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MARKUP OF H.R. 1633, THE FARM DUST REGULATION

PREVENTION ACT OF 2011

THURSDAY, NOVEMBER 3, 2011

House of Representatives,  
Subcommittee on Energy and Power,  
Committee on Energy and Commerce,  
Washington, D.C.

The subcommittee met, pursuant to call, at 11:23 a.m., in Room 2123, Rayburn House Office Building, Hon. Ed Whitfield [chairman of the subcommittee] presiding.

Present: Representatives Whitfield, Sullivan, Shimkus, Walden, Terry, Burgess, Bilbray, Scalise, McMorris Rodgers, Olson, McKinley, Gardner, Pompeo, Griffith, Barton, Upton (ex officio), Rush, Inslee, Castor, Dingell, Markey, Green, Doyle, and Waxman (ex officio).

Staff Present: Mary Neumayr, Senior Energy Counsel; C&T; Ben Lieberman, Counsel, Energy and Power; Heidi King, Chief Economist; Jeff

Mortier, Professional Staff Member; Allison Busbee, Legislative Clerk; Cory Hicks, Policy Coordinator, Energy and Power; Katie Novaria, Legislative Clerk; Phil Barnett, Minority Staff Director; Alexandra Teitz, Minority Senior Counsel, Environment and Energy; Alison Cassady, Minority Senior Professional Staff Member; Kelley Greenman, Minority Legislative Associate; Caitlin Haberman, Minority Policy Analyst; Elizabeth Letter, Minority Assistant Press Secretary; and Jen Berenholz, Minority Chief Clerk.

Mr. Whitfield. Good morning. The subcommittee will now come to order. And the chair will recognize himself for an opening statement. Today this subcommittee will mark up H.R. 1633 which has over 100 co-sponsors. It is entitled the Farm Dust Regulation Prevention Act of 2011. This bill ensures that the agricultural sector in rural America will not be burdened with costly new EPA dust regulations. And I would urge all of our colleagues concerned about America's farmers, ranchers and businesses in rural communities to support this legislation. Most recently, farmers, ranchers and businesses in rural America who fear that the agency's pending review of its coarse particulate matter standards may result in more stringent regulations of dust in their communities have been contacting us on a regular basis. Even under the current PM-10 standard, there is extensive regulation of rural dust and EPA has been considering a range of even more stringent alternatives.

We do applaud, however, Administrator Jackson's recent statement that she has decided she will propose a rule that retains the existing standard that covers farm dust. But there are many reasons why this falls short of providing the certainty that farmers, ranchers and rural businesses need. I would remind everyone that there are areas of the country that are in nonattainment of the existing ambient air quality standards and if they exceed the current particulate matter PM-10 rule then the farming in those areas is regulated right now.

For example, we heard the testimony of a gentleman from Arizona who had indicated that on exceptionally windy days, he was unable to

farm. And one rancher testified that for every cow he had, he had to spend four gallons of water to keep dust down in the area where he had his ranch because the entire area was in noncompliance with the national ambient air quality standards. So why do I believe that Administrator Jackson's recent statement that she will retain the existing standard is not adequate? For one thing, President Obama's EPA has a track record for saying one thing but doing another. One recent example of this is the agency's interstate transport rule. The final version contained major changes that went well beyond anything that had been discussed previously. For another, the PM-10 standards themselves have a track record of changing from the proposal to the final stage has occurred with both the 1997 and 2006 PM-10 standards.

The fact that EPA staff and its advisory committee have clearly recommended considering the option of a much tighter farm dust standard in its rule-making record only heightens concern about what its final rule might do and what it would cost. Furthermore, the assurances from Administrator For Air and Radiation, Gina McCarthy, when she testified she said that the Agency is not considering tightening the dust regulations affecting rural America at this time. She also admitted that she would not be able to stop, obviously, environmental groups who may sue the agency to go after farm dust. And as we know all too well so many of the decisions regarding the Clean Air Act today are being made in the court systems. However, one very encouraging sign from that hearing with Gina McCarthy is that no one from either side of the aisle came out in favor of tough new farm dust standards so we

should be able to agree on a bill to prevent this from happening.

H.R. 1633, the bipartisan Farm Dust Regulation Prevention Act, would preclude new Federal dust regulations from one year of the date of enactment. At the same time, the bill also makes clear that State, local and tribal governments can regulate nuisance dust as they see fit. In addition, the bill would allow EPA to step in and regulate nuisance dust in the absence of State, local or tribal requirements, but only if shown to be necessary to protect public health and cost effectiveness. We also will be introducing an amendment in the nature of a substitute which clarifies concerns raised by our colleagues at the hearing. The bill now makes explicit that nuisance dust does not cover dust generated by combustion activities. This bill has a great deal of support and I would urge my colleagues to stand by America's farmers, ranchers and businesses in rural America and pass this much needed bill. At this time, I recognize the distinguished gentleman from Chicago, Mr. Rush, the ranking member of the subcommittee.

Mr. Rush. I want to thank you, Mr. Chairman. Mr. Chairman, last week our legislative hearing on Farm Dust Regulation Prevention Act of 2011, I expressed some serious concerns with special specific positions of this bill. While the majority has made some minor revisions, as reflected in the amendment in the nature of a substitute, there are still some outstanding concerns that remain for me in this legislation. Specifically, the amendment in the nature of a substitute does not modify section 2 of H.R. 1633, which prohibits EPA from proposing, finalizing, implementing or enforcing any regulation

revising the national ambient air quality standards applicable to particles larger than 2.5 micrometers for one year after the date of enactment. Since EPA has already indicated that it has no intentions of revising the national ambient air quality standard for the current PM-10 standard, the impact of section 2 is most unclear and ambiguous. If section 2 applies only to the PM-10 national ambient air quality standard, it has no practical effect as EPA plans to retain the current status for five years anyway.

However, this section may also apply to PM-2.5 national ambient air quality standards as a practical matter and therefore, will block the EPA's ongoing 2.5 national ambient air quality standard review and rule making. Also, while the end narrows -- the amendment, rather, narrows the definition of nuisance dust, it still leaves most of section 3 unchanged which could lead to many of the negative effects identified by the EPA in the legislative hearing.

The amendment in the nature of a substitute drops the reference to "windblown dust," and specifies that the definition does not apply to particulate matter that is, and I quote again, imminent -- emitted, rather, "directly into the ambient air from combustions such as exhaust, from combustion engines and emissions from stationary combustion processes." While this clarifies that the bill is not intended to cover particulate matter emitted directly from sources such as power plants or mobile sources, it does not resolve whether the bill still has the effect of exempting particulate matter that is not emitted directly but forms in the atmosphere from reactions of nitrogen oxide

and sulfur dioxide.

In section 3, the definition of nuisance dust and the exemption for nuisance dust from the Clean Air Act are still very raw and may apply to particles of any size, not just coarse particles and not just limited to rural areas. Therefore, the definition of nuisance dust still should include particulate matter for mining operations as well as from construction sites and other industrial operations. Additionally, air quality monitors are able to distinguish pollution particles by size as to some degree by chemical composition, but they cannot distinguish pollution particles by source.

So as a practical matter, Mr. Chairman, it is unclear how the EPA consider a health-based standard for PM-10 or PM-2.5 that excludes some particles, but includes others dependent on the source of the particles. Mr. Chairman, I intend to offer an amendment today that would adjust some of these vital concerns, and I urge all of my colleagues to support it. And with that, I yield back the balance of my time.

Mr. Whitfield. Thank you, Mr. Rush. At this time the chair recognizes the chairman of the full committee, Mr. Upton, for a five-minute opening statement.

The Chairman. Thank you, Mr. Chairman. Today the subcommittee will mark up H.R. 1633, the Farm Dust Regulation Prevention Act of 2011. The bill precludes EPA from setting new more stringent standards to regulate farm dust. And I would urge those concerned about American agriculture to support it. Like virtually everything that we have done

this year, this bill is about jobs, it is about regulatory certainty and relief and it is about making government work for Americans -- work for America so that Americans can, in fact, can get back to work. The main difference between our previous regulatory relief efforts and the Farm Dust Regulation Prevention Act of 2011 is the primary target of EPA's standard. This time it is not domestic manufacturers and energy producers, it is farmers, ranchers, rural businesses expressing concern and explain how they may be harmed by changes in the current dust regulations. That is not to say that agriculture in rural America have not been affected by other EPA regs since farming and ranching or energy intensive EPA regs that raise the cost of energy are a significant burden on America's ag sector.

And I appreciate the support from organizations such as the American Farm Bureau for bills like H.R. 910, the Energy Tax Prevention Act, as well as the bipartisan support that the bill receive from reps from agriculture districts. The Farm Bureau as identified potential revisions to EPA dust regs as a significant concern for American farmers. As it is, the EPA has a standard in place for course particulate matter, or PM-10, which includes the dust routinely kicked up on farms, ranches, unpaved roads. The standard was, as necessitated, costly compliance measures in locations in the arid west.

The cost of current standards are significant and any changes could be very burdensome and widespread impacting nearly all of the west in major parts of the midwest and other regions. EPA Administrator Lisa Jackson recently made clear that she does not plan

to propose changing the current dust standard, and I appreciate, I do, those assurances. However, it is justified for farmers, ranchers and businesses in rural America to fear that a change may happen and their request for legislative relief is warranted. And I also know that the EPA administrator has sometimes blamed the courts for some of her actions. This legislation removes that excuse. Each time EPA has reviewed its particulate matter standards the process has been fraught with uncertainty. The standards have changed throughout the review process and stakeholders have struggled to determine the cost to implement the new standards. The Farm Dust Regulation Prevention Act is a targeted bill to address the threat of these regs and provide both certainty and regulatory relief to rural America. H.R. 1633 would prevent any revisions to the current dust regs during the coming year as EPA completes its review of the current PM standard. It would also, as EPA itself tried to do in 2006, exempt rural dust from Federal regulation.

At the same time the bill would preserve EPA's authority to regulate nuisance dust in the absence of State or local regulation if EPA finds the dust that caused substantial risk to health or the environment and that regulation would be cost effective. I look forward to working in a bipartisan fashion to pass this much needed bipartisan bill and will work to get it to the House floor for consideration. I yield back.

Mr. Whitfield. Thank you. At this time the chair recognizes the gentleman from California, Mr. Waxman, for his opening statement.

Mr. Waxman. Thank you very much, Mr. Chairman. Today we are considering yet another attack on the Clean Air Act. So far this year the House has voted 170 times to weaken our environmental laws and the biggest single target has been the Clean Air Act. We have voted 61 times to dismantle the Clean Air Act. And if this bill comes to the floor, it will be 62 times. Now, today we will hear that H.R. 1633 is a commonsense bill to prevent EPA from regulating dust from family farms. It is time for a reality check. EPA does not regulate dust from farms. And the Administrator recently announced that she intends to propose making no changes to the PM-10 standards. There is no need to legislate to prevent EPA regulation of farms because EPA is not going to regulate farms.

As Mr. Markey said, we might as well tell EPA not to regulate fairy dust. In fact, this bill is not really about farms at all. It exempts industrial mining operations from regulation under the Clean Air Act, and it rolls back the particulate standards that protect families living in both rural and urban communities. Today we will be considering an amendment in the nature of a substitute. This amendment improves the bill by excluding electric utilities and other sources of combustion from its coverage, but it does not fix the fundamental flaws of the bill. The biggest problem is in section 3, which exempts so-called nuisance dust from any regulation under the Clean Air Act. The broad definition of nuisance dust covers particle pollution generated from a wide array of sources, including mining operations.

One of the supporters of this bill is Kennecott Copper, which

operates one of the largest open pit copper mines in the world. The mine is the single largest source of particulate pollution in Utah. Salt Lake County to the east of the mine violates the health-based limit for particulates. Kennecott wants to expand their mine, which could increase its particulate pollution. This bill would not only allow the increase in pollution, it would exempt Kennecott's particle pollution from the Clean Air Act entirely.

A few years ago, I released a report with then-Representative Hilda Solis on the health effects of 17 gravel mining operations that were located in her district in Los Angeles. Local residents worried that the mining operations were harming the health of their families. Parents were particularly concerned about asthma, which afflicted many of the children. We found that these mining operations were a significant threat. They emitted large quantities of both fine and course particulate matter, yet under this bill, they would be exempt from regulation under the Clean Air Act. That gives certainty to parents that their kids can get asthma. It gives certainty to the minors that they can go ahead and do whatever they want and generate the pollution but nobody is going to ask them to limit that pollution.

There are other serious problems with the bill. According to EPA, the broad exemption for nuisance dust raises the issue of whether EPA could enforce or maintain existing fine or course particle pollution standards. EPA's air quality monitors cannot measure particle pollution from certain sources while ignoring particles from other sources, but that is what the bill requires. This would

invalidate the existing standards and make crafting and implementing a health-based standard for particle pollution virtually impossible. Nor does the revision fix the most basic problem of all.

EPA scientists reviewed all of the medical evidence and concluded that exposure to coarse particles may cause mortality, cardiovascular effects and respiratory effects. There is simply no scientific basis for claiming that so-called nuisance dust is safe to breathe. This subcommittee has a grim track record of reporting bills that allow more weather-altering carbon pollution, more toxic mercury pollution, more arsenic and lead pollution, more sulfur dioxide pollution and more nitrogen oxide pollution. We have created loopholes for incinerators, oil and gas rigs, power plants, industrial boilers and cement plants. This is a deplorable record. We have become the most antienvironment committee in the most antienvironment House of Representatives in history. I urge my colleagues to oppose this unnecessary and dangerous piece of legislation.

Mr. Whitfield. The chair recognizes the gentleman from Texas, Mr. Barton, for a 5-minute opening statement.

Mr. Barton. I won't take the 5 minutes, Mr. Chairman, but thank you for offering it. To quote my good friend, Henry Waxman, this is a commonsense bill to protect the American farmer from EPA. He said that is what we were going to say, so I feel compelled to say it.

Actually, Mr. Chairman, this is a commonsense bill and it will guarantee that EPA doesn't regulate farm dust. To hear my friends on the minority side say it I don't know how this country got settled prior

to the EPA. All those pioneers that trekked to California, they must have walked behind wagons that generated dust. But I guess the dust then was different than the dust today. You know, dust is dust, and there is absolutely -- well, I won't say that. There is little credible evidence that particulate matter farm dust has any negative impact on long-term health effects.

That is just not me, Mr. Chairman, that is Dr. Wellenius of Brown University in his testimony before this subcommittee last week. Maybe we can be accused of putting a belt and suspenders to keep our pants up in this piece of legislation, I don't know. But it certainly won't hurt anything, it is commonsense, we should pass it.

I want a strong EPA, believe it or not, but I want them to focus on stuff that really is harmful to health, enforcing the current law and not looking for reasons to expand their authority. And while the current Administrator has said that she has got no intention to regulate farm dust per se, her Agency has certainly made noise that they want to regulate it, they have certainly been out conducting meetings and things that they want to regulate it.

So I think this is a solid piece of legislation and I hope we can pass it. With the discussion about nuisance dust, I think if you looked in my condo, Mr. Chairman, you would classify all of that dust as nuisance dust. You know, I clean my condo up about once a year when my wife and son come to visit me. The rest of the time I am a victim of nuisance dust, but it is of my own doing. I don't need the EPA to tell me when I need to go in and clean up the condo. I am just too

lazy to do it most of the time. And I think most Americans know dust when they see it, and if it is causing them a problem they will do something to solve that problem. So let's move the bill and move on to other things. With that, I yield back.

Mr. Whitfield. The chair recognizes the gentleman from Michigan Mr. Dingell for a 5-minute opening statement.

Mr. Dingell. Thank you for your courtesy, Mr. Chairman, I think. Well, here we go again, another piece of legislation for which there is no need, fraught with rich opportunities for unseen consequences. We know now from EPA that it is unnecessary for this to be done, because EPA has said they are not going to do anything about changing the Reagan-year provisions with regard to dust and particulate matter. And we don't exactly know what this is going to do to other things, how it is going to impact existing cases, how it is going to impact cases involving other kinds of activities other than agriculture, and we don't know what that is going to mean in terms of the health and the welfare of the people of the United States.

I represent about as many farmers as most people in this committee. And the interesting thing about it is I go home and talk to them about this. And I am going to go home and tell them that this bill is about as unnecessary as side pockets on a cow. And I am going to try to explain to them that somebody is not able to take yes. And the question to my Republican friends is what part of yes don't you understand?

Now, this committee and this Congress have got plenty to do. We

just passed legislation earlier to send a subpoena and start a grand fight with the White House over matters which will probably hurt the Congress because this has raised questions about the executive privilege and get a matter possibly before the Supreme Court, something which we have always been able to resolve before. But now we are going out to prohibit regulations that we are told are going to be overly burdensome and impractical for the Nation's farmers and producers.

Now, EPA has recognized this. The Administrator said that she is not going to do this. We don't know what the other events that are going to accompany the enactment of this legislation might be or how it is going to affect the health and wellbeing of the American people. My old friend, Mr. Barton, tells us that we wouldn't have been able to sell the country -- or settle the country if EPA had been in place. I seriously doubt it. And I also seriously doubt that EPA is going to go back on their word on this matter.

And so while this is a fine bill for some of the Members who sponsored it, to go home and make wonderful campaign speeches on, and I am sure they will, they will tell their people how they struck another mighty blow at EPA. And I want my colleagues to know that I have criticized and do criticize EPA when they are engaged in what I regard as stupid or unnecessary or improper behavior. As a matter of fact, I conducted an investigation one time which largely emptied EPA of people who were engaged in wrongdoing, a fair number of whom wound up doing time.

Now, having said these things I think this committee has a

responsibility to legislate wisely and well, and to avoid unforeseen consequences. I think we also have the very high responsibility to quit fooling around with nonsense that accomplishes nothing and get down to business and legislating on jobs, on opportunity, on the economic situation which this country finds itself and try and get our people back to work and not to pass legislation which isn't going to do anything. I find it bad enough to tell falsehoods to my folks, but I find it even harder to tell falsehoods to me about what I am doing. Because I know this bill is not going to do anything and it is just a fine waste of the time of the members and the committee, and probably when it goes to the floor, will be an equally fine waste of time. But it will probably give us something on which we can have a vote at about 6:30 some day. And we can be informed that if there is really no controversy because EPA has already said that they are going to do what they are going to do.

Now, there is some virtue in that because it means that this will be up instead of naming a post office somewhere after a relative or neighbor or distinguished citizen. But that is hardly a basis for which the Congress should be functioning. We have important business to be done and I would urge my colleagues to let's settle down and do that business so that we are not jeopardizing the wellbeing of the country by all the nonsense that we are doing without accomplishing anything for the benefit of the country.

Mr. Whitfield. I would remind all members of the subcommittee that if you submit an opening statement, it will be a part of the record.

However, you are given up to three minutes to make an opening statement should you so desire. So is there anyone on our side of the aisle that would like to make an opening statement?

Mr. Bilbray. Mr. Chairman.

Mr. Whitfield. Mr. Bilbray.

Mr. Bilbray. Mr. Chairman, I just want to bring us back on the realm of reality.

Mr. Whitfield. Are you making an opening statement?

Mr. Bilbray. Yes.

Mr. Whitfield. The gentleman is recognized for 3 minutes.

Mr. Bilbray. Thank you. Mr. Chairman, I just want to bring back I know the concern about why would we have or what you shall not do. Ever since Moses came off the mountain, there was a basic concept that rules and regulations have the dos and don'ts, and to try to focus people on where the most effective way of using our resources to address the issues. And so I think this concept of being able to clarify what we don't want chased after at this time is quite simple, it is basic. But I was very concerned when my colleague talks about something in the L.A. air basin and indicates that somehow this body is going to keep air regulations from being enforced in the south coast air basin.

And I just want to make it clear, I don't know where the information is coming out that somebody can say on this floor that particulate standards will not be enforced in the L.A. air basin or in the south coast air basin anywhere. I just think it doesn't reflect the reality that there is no place in the world where regulations are

more strict and more oversight of every bit of emissions than in the south coast air basin.

So in all fairness no matter, what we do with this bill today the regulators in the L.A. air basin and the south coast air basin in total will be there looking over everybody's shoulders and will be enforcing the laws of the State of California and doesn't need the EPA to tell them how to protect their local community or their local citizens. And it doesn't take us to tell the air basins in California what standards they have to live up to. I think history has proven that the south coast air basin has been one of, if not but clearly the most restrictive regulator of air emissions anywhere in the world. And I just don't want somebody to stand up on this floor or speak on this floor as if the south coast air basin is going to be opened up for air emissions and massive amounts of health impact.

That is not a reality that I have ever seen or observed in my 30 years of public service, and especially in my 6 years on the air resources board and my 10 years on air district. The south coast air basin, if there is any place in this country where the regulations are going to be enforced to the nth degree that is where it is going to happen. I yield down.

Mr. Whitfield. Anyone seek recognition? Mr. Inslee, do you seek recognition for an opening statement?

Mr. Inslee. Yes.

Mr. Whitfield. The gentleman is recognized.

Mr. Inslee. Thank you. American agriculture really is in big

trouble, but I am not sure this bill addresses why it is in big trouble. I don't think we saw the picture of the mile high dust cloud swallowing Phoenix, was it last week or 2 weeks ago? This red ominous thing. It looks like some sort of kind of monster coming out of the horizon. That is the threat to American agriculture, which is the increasing aridity and increasing dust storms we are going to be facing because of climate change.

And instead of dealing with this issue, we are not -- we are just totally ignoring why American agriculture may be in Dust Bowl conditions in a few decades if we don't act, and yet we have actually gone backwards. And if folks want to have some sense of that, there is a book called *The Worst Hard Time*, it is by Tim Egan about the Dust Bowl conditions. We now face potentially similar situations and yet this committee has done absolutely nothing to deal with that threat to American agriculture.

So I think we have really taken our eye off the ball. In fact, we have gone backwards on the ability to deal with this. And I think it is sad that we are ignoring this real threat to American agriculture.

Mr. Whitfield. Does anyone seek recognition for an opening statement? Mr. Terry, you are recognized for an opening statement.

Mr. Terry. Yes, sir. Thank you. An opening statement. I am actually pretty darn pleased that we are marking up 1633, the Farm Dust Regulation Prevention Act. The reality is -- well, let's say perception is reality. The reason why the ranchers in Nebraska or grant producer farmers in Nebraska fear the EPA is because there have

been comments made by not the Secretary per se, but other people in the EPA, other people in the environmental community that are saying that dust needs to be regulated.

Now, it is nice that Lisa Jackson, Secretary Jackson comes before us. And we may remember earlier this year when she was before us and I specifically asked her the question, do you, the EPA, plan to regulate farm dust? And she replied something to the effect that, "There is indeed a recognition at EPA that dust happens." It got a laugh, it was a cute statement, but once again, it was the EPA refusing to say that they would not enforce the ten microns standard on farms and ranches. They are the ones that started this debate.

Now, the question then followed up was, you may decide as the Secretary to not enforce that, but aren't you just one lawsuit away from the Natural Resources Defense Council or the Sierra Club forcing you to start taking measurements on farms when they are tilling and planting and putting their pesticide down or weed control down? You get dust. They can only do that when the ground is dry. You can't till when it is wet.

So the reality is every time I ask that question about the lawsuits they evaded the answer because they know if they choose unilaterally not to enforce, they are only one lawsuit away. We have to make it clear that farm dust is exempt, and that is what we are doing here today. You may say, and this is another thing that really gets our farmers riled, is when people from Boston and Hollywood and El Segundo, are telling them what they should be fearing and not fearing. This puts

it down in black and white. That is what our farmers want and that is what we are going to do today. I yield back.

Mr. Whitfield. Does the gentlelady from Florida seek recognition?

Ms. Castor. Yes.

Mr. Whitfield. The gentlelady is recognized.

Ms. Castor. Well, thank you very much, Mr. Chairman. My GOP colleagues are doing everything in their power to avoid the moniker of the do-nothing Congress. But I would submit that this bill is not going to do anything to help them. What it really demonstrates is that the GOP does not have any plan for jobs, the Democrats have a plan. The GOP has spent their time blocking the President's jobs plan. And in the interim they have had to manufacture and issue to try to prove that yes they are actually doing something in this Congress. Well, you don't have to take it from someone from Boston or any other, take it from the Pulitzer Prize winning PolitiFact that put this farm dust issue up against the Truth-O-Meter and it got a big false.

It says that yes, there are no new regulations scheduled for farm dust. In fact, it says both the EPA and regulation opponents agree that no regulation is even in the pipeline. In addition, factcheck.org said on September 23rd in a story on the debate, noted that EPA Administrator Lisa Jackson testified before the U.S. House Committee on Agriculture in March that it was a mischaracterization that the EPA is trying to expand regulation of dust from farms.

Now let's go to The Washington Post, Wednesday November 2nd.

They are calling it in the headline the phantom, the phantom rule. I guess appropriate right after Halloween. And it points out comments that have been made by our GOP colleagues on the House floor, the EPA is now proposing rules to regulate dust. The article says there is just one flaw in this argument, it was not true, the EPA's new dust rule did not exist, it never did, this is a phantom rule, the regulation that never was.

See, what is happening here is this is the GOP's best efforts at distraction, distracting the country from the fact that this Republican Congress really is the new do-nothing Congress. They are not doing anything to address the true issues confronting the American people, which is jobs and giving a boost to the economic recovery. You can float these bills, but I have to say, nobody is going to be fooled by this. And I would really urge all of my colleagues to focus on more meaningful policy, policy that creates jobs and will boost the economic recovery. I yield back.

Mr. Whitfield. The chair recognizes the gentleman from Kansas for the purpose of making an opening statement.

Mr. Pompeo. Thank you, Mr. Chairman. First, let me say thank you for bringing this legislation forward, Mr. Chairman. Having heard the testimony last week, I think now more than ever I recognize how important this is to our agriculture community that we put this into law. I want to remind the gentlelady too, this is not a Republican bill, this is a bipartisan piece of legislation, so there are Democrats who also are concerned that the EPA is going to do something that is

going to hurt our agriculture community. I was in Sumner County and Cowley County a couple weeks back, and the folks out there continue to be concerned that at some point, EPA will begin to regulate farm dust in a way that will impact their lives.

And while it is the case that Ms. Jackson says she is not going to regulate it, she could be gone tomorrow, she could resign in an instant and a new EPA administrator could take her place and have a very different view. And it is our responsibility to pass into law the things we think make sense from a policy perspective and not to rely on the whims of agency. Surely the two former chairmen on the other side understand that agencies as they change leadership have very different views about statutes and change from time and time. That is why we pass laws.

And so Mr. Chairman I congratulate you for bringing this forward. I want to make just one more comment about the health effects. Some folks this morning said that if we pass this there are real health effects. Well, Ms. McCarthy testified before our committee just last week that there is no scientific data which demonstrates that there are health effects from course particulate matter along the long haul. Indeed she used that as the justification for why Administrator Jackson has stated that she is not going to regulate it at this time. And so this is a bill that will help protect our farmers, help create jobs and I urge this committee to pass this out of our subcommittee today and get this to the floor as quickly as possible. I yield back.

Mr. Whitfield. The chair recognizes the gentleman from

Massachusetts, Mr. Markey, for an opening statement.

Mr. Markey. Today we gather to mark up a real piece of legislation that solves an imaginary problem. The Farm Dust Regulation Prevention Act purports to address the fictitious threat that the Environmental Protection Agency is out to destroy the family farm and countless jobs by regulating the dust emitted by tractors and other farming equipment. Never mind that EPA Administrator Lisa Jackson has promised not to change the 1987 standard for large soot particles, and never mind that EPA Assistant Administrator Gina McCarthy essentially told the subcommittee last week that EPA was about as likely to regulate fairy dust as it was to regulate farm dust.

While these sorts of excursions into congressional Never Neverland may satisfy those who just don't believe anything they hear from this administration, this bill will inflict very real harm. But because the phoney dust issue is really only a Trojan horse constructed to carry their real agenda. That is because this bill also blocks EPA from setting standards for the dirty soot that gets spewed out of massive mines, smelters, refineries and some chemical plants.

In the play Peter Pan, Tinker Bell drinks poison that is intended to kill Peter. She begins to die but Peter Pan implores the audience to just clap their hands if they really do believe in fairies and then maybe Tinker Bell won't die. Every small child in the audience then clapped so hard their hands sting and Tinker Bell rises magically back to life. With this bill, Republicans are engaging in the very same sort of fantasy.

If we just believe that EPA has launched a war on jobs, then it must be so and we must stop it. If we just believe that EPA officials are lying about their secret nonconsistent plans to destroy the livelihood of every farmer in America, then it must be so and we must stop it. If we just believe that eviscerating every environmental law on the books will not lead to the real deaths of thousands of Americans each year, each and every year, then it must be so. The Republican lost boys are telling America that the only way to revive the jobs fairy is to kill the EPA. To pretend that the Republicans' farm dust plan won't lead to unnecessary deaths, cancers and other illnesses requires suspension of disbelief worthy of a fairy tale. I yield back the balance of my time.

Mr. Whitfield. The chair recognizes the gentleman from Louisiana, Mr. Scalise, for an opening statement.

Mr. Scalise. Thank you, Mr. Chairman. I appreciate you bringing this important bill. The Farm Dust Regulatory Relief Act is needed to relieve uncertainty that is out there that is really hurting our farmers. And some people want to continue to make light of this and try to make it out as some sort of game and try to have it both ways, frankly. On one hand they are saying, oh, look, we don't need this bill because it is not going to happen. Well, if they don't think it is going to happen, then why are they threatened by the bill. But on the other hand, they are saying, oh, but we can't take this power away from EPA because they need to protect us from all these helpful harms that are coming. Well, either EPA is going to use this to protect

some mystical group of people out there or EPA is not. But you can't say both. You can't say it is going to be this way and that way, and in the meantime, we don't need this bill because there is no real threat out there.

Well, if there is no real threat out there then why are all of our farmers across this country pleading with us to remove this uncertainty and pass this bill? There are over 126 organizations out there that support this legislation. Some people call this bill nonsense and they like to make jokes and talk about pixie dust and fairy dust, making fun of the farmers out there who are scared to death of the threats coming from EPA that are real. If this bill was so unnecessary, why is the U.S. Chamber of Commerce in support, why is the American Farm Bureau in support? Are you trying to make fun of that organization? These are serious people. The American Sugar Alliance, Dairy Farmers of America are in support of this bill, the U.S. Poultry and Egg Association, Select Milk Producers. Look, there is not a lot that the people from Louisiana and Alabama agree on right now as LSU is getting ready to go and have a dust-up in Alabama. But the Alabama Cattleman's Association is in support of this bill. Maybe EPA is going to try to regulate the dust that is going to be ensued when LSU goes and beats Alabama this weekend.

But this is serious business, and we are talking about real lives and real jobs that are at stake. And maybe some people don't get it. And maybe that is why the economy is struggling so much, because every small business owner I have talked to, not just farmers, small business

owners, job creators out there, the biggest threat they tell me about, and my colleagues have shared this with me from other States, the biggest threat they see is from Federal regulations coming out of agencies like the EPA. I mean, EPA is killing jobs. And when EPA sat there and testified the other day they didn't say they weren't going to do it, they just said they weren't going to do it at this time.

Well, what does that mean? That means they can come back a couple weeks later when they think everybody has gone away and when they think maybe legislation is not going to pass and then they are going to try to ram it through like they are still trying to do with cap and trade. Even though cap and trade passed, they are trying to come through with other greenhouse gas regulation. Even President Obama himself said enough is enough when he pulled back EPA's attempt to regulate ozone. And by the way, all those same health threats were thrown out there. Oh, people are going to die and there is going to be asthma and all this other stuff and you got to have this regulation go through. They said that about the ozone ruling. And even President Obama said you went too far.

This is a radical agency that is out of control and killing jobs and we need to pass this bill to at least put some certainty back out there for our farmers so that they can go back out and invest and create more jobs. And I hope we pass the bill and I yield back the balance of my time.

Mr. Whitfield. Thank you. Does the gentleman from Pennsylvania seek recognition for an opening statement?

Mr. Doyle. No, Mr. Chairman. I won't waste any more of this committee's time that is being wasted by this bill.

Mr. Whitfield. The chair recognizes the gentleman from West Virginia, Mr. McKinley, for an opening statement.

Mr. McKinley. Thank you, Mr. Chairman. I was curious when I saw this bill as to try to understand the magnitude of the issue. And when I looked at that from an engineering perspective when they talk about 150 micrograms per cubic meter, what does that mean? 150 micrograms per cubic meter? I tried to do an analysis to compare to this room because you are comparing a weight to a volume. What would be an equivalent weight in this room to the EPA standard? Is it a human being, that amount of dust, that weight of dust in this room, is that the standard? Is it this cup? What is it that equates to 150 micrograms per cubic meter?

So we did the calculations. They came down to what we are talking about here is the EPA standard is a quarter of a gram for this room, a quarter of a gram of dust in this room. If you create more than a quarter of a gram of dust in this room, if this were a farm, you would be in violation. What is a quarter of a gram? This piece of paper, this little piece of paper is a quarter of a gram. So in this entire room this weight of dust is the threshold that the EPA has set, this weight of dust.

No wonder the farmers are concerned, because they can see us when we may get to a point where we cut it in half some day, their next threat that uncertainty. Let's just be careful. Let's make sure we get out

of the Beltway, let's get back to where America really is and find out what are we really talking about here. A quarter of a gram of dust in this room is the threshold level. I hope we just keep that in consideration for all other matters when we talk about what the EPA standards are and the threat they have to our health. A piece of paper this small, the weight of that in dust. Thank you very much. I yield back my time.

Mr. Whitfield. The chair recognizes the gentleman from Colorado, Mr. Gardner, for an opening statement.

Mr. Gardner. Thank you, Mr. Chairman. And thank you as well for bringing this important piece of legislation. I am probably in no position to question the agricultural wisdom of The Washington Post to the bastion of farmers and ranchers that it is. But the people that I represent, the 11th most agricultural district out of the 435 Members of Congress. And the farmers and ranchers in my district they don't cut imaginary wheat, they don't pick imaginary corn, they don't dig imaginary sugar beets, and they don't oppose imaginary problems.

And when I go to town meeting after town meeting, I meet with farmers and ranchers who oppose this attempt by the EPA, the proposed attempt, the supposed attempt, they are very serious about and very concerned about the real possibility of what it means for their current operation and what it means for future operations of farmers and ranchers that follow them.

And so while others on the other side can, I guess, compare farmers and ranchers to fairy tales and Peter Pan and perhaps Tootles who lost

his marbles would be another one they would like to talk about, the farmers and ranchers in my district would like to talk about what it means for them to survive and to grow and to prosper and for future generations to be involved in their operation. And that is why this bill is yet one other attempt to bring certainty to farms and ranchers and to make sure that they survive and thrive into the future.

And so I commend the committee for dealing with this legislation, I commend the chairman for bringing it up, and I certainly believe that the Farm Bureau and other farm organizations who support this legislation aren't supporting a bill that would roll back any imaginary problem. It is very real, and it means a lot to the farmers and ranchers that they represent in their organizations. And I certainly am glad to stand with them on a bill that matters so much. And so, if people want to compare this to fairy tales and Peter Pan, perhaps they ought to be thinking of Snow White because if the current EPA was in charge at that time, the dwarfs would be out of work.

RPTS CASWELL

DCMN ROSEN

[12:15 p.m.]

Mr. Whitfield. Thank you. Mr. Burgess, did you seek recognition? Okay. Does anyone else seek recognition for an opening statement?

Mr. Griffith, you are recognized for an opening statement.

Mr. Griffith. Mr. Chairman, being brief, I would prefer that we take our time to pass this bill. It may be a fairy tale with action, but I don't want to tell my constituents that we failed to act and we got a nightmare.

I yield back.

Mr. Whitfield. Does anyone else seek recognition? If not the chair would call up H.R. 1633 and ask the Clerk to report.

The Clerk. H.R. 1633, to establish a --

Mr. Whitfield. Without objection, the first reading of the bill is dispensed with, and the bill will be open for amendment at any point. So ordered.

The chair recognizes the gentleman from Kansas, Mr. Pompeo, for the purpose of offering an amendment in the nature of a substitute.

Mr. Pompeo. Yes, Mr. Chairman, I do an amendment in the nature of a substitute at the desk.

Mr. Whitfield. Clerk will report.

The Clerk. Amendment in the nature of a substitute to H.R. 1633

offered by Mr. Pompeo.

Mr. Whitfield. Without objection, the reading of the amendment is dispensed with and the gentleman from Kansas is recognized for 5 minutes in support of the amendment.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Pompeo. Thank you, Mr. Chairman. This amendment attempts to address some of the concerns that were raised during the hearing. There were both members and witnesses who expressed concerns that the definition of nuisance dust in the bill, as introduced, would be broadly interpreted.

There was specifically concern that the definition could be read to preclude EPA from regulating particulate matter emissions from many different sources. Things like power plants were mentioned, industrial processes, diesel engines, buses.

This was not the intent of the bill. We talked about that at the hearing, but we want to do everything we can to provide clarity. Their concern was that the EPA would broadly read the definition so as to deny themselves power.

I doubt that that would happen with this administrator, who would seek as much authority as she could, but in any event, we wanted to clarify that language and try and address the concerns of some of the folks across the aisle, and so we have done that.

We have revised the definition to require that the three criteria in section 3 be met jointly, that is, we changed the "or" to an "and" so that each must be -- each must be met in order to have the definition of nuisance dust narrowed.

It also eliminates any reference to wind blown dust. There were those who were concerned about that as well. And it's now very clear power plants, diesel engines, school buses are no longer sources that can generate nuisance dust and therefore are not excluded.

As the bill sponsors testified, Congresswoman Noem, that was not the intent in her bill. We have clarified that.

I would urge my colleagues to support this amendment and then to pass this legislation.

And I yield back my time, Mr. Chairman.

Mr. Whitfield. Thank you. Is there further discussion on the gentleman's amendment? For what purpose does the gentleman from Illinois seek recognition?

Mr. Rush. I would speak in opposition to the amendment.

Mr. Whitfield. The gentleman is recognized in opposition.

Mr. Rush. The language in the substitute bill could be construed to prevent regulations of particle pollution from numerous sources. The revised definition that excludes "combustion" sources from the definition would not negate that. Sources that could be included under the definition of nuisance dust in the amendment in the nature of a substitute could include Portland Cement.

PM is emitted from materials having grinded lime as well as combustion, ferroalloys, coal processing plants, gold production, processing, most storage ponds, even forestry operations, involving straining, chipping, swinging, all of these could be included.

The cotton gins also could be included, waste and recovery facilities, construction.

The definition, Mr. Chairman, and members of the subcommittee, in this bill goes far beyond pollution from this farm. It would include various other activities in the broad American enterprise.

Mr. Chairman, I hope I can address some of these matters with my amendment, but I just want to say that, you know, that this substitute falls far short of what is meaningful in terms of really addressing the concerns that members of this side have with the manager's amendment.

I yield back.

Mr. Whitfield. Is there further discussion of the amendment in the nature of a substitute?

Are there any bipartisan amendments to the amendment in the nature of a substitute?

Mr. Dingell. Mr. Chairman, I would like to be recognized to ask questions of the counsel.

Mr. Whitfield. The gentleman from Michigan is recognized for the purpose of answering questions of counsel.

Mr. Dingell. Counsel, may I have your attention, please. I'm trying to understand what this amendment does and what is covered. First of all, at page 1, about line 11 or 12, it says, agency may not propose, finalize, implement or reports any regulation, revising national primary and primary air quality standard, or the national secondary ambient air quality standard applicable to particulate matter.

Now, I'm trying to understand, what does that do to existing proceedings going on at EPA? Does that affect existing proceedings?

Ms. Neumayr. This would direct that the administrator in the existing proceedings would not revise the existing PM standards.

Mr. Dingell. Well, if there's a lawsuit about somebody who's creating a prodigious amount of this nuisance dust is going on or if there's an enforcement proceeding at EPA over somebody doing that, then am I to understand that that enforcement action or that regulation being completed by the EPA is suspended?

Ms. Neumayr. No.

Mr. Dingell. It is not?

Ms. Neumayr. It is not focused on revising the standard, may not propose, finalize, implement or enforce any regulation, revising the standard.

Mr. Dingell. So it doesn't impact any current enforcement actions or writing of regulations by the EPA.

Now, am I to -- what I am trying to understand what this is going to affect. We hear that it is, that this is directed at farm dust; is that right?

Ms. Neumayr. Yes, nuisance dust bill.

Mr. Dingell. Now dust is created in many ways, building roads, driving trucks down roads, smelting, mining of ore, production of steel and metals, electrical generating from coal dust and things of that kind, burning coal and other things, different kinds of combusters, incinerators and diesel engines on trucks and trains and boats and things like that.

Does it cover these or are these excluded?

Ms. Neumayr. It covers naturally occurring dust and dust which is generated as the result of activities that are outlined in the

definition of nuisance.

Mr. Dingell. So all of these things would be covered?

Ms. Neumayr. Well, only if they were to meet all three of the stated criteria.

Mr. Dingell. And what are those, that is nuisance dust referred to in B on 2, of page 2? What are these? You are telling me that they are covered, but then you are telling me that they are not covered, and you are telling me that they have got to meet certain criteria, so that they are covered or not covered.

Ms. Neumayr. Are you talking about section 2 or 3?

Mr. Whitfield. I think he wants to know the definition of nuisance dust, so why don't you read him beginning with line 24 so that he will understand.

Mr. Dingell. I am just trying to find out what is covered and what activities are covered. We have been told this is going to solve the farmers' problems, but is it going to solve other people's problems too? Some of my people want to make dust doing these things and some of my people don't want them to make dust doing these things, and I am trying to find out whether it covers these things.

Ms. Neumayr. The dust that would be covered will be dust that is generated primarily from natural sources, unpaved roads, agricultural activities, Earth-moving or other activities typically conducted in rural areas.

Mr. Dingell. So I make concrete, or so I burn coal or I rent a combuster or I smelt. Or --

Ms. Neumayr. Well, there are actually three conditions.

Mr. Dingell. Or nickel.

Ms. Neumayr. There are three conditions. In addition to being generated from those activities, it must also consist primarily of soil, other natural or biological --

Mr. Dingell. Well, I have 21 seconds remaining. Does this cover, and does it absolve mining, smelting, steel and metal production, electrical generating, burning coal, incinerators, diesel engines and incinerators?

Ms. Neumayr. It does not address combustion activities.

Mr. Dingell. It does not?

Ms. Neumayr. It does not.

Mr. Dingell. In no instances?

Ms. Neumayr. No.

Mr. Dingell. What does it cover more than agricultural activities?

Ms. Neumayr. Agricultural Earth-moving activities, dust that is generated from driving on unpaved roads, those kinds of activities.

Mr. Dingell. All right. What else?

Ms. Neumayr. From natural sources, naturally occurring dust.

Mr. Dingell. Is this limited to natural resources or is it some guy running a bulldozer?

Ms. Neumayr. Natural sources or generated primarily from unpaved roads, the movement on soil by --

Mr. Dingell. Okay. So if I am riding a bulldozer, I am exempted.

Ms. Neumayr. The dust generated.

Mr. Dingell. If I am driving a big piece of Earth-moving equipment, I am exempted. If I am running a truck down a road and making dust and making all of my people that I am going by complain about dust, that's -- I am absolved of that; is that right?

Ms. Neumayr. That would be nuisance dust, it would be exempt from Federal regulation if it is subject to State, tribal or local regulation.

Mr. Dingell. How about cement kilns and things of that kind?

Ms. Neumayr. Combustion activities are not covered, movements, the driving on unpaved roads or Earth-moving activities may be covered.

Mr. Dingell. Earth-moving activity is covered and so that's exempted here.

Ms. Neumayr. The dust generated from Earth-moving activities but not from combustion activities.

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

Mr. Dingell. Thank you, you have been kind, Mr. Chairman.

Mr. Whitfield. Does anyone else seek recognition? Okay, are there any bipartisan amendments to the amendment in the nature of a substitute?

Are there other amendments?

Mr. Rush. Mr. Chairman, I do have an amendment.

Mr. Whitfield. The Clerk will report the amendment.

The Clerk. Amendment to the amendment in the amendment in the nature of a substitute to H.R. 1633 offered by Mr. Rush of Illinois.

Mr. Whitfield. Without objection, reading of the amendment is dispensed with and the gentleman from Illinois is recognized for 5 minutes in support of his amendment.

[The information follows:]

\*\*\*\*\* INSERT 2-1 \*\*\*\*\*

Mr. Rush. Mr. Chairman, last week, during the hearing on H.R. 1533, we heard testimony from the assistant administrator for the Office of Air and Radiation, Gina McCarthy, where she expressed some concerns over the ambiguous language in the bill and the potential impact it could have on existing Clean Air Act programs.

Today, I am offering an amendment that would address some of the primary concerns that I have, as well as those expressed by the Environmental Protection Agency.

On page 1, line 13 through 15, my amendment would strike, and I call it "applicable to particulate matter with an aerodynamic diameter greater than 2.5 micrometers," and insert "for PM10. "

And at the end of section 2, my amendment would amendment would add the following, and I quote, "Nothing in this Act precludes the Administrator from proposing, finalizing, implementing, or enforcing the national primary, ambient air quality standard or the national secondary ambient air quality standard for PM2.5."

Mr. Chairman, members of the subcommittee, this will make it clear in the legislative language, that section 2 will not block the EPA's ongoing review and rulemaking for PM2.5 of the national ambient air equal standards.

Additionally, my amendment would strike section 3 altogether, as this section adds to the ambiguous intent of the bill. Although the amendment in the nature of a substitute narrows the definition of "nuisance dust" somewhat, the definition is still very broad and could apply to particles of any size, not just coarse particles and not only

those limited to rural areas.

This bill could hinder or even prevent the EPA from reducing deadly fine particle pollution, as well as coarse particulate matter in rural and urban areas across the country.

Section 3 would exempt particulate matter primarily composed of natural materials from Earth moving, which Ms. McCarthy told the subcommittee could include activities from mining operations, as well as from construction and a number of other industrial operations.

Additionally, as drafted, it is unclear how the bill's goal of exempting certain pollution from being included in the health-based standards could be accomplished as a practical matter.

Mrs. McCarthy raised concerns about the effect of this bill on existing health-based standards for particle pollution since the existing air quality standards do not distinguish between "nuisance dust" and other particles.

In her testimony, Ms. McCarthy stated, and I quote, "Unlike in terms 'fine particle' and 'coarse particle' the term 'nuisance dust' is not a scientific or scientifically defined term. It would be very difficult to incorporate an exclusion for 'nuisance dust' into a scientific-based program."

Ms. McCarthy went on to say, a further quote, "Coarse particles have been linked to a variety of adverse health effects, including hospital visits relating to cardiovascular and respiratory disease, and premature death. While the body of scientific evidence is much more limited for coarse PM than for fine particles, the Agency's review

of the studies indicates that short-term exposures to coarse particles remain a concern."

Mr. Chairman, my amendment would remove the ambiguity, and I urge all of my colleagues to support my amendment.

With that, I yield back.

Mr. Whitfield. Does any member seek recognition to speak in opposition to the amendment?

Well, this amendment would -- the chair will recognize himself then to speak in opposition to the amendment.

This amendment would strike the provisions of the bill relating to nuisance dust, keeping only the temporary prohibition on a change to the existing PM10 standard.

Since the entire purpose of this legislation is to exempt rural dust from costly Federal regulation, this amendment would really gut the bill by eliminating all of section 3, which is about nuisance dust and the definition of nuisance dust.

So for that reason, I would respectfully oppose the gentleman's amendment, and I would yield back the balance of my time.

Mr. Waxman. Mr. Chairman.

Mr. Whitfield. For what purpose does the gentleman from California seek recognition?

Mr. Waxman. I move to strike the last word.

Mr. Whitfield. The gentleman is recognized.

Mr. Waxman. The bill's supporters say that they want certainty for agriculture and other sectors that have to meet particle pollution

standards. This amendment provides that certainty.

EPA Administrator Jackson has said she will not propose to revise the PM10 standards. Some of our colleagues have argued that even if the administrator does not intend to change the standard, she could be forced to do so through litigation. I don't think that's a realistic fear, but this amendment codifies the administrator's commitment and ensures that EPA will not propose to revise the PM10 standard for 1 year.

This amendment also makes another important clarification. EPA testified that the wording of section 2 of the bill could have the apparently-unintended consequences of preventing EPA from revising the PM2.5 standard for deadly fine particles. This amendment adds language to ensure EPA can revise the standard if the administrator determines the science merits it.

This amendment also strikes section 3, which is a fatally flawed attempt to exempt a new category of pollution from Clean Air Act without any scientific basis for such an exemption.

The Republicans' original definition of nuisance dust was so poorly worded that it could have prevented EPA from regulating particulate matter from power plants and diesel school buses.

The revised definition in the substitute bill avoids exempting those particular sources, but fails to fix the basic problem. It still exempts fine and coarse particle pollution from a large range of sources that remain largely undefined.

For example, this definition exempts from the entire Clean Air

Act all particle pollution from large industrial mining operations that engage in "Earth moving." Open pit mines are hardly family farms.

The bill also appears to assume that natural materials are necessarily harmless and, therefore, should not be regulated by the EPA. Asbestos, lead and coal dust are all natural materials, but they can be devastating for human health. No one should try to argue that eliminating control on the broad range of pollution covered by this bill won't harm public health.

EPA scientists and independent experts have not examined medical and scientific evidence on the potential impacts of uncontrolled quantities of so-called nuisance dust. They couldn't have done so. Republicans reworked the definition of nuisance dust just 2 days ago.

The scientific and medical evidence we do have is clear. Exposure to fine and coarse particulates can cause respiratory problems, cardiovascular program and premature death. And this is true for particle pollution in rural areas as well as urban areas.

Section 3 is ironic in one respect. The Republicans say they don't want EPA to revise the coarse particle pollution standards, but because this bill exempts a whole new category of pollution, EPA will have to revise itself -- standards for both fine and coarse particles to attempt to remove so-called nuisance dust from the standards.

This bill creates more real problems than imaginary ones it purports to solve and I urge my colleagues to support the Rush amendment.

It does what you said you wanted and that should be enough. Let's

don't raise other problems that some may look at as unintended consequences and some of us worry maybe are, in fact, the intended consequence of the legislation.

Mr. Rush. Will the gentleman yield?

Mr. Waxman. Yes.

Mr. Rush. Mr. Chairman, my amendment -- I thank the gentleman for yielding.

My amendment is simple and will get us back to the basics. First, the amendment states that the EPA can't revise the PM standard for 1 year, even though EPA said that it doesn't plan to revise it. This codifies it.

Second, the amendment clarifies that this bill doesn't affect the EPA's ability to revise the standard for fine particles. And, third, the amendment cites the confusing and poorly-worded definition -- and I agree with the gentleman from California, the ranking member of the full committee -- the poorly worded definition of nuisance dust in section 3.

What my amendment doesn't do is exempt the EPA, exempt from the Clean Air Act particle pollution from huge industrial mining operations, construction and demolition and other polluting activities. It also doesn't require the EPA to redo the existing fine particulate matter and coarse particulate matter standards.

Mr. Chairman --

Mr. Whitfield. Is there further discussion? For what purpose does the gentleman seek recognition?

Mr. Rush. I ask unanimous consent for 30 seconds.

Mr. Whitfield. The gentleman has asked unanimous consent to speak an additional for 30 seconds. The gentleman is recognized.

Mr. Rush. It also doesn't require the EPA to renew the misdefined particulate matter and coarse particulate matter standards.

If what we really want to do is eliminate existing Clean Air Act protection, we should oppose my amendment. But if you want certainty, and this is what the author of the bill, this is what she said, Congresswoman Noem, one of the bill's sponsors. She said she introduced this bill because of "regulatory uncertainty facing rural America." If you want certainty, if you want regular certainty, then you should support this amendment.

Mr. Whitfield. Is there further discussion on the gentleman's amendment?

If not, then all those in favor shall signify by saying aye, all those opposed no.

Mr. Rush. Roll call vote. Roll call, Mr. Chairman.

Mr. Whitfield. The gentleman asks for a roll call vote. The clerk will call the roll.

The Clerk. Mr. Sullivan?

[No response.]

The Clerk. Mr. Shimkus?

[No response.]

The Clerk. Mr. Walden?

[No response.]

The Clerk. Mr. Terry?

Mr. Terry. No.

The Clerk. Mr. Terry, no.

Mr. Burgess?

[No response.]

The Clerk. Mr. Bilbray?

Mr. Bilbray. No.

The Clerk. Mr. Bilbray, no.

Mr. Scalise?

Mr. Scalise. No.

The Clerk. Mr. Scalise, no.

Mrs. McMorris Rogers?

Mrs. McMorris Rogers. No.

The Clerk. Mrs. McMorris Rogers, no.

Mr. Olson?

[No response.]

The Clerk. Mr. McKinley?

Mr. McKinley. No.

The Clerk. Mr. McKinley, no.

Mr. Gardner?

Mr. Gardner. No.

The Clerk. Mr. Gardner, no.

Mr. Pompeo?

Mr. Pompeo. No.

The Clerk. Mr. Pompeo, no.

Mr. Griffith?

Mr. Griffith. No.

The Clerk. Mr. Griffith, no.

Mr. Barton?

[No response.]

The Clerk. Mr. Upton?

The Chairman. No.

The Clerk. Mr. Upton, no.

Mr. Rush?

Mr. Rush. Aye.

The Clerk. Mr. Rush, aye.

Mr. Inslee?

Mr. Inslee. Aye.

The Clerk. Mr. Inslee, aye.

Ms. Castor?

Ms. Castor. Aye.

The Clerk. Ms. Castor, aye.

Mr. Dingell?

Mr. Dingell. Aye.

The Clerk. Mr. Dingell, aye.

Mr. Markey?

[No response.]

The Clerk. Mr. Engel?

[No response.]

The Clerk. Mr. Green?

Mr. Green. Aye.

The Clerk. Mr. Green, aye.

Mrs. Capps?

Mrs. Capps. Aye.

The Clerk. Mrs. Capps, aye.

The Clerk. Mr. Doyle?

Mr. Doyle. Yes.

The Clerk. Mr. Doyle, aye.

Mr. Gonzalez?

[No response.]

The Clerk. Mr. Waxman?

Mr. Waxman. Aye.

The Clerk. Mr. Waxman, aye.

The Clerk. Chairman Whitfield?

Mr. Whitfield. No. The gentleman from Oregon, Mr. Walden.

Mr. Walden. No.

The Clerk. Mr. Walden, no.

Mr. Whitfield. The gentleman, Mr. Olson, is he recorded?

Mr. Olson. No.

The Clerk. Mr. Olson, no.

Mr. Whitfield. The gentleman from Massachusetts?

Mr. Markey. Aye.

The Clerk. Mr. Markey, aye.

Mr. Whitfield. Does anyone else seek recognition or vote? In that case, the Clerk will report the vote.

The Clerk. Mr. Chairman, on that vote there were nine yeas, 12 nays.

Mr. Whitfield. The amendment is not agreed to.

At this time, the vote will occur on the amendment in the nature of a substitute. All those in favor will signify by saying aye. All those opposed, nay.

Mr. Whitfield. In the opinion of the chair, the ayes have it and the amendment in the nature of a substitute is agreed to.

The question now occurs on favorably reporting H.R. 1633, as amended. All those in favor shall signify by saying aye.

The ayes have it and the bill --

Mr. Gardner. Mr. Chairman, may I request a recorded vote.

Mr. Whitfield. The gentleman seeks a recorded vote. The Clerk will call the roll.

The Clerk. Mr. Sullivan.

[No response.]

The Clerk. Mr. Shimkus?

[No response.]

The Clerk. Mr. Walden?

Mr. Walden. Aye.

The Clerk. Mr. Walden, aye.

The Clerk. Mr. Terry?

Mr. Terry. Aye.

The Clerk. Mr. Terry, aye.

Mr. Burgess?

[No response.]

The Clerk. Mr. Bilbray?

Mr. Bilbray. Aye.

The Clerk. Mr. Bilbray, aye.

Mr. Scalise?

Mr. Scalise. Aye.

The Clerk. Mr. Scalise, aye.

Mrs. McMorris Rogers?

Mrs. McMorris Rogers. Aye.

The Clerk. Mrs. McMorris Rogers, aye.

Mr. Olson?

Mr. Olson. Aye.

The Clerk. Mr. Olson, aye.

Mr. McKinley?

Mr. McKinley. Aye.

The Clerk. Mr. McKinley, aye.

Mr. Gardner?

Mr. Gardner. Aye.

The Clerk. Mr. Gardner, aye.

Mr. Pompeo?

Mr. Pompeo. Aye.

The Clerk. Mr. Pompeo, aye.

Mr. Griffith?

Mr. Griffith. Aye.

The Clerk. Mr. Griffith, aye.

Mr. Barton?

[No response.]

The Clerk. Mr. Upton?

The Chairman. Aye.

The Clerk. Mr. Upton votes aye.

Mr. Rush?

Mr. Rush. No.

The Clerk. Mr. Rush votes no.

Mr. Inslee?

Mr. Inslee. No.

The Clerk. Mr. Inslee, no.

Ms. Castor?

Ms. Castor. No.

The Clerk. Ms. Castor, no.

Mr. Dingell?

Mr. Dingell. No.

The Clerk. Mr. Dingell, no.

Mr. Markey?

Mr. Markey. No.

The Clerk. Mr. Markey, no.

Mr. Engel?

[No response.]

The Clerk. Mr. Green?

Mr. Green. No.

The Clerk. Mr. Green, no.

Mrs. Capps?

Mrs. Capps. No.

The Clerk. Mrs. Capps, no.

The Clerk. Mr. Doyle?

Mr. Doyle. No.

The Clerk. Mr. Doyle, no.

Mr. Gonzalez?

[No response.]

The Clerk. Mr. Waxman?

Mr. Waxman. No.

The Clerk. Mr. Waxman, no.

Chairman Whitfield?

Mr. Whitfield. Aye.

The Clerk. Mr. Whitfield, aye.

Mr. Whitfield. Are there others seeking to vote? The clerk will report the vote.

The Clerk. Mr. Chairman, on that vote there were 12 yeas, nine nays.

Mr. Whitfield. The ayes have it, and the bill is favorably reported.

Without objection, staff is authorized to make technical and conforming changes to the bill approved by the subcommittee today. So ordered, and the subcommittee now stands adjourned.

[Whereupon, at 12:46 p.m., the subcommittee was adjourned.]

