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3 HEARING ON ``THE AMERICAN ENERGY INITIATIVE''

4 FRIDAY, APRIL 15, 2011

5 House of Representatives,

6 Subcommittee on Energy and Power

7 Committee on Energy and Commerce

8 Washington, D.C.

9 The Subcommittee met, pursuant to call, at 9:03 a.m., in
10 Room 2123 of the Rayburn House Office Building, Hon. Ed
11 Whitfield [Chairman of the Subcommittee] presiding.

12 Members present: Representatives Whitfield, Shimkus,
13 Walden, Burgess, Scalise, McMorris Rodgers, McKinley,
14 Gardner, Pompeo, Griffith, Barton, Upton (ex officio), Rush,
15 Inslee, Dingell, Markey, Green, Capps, Gonzalez, and Waxman
16 (ex officio).

17 Staff present: Maryam Brown, Chief Counsel, Energy and
18 Power; Allison Busbee, Legislative Clerk; Cory Hicks, Policy

19 Coordinator, Energy and Power; Heidi King, Chief Economist;
20 Mary Neumayr, Counsel, Oversight/Energy; Greg Dotson,
21 Democratic Energy and Environment Staff Director; Caitlin
22 Haberman, Democratic Policy Analyst; and Alexandra Teitz,
23 Democratic Senior Counsel for Energy and Environment.

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24 Mr. {Whitfield.} We will call the hearing to order this
25 morning, and I look forward to the testimony of our panel.
26 Before we get started, I just want to make a couple of
27 comments relating to administrative issues. We had invited
28 EPA representatives to testify at our hearing on Wednesday as
29 well as today, and they were unable to attend. As a result
30 of that, we are going to have another hearing and we are
31 going to invite representatives of the agency to come. We
32 know that there is more than one or two people that can
33 testify over there, and I think on this issue that we are
34 looking at today, as well as others, it is imperative that we
35 have testimony from EPA. So my staff is going to work with
36 Minority staff to schedule a time for Administrator Jackson
37 or her designee to come before us in May after the Easter
38 recess for a hearing with them.

39 So this is another hearing on our--and now I am going to
40 recognize myself for a 5-minute opening statement. This is
41 another hearing on the American Energy Initiative in which we
42 look at the impact of EPA regulations on providing fuel for
43 our transportation needs and generating electricity for our
44 other needs.

45 In an interview with the San Francisco Chronicle back in
46 January of 2008, then presidential candidate Barack Obama,

47 when asked a question, said that his Administration was going
48 to have the most aggressive cap and trade system that was out
49 there. Then he said so if somebody wants to build a coal
50 power plant, they can. It is just that our policies will
51 bankrupt them because they are going to be charged a huge sum
52 for all that greenhouse gas that is being emitted. That will
53 generate billions of dollars that we can invest in solar wind
54 and other alternative energies. Well, he was not successful
55 in adopting a cap and trade system, but it is quite clear
56 that EPA is taking up the mantle, and they are determined to
57 pass regulations to increase the cost of coal and make other
58 energy sources more competitive.

59 Today we are going to focus on only three of the
60 multitude of regulations in the queue at EPA in which they
61 are moving at unprecedented speed, and all of these are under
62 Section 111 and 112 of the Clean Air Act. First, we have the
63 utility rule, which affects the HAP standards for new and
64 existing coal and oil fired electric generating units and U-
65 source performance standard for fossil fuel-fired EGUs.

66 Second, we have the cement rule, which affects HAP
67 standards and U-source performance standards for the Portland
68 Cement manufacturing industry.

69 Third, we have HAP standards for large and small
70 boilers. We also have a rule establishing new standards of

71 performance in environment and emission guidelines for
72 commercial and industrial incinerators.

73 There is a fourth rule regarding secondary material that
74 are solid wastes.

75 I might also mention that every one of these rules is
76 the result of a court settlement or a consent decree. It is
77 becoming quite clear that lawsuits are the method now being
78 used to regulate at EPA. In fact, just under the Clean Air
79 Act, there are 509 lawsuits pending at EPA.

80 So we see this pattern of third party groups filing
81 lawsuits, EPA entering consent decrees, federal judges
82 issuing--giving legal fees to the parties that brought the
83 lawsuits in the first place. So if there was ever an act
84 that is promoting lawsuits, it is this act.

85 Now we know from these regulations that plants are going
86 to close. We know jobs are going to be lost. We know
87 wholesale electric rates are going to go up. We know America
88 is going to be less competitive in the global marketplace.
89 And we know that there are some witnesses today who are going
90 to speak in favor of these regulations. There are those who
91 say these regulations are good for America because it is
92 going to create new industries and create new jobs. And as
93 one of our witnesses said, that may be true sometime in the
94 future, but we know with certainty it will eliminate real

95 jobs today and inflate wholesale power rates today, not in
96 the future. And then we need to be concerned about our
97 capacity, we need to be concerned about preserved margins, we
98 need to be concerned about the cost. These regulations alone
99 under EPA's conservative estimates will cost industry over
100 \$14 billion a year.

101 So these are significant rules that have a dramatic
102 impact on America as we try to revive our economy. And so I
103 look forward to the testimony. I know that we need to have
104 people supporting these rules, and we need to have people
105 opposing these rules, because we need a national debate on
106 the direction that EPA is going and the method that they are
107 using to get there. To try to have a 60-day comment period
108 on a 1,000-page rule with 1,000 additional technical pages is
109 unacceptable.

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

111 ***** COMMITTEE INSERT *****

|
112 Mr. {Whitfield.} So at this time I recognize the
113 gentleman from Illinois for his 5-minute opening statement.

114 Mr. {Rush.} I want to thank you, Mr. Chairman, for
115 having this hearing, and I want to thank all of the guests
116 for attending today's hearing.

117 Mr. Chairman, I must say that your argument sounds
118 persuading, but some of it is not persuading that the EPA is
119 the real culprit here. Today, Mr. Chairman, we will hear
120 testimony from a variety of stakeholders on proposed or
121 finalized EPA rules regarding the maximum achievable control
122 technology or MACT, and other standards for power plants,
123 cement facilities, boilers, and incinerators. Mr. Chairman,
124 Section 112 of the Clean Air Act mandates that EPA establish
125 technology-based standards to reduce hazardous air
126 pollutants, HAPs, that may contribute to increased cases of
127 cancer, birth defects, and other harmful defects, and adverse
128 environmental impacts.

129 We will all understand that EPA is required by law under
130 the Clean Air Act to issue each of these rules on a specified
131 schedule, and all of these schedules were actually mandated
132 to be completed by the year 2000. Initially we all know that
133 facilities will have an additional 3 and in some cases even
134 up to 4 years to comply with these rules, plus we are

135 finalizing in State or federal authorities determines that
136 additional time is necessary to install pollution control.

137 Now Mr. Chairman, I am not a math major, but it would
138 seem to me that if these rules were supposedly issued way
139 back in 2000 and we are now in the year 2011 and facilities
140 will still have up to 3--to 4 years to install these controls
141 once they are finalized, then plant operators will have at
142 least 15 years of delay in meeting these standards, even if
143 all these rules were finalized today.

144 Today, Mr. Chairman, we will be hearing contrasting
145 testimony by interested stakeholders on how compliance with
146 these rules will impact energy rates and reliability, jobs
147 and the economy as well. This is the time for us to consider
148 the impact of these rules on rates and reliability on jobs.

149 First is those utility companies that have been
150 proactive in preparing for these rules and some of these
151 utility companies have been proactive in preparing for these
152 rules, which everyone understood to--that they were coming.
153 These prepared utility companies will testify on how these
154 rules are balanced and they are reasonable. That EPA has
155 engaged the industry in a transparent manner, and they have
156 no problem meeting these standards because they have already
157 invested in these controlled technologies.

158 These forward-thinking companies which must be commended

159 and applauded and lifted up will also testify that
160 implementing these pollution control technologies can indeed
161 advance economic growth, inspire innovation and
162 competitiveness, and actually create well-paying jobs through
163 the installation of scrubbers, air quality control systems,
164 and other pollution control equipment.

165 In addition to these economic benefits, we will also
166 hear about some of the health and environmental benefits that
167 compliance with these rules would bring. Specifically, just
168 a reduction in mercury and particulate matter alone will lead
169 to significant and tangible health benefits, including the
170 prevention of thousands of premature deaths, non-fatal heart
171 attacks, chronic bronchitis, and associated asthma cases.

172 Unfortunately, we will also hear the other side of the
173 story as well. Naturally, these companies who have been less
174 active in planning and investing in pollution control
175 technologies over the years will testify that they are, as a
176 result, unprepared for compliance and will request additional
177 time to do so. In essence, they are going to be whining at
178 the table. Since there is no legislation up for a debate now
179 today, I will reserve judgment on the merits of pushing these
180 rules down the road for future action once again, and I look
181 forward to today's testimony and the subsequent questions of
182 our witnesses.

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

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

186 ***** COMMITTEE INSERT *****

|
187 Mr. {Whitfield.} Thank you. At this time I recognize
188 the Chairman of the Energy and Commerce Committee, Mr. Upton
189 of Michigan, for 5 minutes.

190 The {Chairman.} Well thank you, Mr. Chairman. I too
191 regret that EPA was not able to be with us this morning.

192 The American Energy Initiative is an ambitious effort to
193 take on all of the energy-related issues that the Nation
194 faces today and into the future. With high and rising gas
195 prices, Middle East instability, and a domestic economy
196 struggling to regain its footing and create jobs, the current
197 energy challenges certainly are great, and with global
198 industrial competition and relating worldwide energy demand
199 going nowhere but up, we need to take these issues on now
200 before they get out of hand.

201 What is most disturbing is how many of these energy
202 challenges are self-imposed. Two days ago this subcommittee
203 heard from Alaska's entire congressional delegation--many of
204 them--as well as local officials--all of them--and energy
205 company representatives from the State. Alaska is
206 practically begging to produce more of its substantial
207 reserves of domestic oil and help bring down future gasoline
208 prices. The fact that EPA continues to stand in the way is
209 both inexplicable and unacceptable. America has plenty of

210 outside enemies who would love to cut off our energy
211 supplies. We don't need to make things worse by being our
212 own enemy as well.

213 Every bit as bad are EPA regs that raise electricity
214 costs and stifle our manufacturing competitiveness. Our
215 fifth day of the hearing on the American Energy Initiative
216 deals with a set of regulations, those impacting utility
217 steam generating units, boilers, and cement. Raising the
218 cost of operating utility steam generating units means higher
219 electricity prices for everybody. Since boilers and process
220 heaters are used at nearly every manufacturing facility, they
221 also certainly raise manufacturing costs. Few, if any, of
222 the other countries, including our industrial competitors,
223 are pursuing similar policies to raise costs. Needless to
224 say, there is not much of an export market for EPA's ideas
225 and how to run this part of our economy.

226 With unemployment long stuck above 8 percent, higher in
227 manufacturing areas like mine, we need to be mindful of regs
228 that make energy more expensive and discourage investment in
229 the domestic manufacturing sector. Beyond power plants and
230 manufacturers, other facilities with boilers, such as
231 universities, will face higher operating costs at a time when
232 State governments are hard-pressed to increase funding levels
233 in tuition bills that are already way too high for most

234 students to pay.

235 The goal is not to repeal these regs; it is to advance
236 them in a reasonable way. Regs that reduce emissions without
237 reducing manufacturing activity or jobs are creating other
238 undue hardships.

239 I look forward to the discussion and plan to incorporate
240 what is learned in to the American Energy Initiative.

241 I yield to Mr. Barton.

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

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

|
244 Mr. {Barton.} Thank you, Mr. Chairman--both Mr.
245 Chairmans. Thank you for holding this hearing.

246 We have a very difficult economy. We all know that.
247 The Environmental Protection Agency, I think this is our
248 third or fourth hearing this week in which they have been
249 invited to attend and I think they have come to one. We
250 could call them the Evaporating Personnel Administration, I
251 guess. They don't seem to ever show up and be accountable.

252 Mr. {Rush.} Will the gentleman yield?

253 Mr. {Barton.} I will, on your time. I am always happy
254 to yield on your time.

255 They have consistently--they being the EPA--made
256 problematic decisions with their proposed regulations,
257 rulings, and in some cases, pulling the existing permits as
258 they have done in Texas without cause. These threaten our
259 Nation's energy security at a minimum and our economic
260 opportunity for sure.

261 The regulations that EPA is proposing as the subject of
262 this hearing will decrease reliability in our energy sector,
263 increase the cost of our energy, and kill jobs. The latest
264 and greatest scheme to regulate the hazardous air pollutants
265 from power plants under the Clean Air Act Section 112 will
266 amend the new source performance standards with regard to the

267 new utility maximum achievable control technology, or MACT.
268 Some people call it big MACT standards. This would cause an
269 adverse effect on coal and oil electric generating plants
270 throughout our country.

271 The EPA seems to be going after a number of different
272 industries, but it is apparent to me that they are actually
273 attacking the most prevalent economical resource generation
274 in the United States, and that is the coal industry.

275 The timeline that EPA is proposing is unworkable,
276 unreasonable, and uneconomical. Their statistical data are
277 skewed. They base their proposal on the average of the 12
278 best--12 percent best performing plants in the country. The
279 results do not reflect the real life activity of existing
280 power plants across the Nation. With so many compliance
281 factors involved, no one plant can possibly expect to comply
282 with all of the MACT limits on all modes of operation.

283 To comply with the EPA's utility MACT proposal, it will
284 cost \$11 billion annually across the electric generation
285 industry. Cement is an additional \$1 billion. Under the
286 boiler rules, \$2.3 billion is indicated by the EPA in cost to
287 the refinery industry. If you add that up, that is almost
288 \$14 billion, Mr. Chairman.

289 And finally, last but not least, I do find it troubling
290 that Lisa Jackson, once again, is a no-show at a very

291 important hearing that she has had every opportunity to be in
292 attendance. The MACT truck is about to overrun us all, and
293 she is not even here to comment on the proposed regulations.

294 With that I yield back, Mr. Chairman.

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

296 ***** COMMITTEE INSERT *****

|
297 Mr. {Whitfield.} Thank you very much. Mr. Waxman is on
298 his way. He has been delayed, so he will have a 5-minute
299 opening statement when he gets here, but in the meantime, I
300 want to introduce our panel. We do appreciate all of you
301 coming to help us examine in a more thorough way the
302 implications of these regulations.

303 We have Mr. Tom Fanning, Chairman, President, and CEO of
304 Southern Company. We have Mr. Anthony Earley, Executive
305 Chairman, DTE Energy. We have Mr. Michael Bradley, Executive
306 Director of The Clean Energy Group. We have Mr. Paul Kempf,
307 Director of Utilities at Notre Dame University--University of
308 Notre Dame. We have Mr. John Walke, who is the senior
309 Attorney and Clean Air Director for the Natural Resources
310 Defense Council. We have Mr. Dirk Krouskop, Vice President,
311 Safety, Health & Environment at MeadWestvaco Corporation, and
312 we have Mr. Aris Papadopoulos, President and CEO of Titan
313 America.

314 We thank all of your for being here. We have one vote
315 on the House Floor right now. We like to start these
316 hearings early so we don't have to be interfered by votes, so
317 we have one member going over to vote. He is going to come
318 back, but in the meantime, we will go on and get these
319 opening statements going because we want to get them on the

320 record.

321 So Mr. Fanning, I will recognize you for 5 minutes for

322 your opening statement.

|

323 ^STATEMENTS OF TOM FANNING, CHAIRMAN, PRESIDENT AND CHIEF
324 EXECUTIVE OFFICER, SOUTHERN COMPANY; ANTHONY F. EARLEY, JR.,
325 EXECUTIVE CHAIRMAN, DTE ENERGY; MICHAEL J. BRADLEY, EXECUTIVE
326 DIRECTOR, THE CLEAN ENERGY GROUP; PAUL KEMPF, DIRECTOR OF
327 UTILITIES, UNIVERSITY OF NOTRE DAME; JOHN WALKE, SENIOR
328 ATTORNEY AND CLEAN AIR DIRECTOR, NATURAL RESOURCES DEFENSE
329 COUNCIL; DIRK KROUSKOP, VP, SAFETY, HEALTH & ENVIRONMENT,
330 MEADWESTVACO CORPORATION; AND ARIS PAPADOPOULOS, PRESIDENT
331 AND CEO, TITAN AMERICA LLC.

|

332 ^STATEMENT OF TOM FANNING

333 } Mr. {Fanning.} Thank you. Chairman Whitfield, Ranking
334 Member Rush, and members of the subcommittee, thank you for
335 inviting me to testify today.

336 Southern Company is the leading energy supplier in the
337 Southeastern United States, and one of the largest generators
338 of electricity in the Nation. We work hard every day to
339 ensure that our customers have access to reliable and
340 affordable power. Like the rest of our industry, we are
341 committed to working with our communities, stakeholders, and
342 our customers to continue reducing our environmental impact.
343 That is why Southern Company in recent years has invested

344 over \$8 billion in environmental controls, and intends to
345 spend up to \$4.1 billion to comply with existing, revised, or
346 new rules over the next 3 years.

347 We are glad that you are examining and discussing the
348 utility MACT rule that EPA recently proposed. We are very
349 concerned with this proposal and believe that if adopted, it
350 could put the reliability and affordability of our electric
351 supply at risk. The rule would impact plants responsible for
352 nearly 50 percent of total electricity generation. It would
353 impose an unrealistic 3-year timeline for compliance at a
354 time when the industry is laboring to comply with numerous
355 other mandates. The result could be the reduced generating
356 capacity below the minimum required to provide reliable
357 service and also cause electric rates to substantially
358 increase.

359 However, we believe these risks can be reduced or
360 avoided by moving forward on a reasonable schedule that
361 reflects industry experience and the challenges of upgrading
362 the Nation's generating fleet.

363 I have four points for your today.

364 The first is that the timeline for this rule is
365 unreasonable. The Agency has proposed to allow only 60 days
366 to comment on one of the most burdensome and expensive rules
367 that was ever put forward. We looked at nine other less

368 complex rules, and found that EPA has allowed between 120 and
369 180 days for comments on each of them. This is nearly a
370 1,000-page rule with nearly 1,000 more pages of technical
371 supporting documents. Sixty days is plainly inadequate for
372 the industry to analyze this rule and its effects, and to
373 offer meaningful comments.

374 But even a greater concern is the 3-year compliance
375 period that would follow this particular MACT rule. A study
376 conducted for the Electric--Edison Electric Institute by ICF
377 concluded that for U.S. by 2015, over 80,000 megawatts of
378 scrubbers and over 160,000 megawatts of fabric filter
379 baghouses will be required to be constructed. Almost 80,000
380 megawatts of current coal capacity will retire and have to be
381 replaced. As the CEO of a company that has installed more
382 pollution controls than any other utility, I tell you that
383 this cannot be done in 3 years.

384 That leads to my second point, which is that this rushed
385 timeline could put the reliability of the Nation's electric
386 generating system at risk. The major challenge of complying
387 with these new rules is ensuring adequate reserve margins,
388 that is, the generating capacity that is available during
389 times of high demand or during interruptions in service from
390 base load plants. According to Bernstein Research, the
391 impact of utility MACT rule on smaller plants will cause

392 regional capacity margins to plummet by 7 to 15 percentage
393 points into the single digits in some regions. Other studies
394 have reached similar conclusions. The result will be a
395 greater risk of power outages.

396 My third point is that the rushed timeline will also
397 impact electricity affordability. The construction of the
398 massive numbers of controls that I mentioned, plus the costs
399 of replacing the coal plants that will retire will require
400 utilities to spend as much as \$300 billion by 2015. This
401 huge cost will certainly show up in customers' power bills
402 and will threaten jobs and any economic recovery.

403 My fourth and final point is that there is a better way
404 to continue to improve our environmental performance while
405 protecting our customers, reliability, and jobs. We need a
406 realistic compliance schedule based on historical experience
407 that allows us to retrofit existing plants and to begin work
408 on any replacement capacity. A realistic schedule would
409 allow upgrades to be made in an orderly fashion without
410 placing reliability in jeopardy or imposing undue additional
411 cost increases on our customers.

412 To conclude, we believe that the utility MACT proposal
413 on its current schedule and in its current form puts at risk
414 the reliability and affordability of power in the United
415 States. These risks can be reduced by extending the

416 rulemaking schedule and the timeline for compliance. During
417 that time, we can work to improve and refine the proposed
418 rule, and simultaneously better prepare for any changes in
419 our generation fleet. This is a commonsense solution that
420 all stakeholders should be able to support.

421 I thank the committee for holding this important hearing
422 today and giving me the opportunity to testify. I look
423 forward to any questions you might have.

424 [The prepared statement of Mr. Fanning follows:]

425 ***** INSERT 1 *****

|
426 Mr. {Whitfield.} Thank you, Mr. Fanning, and Mr.
427 Earley, you are recognized for 5 minutes.

|
428 ^STATEMENT OF ANTHONY F. EARLEY, JR.

429 } Mr. {Earley.} Thank you, Mr. Chairman and members of
430 the subcommittee for the invitation to address a subject with
431 critical implications for the future of our industry and your
432 constituents, the customers that we serve.

433 Sometimes we focus too much on what we disagree with,
434 but I want to emphasize one thing that we all should be able
435 to agree on, and that is the importance of a reliable and
436 affordable electric system. We only need to think back to
437 the massive blackout of 2003 to understand the ubiquitous
438 role that electricity plays in our economy and in our
439 personal lives.

440 Let me start by emphasizing that progress on the
441 environment is vital, but it must continue on a schedule that
442 can be efficiently and cost-effectively managed without
443 requirements that jeopardize the economy and with the
444 sensitivity to preserving the balanced mix of generation
445 technology that has served us so well in the past.

446 My message today is not do nothing. My message today is
447 to do something that will continue the tremendous progress we
448 have already made. The key to success will be managing the
449 timing, using a commonsense approach to achieve improvements,

450 and ensuring the benefits actually do justify the very real
451 cost in terms of money and jobs.

452 I want to make it clear why this commonsense measured
453 approach is appropriate by dispelling the myth that we face
454 some immediate environmental crisis. The progress that our
455 industry has made in cleaning the air since the Clean Air Act
456 was adopted in 1970 is one of the great environmental success
457 stories, and I will use my own company, DTE Energy, as an
458 example. Over the last 35 years, we have reduced particulate
459 emissions by more than 90 percent, and sulfur dioxide and
460 nitrogen oxide by more than 70 percent; at the same time
461 increasing generation output by approximately 45 percent.
462 Other electric utilities have accomplished similar results.
463 The bottom line is our children are breathing air today that
464 is far cleaner than the air that we inhaled as children.
465 Having said that, we continue to make improvements. We are
466 investing billions of dollars in environmental controls and
467 clean energy technology.

468 My concern with the EGU MACT is that it derails this
469 approach and has very serious consequences. The proposed
470 rule is flawed in a number of ways.

471 First, it provides insufficient time to address these
472 extremely complex issues. This rule will have far-reaching
473 economic and energy supply impacts. Allowing just a 60-day

474 comment period is totally inappropriate. The goal of
475 completing these regulations by November seems equally
476 inappropriate, considering the enormous amount of public
477 comment that this rule is going to generate. Too much is at
478 stake to move forward without proper vetting.

479 Second, the proposed rule focuses on technology-based
480 standards for some of the emissions, and for some of the
481 emissions, there is sparse data available to support these
482 standards. The EPA is proceeding with regulations under the
483 mistaken belief that reasonably priced technology solutions
484 are currently available to control acid gasses, non-mercury
485 metals, and organics. For example, the low estimate for
486 early plant retirements is based on the belief that the
487 industry can meet acid gas limits using dry sorbent
488 injection. It appears that the EPA made this determination
489 based on one 3-week trial on one boiler type. Even the
490 company that performed that evaluation recommends a more
491 complete trial to better understand the technology. I can't
492 think of any business that would be willing to invest
493 millions or billions of dollars on a single 3-week trial that
494 may or may not be applicable to the entire U.S. coal fleet.

495 The third and most troubling flaw of the proposed rule
496 is choosing not to pursue health-based standards. The EPA is
497 committing our customers to funding billions of dollars in

498 technology investments without knowing the potential health
499 implications and without serious consideration of the
500 ramifications to the economy and ultimately to the public.
501 EPA's own analysis concludes that reducing the emissions
502 covered by the rules offers only minimal health benefits.
503 Almost all of the benefits they assigned to these regulations
504 is associated with the expected coincidental reductions in
505 particulate emissions, something that is already regulated
506 under another part of the Clean Air Act.

507 Even if EPA is right about available technology, can we
508 afford to spend billions of dollars when we have no solid
509 understanding of whether it can be worthwhile or not?
510 Whether a conscious decision or not, the regulations will
511 have the impact of driving companies to retire significantly
512 more of their older coal fire units than EPA estimates. With
513 plant closings, lost jobs, and lost tax base at stake, we
514 must be prudent in our decision-making, particularly in this
515 economy.

516 In closing, I would like to stress that our end goal is
517 the same: continued progress on the environmental front. I
518 ask that you ensure that there is sufficient time for EPA to
519 make sound decisions, to understand whether a health-based
520 standard would reduce the real impacts on our customers and
521 the economy, and to evaluate the adequacy of control

522 technologies so we don't unnecessarily undermine the
523 viability of a diverse energy mix. This approach has served
524 us well in the past, and it will continue to serve us well in
525 the future. Thank you.

526 [The prepared statement of Mr. Earley follows:]

527 ***** INSERT 2 *****

|

528 The {Chairman.} [Presiding] Thank you, Mr. Earley.

529 Mr. Bradley?

|
530 ^STATEMENT OF MICHAEL J. BRADLEY

531 } Mr. {Bradley.} Good morning, Chairman--

532 The {Chairman.} You need to hit that mic button down
533 below.

534 Mr. {Bradley.} Good morning, chairman, Ranking Member
535 Rush, and members of the subcommittee. My name is Michael
536 Bradley, the executive director of The Clean Energy Group. I
537 am testifying today on behalf of The Clean Energy Group's
538 Clean Air Policy Initiative, a coalition of electric power
539 companies. The member companies are some of the Nation's
540 largest generators of electricity, serving nearly one-fifth
541 of all U.S. electric customers. On behalf of my member
542 companies, I appreciate the opportunity to speak with you
543 today and offer the following observations on the proposed
544 Utility Toxics Rule.

545 The rule provides the business certainty required for
546 the industry to move forward with capital investment
547 decisions. The proposal, while not perfect, is reasonable
548 and consistent with the requirements of the Clean Air Act.
549 The electric sector, overall, is well-positioned to comply.
550 The Clean Air Act provides sufficient time to comply, as well
551 as the authority to accommodate special circumstances where

552 additional time is necessary.

553 It should be no surprise that EPA issued this rule.
554 Since 2000, the electric industry has known that hazardous
555 air pollutants would be regulated under the Clean Air Act.
556 Now, over a decade later, EPA is under a quarterly deadline
557 to finalize the rule by November. Additionally, EPA
558 conducted an extensive data collection effort with the
559 cooperation of industry to ensure that the standards were
560 based on real world operating experience.

561 The proposed standards are not as burdensome as some
562 electric sector members anticipate. In fact, if there was
563 any surprise, it was the degree of compliance flexibility
564 proposed by the rule. For example, the proposal includes
565 work practice standards for dioxins rather than initial
566 limits, surrogates for certain hazardous air pollutants, as
567 well as the ability to average among units at a facility. We
568 are evaluating specific technical issues with the rule that
569 we think need to be addressed, but we expect continued
570 engagement with EPA will lead to a final rule that is both
571 balanced and flexible.

572 The technologies to control hazardous air emissions,
573 including mercury and acid gasses, are commercially
574 available. Also, the industry has extensive experience with
575 installation and operation of these controls. Companies will

576 generally have 3 years to comply once the rule is final. We
577 believe that the vast majority of generating units can meet
578 this schedule for several reasons.

579 First, to their credit, many companies have installed
580 major components of pollution control systems that will be
581 required to comply. For example, 60 percent of the Nation's
582 coal capacity has already been retrofit with scrubbers. We
583 are not starting from scratch.

584 Second, EPA allows compliance flexibility in the rule by
585 allowing power plant owners to average their emissions across
586 all the boilers at a facility. Almost 20 percent of coal
587 capacity that currently lacks scrubbers is co-located at
588 plants with existing scrubbers for the potential to average.

589 Third, historic experience shows that the industry has
590 the capacity to install a large number of pollution control
591 systems in a relatively short period of time. Between 2008
592 and 2010, the industry installed about 60 gigawatts of
593 scrubbers and 20 gigawatts of advanced NOX controls.

594 Fourth, most of the controlled technologies that will be
595 required to comply, like activated carbon injection and dry
596 sorbent injection, can be installed in less than 2 years. If
597 a company is unable to comply in time, the Act allows up to
598 one additional year to install the necessary controls. This
599 will allow companies to manage multiple control installations

600 and avoid potential reliability concerns. Furthermore, EPA
601 has the authority and has used this authority in similar
602 situations to provide additional time beyond the 1-year
603 extension.

604 To conclude, the Clean Air Act amended by Congress in
605 1990 with overwhelming bipartisan support and signed by
606 George H.W. Bush requires regulations that limit hazardous
607 air pollutions from the electric sector. In 2000, EPA took
608 the first step towards regulating those emissions, and over a
609 decade later, EPA now is working to finalize the rule. While
610 complying with these obligations will require planning and
611 significant resources, many companies are on their way to
612 complying. There is no reason to delay the implementation of
613 the Utility Toxics Rule. Proceeding on schedule with the
614 flexibility that is available will provide the business
615 certainty that the industry is looking for.

616 Thank you for your time, and I would welcome any
617 questions you may have.

618 [The prepared statement of Mr. Bradley follows:]

619 ***** INSERT 3 *****

620 | The {Chairman.} Thank you. Mr. Kempf?

|
621 ^STATEMENT OF PAUL KEMPF

622 } Mr. {Kempf.} Good morning, Chairman Upton and members
623 of the committee, and thank you for inviting me to testify
624 before the committee today.

625 I am the director of utilities at the University of
626 Notre Dame. The university is a national Catholic university
627 located in Northern Indiana, 90 miles east of Chicago. It
628 has a campus of 1,250 acres with over 140 buildings and a
629 student enrollment of 12,000. Notre Dame was the first
630 university in the U.S. to generate electricity powering
631 lights in its main building shortly after Edison made
632 incandescent lighting practical. The university takes
633 seriously its leadership role in demonstrating stewardship,
634 sustainability and social justice, and therefore seeks to be
635 a leader in all areas, including energy and environment. We
636 are proud of the efforts of our student group, Green ND, and
637 our Office of Sustainability, which have led a number of
638 energy and environmental projects. I appreciate the
639 opportunity to tell the committee about the challenges facing
640 Notre Dame and many other universities across the Nation as
641 we strive to comply with the full range of pending EPA
642 regulations.

643 We at Notre Dame are most immediately concerned about
644 the suite of four rules known as the boiler MACT rules.
645 These rules will significantly impact many universities,
646 including Notre Dame, which installed their own utility
647 plants to ensure reliable and affordable source of energy for
648 their campuses. These plants are efficient, cost effective,
649 and environmentally sound source of energy for universities.
650 EPA's final rules, however, impose unrealistic and costly
651 requirements that EPA has not justified by corresponding
652 reduction of hazardous air pollutants.

653 EPA's boiler MACT rules will require significant
654 changes, many of which are not achievable, affordable, or
655 realistic in a timeframe set out by EPA. Improving
656 environment at reasonable cost benefit rates is certainly in
657 all our best interests, but the recent rules will require
658 significant additional capital and operational expenses,
659 assuming compliance is even possible. Compliance testing
660 costs alone will likely increase nearly 20-fold from the
661 expenses based on levels of testing and testing frequency.

662 Universities face unique challenges in adapting to new
663 rules. Most universities plan over a decade or more. Also,
664 universities are unable to make the types of changes that are
665 options for businesses. We cannot consolidate with other
666 universities, move to a different state, or even overseas.

667 Raising prices for our customers would be a hike in tuition
668 imposed on our students and their families, already stretched
669 by the Nation's struggling economy.

670 At Notre Dame, we have had a combined heat power system
671 since 1953, one of the first universities to adopt this
672 highly efficient and environmentally conscious means of
673 producing energy. Our CHP system includes three coal fire
674 boilers and three gas and oil boilers, and produces 55
675 percent of the campus's electrical demand. This fuel
676 diversity offers a hedge against volatility, shortages, and
677 market factors. Regulations should not make it impossible to
678 sustain the reliability and energy security provided by our
679 system.

680 When the original boiler MACT rule was issued in 2004,
681 the university upgraded its control to achieve that
682 regulation, but then the boiler MACT rule was vacated by the
683 courts. The university was left to decide whether to proceed
684 with its \$20 million investment in pollution control
685 equipment, or halt the project. We decided to complete the
686 project and achieve emission reductions. We were left to see
687 whether our new system would be sufficient to comply with the
688 EPA's revised boiler MACT. Now nearly 4 years later, we are
689 faced with a revised rule that is patently different from the
690 original rule, and one that presents uncertain compliance

691 capabilities for our investment. EPA's capital cost estimate
692 for compliance in the '04 rule was estimated at half a
693 million dollars per solid fuel boiler. We spent nearly \$7
694 million to comply with that rule. Now for new boiler MACT,
695 EPA projects capital costs of \$2.2 million per unit. With
696 this wide disparity between EPA projected costs and actual
697 costs, it is difficult to plan.

698 Twenty million dollars in a university setting could
699 provide a full year of tuition for 500 students or a full 4-
700 year scholarship for 1125 students. Before we commit more
701 millions of dollars for resources, EPA should take the
702 necessary time to address the fundamental issues with the
703 rules. We are not publicly funded. These added costs of
704 compliance are directly borne by our students and their
705 families, who are committed to our tradition of offering an
706 excellent education as economically possible to our students.
707 Yet with these rules on the horizon, maintaining that
708 tradition is more challenging than ever before.

709 Mr. Chairman, thank you for this opportunity to testify
710 before the committee. I welcome any questions you or other
711 members may have.

712 [The prepared statement of Mr. Kempf follows:]

713 ***** INSERT 4 *****

|
714 The {Chairman.} Thank you. Mr. Walke?

|
715 ^STATEMENT OF JOHN WALKE

716 } Mr. {Walke.} Thank you, Chairman Upton and members of
717 the subcommittee. My name is John Walke and I am Clean Air
718 Director and Senior Attorney for the Natural Resources
719 Defense Council, a national public health and conservation
720 organization with 1.2 million members and online activists
721 nationwide.

722 Power plants, industrial boiler, and cement plants are
723 the largest emitters of mercury and scores of other toxic air
724 pollution in the country today. Mercury is a powerful brain
725 poison that damages the developing brains of children and
726 fetuses, lowering IQs and harming motor functions. These
727 polluting facilities emit many other toxic air pollutants as
728 well that cause cancer, heart attacks, strokes, asthma
729 symptoms, and premature deaths.

730 Yet these industrial facilities still are failing to
731 comply with basic clean air requirements to reduce their
732 toxic pollution after two decades after passage of the 1990
733 Clean Air amendments. This inexcusable situation is due to
734 unlawful delays, along with plainly illegal standards by EPA
735 under the prior administration, standards that were
736 overturned in courts by unanimous decision rendered by judges

737 appointed by Republican and Democratic presidents alike.
738 These delays in court decisions resulted in EPA under the
739 present Administration inheriting the obligation to re-
740 propose and reissue standards that comply with the Clean Air
741 Act and protect the public.

742 Now that EPA has final and proposed mercury near toxic
743 standards for the three industrial sectors at issue today,
744 these standards will deliver enormous benefits and health to
745 the American people. Yet today's hearing is serving as a
746 platform for industry officials to urge the delay of these
747 lifesaving mercury and air toxic standards. Members of this
748 committee in recent days have acknowledged they are crafting
749 plans to delay these generationally important health
750 safeguards.

751 If there is one thing for you to remember from my
752 testimony today, it is this. Delay would mean more deaths
753 and disease on a truly staggering scale. If these health
754 protections were to be delayed by even a single year, such
755 delay would result in up to 26,000 premature deaths, 16,500
756 nonfatal heart attacks, 178,000 asthma attacks, 18,000
757 hospital admissions and ER visits, 1.3 million days when
758 people would miss work or school, and nearly 8 million days
759 when people would restrict their activities.

760 If delay is pursued, I am unaware of any other proposal

761 or legislation to have been entertained in Congress that
762 would inflict this level of hardship upon the American
763 people's health in a single year. I respectfully appeal to
764 the members of this committee to be straight with the
765 American people about the deadly consequences of delay. The
766 American people deserve to have these choices put in sharp
767 relief. The choice between enforcing the law and securing
768 these tremendous health benefits every year are blocking law
769 enforcement and sacrificing public health.

770 Americans have a right to understand how many people
771 would be allowed to die due to the weakening or delay of
772 these health safeguards. How many more pregnant women and
773 children will be poisoned by mercury in their bodies if
774 Congress delays or weakens health safeguards covering these
775 industries? How many additional hundreds of thousands of
776 cases of asthma attacks, heart attacks, and trips to the ER
777 would be permitted to occur?

778 Before Congress even considers setting the country on
779 this course, I urge you to convene legislative hearings not
780 with lawyers, lobbyists, and corporate executives, but with
781 doctors, nurses, and respiratory therapists. Please invite a
782 panel with a pregnant mother-to-be, a religious leader, and a
783 specialist in neurotoxins to discuss the impacts of delayed
784 cleanup on the most vulnerable in our care, the more than

785 300,000 newborns each year in the U.S. that may have been
786 overexposed to mercury in utero, increasing their risk of
787 neural developmental effects.

788 These EPA rulemakings have been conducted pursuant to
789 clear statutory authorities and court orders following court
790 decisions that vacated and remanded earlier unlawful
791 standards issued by the prior Administration for these
792 industries. Indeed, for critics that complain about the
793 concentration of several standards by the current
794 Administration during its first 2 years, there is a very
795 simple explanation. EPA, under the prior Administration,
796 violated the Clean Air Act repeatedly over two terms, courts
797 sent those standards back to EPA for correction, the prior
798 Administration left office without fixing those standards,
799 and now the current Administration must fix the standards to
800 follow the law.

801 We Americans deserve to have our government follow the
802 law, to enforce the law. Americans have the right to clean
803 air, a right conferred in the Clean Air Act of 1990 by a
804 Republican president, 89 senators, and 400 members of this
805 House. Congress should not take away our right to clean air.

806 In conclusion, there can be no claim that EPA lacks
807 statutory authority to protect Americans against poison and
808 cancer-causing chemicals. There can be no complaint that EPA

809 is acting too quickly after well over a decade of delay,
810 fueled by special interest and law-breaking. There should be
811 no willingness to entertain delays of health protections that
812 will avoid up to 26,000 deaths, nearly 180,000 asthma
813 attacks, and mercury poisoning of society's most vulnerable.
814 I respectfully ask you to let the clean air work to protect
815 the health of all Americans.

816 Thank you.

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

818 ***** INSERT 5 *****

|
819 Mr. {Whitfield.} Thank you. Mr. Krouskop, you are
820 recognized for 5 minutes.

|
821 ^STATEMENT OF DIRK KROUSKOP

822 } Mr. {Krouskop.} Chairman Whitfield, Ranking Member
823 Rush, and members of the subcommittee, my name is Dirk
824 Krouskop and I am the Vice President of Safety, Health, and
825 the Environment at MeadWestvaco. MeadWestvaco is a global
826 leader in the packaging industry, producing high quality
827 paperboard and plastic packaging, in addition to operating
828 school and office supply and specialty chemical businesses.
829 We operate and market our products globally with
830 approximately half of our 17,500 employees based in the
831 United States. At MeadWestvaco, we are proud of our
832 leadership and sustainability, and our longstanding record of
833 environmental stewardship.

834 Today I am here representing MeadWestvaco; however, we
835 are also members of a number of organizations that represent
836 manufacturers whose members share concerns similar to those
837 that I am expressing today on behalf of MeadWestvaco. I
838 would like to thank you for the opportunity to discuss the
839 challenges that manufacturers face in boiler MACT and other
840 related rules. We applaud this subcommittee for your
841 commitment to ensuring that laws are implemented in a
842 reasonable and fair manner. Environmental legislation has

843 produced significant improvements in air and water quality
844 over the past several decades, and improvements year over
845 year continue.

846 What has also changed and at an increasing pace in
847 recent years is the global nature of our businesses. Today,
848 many businesses, including MeadWestvaco compete globally. We
849 must produce cost competitive products that can be sold into
850 global markets; we must compete against products from
851 overseas; and we must compete in global markets for the
852 capital required to meet regulatory demands, and hopefully
853 still be able to grow our businesses.

854 A key issue for the committee's consideration is the
855 cumulative effect of many new regulations which are
856 confronting manufacturers like MeadWestvaco nearly
857 simultaneously. Paper and wood products manufacturers are
858 facing over 20 major regulations from EPA's Clean Air Act
859 program alone. The pace and volume of regulation is not
860 sustainable not only for the regulating community, but also
861 for the government.

862 I have attached a diagram to my written testimony that
863 shows the clean air regulations in the pipeline that will
864 affect forest products manufacturers. This picture gives you
865 an idea of the regulatory train wreck from just one EPA
866 program, and it doesn't even take into account the hundreds

867 of other regulations we must comply with every day.

868 As detailed in my written statement, this regulatory
869 environment increases our costs, makes us less competitive on
870 a global basis, and ultimately results in lost jobs.

871 The forest products industry, like so many other
872 manufacturers, has been hit hard by the economic crisis.
873 Since 2006 when the housing downturn began, the forest
874 products industry has lost 31 percent of its workforce,
875 nearly 400,000 high-paying jobs, largely in small rural
876 communities that can least afford to lose them. The closing
877 of a mill in a small town has a severe ripple effect when
878 that mill is the largest employer and a major contributor to
879 local taxes and community programs.

880 Here are a few of the many regulations we are concerned
881 about. EPA's recently finalized Boiler MACT rules will cost
882 our industry well over \$3 billion, and continues to ignore
883 what real world best performing boilers can achieve. While
884 Congress authorized EPA to adopt a health-based approach to
885 target controls for certain emissions below the health
886 threshold, EPA decided not to use this authority and reversed
887 its previous precedent.

888 EPA is also considering redoing the Pulp and Paper MACT
889 issued a decade ago, even though MACT is supposed to be a
890 one-time program. This could add another \$4 billion in

891 capital costs beyond Boiler MACT.

892 The National Ambient Air Quality Standards Program has
893 greatly reduced emissions of criteria pollutants, yet further
894 tightening is underway. Even before the latest ozone
895 standard is fully implemented, EPA is tightening still
896 further, 2 years ahead of the statutory schedule.
897 Collectively, the revisions of all the National Ambient Air
898 Quality Standards rules could cost the forest products
899 industry over \$8 billion in capital costs.

900 These constantly changing air quality regulations impede
901 rational, long-term decisions about capital spending,
902 particularly for projects that do not return profits to the
903 bottom line.

904 So what are we asking? Well, we applaud the
905 subcommittee's effort to address the impacts of EPA
906 regulations, and we believe Congress needs to act. As you
907 know, EPA requested from the court an extension of a deadline
908 for finalizing the Boiler MACT rules to get them right. The
909 court did not grant this request. We would respectfully
910 request that Congress act to stay the final Boiler MACT rules
911 until EPA does get it right, reset the date for defining
912 resources, allow facilities more time to comply, clarify that
913 renewable and recyclable materials are traditional fuels, and
914 ensure that the rules are achievable and less burdensome.

915 We also urge this committee to continue its efforts to
916 shine light on the impact of EPA regulations facing
917 manufacturers over the next decade. The threat of continued
918 erosion of global economic competitiveness in the United
919 States is real. Contributing to transparency and analysis of
920 the impacts of regulations on the United States is critical
921 to a future healthy and robust economy.

922 In summary, we know that the current wave of pending new
923 regulations is unsustainable. This uncertain regulatory
924 environment not only costs current jobs, but it also prevents
925 new jobs from being created. The tangled web of rules
926 impedes investment and too often leads to the decision not to
927 invest, or companies simply invest overseas. Others roll the
928 dice, hoping today's rules will change by the time their
929 project is completed. Investments in energy efficient
930 projects, mill modernization programs, and new biomass
931 boilers already have been affected by rules such as Boiler
932 MACT. Unfortunately, it is easier to see the jobs that are
933 lost after the fact, but the greatest damage may be
934 unknowable. The projects never built, the products never
935 made, the jobs never created.

936 Thank you for listening, and for your willingness to
937 help.

938 [The prepared statement of Mr. Krouskop follows:]

939 ***** INSERT 6 *****

|
940 Mr. {Whitfield.} Thank you. Mr. Papadopoulos, you are
941 recognized for 5 minutes.

|
942 ^STATEMENT OF ARIS PAPADOPOULOS

943 } Mr. {Papadopoulos.} Mr. Chairman and committee members,
944 my name is Aris Papadopoulos. I serve as CEO of Titan
945 America, a cement manufacturer and concrete--

946 Mr. {Whitfield.} Would you turn your microphone on?

947 Mr. {Papadopoulos.} --United States employing over
948 2,000 Americans. I presently chair the Portland Cement
949 Association that represents 97 percent of U.S. cement
950 capacity with nearly 100 manufacturing plants in 36 States
951 and distribution in 50.

952 Cement is to concrete what nails are to wood. It is the
953 glue that holds together our bridges, roads, dams, schools,
954 and hospitals. At \$6.5 billion combined revenue, we are a
955 relatively small industry, but without us, the entire
956 trillion dollar construction economy would come to a halt.
957 Without cement, our already deteriorating infrastructure
958 would continue to degrade to unsafe levels, along with our
959 communities and quality of life.

960 The Great Recession hit our industry hard. Cement
961 demand dropped in half. Profitability has been wiped out.
962 Yet, we sought neither handouts nor bailouts. We cut costs,
963 which sadly included more than 4,000 jobs. What remains are

964 15,000 well-paying jobs, with average compensation of
965 \$75,000, and a higher representation of minorities.

966 This is a dynamic industry. In its century-long
967 history, cement producers have demonstrated commitment to
968 continuous improvement and environmental stewardship. Many
969 of our facilities have existed for over half a century, and
970 we have never seen any empirical data of the health impacts
971 that Mr. Walke referred to. In fact, the only proof that EPA
972 has presented are computer-generated models that only have
973 helped to generate more fear.

974 In the decade prior to this recession, we invested tens
975 of millions of dollars in modernizing and expanding
976 facilities with state-of-the-art technologies that
977 significantly cut energy intensity. Today, the U.S. has a
978 world class cement industry, which recycles 12 million tons a
979 year of industrial and urban byproducts like tires, fly ash,
980 and wood chips that would otherwise be land-filled; however,
981 recent regulations put all of this at risk.

982 In a time when our industry is crippled by recession,
983 the EPA has bombarded us with multiple regulations that we
984 believe both undermine economic recovery and damage the long-
985 term environment. Several rules in particular pose immediate
986 damage--danger to the industry. Referring to their acronyms,
987 NESHAP, with a 2013 compliance deadline, and CISWI plus a

988 companion to the definition of recycled materials threaten to
989 destroy the industry's recycling success story.

990 NESHAP would cause 18 cement plants to shut down during
991 the next 2 years. This rule as written is technically and
992 economically unachievable, in fact, setting standards
993 demanded by no other country in the world, even advanced
994 European countries. The net result would be reduction of
995 domestic capacity. When the market demand recovers, it would
996 be met by imported cement. This means losing thousands more
997 American jobs. Furthermore, shifting production overseas to
998 places that have far lower standards than ours increases
999 emissions, emissions that EPA itself admits will eventually
1000 travel to and fall in the U.S.

1001 EPA needs to wake up and stop treating our industry as
1002 if we are utilities, realizing that we are not assured to
1003 return on capital, and production can move overseas. These
1004 regulations represent a hidden tax imposed on domestic
1005 production. PCA recently completed a study analyzing the
1006 impacts of EPA rules and concludes that NESHAP and CISWI
1007 rules impose a combined compliance burden of \$5.4 billion in
1008 the next 4 years, equal to 85 percent of the industry's total
1009 annual sales, while increasing production costs by 20
1010 percent. NESHAP and CISWI would force almost 25 percent of
1011 U.S. plants to shut down. We could lose an additional 4,000

1012 jobs. Assuming economic recovery through 2015, reduced
1013 capacity will raise foreign imports to 56 percent of U.S.
1014 consumption.

1015 These EPA rules make investing in the U.S. unattractive
1016 for overseas. In the end, neither the economy nor the
1017 environment win. American jobs and investment are lost,
1018 while more pollutants are emitted offshore. Less recycling
1019 leads to more land-filling. Dependence on foreign cement
1020 follows the road of dependence on foreign energy. The
1021 combined effects of increasing global demand for construction
1022 materials and cement being more cumbersome to import than oil
1023 will mean that shortages and price volatility become more
1024 common. This could hurt the entire construction economy,
1025 with impacts on infrastructure, housing, commerce, and jobs.

1026 As to infrastructure, I would like to share with you
1027 some positive news. Recently lifecycle assessment research
1028 by MIT confirms that cement and concrete can play a key role
1029 in mitigating greenhouse gas emissions by building truly
1030 sustainable roads and structures. We are the battery in the
1031 sustainable infrastructure Prius. It follows that we would
1032 want to produce these strategic materials here in the U.S. to
1033 the benefit of both economy and environment.

1034 Congress needs to step up and take back legislative
1035 ownership by establishing win-win policies like those

1036 suggested by MIT's research, create a climate that encourages
1037 rather than discourages domestic investment by taking
1038 immediate action to address onerous regulations and place a
1039 near term moratorium on more rules. With construction sector
1040 unemployment near 30 percent, Congress must craft legislation
1041 that replaces harmful regulations with policies that promote
1042 job growth, investment certainty, responsible environmental
1043 stewardship, and collaboration. This will revive private
1044 sector confidence, create good jobs for Americans, and
1045 restore economic prosperity.

1046 Thank you for this opportunity. I would be happy to
1047 answer any questions.

1048 [The statement of Mr. Papadopoulos follows:]

1049 ***** INSERT 7 *****

|
1050 Mr. {Whitfield.} Thank you, Mr. Papadopoulos. We
1051 appreciate the testimony of everyone on the panel, and Mr.
1052 Waxman has come in so I am going to recognize him for 5
1053 minutes for his opening statement.

1054 Mr. {Waxman.} Thank you, Mr. Chairman, for recognizing
1055 me and for the courtesy of allowing me to give this statement
1056 out of the usual order.

1057 Mr. Chairman, I fear that what we are seeing is another-
1058 -in a series of assaults on the Clean Air Act. Chairman
1059 Whitfield announced yesterday that after the recess we will
1060 consider legislation to delay implementation of the rules to
1061 reduce toxic air pollution from utilities, boilers, and
1062 cement plants. I think that would be a major setback for
1063 clean air. If we delay these requirements to clean up toxic
1064 air pollution, our children and many other Americans will
1065 suffer serious, and in many cases, irreversible harm.

1066 Toxic air pollution from power plants, industrial
1067 boiler, and cement plants include mercury, lead which harm
1068 brain development in babies and children, arsenic, chromium
1069 and nickel which cause cancer, and acid gasses which damage
1070 the lungs and contribute to asthma, bronchitis, and other
1071 chronic respiratory disease, especially in children and
1072 seniors. These facilities also emit particulate matter which

1073 causes heart attacks, strokes, asthma attacks, hospital
1074 admissions, and premature death.

1075 These are big sources of pollution. Power plants are
1076 the largest source of mercury air pollution in the country.
1077 Boilers are the second largest source of mercury air
1078 pollution, and guess what, cement plants are the third
1079 largest source of mercury air pollution in the country.

1080 A few weeks ago when this committee reported legislation
1081 to repeal EPA's authority to reduce carbon pollution, my
1082 Republican colleagues argued that they weren't trying to
1083 weaken the Clean Air Act. They weren't trying to block
1084 regulations to stop toxic emissions, and they really do
1085 support clean air. The chairman of the full committee said,
1086 and I quote, ``EPA's ability and obligation to regulate and
1087 mitigate air pollutants like particulates that cause soot,
1088 ozone that causes smog, carbon monoxide, lead, asbestos.
1089 Chloroform and almost 200 other air pollutants would be
1090 protected and preserved.'' That was last month. This month,
1091 they are directly targeting EPA's ability to protect the
1092 public from these very pollutants.

1093 Let us be clear. Delaying these rules will hurt a large
1094 number of people, especially children. Cleaning up cement
1095 plants will avoid 17,000 cases of aggravated asthma and 1,500
1096 heart attacks each year. Cleaning up boilers will avoid

1097 2,600 and 6,600 premature deaths, 4,100 heart attacks, 4,400
1098 hospital and emergency room visits each year. Cleaning up
1099 power plants will avoid somewhere between 7,000 and 17,000
1100 premature deaths, 11,000 heart attacks, and 120,000 cases of
1101 aggravated asthma each year. For every year these rules are
1102 delayed, thousands of Americans will die prematurely. Each
1103 year there will be over 150,000 cases of aggravated asthma,
1104 and many of them children. There will be 1.3 million
1105 additional lost days of work.

1106 It has been 40 years since we adopted the Clean Air Act,
1107 and the three industries that are the largest sources of
1108 toxic air pollution in the country still don't have to use
1109 readily available technology to clean it up. American
1110 families have waited long enough.

1111 Over the years when I worked on clean air, I have heard
1112 complaints about the costs of regulation more times than I
1113 can count, and every time, once we set the standards,
1114 industry applies American ingenuity and technical know-how
1115 and gets the job done almost always below the projected
1116 costs. I have every confidence that they will do it again
1117 here.

1118 But that won't happen if Congress repeals or blocks the
1119 Clean Air Act and stops EPA from doing its job. Some of
1120 these regulations have been delayed over a decade, and it is

1121 time that we let EPA get on with its job.

1122 I yield back the balance of my time, and thank you so
1123 much, Mr. Chairman, for allowing me this opportunity to make
1124 my statement.

1125 [The prepared statement of Mr. Waxman follows:]

1126 ***** COMMITTEE INSERT *****

|
1127 Mr. {Whitfield.} Thank you, Mr. Waxman. I think the
1128 last amendments to the Clean Air Act were 1990, and I do
1129 think Congress has a responsibility to review these acts and
1130 even make changes when necessary, and one of the reasons we
1131 have had these hearings is to try to get the testimony of
1132 different groups to see what they think about it.

1133 I would ask Mr. Fanning and Mr. Earley, just to start
1134 off with, Mr. Waxman, who is quite familiar with the Clean
1135 Air Act, said that technology is readily available to meet
1136 this utility MACT standard, and also said that historically
1137 industry gets the job done below anticipated costs. Would
1138 you all react to that, those two statements?

1139 Mr. {Earley.} Yes, Mr. Chairman, a couple of
1140 observations.

1141 First of all, the Clean Air Act amendments of 1990 gave
1142 us tremendous flexibility. The concept of emissions
1143 allowances gave us the opportunity to schedule the addition
1144 of new environmental controls over a timeframe that made
1145 sense to minimize costs. This rule does not give us that
1146 flexibility. It is on a very tight timeframe that is going
1147 to drive costs up and actually strain the ability to actually
1148 install the equipment because of limitations on people and
1149 equipment and the like.

1150 The second issue is around the availability of
1151 technology. As I mentioned in my testimony, with respect to
1152 acid gasses, the EPA assumes that dry sorbent injection
1153 technology will achieve the standards that they have set, and
1154 yet, they admit that it is based on one 3-week study on one
1155 particular type of boiler. Well, in our industry there are
1156 dozens of different boiler types and when you start injecting
1157 materials into the boiler, it does have an impact on how the
1158 system operates. We have no assurance that that technology
1159 is going to work. I don't think it is appropriate to bet
1160 millions or billions of dollars on a technology that may or
1161 may not work. It doesn't make sense.

1162 That is why time will give us a chance to ensure whether
1163 that technology does, in fact, work, or whether those
1164 technologies are not going to work and we have to look for
1165 something else.

1166 Mr. {Whitfield.} Mr. Fanning?

1167 Mr. {Fanning.} Thank you, Mr. Chairman.

1168 These standards that are proposed are unlike any other
1169 that has been proposed, and unlike acid rain, NOX, CARE rule,
1170 the Clean Air Interstate rule, these standards require
1171 compliance with unit specific emissions by a specified date,
1172 and that date would appear to be unreasonable.

1173 When you think about the evaluation period that we have

1174 for this rule, 60 days for a 1,000 page proposed regulation,
1175 with 1,000 pages of underlying documentation, some of which
1176 we haven't even seen yet, it is not clear that the science
1177 being proposed will, in fact, work. There are significant
1178 disagreements that we have, and I must say that Southern
1179 Company is by far the leader in our industry in proprietary
1180 research and development. We have deployed over \$10 billion-
1181 -will have deployed over \$10 billion of environmental control
1182 equipment. We have developed our own environmental control
1183 equipment that performs at levels well in excess of industry
1184 standards and is able to be deployed 10 to 20 percent cheaper
1185 than what our peers are able to do.

1186 We don't believe that some of the levels that are
1187 proposed are workable, and I think just following on what
1188 Tony said, I think that when you consider what the EPA has
1189 proposed in terms of what will be required as a result of
1190 this rule, 24,000 megawatts of scrubbers, I think the number
1191 will be more like 80. They have a very low number for what
1192 might be the retirements, and therefore will have to replace
1193 that generation to provide reliability for the benefit of our
1194 customers. We think that number is going to be 70 to 80,000.
1195 So this is a very different landscape.

1196 Mr. {Whitfield.} Okay, thank you, Mr. Fanning.

1197 Mr. Dingell, I yield to you.

1198 Mr. {Dingell.} You are most courteous, Mr. Chairman.

1199 This question, just yes or no. To our last two
1200 witnesses who commented here, Mr. Fanning and Mr. Earley,
1201 what you are really telling us is you need more time to see
1202 to it that the requirements that are imposed upon you will,
1203 in fact, work, and give you a solution that's in the public
1204 interest as opposed to just big expenditure money. Is that
1205 right?

1206 Mr. {Earley.} Yes, sir.

1207 Mr. {Dingell.} Thank you. I thank you, Mr. Chairman,
1208 for your courtesy.

1209 Mr. {Whitfield.} Thank you. Mr. Papadopoulos, in your
1210 testimony you had indicated that you would anticipate that
1211 cement factories would actually close down if this rule is
1212 implemented? Is that the case?

1213 Mr. {Papadopoulos.} That is correct, Mr. Chairman,
1214 especially particularly older plants--

1215 Mr. {Whitfield.} Excuse me, bring it closer to you.

1216 Mr. {Papadopoulos.} Yeah, particularly older plants
1217 that cannot really justify these large investments would be
1218 the ones that close down. And plants that don't have the--

1219 Mr. {Whitfield.} How many would that be?

1220 Mr. {Papadopoulos.} Well, we are talking about 18
1221 plants in just one room, and probably another two or three

1222 plants from the recent rule on waste, CISWI rule.

1223 Mr. {Whitfield.} Well, my time is expired so I will
1224 recognize the gentleman from Illinois for 5 minutes.

1225 Mr. {Rush.} I thank the chairman.

1226 Mr. Walke, Mr. Fanning in his testimony--especially in--
1227 it seems like--Mr. Bradley--Mr. Fanning in his testimony, he
1228 said that some plants need a chance to increase their bottom
1229 line when they reduce reliability and higher costs that the
1230 EPA regulation would produce. Can you speak to the--being
1231 realized today by companies dealing with electricity--without
1232 any environmental control? Why do your companies support EPA
1233 regulations to restrict emissions from generating plants?
1234 Are you all--here?

1235 Mr. {Bradley.} We counted that these regulations have
1236 been coming for over 10 years. The vast majority of
1237 companies have been planning ahead. The utility industry
1238 across the board has taken measures in advance. As I
1239 indicated, 60 percent of the capacity of the coal capability
1240 is already retrofitted with NOX emissions. It has been
1241 widely deployed. The issue around direct sorbent injection,
1242 I think, is a little outdated. We have seen in the EPA's
1243 database--this is to control acid gasses--dozens of sources
1244 that have been tested, dozens of plants that have deployed
1245 the technology, and we have been real familiar with a couple

1246 of plants that have tested the technology and believe it is
1247 going to be the key to compliance.

1248 The baghouse fabric filter undertakings are going to be
1249 expensive, but they are doable. We think a lot of the
1250 technology can be deployed in 2 to 3 years. But I have to
1251 underscore the fact that every plant is different. Every
1252 plant has to be treated with specific engineering and design
1253 capabilities.

1254 When it comes to reliability and reserve margins, we
1255 think the place to go to assess that is the North American
1256 Electric Reliability Council. At least in the southeast,
1257 they have projected very healthy reserve margins over the
1258 course of the future, 2014 to 2019. Given the history and
1259 the innovation that the industry has brought to the table in
1260 the past, we believe that there is no reason to introduce
1261 legislation to delay the implementation of the Utility Toxins
1262 Rule.

1263 Mr. {Rush.} Thank you.

1264 Mr. Papadopoulos, there has been reporting here, and I
1265 have a copy of an article from the News and Observer, I guess
1266 this is a local paper, and a couple--to family court. Are
1267 you familiar with what they call a slap suit?

1268 Mr. {Papadopoulos.} I am sorry, Congressman, I didn't
1269 understand your question.

1270 Mr. {Rush.} I said are you familiar with what they--
1271 when they talk about slap suit?

1272 Mr. {Papadopoulos.} No.

1273 Mr. {Rush.} All right. A slap suit is a suit by which
1274 a company raises litigation to try to chill public protest
1275 against a company project. I will bring to your attention
1276 that your company sued a pediatrician, Dr. Hill, and--the
1277 statements they made opposing the proposed bill in Wimbledon,
1278 North Carolina, and my understanding--that had been published
1279 in the press, and Dr. Hill said that some people who went
1280 sick and some people died when the plant was built, and they
1281 made the statements at a county commissioner's meeting a year
1282 earlier, and they spoke Titan's permit application said--
1283 1,500 tons of SO₂, over 2,000 tons of NO_X, and about 350 tons
1284 of fine particulates.

1285 What do you say about this suit?

1286 Mr. {Papadopoulos.} Honestly, I can't understand what
1287 you are saying, Congressman. What is your question? Maybe--

1288 Mr. {Rush.} Well, my question is do you believe in the
1289 Constitution?

1290 Mr. {Papadopoulos.} Excuse me?

1291 Mr. {Rush.} Do you believe in the Constitution?

1292 Mr. {Papadopoulos.} Of course.

1293 Mr. {Rush.} Do you support the Constitution?

1294 Mr. {Papadopoulos.} Did you ask if I swear to the
1295 Constitution?

1296 Mr. {Rush.} Do you support the Constitution?

1297 Mr. {Papadopoulos.} Support, yes.

1298 Mr. {Whitfield.} Your time is expired.

1299 Recognize the chairman of the committee, Mr. Upton, for
1300 5 minutes.

1301 The {Chairman.} Thank you, Mr. Chairman. Mr. Fanning
1302 and Mr. Earley, I guess Mr. Earley, in your testimony you
1303 talked about if these utility MACT rules--if the timing stays
1304 60 days to review, begin to see and implement 1,000 pages of
1305 regulations. You indicated in your testimony that you would
1306 be probably forced to retire nearly one-third of your plants?
1307 Is that accurate?

1308 Mr. {Earley.} Yes, Mr. Chairman. We estimate between
1309 20 and 30 percent of our capacity will have to be retired, if
1310 these rules stay as they are.

1311 The {Chairman.} And how fast would that have to occur?

1312 Mr. {Earley.} That would have to happen over the next 4
1313 years. There would not be enough time to build new capacity
1314 to replace it, given the time table of this bill.

1315 The {Chairman.} So we would have to purchase power from
1316 somebody else?

1317 Mr. {Earley.} We would be forced to purchase power on

1318 the open market.

1319 The {Chairman.} And how easy is that to do?

1320 Mr. {Earley.} Well, if the power is available, it is
1321 easy to do. What will happen is it will drive the price of
1322 electricity on the market. The laws of supply and demand
1323 can't be repealed, and we will be paying more and our
1324 customers will be paying more for electricity.

1325 The {Chairman.} And how much more do you think that
1326 would be?

1327 Mr. {Earley.} Our estimate is that the overall cost to
1328 our customers is in the range of 25 percent increase if these
1329 regulations are implemented.

1330 The {Chairman.} So as we come from Michigan where we
1331 are already getting pounded with higher unemployment, this
1332 would add to those costs in a pretty dramatic way?

1333 Mr. {Earley.} Absolutely, Mr. Chairman, and remember,
1334 it is on top of environmental controls that we already have
1335 installed that our customers are paying for, and the multiple
1336 regulations that are in the pipeline which will add to these
1337 costs. So it will be a significant burden for our customers
1338 that are challenged and are struggling to recover from the
1339 Great Recession.

1340 The {Chairman.} Mr. Fanning, is that about the same
1341 case for Southern Company, too?

1342 Mr. {Fanning.} Yes, sir, we estimate the economic
1343 impact would be an increase in prices of about 25 percent for
1344 the southeast, and it would impair reliability potentially,
1345 which hurts economic growth.

1346 The {Chairman.} Mr. Papadopoulos, some of us suggest to
1347 clean it up, some of us would say these regs come in, we will
1348 move them out. Where is your competition for cement? What--
1349 who--what other countries compete, Mexico and China? Are
1350 they your prime competition?

1351 Mr. {Papadopoulos.} Back when we had--

1352 The {Chairman.} I don't know if your mic button is on.

1353 Mr. {Papadopoulos.} When we had a very strong
1354 construction industry, let us say in 2005, the U.S. was
1355 importing about one-third of its cement needs, and the
1356 countries it was coming from, Asia was a big importer, China,
1357 Thailand, Korea, countries in Latin America, Mexico--

1358 The {Chairman.} What type of regulations do they have
1359 on producers of cement in Mexico and China?

1360 Mr. {Papadopoulos.} Well, they are moving but they are
1361 decades behind us.

1362 The {Chairman.} Decades behind us.

1363 Mr. {Papadopoulos.} Decades behind us.

1364 The {Chairman.} And what will the--if you kept all your
1365 production in the U.S., what will the additional costs be?

1366 Mr. {Papadopoulos.} Well, as we pointed out here
1367 through our study is to comply with just a couple of these--
1368 and we don't know if this is the end of the pipeline. This
1369 is a big uncertainty in our industry and probably other
1370 industries. It is going to take \$5.5 billion, 85 percent of
1371 our annual sales. It is, on the other hand, not even going
1372 to help our costs. It is actually going to increase our
1373 costs by 20 percent, making us even less competitive with
1374 imports from overseas.

1375 The {Chairman.} Mr. Fanning, could you walk me through
1376 the ``Frankenplant'' exercise that you cited in your
1377 testimony?

1378 Mr. {Fanning.} I am sorry, could you state it again?

1379 The {Chairman.} The ``Frankenplant''?

1380 Mr. {Fanning.} Oh, yes, sir. So a lot of the design
1381 characteristics that would follow the implementation of a
1382 MACT for different kinds of emissions are designed to provide
1383 a MACT for one and then another and then another. It does
1384 not take into account the consolidated impact of all the
1385 emissions and therefore a single design.

1386 What they would do is pull together the maximum
1387 available control technologies for each different design, and
1388 therefore create a plant, frankly, that may not be workable.
1389 That is why we use the phrase ``Frankenplant''.

1390 The {Chairman.} Mr. Kempf, I confess I am a Michigan
1391 man.

1392 Mr. {Kempf.} That is okay.

1393 The {Chairman.} I will be in South Bend tomorrow. That
1394 is where my plane comes in. I vote for the Irish in a lot of
1395 different ways. Great university. We have a very good
1396 rivalry, as you know, and as I visit some of my universities,
1397 Western Michigan University as an example, I visited their
1398 power plant.

1399 So you have spent \$20 million on your facility in the
1400 last 10 years?

1401 Mr. {Kempf.} Correct, that was our activity to achieve
1402 the original MACT that was promulgated.

1403 The {Chairman.} And it does not comply with these regs?

1404 Mr. {Kempf.} Well, the equipment that we purchased,
1405 obviously we sought a margin of compliance below the limit so
1406 we are in the '04 rule, but the new limits that are proposed
1407 are below the guarantees that we achieved from the
1408 manufacturers of the equipment.

1409 The {Chairman.} Thank you, and my time is expired.

1410 Mr. {Whitfield.} Gentleman's time is expired. Chair
1411 now recognized Chairman Emeritus Waxman for 5 minutes.

1412 Mr. {Waxman.} Thank you, Mr. Chairman.

1413 There was testimony, Mr. Fanning told us that ``The

1414 major flaw in EPA's analysis is that it makes overly
1415 optimistic assumptions about the effectiveness and
1416 availability of certain control technologies,' specifically,
1417 dry sorbent injection, or DSI. Mr. Earley's testimony stated
1418 that EPA makes its determination about DSI based on one 3-
1419 week trial. Mr. Bradley, what can you tell us about DSI?

1420 Mr. {Bradley.} I can tell you that I am not exactly
1421 sure how EPA judged its estimate on DSI. I can also tell you
1422 that in the NEDS database, you can look and see that dozens
1423 of units have been retrofitted with direct sorbent injection.
1424 These typically are smaller units, but it is a key component
1425 to achieving compliance with the standards.

1426 Mr. {Waxman.} So it is already in use?

1427 Mr. {Bradley.} Absolutely.

1428 Mr. {Waxman.} I see. It is my understanding that the
1429 industry's cost assumptions and projected retirements depend
1430 on DSI not being available as EPA projects. Could you
1431 elaborate? Is that--

1432 Mr. {Bradley.} Certainly. I think there have been a
1433 variety of analyses looking at this situation, prior to EPA
1434 proposing the rule. Now that the rule is out and the
1435 standards are set, and the standards are not as aggressive as
1436 I anticipated--this is for mercury, for PM and for acid
1437 gasses--and they introduced quite a bit of flexibility that I

1438 think a lot of folks in the industry didn't anticipate. When
1439 you take all that into account, I think you are going to see
1440 the costs are going to be lower than what has been projected,
1441 and certainly the retirements will be less.

1442 I think it is important to recognize that NERC looked at
1443 retirements prior to EPA's rule coming out, and their
1444 projection is in the range of 15 gigawatts. If you look at
1445 EPA's estimate plus what they saw happening naturally due to
1446 economic drivers like low gas prices, they are pretty much in
1447 the same range. But you know, it probably is going to be on
1448 the lower side of the ranges that have been proposed previous
1449 to the rule.

1450 Mr. {Waxman.} Well, Southern Company disagrees with
1451 you. Now that we have heard from Southern on this topic
1452 before today, in 2004, Southern weighed in on EPA's first
1453 attempt to reduce mercury from power plants. They say that
1454 mercury control technologies were not commercially available
1455 and that the industry couldn't meet standards based on such
1456 controls. In fact, Southern official Larry Monroe stated,
1457 and I want to quote him, ``With straining to do it, it is in
1458 the 2015 to 2018 timeframe that industry can get there.''
1459 Three years later, without any EPA requirements to use
1460 mercury specific control technology, it was already in use on
1461 11 units. Today, almost 100 units are using the technology.

1462 These standards could and should have been adopted years ago,
1463 and if industry hadn't said the cleanup couldn't be done, we
1464 would have already done it.

1465 Mr. Walke, can you explain how these rules have been
1466 delayed? Why have we seen delay after delay?

1467 Mr. {Walke.} Yes, Congressman Waxman. The rules were
1468 delayed in the 1990s due to lateness in carrying out steps
1469 that Congress had demanded in the 1990 amendments to report
1470 to you all about the dangers of toxic pollution from power
1471 plants. But then EPA Administrator Browner in 2000 made a
1472 finding that should have required those standards to be
1473 adopted--to go into effect about 4 years later. Instead, the
1474 Bush Administration did a total U-turn and adopted a rule
1475 that was struck down in 2008, consuming the entire 8 years of
1476 its two terms, preventing any regulation of arsenic, lead,
1477 and the rest from power plants. In fact--

1478 Mr. {Waxman.} Rather than get going and getting this
1479 accomplished, we saw delays. Industry pushed for delays.

1480 Mr. {Walke.} I have to say there was strong pressure
1481 from some of my co-panelists to prevent EPA from adopting
1482 those regulations, and the Bush Administration succumbed to
1483 that pressure and decided to do that.

1484 Mr. {Waxman.} And the courts rejected their arguments.

1485 Mr. {Walke.} Not only did a court with Republican and

1486 Democratic appointees reject the arguments, but in fact they
1487 quoted Lewis Carroll's Alice in Wonderland for the absurdity
1488 of the legal argument that the Bush EPA had relied upon in
1489 unanimously rejecting that rule.

1490 Mr. {Waxman.} Well, at last EPA's proposal defense was
1491 standard. It is consistent with the Clean Air Act. It would
1492 save thousands of lives, prevent brain damage in untold
1493 numbers of children. I don't think we should be shocked to
1494 see the industry here today asking for as long as 10 years
1495 delay. These rules have been delayed long enough and
1496 industry has had plenty of notice. We must not deny our
1497 children these protections any longer.

1498 Thank you, Mr. Chairman.

1499 Mr. {Whitfield.} The gentleman from Texas, Mr. Barton,
1500 is recognized for 5 minutes.

1501 Mr. {Barton.} Thank you, Mr. Chairman.

1502 Let me say it at the beginning that I will stipulate
1503 that mercury is a poison and a pollutant and SO₂ is a
1504 pollutant and these new standards, if adopted, would reduce
1505 those pollutants. I will stipulate that.

1506 Having said that, it is a puzzlement to me that if you
1507 look at the indices for air quality in the United States,
1508 according to the criteria of pollutants that are covered
1509 under the Air Quality Act, our air quality is improving

1510 almost everywhere in the country. In the areas it is not, it
1511 is primarily places like Southern California where you have
1512 just a tremendous number of people and huge number of mobile
1513 sources and a geography that traps the pollution from
1514 tailpipes, and it is just very, very difficult to clean that
1515 up.

1516 So you know, if you look at the facts and then you look
1517 at these proposed standards, I will even stipulate that they
1518 will make the improvement in the pollution control. The
1519 question is is it worth the cost? And if you want to know
1520 what the cost is, just look at what happened at the TVA
1521 yesterday. TVA announced a settlement with EPA that is going
1522 to close 18 of their coal boilers, close one of their coal-
1523 fired power plants, reduce the amount of electricity capacity
1524 by 16 percent. They also agreed to spend an additional \$5
1525 billion in the next few years on the plants they are not
1526 closing and the boilers they are not closing.

1527 If we adopt these standards, that is what you are going
1528 to see across America. The other plants are just going to
1529 close because it just doesn't make sense to spend the money,
1530 and you don't get the environmental--I stipulate you get the
1531 cleanup in terms of lowering emissions, but there is not a
1532 real health benefit.

1533 Now I want to apologize to you, Mr. Wade--Walke--Wade--

1534 Mr. {Walke.} Walke, Congressman.

1535 Mr. {Barton.} Walke, I am sorry. I am not being
1536 facetious.

1537 Mr. {Walke.} No, sir.

1538 Mr. {Barton.} We tried to get the EPA here and they
1539 wouldn't come, so you are the next best thing, okay?

1540 Mr. {Walke.} I am not sure how I feel about that,
1541 Congressman Barton, but--

1542 Mr. {Barton.} It is not personal, I assure you.

1543 Mr. {Walke.} I will not take it personal.

1544 Mr. {Barton.} But you were saying--

1545 Mr. {Rush.} Will the gentleman yield just for a moment?

1546 Mr. {Barton.} Very briefly.

1547 Mr. {Rush.} I see the gentleman refer to we tried to
1548 get the EPA to come. I just think that that is consistent
1549 with what we have been experiencing in the last couple
1550 months. We have given the EPA proper notice, and I know they
1551 have got a lot of employees over there, but they have very
1552 few employees who have this kind of expertise and who are
1553 supervisors who--that is the reason why Chairman Waxman and
1554 I--

1555 Mr. {Barton.} They have had since November, the first
1556 Tuesday in November to get ready, Mr. Rush, and we have had a
1557 number of hearings. I would encourage you to encourage them

1558 to show up so we don't have to--

1559 Mr. {Rush.} With all due respect to the chairman
1560 emeritus and the members on our side, we sometimes--we don't
1561 get notice until the last minute, so we have to scramble and
1562 we are here in the same building and operating in very close
1563 contact with you, and we have to--

1564 Mr. {Barton.} Reclaiming the time, and I would
1565 unanimous consent for 3 additional minutes, or at least 2. I
1566 don't know how long Mr. Rush took, but I have some pretty
1567 important questions I would like to ask.

1568 Mr. {Rush.} I have no objection.

1569 Mr. {Whitfield.} Without objection.

1570 Mr. {Barton.} Okay. Now let us go back to you, Mr.
1571 Walke.

1572 In your testimony, you say that these standards would
1573 save 17,000 lives in terms of premature deaths a year, I
1574 think. Is that not correct?

1575 Mr. {Walke.} That is taken from EPA's projecting that
1576 up to 17,000.

1577 Mr. {Barton.} You stipulate it is a number you got from
1578 somewhere else?

1579 Mr. {Walke.} Yes, sir.

1580 Mr. {Barton.} I want to ask every private sector
1581 individual here, I will start with Mr. Fanning. How many

1582 cases in your company were there last year of mercury
1583 poisoning reported?

1584 Mr. {Fanning.} None that I know of.

1585 Mr. {Barton.} Does anybody know of any mercury
1586 poisoning because of emissions from any of your plants? Do
1587 you know how many there were in the country last year? Zero.
1588 What about SO₂, any of you have any history in your plants of
1589 SO₂ poisoning? We cut SO₂ emissions by 50 percent in the
1590 last decade, and this, if implemented, cuts it another 50
1591 percent but takes it from four million tons a year annually
1592 to two million.

1593 Now Mr. Walke, again, it is not your statistic, but it
1594 is reported all the time. There is absolutely nothing to
1595 back it up.

1596 Mr. {Walke.} Congressman Barton, let me--

1597 Mr. {Barton.} Do you know how many--let me ask you.
1598 How many pounds of mercury is omitted from an average 500
1599 megawatt coal plant a year?

1600 Mr. {Walke.} Congressman Barton, those are attributed
1601 to deadly soot pollution--

1602 Mr. {Barton.} Do you know the number?

1603 Mr. {Walke.} --not mercury, so I want to be clear on
1604 the basis for my claim. It is particulate matter that kills
1605 people. EPA is not claiming--

1606 Mr. {Barton.} All right, then let us see that backed
1607 up.

1608 Mr. {Walke.} Okay, I would be happy to, and that is a
1609 great thing for this committee to convene a hearing on with
1610 the National Academy of Science--

1611 Mr. {Barton.} Every 500 megawatt coal-fired power plant
1612 produces 3 pounds of mercury a year, 3 pounds. According to
1613 Mr. Walke's testimony, these standards reduce that 91
1614 percent. Well, that is great. So you go from 3 pounds a
1615 year per plant to .3 pounds per plant, but that is per year.

1616 Now to actually cause poisoning or a premature death,
1617 you have to get a large concentration of mercury into the
1618 body. I am not a medical doctor, but my hypothesis is that
1619 is not going to happen. You are not going to get enough
1620 mercury exposure or SO2 exposure or even particulate matter
1621 exposure. I think the EPA numbers are pulled out of the thin
1622 air, and I am going to ask that we send an official document
1623 to EPA. Let us back them up, because the entire premise for
1624 going forward with these standards is that you get such a
1625 tremendous ratio of benefits to cost because they claim,
1626 according to Mr. Walke's testimony, which he is an honest man
1627 and he has got it from somewhere, is \$140 billion annually.
1628 But if you really don't have the benefit because you are not
1629 having the medical negative, but you really have the cost--

1630 and if you don't think the costs are real, just look at how
1631 many factories are closing and going to Mexico and China.
1632 Look at the population of Mr. Dingell's home city, Detroit,
1633 Michigan. It has fallen by 40 percent, I think, in the last
1634 20 years. If you don't think those are real--so if we are
1635 going to have a real debate about these standards, Mr.
1636 Chairman, we need to start getting some real numbers from the
1637 EPA and getting the EPA up here--if it takes Mr. Rush's help,
1638 Mr. Dingell, Mr. Waxman's, because if their benefits are not
1639 real and the costs are real, we are absolutely wrong to force
1640 these standards.

1641 And with that, I have overextended even my extended
1642 time, and I yield back.

1643 Mr. {Whitfield.} Well thank you. I might mention to
1644 the gentleman that there was an article in University of
1645 Michigan Law Review recently not too long ago that was quite
1646 critical of the method used by EPA in calculating health
1647 benefits.

1648 Mr. {Barton.} That is why we need the EPA here.

1649 Mr. {Whitfield.} At this time I recognize the gentleman
1650 from Michigan, Mr. Dingell, for 5 minutes.

1651 Mr. {Dingell.} Mr. Chairman, I thank you and I thank
1652 you for your courtesy in yielding to me earlier. I would
1653 like to welcome my old friend Mr.--constituent friend. He

1654 heads a very fine public spirited company and I would like to
1655 ask him this question. Is there a difference between what
1656 DTE has been able to do at several power plants in my
1657 district? I know that you have been making significant
1658 investments as you referenced in your testimony to upgrade
1659 the environmental performance of these facilities, and I know
1660 that there are some problems in what is being contemplated
1661 under the proposed rules. Is that a correct statement?

1662 Mr. {Earley.} That is correct.

1663 Mr. {Dingell.} All right. Now tell us what the
1664 differences are between EPA and DTE, and what it is they are
1665 requiring you to do and what it is you believe would be in
1666 the best economic interest of the company, and if it will
1667 repair industry jobs in Michigan.

1668 Mr. {Earley.} Well Mr. Chairman, the prior Clean Air
1669 Act amendments of 1990 gave us tremendous flexibility in
1670 terms about timing and the ability to sequence adding
1671 equipment by the ability to go out and buy allowances on the
1672 market. So as you know, we have spent several billion
1673 dollars at our Monroe power plant, but we didn't have to
1674 build all of the equipment at once. We were able to phase it
1675 in over time.

1676 This rule will require every single unit on our plant to
1677 comply by a specific date. That will drive the costs up and

1678 it will force us, in many cases, up to 25 percent of our
1679 coal-fired power plants will have to be shut down because it
1680 will just not be economic.

1681 The other point that I know you are aware of, we talk
1682 about imposing these requirements on utilities, we are
1683 imposing on our customers. For a utility, this is an
1684 opportunity for investment. Economically, we are not hurt by
1685 it as a regulated utility, but our customers--

1686 Mr. {Dingell.} What you are telling us they are forcing
1687 you to make investments that are not in the best interest of
1688 your customers for a momentary gain which, if you could go
1689 forward with your regular construction plans and improvement
1690 plans you would not make and you would serve better your
1691 customers and produce just as much clean air, but at a much
1692 lower energy cost and at a much lower emission of CO2? Is
1693 that right?

1694 Mr. {Earley.} That is absolutely correct.

1695 Mr. {Dingell.} Very good. I would like to have you
1696 submit a bit more on that answer so that we have that in the
1697 record.

1698 Now if--let us see. As I understand, then, that there
1699 are several older electrical generating facilities that are
1700 scheduled to be shuttered in the next decade, and as you have
1701 indicated, that that shuttering will be hurried up and you

1702 will be compelled essentially to move instead of to nuclear,
1703 which you are contemplating doing, moving to natural gas
1704 combined cycle generating systems. Is that right?

1705 Mr. {Earley.} Yes, sir.

1706 Mr. {Dingell.} And that constitutes a complete change
1707 in the investment plans that you have in the company, is that
1708 right?

1709 Mr. {Earley.} Yes, sir.

1710 Mr. {Dingell.} Very good. Now, these questions for Mr.
1711 Walke and Mr. Krouskop. It is my understand that EPA
1712 requested additional time for the rule. Is that right?

1713 Mr. {Krouskop.} For the boilers rule, yes, sir.

1714 Mr. {Dingell.} All right, and you agree with that
1715 statement, Mr. Earley?

1716 Mr. {Earley.} Yes.

1717 Mr. {Dingell.} Has industry filed a motion for a stay
1718 on the Boiler MACT?

1719 Mr. {Krouskop.} We are continuing to work both from the
1720 perspective with EPA for reconsideration, requesting a stay,
1721 and also are considering from a judicial standpoint what are
1722 options are for requesting a stay.

1723 Mr. {Dingell.} I have been hearing that this would be a
1724 good solution to the problem, that EPA would not oppose that
1725 kind of step and that that would help us resolve the problem

1726 that lies before us. Am I correct in that?

1727 Mr. {Krouskop.} I think that it is generally correct.
1728 I think EPA certainly indicated they needed quite
1729 considerable additional time to get the rule right. At the
1730 same time, though, there are some elements of the Boiler MACT
1731 rule which EPA has been resistant to correcting the way we
1732 believe they are, and that really is around the health-based
1733 compliance alternative, which is part of the Clean Air Act,
1734 and we believe that is appropriate.

1735 Mr. {Dingell.} Thank you. I have got 9 seconds to ask
1736 this question, Mr. Earley. So we can say here, Mr. Earley,
1737 as a result of your testimony that the requirements of
1738 Utility MACT go beyond your facilities and your jobs. In
1739 other words, there is a potential for impacts to go well
1740 beyond the electrical generating sector and to compel you to
1741 make business decisions that may be well beyond and well
1742 different than what you had made that may not be either in
1743 the interest of your consumers or in the interest of the
1744 public and might very well result in wasteful use of energy,
1745 and of capital. Is that a correct statement?

1746 Mr. {Earley.} That is correct, chairman.

1747 Mr. {Dingell.} Thank you, and I thank you, Mr.
1748 Chairman.

1749 Mr. {Whitfield.} At this time I recognize the gentleman

1750 from Illinois, Mr. Shimkus for 5 minutes.

1751 Mr. {Shimkus.} I thank you, Mr. Chairman. I am going
1752 to go quickly, too, to get through my questions. We wanted
1753 the EPA back here again. We had them here yesterday in coal
1754 combustion waste. There's a President Executive Order that
1755 says all the new regulations have to comply with an economic
1756 analysis. What we found out yesterday in the hearing is just
1757 even though EPA does an economic analysis, they don't
1758 translate to that job impact. So if there is an economic
1759 analysis there is going to be a job impact, so we welcome EPA
1760 to hopefully coincide with the President Executive Order
1761 doing an economic and a job analysis, because that is what
1762 this is about, complying without destroying jobs.

1763 First thing, Mr. Bradley, have you ever designed a power
1764 plant?

1765 Mr. {Bradley.} Have I ever denied?

1766 Mr. {Shimkus.} Designed.

1767 Mr. {Bradley.} Designed, no.

1768 Mr. {Shimkus.} Sited?

1769 Mr. {Bradley.} No.

1770 Mr. {Shimkus.} Built?

1771 Mr. {Bradley.} No.

1772 Mr. {Shimkus.} Raised capital to build one?

1773 Mr. {Bradley.} No.

1774 Mr. {Shimkus.} Conducted a payroll for the power plant?

1775 Mr. {Bradley.} No.

1776 Mr. {Shimkus.} Provided healthcare benefits for the
1777 employees?

1778 Mr. {Bradley.} No.

1779 Mr. {Shimkus.} Okay, thank you. In your written
1780 testimony on page 4, you state that Constellation recently
1781 installed a major air quality control system at its Brandon
1782 Shore facility, and that construction was completed in 26
1783 months. Now time is one part of this debate, it is a key
1784 issue in implementation. Is that an estimate? That
1785 construction took a little over 2 years, is that accurate?

1786 Mr. {Bradley.} The construction itself took 26 months.

1787 Mr. {Shimkus.} And I would turn to and ask for
1788 unanimous consent to put into the record an article that
1789 states that that construction was at least a 3-year
1790 construction. So I would ask you to re-look at that, because
1791 I don't think that is correct in your testimony.

1792 Mr. {Bradley.} I can provide you with more--

1793 Mr. {Shimkus.} I would be happy to see whatever
1794 documentation you have. The company says it was a 3-year
1795 construction, so they dispute your opening statement.

1796 Mr. Fanning and Mr. Earley, what happens if there is a
1797 race to build in this 3-year timeframe on cost of equipment,

1798 metal, employees? What happens to the overall cost of these
1799 projects?

1800 Mr. {Fanning.} Well, they go up dramatically.

1801 Mr. {Shimkus.} Dramatically, three-fold, four-fold?

1802 Mr. {Fanning.} Sure.

1803 Mr. {Shimkus.} And what happens to the cost to the
1804 consumer? What are you going to have to do?

1805 Mr. {Fanning.} Raise prices.

1806 Mr. {Shimkus.} Does anyone dispute that? Mr. Earley,
1807 do you dispute that?

1808 Mr. {Earley.} No, I agree with Mr. Fanning on that.

1809 Mr. {Shimkus.} Okay, let me go to Mr. Kempf. I, too,
1810 have great respect for the institution of Notre Dame. I am a
1811 Missouri Lutheran. Hopefully I try to be devout--I am being
1812 serious here.

1813 In your opening statement, you say that the EPA has not
1814 justified by corresponding environmental health protections
1815 from reduction of hazardous air pollutants. So you are
1816 staking Notre Dame's institutional position and it is very
1817 similar to the comments by the Chairman Emeritus Barton on
1818 the whole mercury debate, that 2 pounds versus .2 pounds,
1819 there is no mercury poisoning reported last year. Aren't you
1820 staking the university's position that there--these have, as
1821 you say, is not justified by corresponding environment and

1822 health protection from reduction of hazardous air pollutants?

1823 Mr. {Kempf.} I don't know that I am the person who can
1824 make that statement for the whole institution. I think our
1825 concern is that we want to make sure that--

1826 Mr. {Shimkus.} But you are making it for this--in this
1827 testimony today--

1828 Mr. {Kempf.} Correct.

1829 Mr. {Shimkus.} --as the director of utilities.

1830 Mr. {Kempf.} We are looking for a fair and balanced
1831 regulation that we can achieve at a reasonable cost.

1832 Mr. {Shimkus.} And I think that is part of this debate.
1833 Cost benefit analysis, again, we welcome EPA to justify the
1834 loss of jobs for negligible toxic emittent benefits.
1835 Negligible, zero. Now, we could talk with Mr. Walke on
1836 particulate matter, but we are using particulate matter to
1837 address toxicity. EPA is not addressing toxicity. All this
1838 debate is on PM.

1839 Mr. Walke, I don't want to go down this route, but you
1840 raised it in your opening statement. You are concerned about
1841 mercury contamination in the unborn child, is that correct?
1842 That is part of your opening statement?

1843 Mr. {Walke.} That was.

1844 Mr. {Shimkus.} Does the NRDC have a position on
1845 abortion?

1846 Mr. {Walke.} Not to my knowledge.

1847 Mr. {Shimkus.} And you know that is the destruction of-
1848 -I will use the pro-choice vocabulary--that is a fetus,
1849 right? An unborn child is a fetus. You are concerned about
1850 the fetus and mercury poisoning, but NRDC doesn't have a
1851 position on the protection of a fetus on abortion? Is there
1852 a conflict here between life and health?

1853 Mr. {Walke.} I don't think there is a conflict, but--

1854 Mr. {Shimkus.} I think there is a huge conflict, and I
1855 would--

1856 Mr. {Walke.} Fetus--neurotoxicity by mercury poisoning--
1857 -

1858 Mr. {Shimkus.} I would say that if NRDC is concerned
1859 about mercury poisoning, then they ought to be concerned
1860 about the destruction of human life in the process of
1861 abortion.

1862 I yield back my time.

1863 Mr. {Whitfield.} Thank you. Mr. Gonzalez, you are
1864 recognized for 5 minutes.

1865 Mr. {Gonzalez.} Thank you very much, Mr. Chairman. I
1866 have 5 minutes, and we have so many witnesses so I am going
1867 to employ the John Dingell method, and that is just a yes or
1868 no answer. We will start with Mr. Fanning. Do you believe
1869 that the Clean Air Act should be repealed? I mean, let us

1870 just forget about it. Let us just go straight to it. Is it
1871 relevant? Do we need it? Should it be repealed? Yes or no.

1872 Mr. {Fanning.} No.

1873 Mr. {Earley.} No.

1874 Mr. {Bradley.} No.

1875 Mr. {Kempf.} No.

1876 Mr. {Walke.} No.

1877 Mr. {Krouskop.} No.

1878 Mr. {Papadopoulos.} If repeal means upgrading it, yes.

1879 Mr. {Gonzalez.} Are you for repealing it, just
1880 repealing it?

1881 Mr. {Papadopoulos.} The Act is functional.

1882 Mr. {Gonzalez.} See, you are an interested witness and
1883 I am leading you, so it is a yes or no answer.

1884 Mr. {Papadopoulos.} I am sure going to, thank you.

1885 Mr. {Gonzalez.} Are you for repealing the Clean Air
1886 Act?

1887 Mr. {Papadopoulos.} I am for replacing it with
1888 something more--

1889 Mr. {Gonzalez.} Okay, you are for repealing, then you--
1890 that is good. That is an honest answer. You are for
1891 repealing the Clean Air Act. Now I am assuming that you said
1892 that--those that answered no, is that it is still irrelevant
1893 and that EPA has the responsibility to protect the public's

1894 health, and this is one way of doing it. Should we disregard
1895 a rule that is promulgated by EPA, simply based on the fact
1896 that it does add some cost to protect the public's health?
1897 Yes or no, and we will start with Mr. Fanning.

1898 Mr. {Fanning.} You can't disregard it, but it needs to
1899 be modified. The rule as proposed doesn't work from a timing
1900 standpoint, first to understand what is in the rule, and
1901 secondly to comply.

1902 Mr. {Gonzalez.} I am actually going to get into that.
1903 I just want general proposition so that we can maybe agree on
1904 some things here.

1905 Mr. {Earley.} I think as a general thought as in cost
1906 alone wouldn't justify, but there has to be benefits that are
1907 consistent with the costs.

1908 Mr. {Gonzalez.} Mr. Bradley?

1909 Mr. {Bradley.} I agree with my colleague.

1910 Mr. {Kempf.} I would agree that, you know, that we
1911 should be expecting costs, and that is acceptable.

1912 Mr. {Gonzalez.} Mr. Walke?

1913 Mr. {Walke.} My answer is no, it is worth spending
1914 money to protect children and to save lives.

1915 Mr. {Krouskop.} Rules have to be achievable and
1916 affordable.

1917 Mr. {Papadopoulos.} Cost is essential.

1918 Mr. {Gonzalez.} Yes or no, does the EPA have the
1919 expertise presently to be able to promulgate rules that get
1920 the science right, the technology right, and the cost right?
1921 Yes or no?

1922 Mr. {Fanning.} I think they need to involve history--I
1923 mean, industry. They can't do it by themselves.

1924 Mr. {Earley.} Alone they don't have all the expertise.

1925 Mr. {Bradley.} Yes, they have the expertise.

1926 Mr. {Kempf.} Not in a vacuum.

1927 Mr. {Walke.} Yes.

1928 Mr. {Krouskop.} Alone they don't have the expertise.

1929 Mr. {Papadopoulos.} A very strong no.

1930 Mr. {Gonzalez.} All right. You expect us as Members of
1931 Congress to basically listen to one side or the other's
1932 experts. It has been my experience it just depends who the
1933 expert is basically representing at that point, because they
1934 are defending their opinions. Should we just be listening to
1935 industry's experts or just EPA's experts? How do we
1936 determine which is a legitimate source of good, solid
1937 information? Because I am going to tell you right now, we
1938 will argue up here over whether there is climate change
1939 taking place and we even argue over evolution. So good luck.
1940 Who do we listen to, industry or EPA? Whose experts? Should
1941 we have some other referee other than Congress? And I am not

1942 trying to shirk our duty, I am just telling you the stuff
1943 that you present to us is really many times incomprehensible
1944 because we are not experts, and we expect that experts from
1945 industry and experts from EPA are going to give us an honest
1946 opinion, but you guys don't agree, so who do we listen. I
1947 only have 30--40 seconds. Tell me who should we have as the
1948 disinterested third party expert?

1949 Mr. {Fanning.} Congressman, I think you are making a
1950 great point that for the need to review this rule and debate
1951 with EPA its ramifications in a reasonable timeframe. I
1952 think that is why we need more than 60 days in order to
1953 really understand 1,000 pages of a proposed rule and 1,000
1954 pages of documentation underlying it.

1955 Mr. {Gonzalez.} Mr. Fanning, my time is up, and to the
1956 other witnesses, if you could supply that answer. You tell
1957 me who that referee, that disinterested third party expert--I
1958 am not opposed to extensions of time to get people that are
1959 impacted time to comply and understand and evaluate, but when
1960 we do that, I also want to know that you just won't be asking
1961 for more time.

1962 Thank you very much, and I yield back.

1963 Mr. {Whitfield.} The gentleman from Oregon is
1964 recognized for 5 minutes.

1965 Mr. {Walden.} Mr. Chairman, first of all thank you for

1966 holding these hearings on these rules. I was kind of amazed
1967 the other day when we had one of these hearings to hear I
1968 believe it was a witness from the EPA talking about the job
1969 creation that is going to come from all of these regulations.
1970 Having been a small business owner for over 20 years, I am
1971 always astounded when the government puts on a rule that is
1972 very expensive and calls that job creation. They don't look
1973 at the other side of the equation. In my district, Mr.
1974 Papadopoulos, we have a cement plant that Ashgrove, I
1975 believe, owns. They have invested \$20 million installing and
1976 activating a carbon injection system. They have optimized
1977 their ACI to achieve 95 percent reductions in emissions, and
1978 EPA wants them to go to 98.5 percent, and the rule requires
1979 them to sustain those reductions over a 30-day average. So
1980 even if you have a little blip, you are out of compliance.
1981 There are 116 jobs on the line, most of them union. This is
1982 Baker County's largest single taxpayer and employer, and puts
1983 \$9 million into the economy.

1984 Now I know some of my colleagues on the other side of
1985 the aisle say oh, that doesn't matter because they are not
1986 really for jobs in the private sector anyway, some days, I
1987 believe. This is going to devastate the economy and the
1988 economy of the rural eastern Oregon county I represent. The
1989 difference between 95 percent and 98.5 percent is the

1990 equivalent of less than a teaspoon of mercury a day. Over
1991 that, we probably are going to lose this plant and those
1992 manufacturing jobs, and will end up importing more cement
1993 from China.

1994 So Mr. Papadopoulos, do you believe the EPA should
1995 exercise its authority to use the flexibility provided in the
1996 Clean Air Act amendments of 1990, flexibility that issued
1997 sub-categories?

1998 Mr. {Papadopoulos.} I think this is a very important
1999 question--

2000 Mr. {Walden.} Please turn on your mic there, sir.

2001 Mr. {Papadopoulos.} --for our industry, because we are
2002 different from power generation and other industries in that
2003 we depend on the raw materials that exist there on the site,
2004 what Mother Nature has provided the cement plants. These raw
2005 materials come in perfect, and therefore there is a whole
2006 wide range of outcomes when you use those raw materials. It
2007 would make absolute sense for the EPA to say let us look at
2008 the specific environment in which categories the plants are,
2009 and let us work with industry.

2010 I think to answer some of the questions, we need a
2011 win/win collaboration with government--

2012 Mr. {Walden.} Right.

2013 Mr. {Papadopoulos.} --not a win/lose litigation,

2014 fighting heavy-handed, you know--

2015 Mr. {Walden.} Job killing. Can I throw in job killing
2016 in that process?

2017 Mr. {Papadopoulos.} Job killing. Germany has done
2018 that. The reason--because I worked internationally, the
2019 reason Germany today is the global powerhouse along with
2020 China is because Germany has a win/win attitude working
2021 between government and industry. We need to bring that
2022 process back here to the U.S. This is a prime example of a
2023 company actually doing the right thing and in the end,
2024 getting penalized.

2025 Mr. {Walden.} And by the way, they met the
2026 requirements, I am led to understand, that the State of
2027 Oregon had put in place prior to these new requirements
2028 coming out from the EPA. And then the State wouldn't even
2029 back them up with the EPA. It was really, really quite
2030 frustrating and remains so.

2031 I got to tell you, I represent a district where I have
2032 got counties that have been averaging 15 and 16 percent
2033 unemployment for way too long. We have 55 percent of the
2034 land out there is owned by the Federal Government and
2035 mismanaged or not managed at all. There are groups, some of
2036 them represented at this table, who could care less about the
2037 livelihood of the men and women who live out in these

2038 forested communities who are fighting us on biomass, turning
2039 wooded biomass into productive, renewable energy. They would
2040 rather let the forest get overstocked, bug infested, rot and
2041 die, and then catch fire and burn. They wouldn't let us go
2042 in. They go in and sue us to go in and cut the burn dead
2043 trees while they still have value. These are not
2044 environmentalists. I don't know what they are, but they are
2045 sure destroying my part of the world and the economy there.

2046 We can find good partnerships. My State has led the way
2047 in environmental activism in a positive way, in most cases.
2048 I am going to tell you, these new federal rules are shutting
2049 down everything that matters out there in my part of the
2050 world. The new particulate rules on dust--how about in
2051 eastern Oregon? I mean, we grow they'd probably have to drag
2052 a mister behind their machinery in order to hold the dust
2053 down. We wouldn't call it dry land farming if we had that
2054 much water. This Administration is killing more jobs in
2055 rural communities than prior Administrations combined. This
2056 President doesn't understand what his own folks are doing. I
2057 have about had it, and so have the people I represent.

2058 So we are going to go after this agency. We are going
2059 to bring some damn common sense to the process and these
2060 groups that are killing the folks out there, they need to
2061 have some skin in the game and not just use these things as

2062 big fundraising efforts, which is what generally happens.
2063 There is common sense here. We can get America working
2064 again. We can get back on our feet out there, if you will
2065 just let us.

2066 Mr. {Whitfield.} Thank you, Mr. Walden. At this time,
2067 the gentleman from Texas, Mr. Green is recognized for 5
2068 minutes.

2069 Mr. {Green.} Thank you, Mr. Chairman.

2070 Mr. Fanning, Mr. Bradley testified that the installation
2071 of control technology can occur in 26 months. Southern has
2072 found that scrubbers average 54 months to install. Can you
2073 explain the apparent discrepancy?

2074 Mr. {Fanning.} I would be glad to, thank you. In fact,
2075 it is interesting to look at the actual permit application
2076 for the constellation scrubber that they refer to. When they
2077 made the application, they sought approval for the scrubber
2078 and cited a 41- to 46-month installation schedule. I think
2079 the confusion probably arises from the fact that when you
2080 consider adding new equipment, you have got to go through the
2081 whole process of design, permit, and then build. I think the
2082 confusion in the 26-month reference only relates to when you
2083 start to break down and actually build the plant. When you
2084 put in new facilities, you need to take into account the
2085 design characteristics of the unit in question, the permits

2086 that need to be applied for and received, and then ultimately
2087 specific site engineering and construction.

2088 Mr. {Green.} What is the lag time on the permits? Once
2089 you get the permit in there, how long does it take to get a
2090 permit?

2091 Mr. {Fanning.} Well, that is certainly, you know,
2092 matters on State to State, because these are generally State
2093 issues at that point.

2094 Mr. {Green.} Do you have an average?

2095 Mr. {Fanning.} Round numbers, I don't know, 12 to 18
2096 months.

2097 Mr. {Green.} Okay, so anywhere from a year to a year
2098 and a half?

2099 Mr. {Earley.} We think 18 months is probably a working
2100 number.

2101 Mr. {Green.} Thank you. This is a question for Mr.
2102 Fanning, Mr. Earley, and Mr. Bradley.

2103 EPA estimates that 10 gigawatts of coal-fired power will
2104 retire rather than install controls. Can each of you state
2105 whether you agree with that conclusion?

2106 Mr. {Earley.} We disagree with that conclusion. We
2107 think it is going to be a much larger number.

2108 Mr. {Green.} Do you have any idea? I mean, I know we
2109 are just guessing, but--

2110 Mr. {Earley.} Yeah, I think it is going to be more in
2111 the range of 50 to 75.

2112 Mr. {Fanning.} Yeah, we think it is--70,000 to 80,000
2113 is what we think, and the answer is really pretty simple.
2114 They believe dry sorbent injection is going to solve one
2115 problem, and it actually creates another. It creates a
2116 particulate matter problem that would need to be dealt with.
2117 It will not be a widespread solution.

2118 Mr. {Green.} Okay, Mr. Bradley?

2119 Mr. {Bradley.} Yes, I think 10 gigawatts is on the low
2120 side. I think EPA targeted that specifically to the Utility
2121 Toxics Rule. I think they have acknowledged that more
2122 retirements will happen through just market pressures.

2123 I think it is also important to go back and reassess the
2124 retirement issue based on the proposal itself and the
2125 flexibility that is included. The--certainly NERC is more on
2126 the ball park with EPA, but I think it is going to be hard to
2127 project exactly what is driving retirements. Is it singly
2128 the Utility MACT rule or is it low natural gas prices,
2129 depression of demand, the inefficiency of some of these old
2130 plants?

2131 Mr. {Green.} Okay. This question, Mr. Fanning, in your
2132 testimony you say that ``EPA goes to set limits separately
2133 for individual pollutants using different sets of best

2134 performing plants. EPA's resulting suite of emission limits
2135 does not reflect the performance of any existing plant, but
2136 instead reflects the performance of so-called 'Frankenplant,'
2137 one consisting of mixed-suite performance characteristics
2138 that do not represent the technology applications across all
2139 pollutants for that individual facility.'" Mr. Earley, do
2140 you agree with Mr. Fanning's statement?

2141 Mr. {Earley.} I agree with that.

2142 Mr. {Green.} Okay. Mr. Bradley, you argue that the EPA
2143 proposal is based on standards performance that is already
2144 achieved by existing plants, so how do you respond to Mr.
2145 Fanning's statement about the ``Frankenplant'`?

2146 Mr. {Bradley.} I would be happy to submit for the
2147 record a list of plants that are documented in EPA's database
2148 that are based on data that companies submitted, and there
2149 are 27 units and 16 plants in that database that--preliminary
2150 analysis of ours that represent both sub-bituminous,
2151 bituminous, and even one lignite plant that currently meet
2152 the standards.

2153 Mr. {Green.} I would appreciate that. In my 26
2154 seconds, Mr. Fanning, you talked about the delay--and I know
2155 there are other questions from other members--can you
2156 specifically talk about how long do you think it would take
2157 to need to implement the rule? I know 30 days is too short,

2158 60, what is the time? I know Congressman Gonzalez mentioned
2159 that.

2160 Mr. {Fanning.} Yeah, I would be glad to. We think
2161 there needs to be a thorough review process. Remember, this
2162 is the most expensive proposal put forth in a MACT form that
2163 EPA has ever done, 1,000 pages, 1,000 documentation. We need
2164 to go through this and really understand the science first,
2165 number one. So my view is we need some extension on
2166 evaluating what is being proposed, and I think one of the
2167 issues that we get to on all of this dry sorbent injection,
2168 all these other things, is the combined effect of the
2169 controls of all these plants. Further, we need to have a
2170 reasonable way to implement this requirement. Our company is
2171 already transitioning our coal fleet. We have examples of
2172 that I could tell you about, but in order to account for an
2173 orderly way to run your generation portfolio for the benefit
2174 of customers to ensure that you have reliability in a
2175 reasonable economic impact, and to assure that you have
2176 reasonable participation by vendors and required craft
2177 workers to undertake these billions of dollars of capital, my
2178 sense is you are going to need somewhere in the 6-year
2179 timeframe to get this done reasonably.

2180 Mr. {Green.} Okay. Thank you, Mr. Chairman.

2181 Mr. {Whitfield.} Mr. Pompeo, you are recognized for 5

2182 minutes.

2183 Mr. {Pompeo.} Thank you, Mr. Chairman, and thank you
2184 all for coming here today.

2185 You know, I have been here only 100 days, and when I
2186 look at something like this, it is staggering because we are
2187 talking about one set of rules today that you all are trying
2188 to deal with and create jobs and create energy. So
2189 manufacturing guys, like I was 101 days ago, I find it
2190 surprising that so many of you are still here working,
2191 banging away in the United States trying to create jobs. I
2192 admire you for continuing to do that and continuing to fight
2193 the fight to help us understand what it is that will allow
2194 you to do those things. I come here today, you all come here
2195 today, but the EPA chose not to. We have this constitutional
2196 oversight duty, and yet they don't come so we can hear the
2197 things that they want to tell us and present their side and
2198 their set of facts. It is incomprehensible to me that they
2199 are not here.

2200 I heard the ranking member say today that EPA had very
2201 few experts. I don't know about all that. What I can tell
2202 you when you look at something like this and they got too few
2203 people with common sense, I am confident of that.

2204 Mr. Krouskop, you gave me the chart so I want to ask you
2205 just a couple questions. There was a piece in your testimony

2206 about the secondary materials rule and how that impacts your
2207 business. Can you tell me a little bit more about that?

2208 Mr. {Krouskop.} Yeah, the secondary materials rule is
2209 basically--Boiler MACT is actually four separate rulemakings,
2210 and one of them deals with the definition of solid waste.
2211 One of the areas that, of course, products industry is very
2212 interested, and quite frankly, I think from an energy
2213 perspective we are interested in creating renewable energy,
2214 and it certainly is questionable as to the way the rule is
2215 written is whether or not things like biomass would not be
2216 classified ultimately as a waste, which would then require
2217 even more expensive control systems to be put on those
2218 boilers.

2219 Mr. {Pompeo.} I appreciate that. I want to come back
2220 to something, too, and I will ask everyone on the panel.

2221 So there was this notion that there has been this delay,
2222 a decade, 12 years, 13 years, and that you all should have
2223 been doing something in that time. The notion was hey, you
2224 have had 15 years to get ready for this, but the truth is, if
2225 you would have taken action, much like your university did
2226 during this 15-year timeframe, I would like to ask you if you
2227 think you would all be looking at something that was going to
2228 cost you even more money? That is, you would have been
2229 trying to guess what EPA was going to do. I want to ask you

2230 if that is something that when you present to your employees
2231 and your regulated--the folks that regulate your utilities or
2232 your shareholders, if that is something that they would say
2233 hey, that is exciting, we want to go invest some money trying
2234 to guess what EPA is going to do. We can start down here
2235 with Mr. Fanning.

2236 Mr. {Fanning.} I am proud to say we have already
2237 invested--committed to invest more than \$10 billion on
2238 improving the climate. We are the leader in the industry in
2239 that respect, and we are going to invest more.

2240 Mr. {Pompeo.} I hope you guessed right.

2241 Mr. {Fanning.} Well, the other issue that is just very
2242 important that you are hitting on here is we are in the
2243 Southeast, which is largely an integrated regulated electric
2244 system. We have a constructive relationship with our
2245 regulators and we go through very disciplined processes to
2246 evaluate ultimately the impacts for our customers on
2247 reliability, price and environmental impact.

2248 These are policies that have should be followed through
2249 and have served us well in the past, and will require more
2250 time than what is permitted in this proposal.

2251 Mr. {Earley.} Congressman, we have done the same thing.
2252 We have invested well over \$2 billion, but what this rule
2253 shows is we will have to invest even more, and as I say in my

2254 testimony, we have slashed emissions over the last 30 years,
2255 and it is a lot of great success stories. I think we have to
2256 use some common sense going forward. At some point enough is
2257 enough, and you just can't afford to spend the next dollar
2258 for another piece of equipment just because the equipment is
2259 available, because these costs are borne by our customers,
2260 your constituents.

2261 Mr. {Pompeo.} Thanks to those who responded. You know,
2262 Kansas we have got a utility plant that has been trying to be
2263 built to retire some older, less clean technology, and our
2264 former governor, now the Secretary of HHS, didn't let them do
2265 it. So this was a company that was trying to invest, trying
2266 to create jobs, trying to create affordable energy, and was
2267 prevented by doing so by the Kansas Department of Health and
2268 Environment, and ultimately by EPA, too.

2269 I have just got 20 seconds. Mr. Bradley, you think
2270 these make sense. I am trying to understand what is
2271 different about the businesses that are part of your group as
2272 opposed to the folks sitting to your right. Why is it that
2273 you think they make sense and they don't?

2274 Mr. {Bradley.} These have been clearly on the books and
2275 on the horizon for more than 10 years. The companies I
2276 represent have a responsibility to their shareholders, to
2277 their customers, to their employees to plan ahead, to do risk

2278 assessment, and manage their investments, and they have made
2279 those investments in a way they are in a pretty good
2280 position--

2281 Mr. {Pompeo.} You just--frankly, the folks you
2282 represent just have a lot different mix of energy. You have
2283 got a lot less coal involved in the folks that you represent
2284 than some of the other folks sitting on the panel.

2285 Mr. {Bradley.} That is correct.

2286 Mr. {Pompeo.} So this would be--these rules would be
2287 good for your folks because they would cause your profits to
2288 increase and the others--

2289 Mr. {Bradley.} Yeah, but let me emphasize that the
2290 number of my companies that I represent have invested the
2291 hundreds of millions of dollars to clean up their coal
2292 facilities as well.

2293 Mr. {Pompeo.} Thank you. I yield back my time.

2294 Mr. {Whitfield.} The gentleman Mr. Inslee is recognized
2295 for 5 minutes.

2296 Mr. {Inslee.} Thank you.

2297 Mr. Fanning, I was interested in your technology,
2298 reading your written statement, you said ``Second, we need a
2299 national robust research and development effort to create new
2300 energy technologies for the future,' ' and I very much agree
2301 with that. Apparently so does President Obama. He said

2302 yesterday ``I will not sacrifice the core investments we need
2303 to grow and create jobs. We will invest in medical research
2304 and clean energy technology.''

2305 Now, there are efforts here to reduce--not increase, but
2306 actually reduce our national investments in clean energy
2307 research. I think that is a huge mistake. It is like eating
2308 your seed corn. Would you urge us on a bipartisan basis to
2309 increase our federal investment in clean energy research
2310 across the board in all CO2, non-CO2, and low-CO2 emitting
2311 technologies?

2312 Mr. {Fanning.} Absolutely. I am on record as saying
2313 that this should be a national imperative.

2314 Mr. {Inslee.} Well, I would hope you might spend some
2315 time with some of my Republican colleagues, talking to them
2316 about the importance of this investment and the potential job
2317 creation technology. I am serious about this. We have
2318 deficit challenges here that are very, very important, but as
2319 we make priority decisions, if you have a chance to talk to
2320 some of my colleagues about the job creation potential of
2321 that research, I think it could be beneficial. Thank you.

2322 Mr. Walke, I have--I want to ask you to comment on
2323 something that I found fascinating. Mr. Earley talked about
2324 yearning for the good old days of a proposal to have
2325 something like a cap and trade system where we gave

2326 flexibility to industries to try to figure out what actions
2327 and what investments to take to clean up our skies. I am not
2328 liking this what you might call a command and control system
2329 that sets up regulatory systems about specific behavior. Now
2330 it seems to me a little bit ironic that one side of this
2331 aisle here rejected Congress doing something that would have
2332 given industry flexibility on how to decide where to make
2333 investments. Then when we take the alternative approach,
2334 which is a regulatory approach, rejecting that approach. Now
2335 that to me seems a little bit ironic. What do you think?

2336 Mr. {Walke.} Well, what they share in common is a
2337 desire to avoid reducing pollution in both cases, so there is
2338 that consistency, that failure to support carbon cap and
2339 trade legislation and failure to support the command and
2340 control programs. But EPA has flexibility, including
2341 averaging in this toxics rule, and there is a deep commitment
2342 to carrying out a law that was adopted by 401 members of the
2343 House in 1990.

2344 Mr. {Inslee.} Thank you. Mr. Krouskop, if I can ask
2345 you a question. If you had in your broadly industry--three
2346 industries kind of associated with this rule, if these
2347 industries were taking some action that resulted in the
2348 premature deaths of 26,000 people a year in America, not
2349 China, in America, 26,000 Americans a year, and if your

2350 industry could make an investment that would return to the
2351 national economy at a minimum five times more benefits by
2352 eliminating those premature deaths for every dollar of
2353 investment, would you make that investment? Would you
2354 suggest that we as a community make that investment?

2355 Mr. {Krouskop.} I think the real question here is how
2356 fast you make the investment and to what degree do you
2357 compare some of the benefits and the costs to those
2358 investments. I think that is what we are saying.

2359 Mr. {Inslee.} So let us start at the beginning of my
2360 question. If you could make an investment of \$1 that could
2361 result in 26,000 deaths--premature deaths in the United
2362 States, and would return economic benefits of a minimum of \$5
2363 to the Nation, let us just start with that presumption.
2364 Would you suggest that the industry make that investment?

2365 Mr. {Krouskop.} If you buy the premise of the dollars
2366 and there has been lots of discussions about, A, truly are
2367 those numbers correct, and are the estimates of health
2368 effects associated with these things, the answer, of course,
2369 is yes.

2370 Mr. {Inslee.} Well, I don't think it is of course,
2371 because I have heard at least five witnesses say and we say
2372 to ignore this cost benefit analysis. This is very
2373 problematic to me, and let me tell you why. The only

2374 comprehensive assessment of the cost benefit analysis is the
2375 one presented by the EPA. I don't see anything coming from
2376 industry that is really presented a contrary opinion. Now,
2377 that is problematic to us as a policymaker. Mr. Papadopoulos
2378 wants to say something. Go ahead.

2379 Mr. {Papadopoulos.} I want to say that, you know,
2380 statistics that have come out of computer models are one
2381 thing. Proof in the field, empirical proof is another thing.
2382 If I knew that even one person was--

2383 Mr. {Inslee.} Let me stop you just for--I only got 13
2384 seconds.

2385 Mr. {Papadopoulos.} I would have gotten it tomorrow. I
2386 would wait for EPA to come.

2387 Mr. {Inslee.} I am waiting for something from you guys.
2388 I would like to see it.

2389 Mr. {Whitfield.} The gentleman's time is expired.
2390 Recognize the gentleman from Virginia, Mr. Griffith, for 5
2391 minutes.

2392 Mr. {Griffith.} Thank you, Mr. Chairman. If we could
2393 put up a map showing the percentage of mercury deposits from
2394 outside the United States, I believe the committee has that.
2395 Oh, there it is. Mr. Papadopoulos, thank you for having a
2396 facility--I guess I should ask before I get to the map, when
2397 you talked about closing down older plants, I hope that

2398 doesn't include Roanoke Cement just outside of my district in
2399 Botetourt County.

2400 Mr. {Papadopoulos.} We are trying very hard.

2401 Mr. {Griffith.} I appreciate that. When you look at
2402 this map, it appears that a significant amount of mercury in
2403 the U.S. comes from outside the country. Now so you will
2404 know, the chart indicates the percentage of mercury deposits
2405 that are from outside the country, so the red would be 100
2406 percent and down, and purple would mean that most of it is
2407 coming from this country. So it appears that a lot of the
2408 mercury is coming from outside the country. Can these
2409 foreign mercury emissions be reached by EPA regulations?

2410 Mr. { Papadopoulos.} None at all. They will worsen, in
2411 fact.

2412 Mr. {Griffith.} And isn't it accurate to think that if
2413 these mercury emissions--and I heard you say something about
2414 this in your opening statement, too, or at least get close to
2415 it, but isn't it a fact that if they are coming from outside
2416 the United States and we drive manufacturing--all kinds, but
2417 particularly in your case, the production of cement, to other
2418 countries like China, India, or Mexico, aren't we, in fact,
2419 increasing the likelihood or increasing the amount of mercury
2420 that may actually come into these United States?

2421 Mr. { Papadopoulos.} Exactly. The EPA has all these

2422 studies, but it refuses to communicate them, and you know, I
2423 heard a statistic from Mr. Waxman that I wanted to correct.
2424 He said that the cement industry is the number three producer
2425 of mercury in the U.S. That is incorrect. In fact, we rank
2426 number nine. The U.S., in fact, is one of the smallest
2427 mercury producers in the world. Compared to our energy
2428 footprint, our mercury production globally is only 7 percent,
2429 and 80 percent plus of the mercury that comes into the U.S.
2430 originates offshore. So unless we are planning to build a
2431 big glass globe around the country, we could shut everything
2432 down and still this won't change. It will get worse.

2433 Mr. {Griffith.} Thank you. I do want to shift over to
2434 my friends from MeadWestvaco. I asked staff when I saw the
2435 witness list today, I said did you all set up this hearing
2436 for me? My understanding is that Eastman was also invited,
2437 and they are on the other end of the district, just outside
2438 of the district. But if I could ask you a few questions, I
2439 do appreciate your facility there, and I am going to
2440 mispronounce your name. Help me with it.

2441 Mr. {Krouskop.} Krouskop.

2442 Mr. {Griffith.} Krouskop. I do appreciate your
2443 facility there in Covington. Obviously you employ a lot of
2444 people, as does Mr. Papadopoulos, in the 9th Congressional
2445 District of Virginia, and both of you all have great

2446 companies.

2447 But let me ask you, looking at Boiler MACT as well as
2448 other current EPA air regulations that are looming over the
2449 next several years, can you explain in general terms the
2450 investment and technology control issues that a mill like
2451 yours is facing with these regulations?

2452 Mr. {Krouskop.} Yeah, the investment, for example, for
2453 Covington Mill associated with these regulations certainly
2454 are in the tens of millions of dollars. I think the
2455 fundamental question here is as much about how do we
2456 effectively accomplish the goals of the Clean Air Act and the
2457 MACT rulemaking and control toxics and not have to spend so
2458 much money. We would submit that there is, in fact,
2459 technology to do that.

2460 Mr. {Griffith.} All right. Your testimony basically
2461 says the EPA and the Boiler MACT rule in its current form has
2462 essentially failed to capture what is the essence of what
2463 real world industrial boilers actually achieve. Can you
2464 elaborate on that?

2465 Mr. {Krouskop.} Yeah, one of the most difficult parts
2466 of the Boiler MACT rulemaking was, even though EPA did go to
2467 a sub-categorization system, in effect what they did rather
2468 than saying here is boiler X and it can achieve these things
2469 and we will look at the best 12 percent performing of all

2470 boilers, they literally cherry-picked pollutant by pollutant.
2471 So when you look at the true number of boilers that could
2472 achieve these rules today, they are much less than 10, based
2473 on our analysis, of about over 3,000 boilers nationwide.

2474 Mr. {Griffith.} All right. My time is just about up,
2475 but I just again want to say thank you to all of you.
2476 Anybody else who wants to bring jobs to the 9th District of
2477 Virginia, you are more than welcome. We understand that
2478 there has got to be a balance that you want to have clean air
2479 and you want to have clean water. The EPA has a role, but we
2480 have to make sure that it makes sense and doesn't eliminate
2481 jobs and increase pollution inadvertently.

2482 Thank you, I yield back my time, Mr. Chairman.

2483 Mr. {Whitfield.} Ms. Capps, you are recognized for 5
2484 minutes.

2485 Mrs. {Capps.} Thank you very much, and thank you for
2486 testimony of each of you. I am going to be brief and concise
2487 because I know my colleague, Mr. Markey, has some questions
2488 too. These will be focused at you, Mr. Walke.

2489 Yesterday Subcommittee Chairman Whitfield confirmed that
2490 legislation to delay air toxic standards will be introduced
2491 after the congressional recess. We have heard from some in
2492 the energy industry that a delay is needed because of
2493 ``importance of a smooth transition and more deliberate

2494 schedule'' to ease the strain on industry and reduce risks to
2495 consumers with the proposed rules for utilities. If the
2496 proposed standards to reduce air toxics from power plants
2497 were delayed by even a year, a single year, what would it
2498 mean for public health? Give us a couple of examples.

2499 Mr. {Walke.} I would be happy to, Congresswoman Capps.

2500 What we have found from EPA's own data is that the delay
2501 of these three rules by even a single year would result in up
2502 to 26,000 premature deaths, 17,000 non-fatal heart attacks,
2503 about 180,000 asthma attacks, and approximately 330,000 cases
2504 of upper and lower respiratory systems. These would be one
2505 of the most profound retreats from the Clean Air Act
2506 protections ever to be considered by this body.

2507 Mrs. {Capps.} Mr. Walke, we also hear from the industry
2508 and increasingly from my colleagues on the other side of the
2509 aisle that EPA is overreaching with its air toxics standards.
2510 I myself disagree with that statement. I have maintained
2511 that these standards reflect EPA doing its job. Do you
2512 believe EPA is overreaching with its proposed air toxic
2513 standards for power plants?

2514 Mr. {Walke.} I do not. The agency is following well-
2515 established law that unfortunately it was created by the
2516 courts in the last decade when they overturned far greater
2517 overreaching by the Bush Administration that--

2518 Mrs. {Capps.} That is what I wanted to turn to next.
2519 As EPA has moved to implement the law and issue standards to
2520 control air toxics from power plants, go further to
2521 illustrate--I wanted to find has there ever been an action
2522 that can be characterized as an EPA overreach, and finish
2523 that description that you were giving.

2524 Mr. {Walke.} Yes, absolutely. EPA under the Bush
2525 Administration violated the toxics provision of the Clean Air
2526 Act at least in 11 or 12 cases, all of which are represented
2527 before us today. One of them EPA even realized it couldn't
2528 defend, so it took back the cement rule. In several of those
2529 cases, the courts found themselves resorting to quoting two
2530 different works of Lewis Carroll, including Alice in
2531 Wonderland in the power plant case, because they were so
2532 profoundly disgusted by the end of the second term as to how
2533 many times the law had been broken. It really has never been
2534 seen in the Clean Air Act case law in quite the way it played
2535 out under that Administration.

2536 Mrs. {Capps.} And finally, Mr. Walke, some folks today
2537 have said that the EPA standards for boilers and cement
2538 factories are just too hard to achieve, and that the industry
2539 will not have enough time to meet the long-awaited standards.
2540 You disagree. Now just to use a few seconds and maybe a
2541 minute to comment on these claims that they have made so we

2542 can get this on the record.

2543 Mr. {Walke.} Sure. The Clean Air Act gives up to 4
2544 years, that includes a 1-year extension if it is necessary,
2545 to install the controls. We have had over 100 of these
2546 standards issued in the past 20 years, covering 400 to 500
2547 industries. It is really these laggards who have benefited
2548 from lawbreaking by the last Administration that are now
2549 complying with these rules for the first time, some 15 years
2550 overdue. The law gives them the flexibility. The boilers
2551 rule came in far more flexibly and cost effectively than
2552 anyone anticipated. Mr. Bradley has testified that the power
2553 plant rule is the same. The cement final rule is weaker than
2554 the proposed rule. EPA does not agree with the Portland
2555 Cement Association's claims about closures and job losses.
2556 These are hotly disputed topics, and I just want you to be
2557 aware that it is very important to have EPA appear as a
2558 witness, as Chairman Whitfield has invited at a future
2559 hearing.

2560 Mrs. {Capps.} I thank you and I will yield back now the
2561 balance of my time.

2562 Mr. {Whitfield.} Thank you very much.

2563 Mrs. {Capps.} I will yield to, if it is okay, to Mr.
2564 Markey.

2565 Mr. {Markey.} I thank the gentlelady very much.

2566 Mr. Bradley, in 2004 Governor Mitt Romney of
2567 Massachusetts adopted regulations to control mercury from
2568 coal-fired power plants in Massachusetts that require 85
2569 percent of mercury emissions to be captured by 2008. Were
2570 utilities able to keep the lights on while this standard was
2571 being met?

2572 Mr. {Bradley.} Absolutely.

2573 Mr. {Markey.} Did the geniuses at MIT have to invent
2574 some new alloy or exotic technology so the coal-fired power
2575 plants in Massachusetts can meet this standard?

2576 Mr. {Bradley.} Not that I am aware of.

2577 Mr. {Markey.} Is this standard now being met by 12
2578 other States in the union?

2579 Mr. {Bradley.} Comparable requirements are in place in
2580 12 States.

2581 Mr. {Markey.} Are the technologies that were installed
2582 in Massachusetts available and economically viable for use in
2583 coal-fired power plants in other States?

2584 Mr. {Bradley.} Absolutely.

2585 Mr. {Markey.} The Southern Company says they can build
2586 two new nuclear power plants and guarantee the safety of
2587 people, but they can't really figure out how to install these
2588 technologies that already exist that would protect against
2589 the poisoning of the children in our country. Do you think

2590 that Southern Company should be able to figure that out if
2591 they can build two new nuclear power plants in our country?

2592 Mr. {Bradley.} I think they have a tremendous track
2593 record--

2594 Mr. {Markey.} I do, too.

2595 Mr. {Bradley.} --and in the end, they will figure it
2596 out.

2597 Mr. {Markey.} I just--I think this can't do attitude
2598 that is not like President Kennedy's can do attitude to put a
2599 man on the Moon with alloys that had not yet been invented,
2600 but here the technology has already been invented and are
2601 already installed. We are not asking them to invent
2602 anything, but yet, it is kind of disconcerting to me to hear
2603 the Southern Company and others here saying they can't figure
2604 out how to install something while guaranteeing us they can
2605 make nuclear power plants safe, after Fukushima, without even
2606 waiting until they really install all the lessons from
2607 Fukushima. So that is a great concern to me, and I would
2608 hope that this can't do Republican majority can turn into a
2609 can do majority and take existing technologies and mandate
2610 that we can install them, but I am afraid that those public
2611 health lessons are going to be lost upon them.

2612 I thank the gentlelady and I thank the chairman for his-
2613 -

2614 Mr. {Whitfield.} I am glad the gentleman from
2615 Massachusetts is so intimately involved with Southern Company
2616 and knows their facts.

2617 Mr. {Markey.} I love the Southern Company. It is my
2618 favorite utility to talk to.

2619 Mr. {Whitfield.} Mr. Scalise, I am going to recognize
2620 you. We have votes on the Floor and I am trying to
2621 accommodate everyone so that--we are going to have three
2622 series of votes, and I am sure these people don't want to
2623 wait another 2 hours. So I will recognize Mr. Scalise for--

2624 Mr. {Scalise.} Sure. Thank you, Mr. Chairman. I
2625 appreciate that. I will try to rapid fire. I hope the
2626 gentleman from Massachusetts will join with us in supporting
2627 a comprehensive all-of-the-above energy strategy, because I
2628 think we know we have got resources in our country for wind,
2629 solar, nuclear, a whole lot more oil and gas, billions and
2630 billions of barrels that are still out there that can
2631 explored for in a safe way. That can generate thousands of
2632 jobs, generate billions of dollars to our economy so that we
2633 can reduce our deficit while not shipping more jobs to other
2634 countries and while not making our country more dependent on
2635 foreign oil.

2636 I want to ask Mr. Fanning, in your testimony you talked
2637 about the impacts on the economy of some of these EPA

2638 proposals and regulations coming down. Can you expand a
2639 little bit upon the true impacts to the economy that would be
2640 imposed if this were to go forward?

2641 Mr. {Fanning.} Yeah, thank you. I would be delighted.
2642 The far-reaching impacts here are pretty significant. We
2643 have already talked about the direct impact; that is, we
2644 think as a result of this proposed rule as it stands, at
2645 least for the Southeast, 25 percent increase in prices, but
2646 that really doesn't even begin to speak to the total impact.
2647 When we think about jobs and the economy, it is pretty clear
2648 that a conservative estimate of the loss of jobs when you
2649 move from coal to gas is about a six to one ratio, just to
2650 flesh that out a bit. For a 500 megawatt coal plant, it
2651 employs about 300 people. A 500 megawatt gas plant employs
2652 about 50 people. So you would move from 300 jobs to about 50
2653 jobs. You lose net 250. If you extend that to the notion
2654 that we may lose 70,000 megawatts across the United States,
2655 that is the direct loss of 35,000 high paying jobs. That
2656 doesn't even begin to address the issue of the first, second,
2657 third tier suppliers, railroads, mines, equipment vendors, et
2658 cetera. It doesn't even begin to address the amount of jobs
2659 lost as a result of a less competitive global economy.

2660 Mr. {Scalise.} And that is what I wanted to ask as my
2661 final question before my time expires. We talk about

2662 international competitiveness, and of course, our American
2663 companies, we want them to be successful not only here in
2664 America, but for those who do operate in other countries, we
2665 want them to be able to play on a level playing field. Right
2666 now, they are being pushed further and further out in their
2667 ability to compete globally because of some of the things
2668 happening by this Administration, EPA, and others that are
2669 actually making it harder for American companies to survive.
2670 So if you have regulations like this that basically say if
2671 you are an American company, you can't even manufacture.
2672 Your electricity costs would be so high if you do business in
2673 America. What does that mean to us internationally as other
2674 countries would love to take our jobs? Unfortunately, other
2675 countries are already taking too many of those jobs. It
2676 seems like an EPA regulation like this would push even more
2677 tens of thousands of jobs from America out of our country.

2678 Mr. {Fanning.} I think you make an excellent point, and
2679 I would just use this notion, that as we don't consume coal
2680 in America and we export it, we will export jobs along with
2681 it.

2682 Mr. {Scalise.} And obviously, they don't have the same
2683 environmental protections that we enjoy today, so the things
2684 that EPA seems to be concerned about would actually be
2685 exponentially increased if those jobs here in America would

2686 go to those foreign countries like China and India.

2687 Mr. {Fanning.} If I could just add one more quick
2688 social impact. As we close down these plants, we will visit
2689 economic damage on local communities. I just got a letter
2690 yesterday from Putnam County, Georgia, that if we close down
2691 Branch Units 1 through 4 in that county, we will reduce their
2692 tax base by about 19 percent.

2693 Mr. {Scalise.} Mr. Chairman, if I can maybe move
2694 unanimous consent to have that letter introduced into the
2695 record? Thank you and I yield back.

2696 Mr. {Whitfield.} Without objection.

2697 [The information follows:]

2698 ***** COMMITTEE INSERT *****

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2699 Mr. {Whitfield.} Well, that concludes today's hearing.
2700 As I said, we have a number of votes on the Floor relating to
2701 the budget, but I want to thank all of you for coming. I
2702 look forward to working with our friends on the--our
2703 Democratic friends to craft legislation that can accommodate
2704 some of the concerns we have heard today. And with that, the
2705 hearing is concluded and the record will remain open for 10
2706 days for additional material or questions. Thank you.

2707 [Whereupon, at 11:30 a.m., the Subcommittee was
2708 adjourned.]