studying these events provides information on the
3124 potential health effects of coarse particles of non-urban
3125 origin. For example, Asian dust storms in Taipei, Taiwan,
3126 have been associated with increased rates of hospital visits
3127 for ischemic heart disease such as heart attacks. Other
3128 studies have linked dust events in Spain and Cyprus with
3129 increased risk of hospitalization or death. These studies
3130 add to the evidence of health effects of coarse particles and
3131 highlight that even coarse particles from nonurban
3132 environments can have important health effects.

3133 In conclusion, Congress built into the Clean Air Act an
3134 orderly process for the regular review of the scientific
3135 evidence on health effects of air pollution. This process
3136 includes multiple rounds of scientific peer review including
3137 by CASAC and other scientists and the public. I strongly
3138 urge you to preserve the authority of the EPA to periodically
3139 review the available scientific evidence and when appropriate
3140 update the air quality standards including for PM10 and
3141 coarse particles. This process is essential if we are to
3142 adequately protect the public's health.

3143 I thank you for your time and would be happy to answer
3144 any questions.

3145 [The prepared statement of Mr. Wellenius follows:]

3146 ***** INSERT 10 *****

|
3147 Mr. {Whitfield.} Thank you very much for your
3148 testimony.

3149 I will recognize myself for 5 minutes of questions. Mr.
3150 Walke, you heard me in the very beginning talk about this
3151 concern about the lawsuits being filed and so forth, and has
3152 the Natural Resources Defense Council ever sued EPA over the
3153 Clean Air Act?

3154 Mr. {Walke.} Yes, sir, Mr. Chairman, we have.

3155 Mr. {Whitfield.} Do you know how many times?

3156 Mr. {Walke.} You probably do if you have researched the
3157 question. I have not, though, sir.

3158 Mr. {Whitfield.} Well, I haven't either but--

3159 Mr. {Walke.} No, I don't know.

3160 Mr. {Whitfield.} And have you all been reimbursed for
3161 legal fees?

3162 Mr. {Walke.} When we win, yes.

3163 Mr. {Whitfield.} Would you provide us with the number
3164 of times that you all have filed suits against EPA and the
3165 number of dollar value of the reimbursement for the legal
3166 fees?

3167 Mr. {Walke.} I will do so the best of my ability. NRDC
3168 was formed in 1970 or 1971, so--

3169 Mr. {Whitfield.} Well, let us just say within the last

3170 10 years.

3171 Mr. {Walke.} Okay.

3172 Mr. {Shimkus.} Mr. Chairman, will you yield?

3173 Mr. {Whitfield.} Yes.

3174 Mr. {Shimkus.} It would also be good to find out what
3175 was their compensation out of the judgment fund that paid
3176 their attorney fees.

3177 Mr. {Whitfield.} Yes, the amount of the legal fee
3178 reimbursed. It comes out of judgment fund, though, doesn't
3179 it, or the agency funds?

3180 Mr. {Walke.} Sure. I mean, Mr. Chairman, I would just
3181 say that the law only provides our ability to go to court and
3182 regain fees when the government is breaking the law.

3183 Mr. {Whitfield.} No, I understand.

3184 Mr. {Shimkus.} Mr. Chairman, I just think we should
3185 have those. For whatever reason, we want those dollar
3186 amounts.

3187 Mr. {Whitfield.} Yes. We won't get into a discussion.

3188 Mr. {Rush.} Mr. Chairman?

3189 Mr. {Whitfield.} Yes?

3190 Mr. {Rush.} I would also like, if I might, ask the
3191 gentleman if he would include what his win-loss ratio is, the
3192 number of times he sued, the number of time he lost and the
3193 number of times he won against the EPA.

3194 Mr. {Whitfield.} You want to know how many he won and
3195 how many he lost?

3196 Mr. {Rush.} Yes.

3197 Mr. {Whitfield.} He wants to know how many you have won
3198 and how many you have lost.

3199 Okay. Anyway, so if you would--the number of lawsuits
3200 in the last 10 years, the amount of money that you have been
3201 reimbursed in legal fees when you have won, and how many
3202 cases you consider you won and how many you consider you
3203 lost.

3204 Mr. {Walke.} Okay. It might take some time to do that,
3205 sir, so I will just ask your indulgence.

3206 Mr. {Whitfield.} Yes, sir.

3207 Mr. {Rush.} Is it okay if we give him 5 years?

3208 Mr. {Whitfield.} You and I may not be here in 5 years.
3209 Thank you so much.

3210 Mr. Foglesong, now, you represent the National
3211 Cattlemen's Association. Is that correct?

3212 Mr. {Foglesong.} The National Cattlemen's Beef
3213 Association, yes.

3214 Mr. {Whitfield.} And are there cattle producers that
3215 are struggling with meeting the current coarse particulate
3216 matter standard?

3217 Mr. {Foglesong.} You know, in particular, there are

3218 some of those, you know, in the Southwest. Arizona is a good
3219 example of that, you know, where they have got feed yards,
3220 and the expense that they incur to try to complex is just
3221 enough to break them. They just can't keep it going. But I
3222 think--and that what sticks in your mind, but understand that
3223 it can happen anyplace in the country. We had a map up there
3224 earlier that shows those places that are at risk, but I am
3225 from Illinois and we get 40 inches of rainfall but I will
3226 guarantee you that last week I was in that position because
3227 it hasn't rained there in 2 months and the wind was blowing
3228 and we are all doing work. So I think that is one of the
3229 things that is a challenge. Our outfit in Georgia, it was
3230 the same thing. We had the worst drought there in 100 years
3231 this spring. Driving up and down our country dirt roads,
3232 every one of them was out of compliance. So all across the
3233 country you run into that, yes, sir.

3234 Mr. {Whitfield.} And there was great concern about the
3235 strengthening of this emission standard on course particulate
3236 matter because that would have changed the standard around
3237 the country and then there would have been areas in
3238 nonattainment and then there would be more enforcement
3239 mechanisms, and Mr. Rogers, you have experienced that
3240 personally, it sounds like. Is that correct?

3241 Mr. {Rogers.} Yes, sir, that is correct. We farm in

3242 Maricopa County in a nonattainment area.

3243 Mr. {Whitfield.} So what enforcement mechanisms must
3244 you comply with as a result of being in a nonattainment area
3245 in this coarse particulate matter issue?

3246 Mr. {Rogers.} Agriculture in Maricopa County was deemed
3247 through modeling to be about 3 percent of the problem of the
3248 Maricopa County area, which is probably a 75-square-mile
3249 county. It is a very large county. We only have 15 counties
3250 in Arizona. And so we were deemed to be 3 percent. You
3251 know, you come to the table with EPA being the 500-pound
3252 gorilla because what they hold over the State's head is the
3253 federal tax dollars, the highway dollars coming back to the
3254 State, so there is motivation through your local government
3255 to come to the table and participate and so that is what we
3256 have done. We have had to come to the table and design a
3257 program with EPA looking over our shoulder to make sure that
3258 every step of the way they agree with what you are doing to
3259 put together your SIP.

3260 Mr. {Whitfield.} And could you just quickly go through
3261 a couple of--

3262 Mr. {Rogers.} Sure. We developed a best management
3263 practice program that is mandatory. Farmers do get to choose
3264 between practices under three different categories, diligent
3265 harvesting, cropland, non-cropland, so every part of my

3266 operation I have to be doing something and so it could
3267 include watering roads, it could include parking your
3268 tractors during high wind events where the wind gets to 26
3269 miles an hour, speed limits on your farm roads where you have
3270 to regulate your own roads that you are in control of,
3271 waiting until there is moisture in the soil before you do
3272 tillage, waiting for rain to bring that moisture, or if you
3273 choose to irrigate, that is your option as well, but there is
3274 probably 40 best management practices that we had to come up
3275 with to help agriculture come to the table, to keep EPA happy
3276 and to keep our State happy because at 3 percent of the
3277 problem, they determined that we need to participate.

3278 We do have a county just south of Phoenix, Pinal County,
3279 which has been recently designated as nonattainment. That is
3280 where the livestock operation is that we talked about before.
3281 That particular livestock operation has taken it upon
3282 themselves to figure out what they can do to get into
3283 attainment. It takes 4 gallons of water per day per cow to
3284 meet the standard, and it is going to be very costly for them
3285 to do that.

3286 Mr. {Whitfield.} Forty gallons per cow per day?

3287 Mr. {Rogers.} Four gallons.

3288 Mr. {Whitfield.} Four?

3289 Mr. {Rogers.} Four gallons, but it is a large operation

3290 so it is going to cost a lot of money, and with four gallons
3291 per day, they were able to bring that under control and so
3292 they are going to--as we move forward with bringing livestock
3293 into our program, they are actually working with EPA and the
3294 State and that will probably be a mandatory number.

3295 Mr. {Whitfield.} Mr. Rush, you are recognized for 5
3296 minutes.

3297 Mr. {Rush.} Mr. Walke, in your written testimony, you
3298 take issue with using the phrase ``farm dust'' as H.R. 1633
3299 is named and say this bill is really an attempt to force EPA
3300 to ignore harmful soot pollution emitted overwhelmingly by
3301 industrial pollutants like coal-burning power plants,
3302 incinerators, chemical plants and diesel vehicles. Can you
3303 explain why you view this bill as a cover for abolishing the
3304 review of health standards for industrial pollution?

3305 Mr. {Walke.} Certainly, Mr. Rush. It is notable that
3306 the word ``farm dust'' doesn't actually appear in the bill
3307 other than its title. The operative legal term of the bill
3308 in its most harmful bill is in section 3 in the definition of
3309 nuisance dust, and it is simple so I will just tell you the
3310 highlights. Nuisance dust means particulate matter from
3311 activities typically conducted in rural areas or windblown
3312 dust. Now, I just selected out some of those from a string.
3313 You know, as I showed in my testimony, activities typically

3314 conducted in rural areas include power plants, incinerators
3315 and manufacturing facilities and diesel vehicles, and, you
3316 know, by this very short, crisp and overbroad definition, all
3317 of those activities will be defined as particulate matter
3318 that could not be regulated by the federal government if the
3319 States are doing so, and the States are doing so, so this
3320 bill would deregulate from federal Clean Air Act authority
3321 those activities. That has sweeping, sweeping implications
3322 that certainly aren't suggested by the farm dust title and
3323 don't even appear to be intended by some of the members from
3324 their statements here this morning.

3325 Mr. {Rush.} Thank you very much.

3326 Mr. Chairman, earlier there was a line of questioning
3327 that I thought was quite interesting, and it covered areas of
3328 legal fees and the amount of money recouped through legal
3329 representation, and in fairness and in full disclosure, I
3330 want to ask the same question of all the members of the
3331 panel. Please, if you will, provide the lawsuits brought
3332 against the EPA by the American Farm Bureau Federation, the
3333 National Stone, Sand and Gravel Association and the National
3334 Cattlemen's Beef Association, and the fees that were obtained
3335 as a result of those legal actions. And also, I understand
3336 that Mr. Blase is being paid by the Coarse Particulate Matter
3337 Coalition, and would you provide to the committee the full

3338 amount that you are being paid to represent them?

3339 Mr. Chairman, I think that that is for full disclosure,
3340 and would you please provide those amounts for the record?

3341 Mr. {Olson.} [Presiding] Without objection, so
3342 ordered.

3343 Mr. {Foglesong.} Sir, point of clarification. Do you
3344 want to know also what we spent?

3345 Mr. {Rush.} No, I want to know the fees that you were
3346 provided, and I think that would cover the same territory
3347 that was requested of Mr. Walke. We just want to make sure
3348 that there is full disclosure and there is fair disclosure in
3349 terms of fees that organizations are able to--or
3350 remunerations from the EPA and the matter of lawsuits.

3351 Dr. {Burgess.} Will the gentleman yield?

3352 Mr. {Rush.} I don't know if I have any time.

3353 Dr. {Burgess.} Well, I would be interested in what they
3354 spent. If we are going to compile that information, let us
3355 be complete.

3356 Mr. {Rush.} Well--

3357 Dr. {Burgess.} I would be interested in what you spent.
3358 I will add that to Mr. Rush's request.

3359 Mr. {Rush.} And so we will also add that to Mr. Walke's
3360 request, what is the amount that your organization spent, the
3361 amount that you spent in terms of court action.

3362 Mr. {Walke.} On the litigation?

3363 Mr. {Rush.} Yes, on the litigation.

3364 Mr. {Olson.} Everybody follow that? Without objection,
3365 so ordered.

3366 Mr. {Rush.} I yield back.

3367 Mr. {Olson.} The gentleman's time is expired, and the
3368 chair recognizes the gentleman from Illinois, Mr. Shimkus.

3369 Mr. {Shimkus.} Thank you. It is great to have the
3370 panel.

3371 Can anyone define for me what ``at this time'' means?

3372 Mr. Foglesong, do you know what ``at this time'' means?

3373 Mr. {Foglesong.} At this time.

3374 Mr. {Shimkus.} Okay. I am making my point. The point
3375 is, when the Assistant Administrator was here, in her
3376 testimony she said--I read the letter and of course
3377 Administrator Jackson said ``I am prepared to propose a
3378 retention with no revision of the current PM10 standard form
3379 when it is sent to OMB for interagency review,'' and her
3380 response was, we are going to abide by this at this time.
3381 ``At this time'' means today, right? And there could be
3382 tomorrow would not be at this time. Tomorrow would be
3383 tomorrow. Isn't that, for Mr. Foglesong and Mr. Rogers, Mr.
3384 Lien, isn't that part of the risk, the uncertainty that you
3385 are dealing with?

3386 Mr. {Rogers.} That is completely part of the risk, and
3387 as the monitoring network is developed across this country
3388 where there may not be that intense monitoring network today,
3389 as those monitors are enhanced, that is where ``at this
3390 time'' comes into play. There may be a speed limit across
3391 this country but if there is not an officer there to pull you
3392 over, he doesn't know if you went five over or not. It is a
3393 monitoring issue.

3394 Mr. {Shimkus.} And if you could pull up Mr. Blase's map
3395 on the proposal? Half of the country under a proposed--that
3396 is additional risk to agricultural America.

3397 Everybody knows in this country jobs are impacted, and
3398 one of the major impacts is risk, is uncertainty. That is
3399 why we are doing this today, to at least give the agriculture
3400 sector some certainty.

3401 Now, Mr. Lien, you are from the sand and gravel. Two
3402 weeks ago, I read, you know, the only sector in this country
3403 that created jobs over the last quarter? You should.

3404 Mr. {Lien.} I would say that--

3405 Mr. {Shimkus.} It was the mining industry.

3406 Mr. {Lien.} The mining industry.

3407 Mr. {Shimkus.} The mining industry was the only sector
3408 in this country that created jobs, and just yesterday,
3409 Caterpillar gave its quarterly report, and Caterpillar did

3410 well. You know what Caterpillar sells? Mining equipment.
3411 So there is a debate on rules and regs and the cost of doing
3412 business based upon uncertainty and job creation, and all
3413 this is about is providing certainty. I would agree with Mr.
3414 Hurt that we can-- we are legislators. We sure can legislate
3415 when it has harm to job creation in parts of the country. If
3416 she would all pull up my harvester cutting beans? Those are
3417 coarse particulates. They are probably bigger than the PM10.
3418 Does anyone know how far those coarse particulates travel?

3419 Mr. {Rogers.} It depends on if there is wind activity
3420 or not, but those coarse particulates that you can see
3421 normally will settle back down within several hundred feet.

3422 Mr. {Shimkus.} And that is all part of the rural debate
3423 because there is not people around. In rural America, it is
3424 not like a city. It is not a metropolitan area. In my new
3425 Congressional district, parts of 33 counties, I think my
3426 biggest community is going to have 33,000 people in it. It
3427 is one-third of the State of Illinois. So if we are farming
3428 in my district, which we do, and we are cutting beans, those
3429 coarse particulates are going to fall to the ground way
3430 before they reach any exposure, especially with the air
3431 conditioned cabs these guys have now, so even the person on
3432 the harvester is not going to be affected.

3433 Let me go to Mr. Walke real quick. Administrator

3434 Jackson in essence said that the PM10 standard really by this
3435 protects human health, the standard today. That is why she
3436 is not going to submit to OMB. Is that the NRDC's position?

3437 Mr. {Walke.} We are prepared to accept that when she
3438 proposes the rulemaking to not change the standard if--

3439 Mr. {Shimkus.} So your testimony is that you will not
3440 sue if this continues to be promulgated and the
3441 Administration keeps this as the standard?

3442 Mr. {Walke.} Mr. Shimkus, that is the first time that
3443 word has come out, and it was your mouth, not mine.

3444 Mr. {Shimkus.} At this time?

3445 Mr. {Walke.} At this time today now, I am not going to
3446 discuss litigation before I--

3447 Mr. {Shimkus.} So you might bring this.

3448 Mr. {Walke.} Mr. Shimkus, if you want--if this is going
3449 to be a--

3450 Mr. {Shimkus.} No, I am just asking--

3451 Mr. {Walke.} Let us talk about speculation--

3452 Mr. {Shimkus.} Reclaiming my time. Mr. Walke, you are
3453 very cavalier with the lives of rural America and
3454 agricultural America saying in respect to the testimony
3455 received that the PM10 standard affects their jobs and their
3456 economy so I am just addressing the point that the NRDC is
3457 not on record as saying whether they will or will not--

3458 Mr. {Walke.} If I may, Mr. Shimkus, this bill removes
3459 federal Clean Air Act authority--

3460 Mr. {Shimkus.} And I yield back my time.

3461 Mr. {Walke.} --over 80 percent of America. Eighty
3462 percent of America has federal--

3463 Mr. {Shimkus.} Mr. Chairman, I yield back my time.

3464 Mr. {Whitfield.} The gentleman yields back his time.

3465 At this time I recognize the--

3466 Mr. {Rush.} Mr. Chairman, Mr. Chairman, Mr. Chairman.

3467 Mr. {Whitfield.} For what purpose does Mr. Rush--

3468 Mr. {Rush.} Regular order, Mr. Chairman.

3469 Mr. {Whitfield.} Regular order?

3470 Mr. {Rush.} Regular order. Mr. Shimkus asked the
3471 gentleman a question.

3472 Mr. {Shimkus.} I did not, Mr. Rush.

3473 Mr. {Rush.} Will the reporter please read the last
3474 question that Mr. Shimkus asked?

3475 Mr. {Whitfield.} Can we just stipulate that Mr. Shimkus
3476 did ask a question--

3477 Mr. {Rush.} But he--

3478 Mr. {Whitfield.} --his time expired and then he decided
3479 he didn't want to--

3480 Mr. {Rush.} No. He cut him off in the middle of--

3481 Mr. {Shimkus.} No, that is not true.

3482 Mr. {Rush.} He cut him off in the middle of the answer.

3483 Mr. {Shimkus.} That is not true.

3484 Mr. {Rush.} Will you please give the witness the
3485 courtesy of answering the question? We do that as a
3486 formality in this subcommittee.

3487 Dr. {Burgess.} Mr. Chairman, if you will yield to me, I
3488 will yield the witness 30 seconds to respond.

3489 Mr. {Whitfield.} Well, Dr. Burgess, I am going to
3490 recognize you for 5 minutes for questions and you can do what
3491 you want to do with it.

3492 Dr. {Burgess.} The committee has a long history of
3493 treating its witnesses well. I want to recognize the
3494 gentleman for 30 seconds to respond.

3495 Mr. {Walke.} Dr. Burgess, thank you for your
3496 professional courtesy. I will only take 30 seconds of your 5
3497 minutes.

3498 The point I wanted to make in responding to Mr. Shimkus
3499 was that in contrast to imaginary problems or imaginary
3500 lawsuits that no one has any intention of bringing, this
3501 bill, if adopted into law, would remove federal Clean Air Act
3502 authority over 80 percent of America, which is defined as
3503 rural by any number of government metrics. That has nothing
3504 to do with farm dust but it does have to do with deregulating
3505 industrial pollution from power plant that causes premature

3506 deaths and heart attacks, and that is the only thing I was
3507 trying to say.

3508 Dr. {Burgess.} Okay. Reclaiming my time.

3509 Can we go back to that map that had half the country in
3510 blue? Can we recall that slide? You know, I listened to the
3511 testimony of Dr. Wellenius, and in your written testimony,
3512 you talked about most existing epidemiologic studies in
3513 coarse particles have been conducted in urban settings. Most
3514 of the urban settings actually, though are removed from that
3515 map that is covered by the footprint of the coloration. Is
3516 that correct?

3517 Mr. {Wellenius.} So we do the studies where we have
3518 monitor data existing primarily and the EPA sites those
3519 monitors. From the research side, we don't have a say as to
3520 where those monitors are sited. So there are parts of the
3521 country that--

3522 Dr. {Burgess.} The real hot spots for cardiovascular
3523 disease, lung disease, interstitial lung disease, industrial
3524 pneumoconiosis, if you were to color those in on the maps,
3525 they likely would be for the most part outside the blue
3526 footprint. Is that not correct?

3527 Mr. {Wellenius.} So there are several areas that are in
3528 blue there that do have high air pollution. There are parts
3529 of Texas, parts of Arizona, parts of southern California that

3530 do have high air pollution.

3531 Dr. {Burgess.} Texas is a huge State. Houston has a
3532 problem. It is miniscule. It can be ignored most of the
3533 time as we in the Dallas-Fort Worth area know well.

3534 But I just would make the point, is there a cost-benefit
3535 analysis you have done? I mean, you want to implement
3536 something on vast swaths of relatively low density
3537 population. Have you done a cost-benefit analysis on how
3538 this would affect people's livelihoods and the status of
3539 people overall, the overall health of people, and how can we
3540 be sure sitting here on this committee that you are not
3541 double counting some of these people that are saved in your
3542 studies? How can we be sure you are not double counting
3543 those individuals?

3544 Mr. {Wellenius.} Right. So--

3545 Dr. {Burgess.} So there are people that might have been
3546 saved anyway by the effects of the Clean Air Act where this
3547 additional regulation would have only miniscule positive or
3548 negative effect.

3549 Mr. {Wellenius.} Yes. Thank you. You asked me first
3550 the question of have I done a cost-benefit analysis, and the
3551 response is, I have not. The scientific committee is large
3552 and there are those of us that deal with the health effects
3553 of air pollution, doing the health side, and there are people

3554 in the cost-benefit business that certainly take those
3555 effects that we estimate and also incorporate the costs of
3556 regulation and the costs of lives averted or the
3557 hospitalizations averted. I am not specifically in that
3558 area, so no, I have not conducted that cost-benefit analysis.

3559 Dr. {Burgess.} Okay, so we don't know is the answer to
3560 that question.

3561 Now, Administrator McCarthy had a rather large
3562 compendium of documents next to her as she testified, and
3563 this is described as the Integrated Science Assessment for
3564 Particulate Matter. Are you familiar with this document?

3565 Mr. {Wellenius.} Yes, I am.

3566 Dr. {Burgess.} My read of at least a portion of this is
3567 that there is insufficient evidence to determine that coarse
3568 particulate matter causes health effects. That is written on
3569 page 219, third heading, maybe six lines from the end of the
3570 page: ``To date, a sufficient amount of evidence does not
3571 exist in order to draw conclusions regarding the health
3572 effects and outcomes associated with long-term exposure to
3573 PM10.'' Is that accurate?

3574 Mr. {Wellenius.} That is accurate. For long-term
3575 effects of coarse particles, there is next to no evidence in
3576 support of long-term health effects.

3577 Dr. {Burgess.} Well, and certainly we will stipulate

3578 your credentials and the credentials of everyone at the
3579 witness table today, but one of the tasks that we face is how
3580 do you approach regulation in a way that does not further
3581 cripple the economy, allows witnesses at the other end of the
3582 table to continue their livelihoods and to support their
3583 employees and their families. You know, forgive me, it looks
3584 like we are going on some pretty thin evidence here with some
3585 fairly sweeping regulations, and I guess that is overall what
3586 the concern here is of the committee today, and I think the
3587 reason that Representative Noem brought the legislation
3588 forward.

3589 I thank the gentleman for his indulgence and I will
3590 yield back the balance of my time.

3591 Mr. {Whitfield.} Thank you, Dr. Burgess.

3592 Mr. {Wellenius.} Mr. Chairman?

3593 Mr. {Whitfield.} Yes?

3594 Mr. {Wellenius.} Thank you. So I agree, you do have an
3595 enviable task and one that I am happy you are doing rather
3596 than me in terms of balancing the public health benefit
3597 versus how to impose those regulations in a sensible manner.
3598 You focused on the long-term effects of long-term exposure to
3599 coarse particulate matter. There is evidence on the short-
3600 term exposure that that is associated with increased
3601 hospitalizations, increased premature death. We need more

3602 research for sure but the current evidence as the Integrated
3603 Science Assessment concludes is suggestive of causal
3604 association. Thank you.

3605 Mr. {Whitfield.} Mr. Olson, you are recognized for 5
3606 minutes.

3607 Mr. {Olson.} I thank the chair. More importantly, I
3608 thank the witnesses for your time and expertise today. And I
3609 am from southeast Texas, Sugar Land, Texas. There is no
3610 equal. As you guys know, Texas, all of Texas has suffered an
3611 historic drought, excessive heat, over 100 degrees for almost
3612 the entire month of August in Houston, which is
3613 unprecedented, and wildfires all across our State, and
3614 ranchers and farmers have been disproportionately hit by
3615 these disasters. And the theme of this series of hearings
3616 that this subcommittee and the full committee has had is
3617 about the uncertainty created by the Administration's
3618 regulatory agenda. I want to talk a little bit about that.

3619 I mean, there has been some testimony in the prior panel
3620 and even on this panel about uncertainty and the fact that,
3621 you know, EPA's promise not to revise the standards for 5
3622 years provides more certainly than a law, H.R. 1633, would
3623 provide, and I am curious if some of the panelists honestly
3624 believe that the Executive Branch agency action provides more
3625 certainty than a law passed under our Constitution by

3626 Congress. I am just asking for a simple yes or no answer.

3627 Mr. Foglesong?

3628 Mr. {Foglesong.} I don't believe that is exactly how I
3629 would put that out. We look to you all because we vote you
3630 into Congress and we expect you to look out for us.

3631 Mr. {Olson.} It sounds like Congress over the Executive
3632 Branch agency.

3633 Mr. {Foglesong.} Absolutely.

3634 Mr. {Olson.} Yes, sir.

3635 Mr. {Rogers.} I would agree.

3636 Mr. {Olson.} Yes, sir. Mr. Lien?

3637 Mr. {Lien.} I would agree.

3638 Mr. {Olson.} Thank you, sir.

3639 Mr. {Blase.} I would agree.

3640 Mr. {von Wachter.} Sir, if your question is whether
3641 regulation reduces uncertainty, that is true. Whether
3642 uncertainty has an impact on economic activity, that is from
3643 a scientific point of view an open question.

3644 Mr. {Olson.} My question is, what provides more
3645 uncertainty, Executive Branch agency regulations or
3646 regulations by laws passed by Congress? I mean, which one
3647 provides more certainty? What is the more difficult process,
3648 going through the Constitution or going through the Executive
3649 Branch? I think the answer is the Constitution. Wouldn't

3650 you agree? Yes or no.

3651 Mr. {von Wachter.} I think you are better qualified
3652 than me to answer that question.

3653 Mr. {Olson.} You are an American. You have an opinion.

3654 Mr. Walke?

3655 Mr. {Walke.} You know, as a matter of law, they are
3656 equally lawful. If the legislative period of relief is short
3657 like this one and the administrative period is longer, than
3658 it is the longer period.

3659 Mr. {Olson.} Okay. And Dr. Wellenius?

3660 Mr. {Wellenius.} I have no comment.

3661 Mr. {Olson.} No comment whatsoever? Okay.

3662 My final round of questions is for Mr. Blase. Mr.
3663 Blase, can you give a brief history of the last round of the
3664 PM revision and this one, and specifically, is it possible
3665 for us to be in the exact same position in 5 years with
3666 farmers, ranchers and other rural businesses if the EPA
3667 chooses to lower the standard on dust?

3668 Mr. {Blase.} Oh, yes, absolutely. That is what
3669 happened the last time. It is kind of a complicated thing
3670 and I won't go into all the details, but there has been a
3671 debate over--you know, the current standard for PM10 includes
3672 PM2.5. It includes fine and coarse. So there has been a
3673 debate over whether the fine should just be kicked out and

3674 the coarse PM standard should only be the top 2.5 to 10. I
3675 think my personal view is, that is probably what is going to
3676 happen in the next review. But in the last review, what
3677 happened was, EPA took a stab at doing just that and
3678 regulating true coarse PM. The problem with that was the
3679 concentration limit was way lower than most of us thought we
3680 could meet. Therefore, there was an exemption proposed for
3681 agriculture and mining activities. In the end, EPA threw up
3682 its hands and said we don't know what the numbers should be,
3683 we don't know what the exemptions should be so we are going
3684 to retain the current standard. But yes, the proposal--if
3685 the point is the final rule can look quite different from the
3686 proposal, the last reviews proves that.

3687 Mr. {Olson.} One final question about the rulemaking.
3688 I have introduced a bill, H.R. 1341, which is called the
3689 Establishing Public Account Act. It is very simple. It just
3690 requires the EPA to do some study of the impact of jobs on
3691 regulations and rulemaking, the proposed changes, and it
3692 requires them to do this before the public comment period so
3693 the public will have the opportunity to review what EPA is
3694 proposing. And so I just want to ask all six of you again,
3695 seven actually, just yes or no, do you think that bill will
3696 be something you support? Mr. Foglesong?

3697 Mr. {Foglesong.} Sure.

3698 Mr. {Rogers.} Yes.

3699 Mr. {Lien.} Yes.

3700 Mr. {Blase.} Yes.

3701 Mr. {von Wachter.} That was a bit quick for me, but it
3702 seems that if EPA is supposed to look at both the costs and
3703 benefits of their regulation, that that seems a good idea.

3704 Mr. {Olson.} I will put you down as yes.

3705 Mr. Walke?

3706 Mr. {Walke.} Is that the Regulatory Accountability Act,
3707 Congressman?

3708 Mr. {Olson.} Establishing Public Accountability, H.R.
3709 1341. I can get you a copy of it. But it is very simple,
3710 just the public has the right to know, you know, whether or
3711 not this regulation, this new rulemaking, what the impact is
3712 going to be on American jobs. Either is going to create jobs
3713 or kill jobs, and that is what we need to address here. I
3714 think that is the biggest challenge our country is facing is
3715 the lack of jobs in this recession.

3716 Mr. {Walke.} Well, I would love to read the bill before
3717 answering that question, if I might.

3718 Mr. {Olson.} We will hook you up.

3719 And finally, Dr. Wellenius.

3720 Mr. {Wellenius.} Again, I am here to comment on the
3721 science and the health effects, not on the policy.

3722 Mr. {Olson.} Thank you, sir.

3723 And that is. I yield back my time.

3724 Mr. {Whitfield.} Thank you, Mr. Olson.

3725 Mr. Pompeo, you are recognized for 5 minutes.

3726 Mr. {Pompeo.} Thank you, Mr. Chairman.

3727 Mr. Blase, Mr. Walke said that no one had contradicted
3728 sort of the legal statements that Ms. McCarthy set out, and
3729 you are counsel, so I thought maybe you could help me. He
3730 also made the statement that 80 percent of federal regulatory
3731 would be stripped away by this bill. Would you care to
3732 comment on what you think this legislation would do with
3733 respect to the scope of the EPA's ability to regulate?

3734 Mr. {Blase.} Yes, I think it is a carve-out for crustal
3735 coarse particulate matter and nothing else is involved. I
3736 mean, power plants, tailpipe emissions, it is all fine PM. I
3737 don't believe these changes are necessary. People think
3738 changes are necessity to this legislation to exclude fine PM.
3739 My group would probably support that. But as I read it right
3740 now, I think it is confined to coarse crustal emissions,
3741 which is what is supported by the science and as it should
3742 be.

3743 Mr. {Pompeo.} So your legal analysis is very different
3744 from Mr. Markey's comments, Ms. McCarthy's statements and Mr.
3745 Walke's testimony.

3746 Mr. {Blase.} Very different, yes, sir.

3747 Mr. {Pompeo.} So I have power plants not excluded,
3748 school bus tailpipes, no impacts. This notion of because
3749 they are windblown they will all get caught up in this and we
3750 won't be able to regulate them so they will become law.
3751 Nonsense.

3752 Mr. {Blase.} No, I don't believe it covers those at
3753 all.

3754 Mr. {Pompeo.} Okay. Great. I yield back the balance
3755 of my time.

3756 Mr. {Whitfield.} Thank you, Mr. Pompeo.

3757 Mr. Griffith, you are recognized for 5 minutes.

3758 Mr. {Griffith.} Dr. von Wachter, your testimony
3759 mentioned that those who lose their job can experience health
3760 problems that can lead to significant reductions in life
3761 expectancy. I have been concerned about a number of EPA
3762 regulations related to similar things like what happens when
3763 you raise the cost of electricity and the people my district
3764 can't afford to heat their homes. So I would just ask you in
3765 regard to the job loss and then significant reductions in
3766 life expectancy, can you explain that and tell me what you
3767 mean by that, and can it actually shorten a worker's life?

3768 Mr. {von Wachter.} Absolutely. I would be happy to
3769 clarify. So what we have done, we have looked at workers

3770 displaced in large downsizing Pennsylvania in the early
3771 1980s, and these were workers at, you know, relatively large,
3772 stable firms and stable jobs and they had very long-lasting
3773 earnings losses, and over the next 20 years they also had
3774 increases in mortality rates, and those who had the larger
3775 earnings losses had the higher increases in mortality rates,
3776 and if you add those 20 years up and assumes that the
3777 mortality effect lasts until the end of our lives, which
3778 seems to be a fine assumption because the effects are very
3779 stable, then you get to 1.5-year losses in life expectancy.
3780 So this one-time shock, what seems to be a shock to earnings
3781 but also lifestyle, can have these long-term effects. Now,
3782 Pennsylvania in the early 1980s is a very hard-hit State with
3783 the reduction in steel and mining at that time, so I would
3784 characterize that as worst-case scenario.

3785 Mr. {Griffith.} So what you are saying is, if we are
3786 going to study the health impacts of regulations, we ought to
3787 also look at the unintended consequences if it does have a
3788 downturn in jobs that that could actually negative impact the
3789 health of workers and of a particular community.

3790 Mr. {von Wachter.} Oh, absolutely. So regulations
3791 affecting certain businesses certainly could lead to job
3792 displacement that has been shown to lead to job displacement
3793 and this displacement takes place in a very depressed

3794 economic environment, that they could have large costs with
3795 the affected workers in terms of earnings but also other
3796 outcomes.

3797 Mr. {Whitfield.} Mr. Blase, did you want to respond?

3798 Mr. {Blase.} Yes, I have a brief response to that. Our
3799 coalition has spent some time looking at what is a great
3800 developing body of scientific literature that suggests that
3801 unemployment itself causes adverse health effects, which I
3802 don't think takes an epidemiology study to show for most of
3803 us. However, we have pressed that point with the agency but
3804 have been told repeatedly that they have no legal authority
3805 to consider that aspect. So we will be making the point in
3806 our comments on the upcoming proposal and in other forums,
3807 but as of now, EPA is telling us, you know, the health
3808 effects of unemployment cannot be considered in this
3809 equation.

3810 Mr. {Griffith.} And I know you don't have any study on
3811 it but I think that plays into my fear that when we raise the
3812 cost of goods and services, particularly goods--again, I get
3813 back to heating but also we are talking about these things
3814 that could raise the cost of food products. That makes it
3815 particularly hard on the working poor or the unemployed, and
3816 that too would by common sense seem to have a health impact.
3817 Wouldn't you agree?

3818 Mr. {Blase.} Yes, I would.

3819 Mr. {Griffith.} I thank you very much for being here
3820 and all your testimony, and I appreciate, Mr. Walke, there
3821 may be a way to fix that concern of us although based on the
3822 definitions, I recognize that it may not need fixing. That
3823 being said, Mr. Chairman, I yield back my time.

3824 Mr. {Whitfield.} The gentleman yields back.

3825 Mr. Rush, do you seek recognition?

3826 Mr. {Rush.} Mr. von Wachter and Mr. Blase kind of
3827 touched on something I am interested in. You said
3828 unemployment has health consequences for the unemployed. Is
3829 that correct?

3830 Mr. {von Wachter.} So what we can establish is that the
3831 job loss has an effect on health.

3832 Mr. {Rush.} On health.

3833 Mr. {von Wachter.} Establishing that unemployment has
3834 an effect is very difficult, because once you lose your job
3835 being unemployed is partly a choice of the worker, so it is
3836 not clear what is cause and effect at that point, but job
3837 losses have been shown to have an effect on health in the
3838 short and long run. It is possible--

3839 Mr. {Rush.} Did your study include the chronically
3840 unemployed and the underemployed?

3841 Mr. {von Wachter.} As I said, it is difficult to

3842 establish those effects for those who are chronically
3843 unemployed or currently underemployed just from a statistical
3844 point of view. We don't know what the right comparison group
3845 is. Now, presumably, from what we know, these people are
3846 unlikely to do better but one has to be very careful because
3847 unemployment is itself an outcome. For example, a sick
3848 worker might become unemployed and you don't want to conclude
3849 that unemployment makes you sick, but if you are displaced
3850 from a large downsizing, presumably you were a good worker
3851 and that being displaced from the downsizing doesn't make you
3852 sick, so that is a statement about causality that is easier
3853 to back up.

3854 Mr. {Rush.} I yield back, Mr. Chairman.

3855 Mr. {Whitfield.} Thank you, Mr. Rush, and thank all of
3856 you for your time and giving us your entire testimony as well
3857 as your oral testimony. We look forward to working with all
3858 of you as we move forward, and thank you very much for
3859 attending, and with that, the hearing is concluded and the
3860 record will remain open for 10 days for any additional
3861 materials. Thank you.

3862 [Whereupon, at 1:35 p.m., the Subcommittee was
3863 adjourned.]