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HOUSE OF REPRESENTATIVES
REPORT
112–225

EPA REGULATORY RELIEF ACT OF 2011

SEPTEMBER 26, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2250]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2250) to provide additional time for the Administrator of the Environmental Protection Agency to issue achievable standards for industrial, commercial, and institutional boilers, process heaters, and incinerators, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "EPA Regulatory Relief Act of 2011".

SEC. 2. LEGISLATIVE STAY.

(a) ESTABLISHMENT OF STANDARDS.—In place of the rules specified in subsection (b), and notwithstanding the date by which such rules would otherwise be required to be promulgated, the Administrator of the Environmental Protection Agency (in this Act referred to as the "Administrator") shall—

(1) propose regulations for industrial, commercial, and institutional boilers and process heaters, and commercial and industrial solid waste incinerator units, subject to any of the rules specified in subsection (b)—

(A) establishing maximum achievable control technology standards, performance standards, and other requirements under sections 112 and 129, as applicable, of the Clean Air Act (42 U.S.C. 7412, 7429); and

(B) identifying non-hazardous secondary materials that, when used as fuels or ingredients in combustion units of such boilers, process heaters, or incinerator units are solid waste under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.; commonly referred to as the "Resource Conservation and Recovery Act") for purposes of determining the extent to which such combustion units are required to meet the emissions standards under section 112 of the Clean Air Act (42 U.S.C. 7412) or the emission standards under section 129 of such Act (42 U.S.C. 7429); and

(2) finalize the regulations on the date that is 15 months after the date of the enactment of this Act.

(b) STAY OF EARLIER RULES.—The following rules are of no force or effect, shall be treated as though such rules had never taken effect, and shall be replaced as described in subsection (a):

(1) "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters", published at 76 Fed. Reg. 15608 (March 21, 2011).

(2) "National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers", published at 76 Fed. Reg. 15554 (March 21, 2011).

(3) "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units", published at 76 Fed. Reg. 15704 (March 21, 2011).

(4) "Identification of Non-Hazardous Secondary Materials That Are Solid Waste", published at 76 Fed. Reg. 15456 (March 21, 2011).

(c) INAPPLICABILITY OF CERTAIN PROVISIONS.—With respect to any standard required by subsection (a) to be promulgated in regulations under section 112 of the Clean Air Act (42 U.S.C. 7412), the provisions of subsections (g)(2) and (j) of such section 112 shall not apply prior to the effective date of the standard specified in such regulations.

SEC. 3. COMPLIANCE DATES.

(a) ESTABLISHMENT OF COMPLIANCE DATES.—For each regulation promulgated pursuant to section 2, the Administrator—

(1) shall establish a date for compliance with standards and requirements under such regulation that is, notwithstanding any other provision of law, not earlier than 5 years after the effective date of the regulation; and

(2) in proposing a date for such compliance, shall take into consideration—

(A) the costs of achieving emissions reductions;

(B) any non-air quality health and environmental impact and energy requirements of the standards and requirements;

(C) the feasibility of implementing the standards and requirements, including the time needed to—

(i) obtain necessary permit approvals; and

(ii) procure, install, and test control equipment;

(D) the availability of equipment, suppliers, and labor, given the requirements of the regulation and other proposed or finalized regulations of the Environmental Protection Agency; and

(E) potential net employment impacts.

(b) NEW SOURCES.—The date on which the Administrator proposes a regulation pursuant to section 2(a)(1) establishing an emission standard under section 112 or

129 of the Clean Air Act (42 U.S.C. 7412, 7429) shall be treated as the date on which the Administrator first proposes such a regulation for purposes of applying the definition of a new source under section 112(a)(4) of such Act (42 U.S.C. 7412(a)(4)) or the definition of a new solid waste incineration unit under section 129(g)(2) of such Act (42 U.S.C. 7429(g)(2)).

(c) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to restrict or otherwise affect the provisions of paragraphs (3)(B) and (4) of section 112(i) of the Clean Air Act (42 U.S.C. 7412(i)).

SEC. 4. ENERGY RECOVERY AND CONSERVATION.

Notwithstanding any other provision of law, and to ensure the recovery and conservation of energy consistent with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.; commonly referred to as the "Resource Conservation and Recovery Act"), in promulgating rules under section 2(a) addressing the subject matter of the rules specified in paragraphs (3) and (4) of section 2(b), the Administrator—

(1) shall adopt the definitions of the terms "commercial and industrial solid waste incineration unit", "commercial and industrial waste", and "contained gaseous material" in the rule entitled "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units", published at 65 Fed. Reg. 75338 (December 1, 2000); and

(2) shall identify non-hazardous secondary material to be solid waste only if—

(A) the material meets such definition of commercial and industrial waste; or

(B) if the material is a gas, it meets such definition of contained gaseous material.

SEC. 5. OTHER PROVISIONS.

(a) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN PRACTICE.—In promulgating rules under section 2(a), the Administrator shall ensure that emissions standards for existing and new sources established under section 112 or 129 of the Clean Air Act (42 U.S.C. 7412, 7429), as applicable, can be met under actual operating conditions consistently and concurrently with emission standards for all other air pollutants regulated by the rule for the source category, taking into account variability in actual source performance, source design, fuels, inputs, controls, ability to measure the pollutant emissions, and operating conditions.

(b) REGULATORY ALTERNATIVES.—For each regulation promulgated pursuant to section 2(a), from among the range of regulatory alternatives authorized under the Clean Air Act (42 U.S.C. 7401 et seq.) including work practice standards under section 112(h) of such Act (42 U.S.C. 7412(h)), the Administrator shall impose the least burdensome, consistent with the purposes of such Act and Executive Order 13563 published at 76 Fed. Reg. 3821 (January 21, 2011).

PURPOSE AND SUMMARY

H.R. 2250, the "EPA Regulatory Relief Act of 2011," was introduced by Rep. Morgan Griffith (together with Reps. Butterfield, Olson, Barrow, McMorris Rodgers, Ross, Scalise and Matheson) on June 21, 2011. The legislation gives the Environmental Protection Agency additional time and guidelines to develop achievable rules under the Clean Air Act governing emissions of hazardous air pollutants from industrial, commercial, and institutional boilers, process heaters, and incinerators.

Key provisions of the bill would:

- Provide EPA with 15 months to re-propose and finalize achievable rules for boilers, process heaters, and incinerators;
- Extend compliance deadlines from 3 years to at least 5 years to allow facilities adequate time to comply with standards and install necessary equipment;
- Direct EPA, when developing the new rules, to adopt definitions that allow sources to continue to use alternative fuels for energy recovery; and
- Direct EPA to ensure that new rules are achievable by real-world boilers, process heaters, and incinerators and impose the least burdensome regulatory alternatives consistent

with the purposes of the Clean Air Act and President Obama's Executive Order 13563 regarding improving regulation and regulatory review.

BACKGROUND AND NEED FOR LEGISLATION

Introduction

The domestic manufacturing and industrial sectors in the United States currently face numerous new Environmental Protection Agency (EPA) rules under the Clean Air Act (CAA) and other statutes. Among the most significant and costly of the new rules are four interrelated, highly complex, and data-intensive rules setting new standards for over 200,000 boilers, process heaters, and incinerators.

The rules were developed under Sections 112 and 129 of the CAA which target emissions of hazardous air pollutants. Under these sections, EPA is required to set technology-based standards for sources that emit such pollutants that are reflective of levels of emissions limits achieved by the best performing sources. EPA is directed to establish "maximum achievable control technology" (MACT) and other standards to reduce emissions of such pollutants.

The EPA rules addressed in H.R. 2250 were all published on March 21, 2011, and include the following four rules:

(1) National Emissions Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial and Institution and Process Heaters ("Major Source Rule"), 76 Fed. Reg. 15608 (March 21, 2011), promulgated under Section 112 of the Clean Air Act;

(2) National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial Commercial and Institutional Boilers ("Area Source Rule"), 76 Fed. Reg. 15554 (March 21, 2011), promulgated under Section 112 of the Clean Air Act;

(3) Standards of Performance and Emissions Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units ("CISWI Rule"), 76 Fed. Reg. 15704 (March 21, 2011), promulgated under Section 129 of the Clean Air Act; and,

(4) Identification of Non-Hazardous Secondary Materials That Are Solid Waste ("NHSM Rule"), 76 Fed. Reg. 15456 (March 21, 2011), promulgated under Sections 2002(a)(1) and 1004(27) of the Resource Conservation and Recovery Act.

Collectively, these four rules often are referred to as the "Boiler MACT Rules." The Major Source Rule applies to an estimated 13,800 boilers located at manufacturing and industrial facilities, as well as large commercial and institutional sites, including large universities and health care facilities. The Area Source Rule applies to an estimated 187,000 smaller boilers located at tens of thousands of industrial, institutional, and commercial sites, including, colleges and universities, hospitals, hotels, commercial buildings, and municipal and federal facilities. The CISWI Rule currently applies to an estimated 88 incinerators. The NHSM Rule defines non-hazardous secondary materials as fuel or waste, which determines whether an emissions source will be regulated under Section 112 or Section 129 of the Clean Air Act.

There has been widespread concern in the regulated community about the unprecedented costs and feasibility for many facilities of implementing these rules as currently written, and about potential job losses and harm to the economy. The EPA Regulatory Relief Act of 2011 is designed to give EPA the time and parameters it needs to develop revised standards for these sources that will protect public health and the environment without undue threat to jobs and our economy.

Potential economic and job impacts

EPA's rules impose significant new compliance costs and put tens of thousands of jobs at risk. While EPA estimates the capital expenditures associated with these rules to be $5.8 billion, the regulated community has projected that the capital costs for the final Major Source Rule alone may exceed $14 billion, plus annual operating and maintenance costs, and put 224,000 jobs at risk. The forest products sector has estimated that the cost of the rules to their industry alone could range from $5 to $7 billion, and that 36 mills and more than 20,000 pulp and paper industry jobs, representing 18% of the current workforce, may be put at risk. That estimate rises to more than 87,000 jobs when supplier and downstream industries are included.

The rules have particularly severe potential impacts in the current economic climate. For example, at an April 15, 2011, hearing before the Subcommittee on Energy and Power, Dirk Krouskop, Vice President, Safety, Health and Environment of MeadWestvaco Corporation, testified: "Since many wood and paper mills are located in rural areas where these high-paying jobs cannot be replaced, the effect of these job losses on local rural communities can be especially devastating. The closure of a mill in a small town has an enormous ripple effect when the mill is the largest employer and a major contributor to local taxes and community civic programs."

The compliance burdens and substantial costs of the rules go well beyond major industrial facilities. For example, on April 15, 2011, the Subcommittee on Energy and Power received testimony from Paul Kempf, Director of Utilities at the University of Notre Dame. Mr. Kempf stated that EPA's original Major Source Rule for boilers issued in 2004 cost Notre Dame $20 million before the rule was vacated by the courts. He further stated "[n]ow, nearly four years later, we are faced with a revised rule that is patently different from the original rule and one that presents uncertain compliance capabilities for our investment." He anticipates high compliance costs for these new rules and noted that "these added costs of compliance are borne by our students and their families." Other non-industrial boiler owning entities will also face similar substantial compliance costs, and will likely have to pass at least some of those costs onto consumers in the form of higher tuition, hospital bills, or rent.

The need for a legislative stay and more compliance time

EPA received more than 4,800 comments on the Boiler MACT Rules. In December 2010, EPA requested 15 additional months from the court to re-propose three of the four rules. That request, however, was denied in January 2011, and EPA was given only 30

days to finalize the rules. On the same day EPA announced the final rules, it also took the unusual step of announcing plans to reconsider certain aspects of the rules, in part because the public had not had sufficient time to comment. Many parties have asked EPA to reconsider other aspects of the rules.

All of the rules been challenged before the Agency and in the Federal courts. Although EPA has initiated reconsideration of three of the rules (the Major Source, Area Source, and CISWI rules), and issued a limited stay of the effective date for two of the rules (the Major Source and CISWI rules), there continues to be significant regulatory uncertainty. This is because the outcome of EPA's reconsideration process is unknown, including whether EPA's stays of the two rules will be upheld, as they themselves have been challenged in Federal court.

Legislation staying the rules is needed to prevent thousands of businesses and institutions located across the United States from having to make major and potentially unnecessary capital expenditures to comply before they know what the rules ultimately will require. A legislative stay for a sufficient period of time, moreover, is essential to ensure EPA has adequate time to address all of the complex technical issues that have been raised, obtain and fully analyze relevant data, and develop workable rules.

An extension of the current compliance periods is also needed for implementing the final rules. Given their technical complexity, the billions of dollars in compliance costs, and the current economic climate, extending the compliance periods will help to ensure that U.S. businesses and institutions can integrate the complex compliance requirements, consistent with capital planning cycles and the availability of qualified vendors and of high-quality control equipment. Extending the compliance periods is also needed given the many other major regulations taking effect over the next few years.

Numerous witnesses before the Committee have addressed the need for a legislative stay of the rules and an extension of the compliance periods. On September 8, 2011, the Subcommittee on Energy and Power received testimony from James A. Rubright, Chief Executive Officer of Rock-Tenn Company. He testified that "Congress should stay the rules for 15 months so EPA can get them right, reset the date for defining new sources, allow facilities more time to comply, clarify that renewable and recyclable materials are traditional fuels, and ensure the rules are achievable and less burdensome."

With respect to the compliance periods, on April 15, 2011, Dirk Krouskop of MeadWestvaco testified to the Subcommittee on Energy and Power that "[t]he three years provided in the rule to comply is insufficient given the complexities of the rules" and that "[f]acilities should be given several more years to comply to account for capital planning cycles and allow a smooth implementation of the new Boiler MACT requirements."

Similarly, Todd Elliott or the Celanese Corporation testified on September 8, 2011, that "[r]egardless of what option we choose, we cannot achieve compliance within three years. Extending the Boiler MACT compliance deadline to five years as proposed in H.R. 2250 would help ensure that Celanese and the manufacturing sector has adequate time to meet the new air quality standards without forced facility shutdowns or inadequate resources to ensure compliance."

The need for achievable regulations

In addition to the need for adequate time for issuance and compliance with the Boiler MACT Rules, there is a pressing need for ensuring that these rules are achievable in practice. The regulated community has not opposed regulation, but rather advocated for achievable and affordable rules. Substantive concerns with the Boiler MACT rules have focused on the need for standards that are achievable by real-world boilers consistently for all regulated pollutants across the full range of operating conditions, as required by the Clean Air Act.

Many stakeholders have specifically expressed concern about EPA's practice of setting standards following a "pollutant-by-pollutant" approach. At the September 8, 2011, hearing, Dr. Paul Gilman, Chief Sustainability Officer for Covanta Energy, testified before the Subcommittee on Energy and Power that under EPA's approach "[e]mission standards for each pollutant were set by finding the lowest emissions from all the different units in a category, not the best overall units. This 'pollutant-by-pollutant' approach rather than 'plant-by-plant' is analogous to asking the decathlon champion at the Olympics to be able to win not only the overall decathlon, but all of the 10 gold individual events as well. People don't work that way and neither do machines."

EPA itself has indicated that the Clean Air Act can be interpreted to support a "plant-by-plant" or source-based approach. In the Major Source Boiler Rule, 76 Fed. Reg. 15621 (March 21, 2011), EPA expressly stated that Section 112(d)(3) of the Clean Air Act is "ambiguous as to whether the MACT floor is to be based on the performance of an entire source or on the performance achieved in controlling particular [hazardous air pollutants]." Nevertheless, EPA followed a "pollutant-by-pollutant" approach in the Boiler MACT Rules which has led to unachievable standards.

This approach has led to situations in which even best performing units do not meet the standards set by the Agency. At the September 8, 2011, hearing before the Subcommittee on Energy and Power, Todd Elliott of the Celanese Corporation noted that "some of our boilers at the Narrows, Virginia facility were identified by the Environmental Protection Agency as top-performing units and were used to set the proposed regulatory standards for hydrochloric acid and mercury emissions. Not even these top-performing units, however, will meet the emissions standards for both mercury and hydrochloric acid simultaneously without installing costly emission controls." Congress did not intend this arbitrary outcome. Congressional intent was that best performers must actually be controlling their emissions and that their techniques must be capable of being reproduced by others in the source category.

There are also major concerns that the rules do not address operational realities faced by facilities. For example, Mr. Elliott also testified that "[o]ur industry is often required to meet production demands during periods of natural gas supply shortages that are primarily the result of limited regional pipeline capacity." He stated that "[t]he current Boiler MACT and Area Source rules prevent industry from combusting alternate fuels during curtailment periods except on the rare occasions when the supply of natural gas is completely cut off for reasons beyond the control of the facility. By making it cost prohibitive to burn alternative fuels, the current

rule would force industry either to pay excessive prices for natural gas or curtail production." He urged "the modification of curtailment provisions in the Boiler MACT and Area Source rules to define curtailment as a period during which the use of natural gas at an affected facility is halted, restricted, or penalized for reasons beyond the control of the facility."

There are also significant concerns associated with the NHSM Rule, which EPA has not stayed. In that rule, EPA has established an approach that will redefine many materials with energy value and now used as fuel to be "solid waste" under the Resource Conservation and Recovery Act. Accordingly, boilers that burn those materials will be redefined as incinerators and will be subject to the more rigid requirements under Section 129 rather than Section 112 of the Clean Air Act. As a result of the changes in the definition of "solid waste," many businesses will discontinue the good practice of recovering energy from these materials and the materials will be treated as waste and landfilled—a bad result for the environment.

On September 8, 2011, Dr. Gilman of Covanta Energy specifically testified before the Subcommittee on Energy and Power about the potential for these rules to be environmentally counterproductive by discouraging the use of waste materials or biomass to fuel boilers. Currently, Covanta uses materials like construction and demolition (C&D) debris and tree stumps from old orchards, but the EPA's definitional change would make this practice cost-prohibitive. The outcome, according to Dr. Gilman, is that instead of supplementing fossil fuels as an energy source for boilers, C&D will "go to landfills where it will generate methane gas," and tree stumps "will be left for farmers to burn in their open fields."

Benefits

While the regulated community as noted above does not oppose the issuance of achievable regulations, and H.R. 2250 requires EPA to promulgate new rules to regulate hazardous air pollutant emissions from industrial, commercial, and institutional boilers, process heaters, and incinerators, the Committee notes that questions have been raised concerning EPA's projections of benefits under these rules. In particular, EPA does not calculate the benefits from reductions of mercury or other hazardous air pollutants. Rather, EPA calculates benefits based on the incidental reductions in outdoor particulate levels, called "PM," a non-hazardous pollutant.

Dr. Peter Valberg, a toxicologist and principal of Gradient, an environmental consulting firm, and former faculty member at the Harvard School of Public Health, testified to the Subcommittee on Energy and Power on September 8, 2011. He noted at the outset that, "by every public health measure, from infant mortality to life expectancy, we are healthier today, and exposed to fewer hazards, than ever before. Our present-day air is much cleaner now than years ago, thanks to EPA, and our air quality is among the best in the world."

He testified that with respect to EPA's projections of benefits from reductions of particulate matter, "[i]ntricate statistical manipulations are required to demonstrate the PM-mortality correlations. The computer models require many assumptions and adjustments, and the results you get depend on the model you use, how you set

it up, and how many different tests you run. You need to correct for many non-PM pollutants as well as non-pollution factors that may confound the PM-mortality associations. It's not clear that all confounders have been taken into account, and mere associations cannot establish causality."

He also testified that exposure to outdoor particulate matter is very small compared to exposure resulting from normal everyday activities, such as cleaning, cooking, baking, frying, barbecuing, mowing lawns, raking leaves, or enjoying a fireplace. He stated that there are major questions about "lives saved" by small PM reductions in the outdoor air. He further stated "[m]ost importantly, neither the animal toxicology nor the human clinical data validate the statistical associations from the observational epidemiology studies."

What the EPA Regulatory Relief Act of 2011 would do

Under H.R. 2250, EPA would be required to promulgate new rules to replace the four recently published rules, and to extend the compliance deadlines for regulated entities from 3 years to at least 5 years. The Committee urges EPA in promulgating the new rules to address all of the significant substantive technical issues that have been raised in the reconsideration proceedings, and to set reasonable compliance dates for businesses and institutions to install necessary controls and to come into compliance with the new rules.

In promulgating the new rules, H.R. 2250 would require that EPA, in defining the terms "commercial and industrial solid waste incineration unit," "commercial and industrial solid waste," and "contained gaseous material," to adopt the meaning of those terms set forth in a 2000 EPA rule published at 65 Fed. Reg. 75338 (December 1, 2000). Under these definitions, units designed for energy recovery are regulated under Section 112 of the Clean Air Act, and are excluded from being regulated as incinerators under Section 129.

These definitions will ensure that the valuable energy content in a wide range of materials can continue to be recovered and will not be wasted. Congress has long supported innovation to safely extract the energy value from secondary materials, and if EPA promulgates rules that discourage the recapture of their energy value, as a nation we will be landfilling energy. This is not sound energy or environmental policy.

Further, H.R. 2250 clarifies that the emissions standards set by the Administrator in the new rules must be achievable in practice. Section 5(a) specifically requires the Administrator to ensure that emission standards for existing and new sources established under Section 112 or 129 of the Clean Air Act can be met under actual operating conditions consistently and concurrently with emission standards for all other air pollutants regulated by the rule for the source category, taking into account variability in actual source performance, source design, fuels, inputs, controls, ability to measure the pollutant emissions, and operating conditions. This is intended to ensure that the standards set can be achieved in practice by facilities using available technology.

The directive to establish standards achievable in practice in Section 5(a) only applies to industrial, commercial, and institutional boilers and process heaters, and commercial and industrial solid

waste incinerator units covered by the rulemakings addressed in the legislation. The Committee urges EPA to ensure that future rulemakings for other source categories set standards that are similarly achievable in practice under actual operating conditions consistently and concurrently with emission standards for all other air pollutants regulated by the rules.

Section 5(a) clarifies Congress' intent that the standards EPA sets be based on emissions limits that are currently achieved in practice. In setting standards, EPA must utilize facility data to establish standards based on the criteria and methodology in this section of the bill. EPA should review all available data and, to the maximum extent practicable, utilize it to develop the standards in the manner required by the legislation. In addition to stack test and fuel sampling data that EPA relied on to develop the boiler and incinerator rules, facilities that will be regulated by these rules routinely submit air emissions inventory and toxic release inventory data as required by EPA and the states. EPA has broad technical expertise and experience analyzing the full range of facility data. To the extent that EPA determines that the existing data should be supplemented in order to develop the standards as required by the bill, EPA may need to seek limited additional data from regulated sources, such as data to understand boiler variability.

Finally, H.R. 2250 also reiterates that in promulgating the new rules, the Administrator should impose the least burdensome regulatory alternatives, consistent with the purposes of the Clean Air Act and President Obama's Executive Order 13563 (published January 21, 2011). That order states that an agency should "tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations."

Although the executive order recognized the need for regulations, it emphasized that regulatory agencies must do so "while promoting economic growth, innovation, competitiveness, and job creation." This provision of H.R. 2250 is intended to ensure that where alternative measures authorized by the Clean Air Act will achieve the goals of the Act, that the Administrator chooses the least burdensome of those alternatives consistent with the objectives of the Act.

Supporters of the legislation

The following entities have expressed support for H.R. 2250: A/C Power Colver, AbitibiBowater, Alabama Forestry Association, Alabama Pulp & Paper Council, Allegheny Hardwood Utilization Group, Inc., American Architectural Manufacturers Association, American Chemistry Council, American Coatings Association, American Coke & Coal Chemicals Institute, American Composites Manufacturers Association, American Fiber Manufacturers Association, Americans For Prosperity, American Forest & Paper Association, American Foundry Society, American Frozen Food Institute, American Home Furnishings Alliance, American Loggers Council, American Municipal Power, American Petroleum Institute, American Sugar Cane League, American Wood Council, Amerities Holdings LLC, Anthony Liftgates, Inc., APA—The Engineered Wood As-

sociation, Appleton Papers Inc., APUs by Rex, LLC, Archer Daniels Midland Company, ARIPPA, Arkansas Forestry Association, Arkansas State Chamber of Commerce, Associated Industries of Arkansas, Inc., Associated Industries of Vermont, Association of American Railroads, Association of Independent Corrugated Converters, Atlantic Wood Industries, Inc., Barge Forest Products Co., Beet Sugar Development Foundation, Belden Brick Company, Belimed, Inc., Bennett Lumber Company, Berco, Inc., Biomass One, LP, Biomass Power Association, Blue Bell Creameries, Blue Ridge Paper Products, Boise Cascade, LLC, Boise Inc., Brick Industry Association, Business Council of Alabama, Business Roundtable, Cahaba Timber Co., California Forestry Association, California League of Food Processors, California Metals Coalition, Canyon Creek Logging, Carolina Cotton Works, Inc., Cement Kiln Recycling Coalition, Chaney Lumber Co., Inc., Charles Ingram Lumber Co., Coast Wood Preserving, Inc., Coastal Plywood Company, Collins Pine Company, Colorado Association of Commerce & Industry, Composite Panel Association, Construction Materials Recycling Association, Corn Refiners Association, Council of Industrial Boiler Owners, Cresote Council, Decker Energy International, Inc., Dietz & Watson, Inc., Domtar Corporation, Douglas County Forest Products, Eastman Chemical Company, Eaton Corporation, Electric Mills Wood Preserving, Empire State Forest Products Association, Evergreen Packaging, Fibrek, Finch Paper LLC, Flakeboard America, Flambeau River Papers, Florida Forestry Association, Florida Pulp and Paper Association, Florida State Council, Florida Sugar Industry, Flower City Tissue Mills Co., Inc., FMC Corporation, Forest Landowners Association, Forest Products Industry National Labor Management Committee, Forest Resources Association Inc., Forging Industry Association, Fowler Post Co, Inc., Fox River Fiber Company, Genesee Power Station LP, George A. Whiting Paper Company, Georgia Association of Manufacturers, Georgia Paper & Forest Products Association, Inc., Georgia-Pacific LLC, Glatfelter, Glier's Meats, Inc., Green Diamond Resources Company, H. W. Culp Lumber Co., Hardwood Federation, Hardwood Manufacturers Association, Hardwood Plywood and Veneer Association, Harrigan Lumber Co., Inc., Hawaii Forest Industry Association, Hesse and Sons Dairy LLC, Hood Industries, Inc., Idaho Forest Group, INDA, Association of the Nonwoven Fabrics Industry, Indiana Hardwood Lumbermen's Association, Industrial Energy Consumers of America, Industrial Fastener Institute, Industrial Minerals Association—North America, Innovative Pine Technology Inc., Interfor, International Brotherhood of Electrical Workers, International Falls Chamber of Commerce (MN), International Paper, J.T. Fennell Company, Inc., JELD-WEN, Inc., Jordan Lumber & Supply, Inc., Kansas City Power & Light, Kapstone Paper and Packaging Corporation, Kentucky Forest Industries Association, Kercher Industries, Inc., Kitchen Cabinet Manufacturers Association, Koppers Inc., Lake States Lumber Association, Land O Lakes Wood Preserving Co., Langdale Forest Products Co., L'anse Warden Electric Company, LLC, Leggett & Platt, Incorporated, Longview Fibre Paper and Packaging, Inc., Louis Dreyfus Agricultural Industries, Louisiana Farm Bureau Federation, Louisiana Pacific Corporation, Louisiana Pulp and Paper Association, LyondellBasell Industries, Maine Pulp & Paper Association, Manufacture Ala-

bama, Manufacturers and Chemical Industry Council of North Carolina, Maple Flooring Manufacturers Association, Masco Corporation, Maxi-Seal Harness Systems, Inc., McShan Lumber Company, Inc., MeadWestvaco Corporation, Melrose Timber Company, Inc., Metal Treating Institute, Metals Service Center Institute, Michigan Biomass, Michigan Forest Products Council, Minnesota Chamber of Commerce, Minnesota Forest Industries, Mission Plastics North, Mission Plastics of Arkansas, Mississippi Manufacturers Association, Missouri Forest Products Association, Motor & Equipment Manufacturers Association, Mount Vernon Mills, Inc., Muscatine Foods Corporation, National Association for Surface Finishing, National Association of Manufacturers, National Association of Trailer Manufacturers, National Concrete Masonry Association, National Construction Alliance II, National Council of Farmer Cooperatives, National Council of Textile Organizations, National Federation of Independent Business, National Lumber and Building Material Dealers Association, National Oilseed Processors Association, National Solid Wastes Management Association, National Spinning Company, NC Association of Professional Loggers, Inc., Neenah Paper Inc., Nevada Manufacturers Association, New Hampshire Timberland Owners Association, Nippon Paper Industries USA Co., Nisus Corporation, NORA, An Association of Responsible Recyclers (formerly the National Oil Recyclers Association), North American Die Casting Association, North American Wholesale Lumber Association, North Carolina Chamber of Commerce, North Carolina Forestry Association, Northeast Regional Council of Millwrights, Northwest Pulp and Paper Association, Ohio Chamber of Commerce, Ohio Forestry Association, Ohio Manufacturers' Association, Ohio Municipal Electric Association, Ohio Willow Wood Company, OMNOVA Solutions, Inc., Oregon Forest Industries Council, Owens-Illinois, Inc., Pacific Wood Laminates, Packaging Corporation of America, Page & Hill Forest Products Inc., Partnership for Affordable Clean Energy, Pellet Fuels Institute, Pennsylvania Business Council, Pennsylvania Chamber of Business and Industry, Pennsylvania Forest Products Association, Pennsylvania Manufacturers' Association, Peterson Mfg. Co., Pile Driving Contractors Association, Piney Creek LP, Plum Creek, Port Townsend Paper Corporation, Portland Cement Association, Possum Tree Farm, Potomac Supply Corporation, PPG Industries, Precision Machined Products Association, Precision Pulley & Idler, Prince Manufacturing Corporation, Railway Tie Association, Rex Lumber, LLC, Rhodia, Inc., River Trading Company, Rock-Tenn Company, Rosboro LLC, Roseburg Forest Products Company, ROW, INC., Roy "O" Martin Lumber Company, LLC, Rubber Manufacturers Association, Rudd Company, Inc., S.I. Storey Lumber Co., Inc., Sage Automotive Interiors, Sappi Fine Paper North America, Sauder Woodworking Co., Scotch Plywood Company, Inc., Seymour Manufacturing Co., Inc., SierraPine Limited, Smith Street Mill, Society of Chemical Manufacturers and Affiliates, South Carolina Forestry Association, South Carolina Manufacturers Alliance, South Carolina Pulp and Paper Association (SCPPA), South Carolina Timber Producers Association, Southeast Wood, Southeastern Lumber Manufacturers Association, Southern Appalachian Multiple-Use Council, Southern Forest Products Association, Southern Pressure Treaters' Association, SP Newsprint Co., States Indus-

tries, LLC, Steel Manufacturers Association, Stella-Jones Corporation, Streator Dependable Mfg. Co., Sunbury Textile Mills, Inc., Tegrant Corporation, Ten-Tec, Inc., Tennessee Chamber of Commerce & Industry, Tennessee Forestry Association, Tennessee Paper Council, Texas Association of Manufacturers, Texas Forest Industries Council, Texas Forestry Association, Textile Rental Services Association, The Association for Hose & Accessories Distribution (NAHAD), The Business Council of New York State, Inc., The Carpet and Rug Institute, The Dow Chemical Company, The International Association of Machinists and Aerospace Workers, The Oeser Company, The United Brotherhood of Carpenters and Joiners of America, Thilmany Papers, Thomasson Company, Thompson Industries, Inc., Timber Products Company, TMA, Tolleson Lumber Company, Tradewinds International Inc., Treated Wood Council, Tri-State Generation and Transmission Association, TrueGuard—wood preservation, U.S. Beet Sugar Association, U.S. Chamber of Commerce, Uniboard USA LLC, Unifi Manufacturing Inc., USA Rice Federation, Vector Tool and Engineering, Verso Paper Corp., Virginia Chamber of Commerce, Virginia Forest Products Association, Virginia Forestry Association, Virginia Manufacturers Association, Washington Contract Loggers Association, Inc., Water Treatment Services Inc., Wausau Paper, Webb Consultants, Inc., WEBB Furniture Enterprises Corp, The Westervelt Company, Weyerhaeuser Company, Window and Door Manufacturers Association, Wisconsin Manufacturers & Commerce, Wisconsin Paper Council, and Wood Machinery Manufacturers of America.

HEARINGS

The Subcommittee on Energy and Power on April 15, 2011, held a hearing on "The American Energy Initiative: Recent EPA Rulemakings Relating to Boilers, Cement Manufacturing Plants and Utilities," and received testimony from:

- Tom Fanning, Chairman, President and Chief Executive Officer, Southern Company;
- Anthony F. Earley, Jr., Executive Chairman, DTE Energy;
- Aris Papadopolous, President and Chief Executive Officer, Titan America LLC;
- Dirk Krouskop, Vice President, Safety, Health and Environment, MeadWestvaco Corporation;
- Paul Kempf, Director of Utilities, University of Notre Dame;
- Michael J. Bradley, Executive Director, The Clean Energy Group; and
- John Walke, Clean Air Director and Senior Attorney, Natural Resources Defense Council.

The Subcommittee on Energy and Power on September 8, 2011, held a legislative hearing on H.R. 2250, the "EPA Regulatory Relief Act of 2011," and H.R. 2250, the "Cement Sector Regulatory Relief Act of 2011," and received testimony from:

- The Honorable Gina McCarthy, Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency;
- James A. Rubright, Chairman and Chief Executive Officer, Rock-Tenn Company;

• Paul Gilman, Ph.D., Chief Sustainability Officer and Senior Vice President, Covanta Energy Corporation;
• Todd Elliott, General Manager, Acetate, Celanese Corporation;
• Daniel M. Harrington, President and CEO, Lehigh Hanson, Inc.;
• Peter A. Valberg, Ph.D., Principal, Environmental Health, Gradient Corporation;
• John Walke, Clean Air Director and Senior Attorney, Natural Resources Defense Council; and
• Eric Schaeffer, Executive Director, Environmental Integrity Project.

COMMITTEE CONSIDERATION

H.R. 2250 was introduced on June 21, 2011, by Representatives Morgan Griffith (together with Reps. Butterfield, Olson, Barrow, McMorris Rodgers, Ross, Scalise and Matheson).

On September 8, 2011, the Subcommittee on Energy and Power held a legislative hearing on H.R. 2250.

On September 13, 2011, the Subcommittee on Energy and Power reported the bill favorably to the full committee by voice vote. During the markup, two amendments were offered and defeated, by voice vote.

On September 20 and 21, 2011, the Committee on Energy and Commerce met in open markup session. During the markup, three amendments were offered and one amendment was adopted by voice vote.

On September 21, 2011, the Committee on Energy and Commerce met in open markup session and ordered H.R. 2250 reported to the House, as amended, by a roll call vote of 36 ayes and 14 nays.

COMMITTEE VOTES

Clause 3(b) of rule XII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 2250, reported to the House, as amended, was agreed to by a record vote of 36 yeas and 14 nays. The following reflects the recorded votes taken during the Committee consideration, including the names of those Members voting for and against.

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 63

BILL: **H.R. 2250,** the "EPA Regulatory Relief Act of 2011"

AMENDMENT: An amendment by Mr. Rush, No. 2, to clarify that certain provisions of the bill are intended to supplement, and not supersede, any provisions of sections 112 and 129 of the Clean Air Act.

DISPOSITION: **NOT AGREED TO,** by a roll call vote of 16 yeas to 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey			
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette			
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield		X	
Mr. Latta		X		Mr. Barrow		X	
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 65

BILL: **H.R. 2250**, the "EPA Regulatory Relief Act of 2011"

AMENDMENT: An amendment by Ms. Baldwin, No. 3, to 1) require EPA to issue the new rules not later than 15 months after enactment of the Act; 2) remove EPA's rule applying to area source boilers from the bill; 3) require EPA to set a maximum compliance period of 5 years; and 4) strike Section 5.

DISPOSITION: **NOT AGREED TO,** by a roll call vote of 17 yeas to 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton				Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey			
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield		X	
Mr. Latta		X		Mr. Barrow		X	
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 66

BILL: **H.R. 2250**, the "EPA Regulatory Relief Act of 2011"

AMENDMENT: A motion by Mr. Upton to order H.R. 2250 favorably reported to the House, as amended. (Final Passage).

DISPOSITION: **AGREED TO**, by a roll call vote of 36 yeas to 14 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Barton				Mr. Dingell		X	
Mr. Stearns	X			Mr. Markey			
Mr. Whitfield	X			Mr. Towns		X	
Mr. Shimkus	X			Mr. Pallone		X	
Mr. Pitts	X			Mr. Rush		X	
Mrs. Bono Mack	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel			
Mr. Terry	X			Mr. Green	X		
Mr. Rogers	X			Ms. DeGette		X	
Mrs. Myrick	X			Mrs. Capps		X	
Mr. Sullivan	X			Mr. Doyle		X	
Mr. Murphy	X			Ms. Schakowsky		X	
Mr. Burgess	X			Mr. Gonzalez	X		
Mrs. Blackburn	X			Mr. Inslee		X	
Mr. Bilbray	X			Ms. Baldwin			
Mr. Bass	X			Mr. Ross	X		
Mr. Gingrey	X			Mr. Matheson	X		
Mr. Scalise	X			Mr. Butterfield	X		
Mr. Latta	X			Mr. Barrow	X		
Mrs. McMorris Rodgers	X			Ms. Matsui		X	
Mr. Harper	X			Mrs. Christensen		X	
Mr. Lance	X			Ms. Castor		X	
Mr. Cassidy	X						
Mr. Guthrie	X						
Mr. Olson	X						
Mr. McKinley	X						
Mr. Gardner	X						
Mr. Pompeo	X						
Mr. Kinzinger	X						
Mr. Griffith	X						

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COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE, GOALS AND OBJECTIVES

H.R. 2250 provides additional time and guidelines for the Administrator of the Environmental Protection Agency to issue achievable standards for industrial, commercial and institutional boilers, process heaters, and incinerators.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2250, the EPA Regulatory Relief Act of 2011, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI, the committee finds that H.R. 2250, the EPA Regulatory Relief Act of 2011, contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate provided by the Congressional Budget Office. Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

H.R. 2250—EPA Regulatory Relief Act of 2011

Summary: In March 2011, the Environmental Protection Agency (EPA) completed four final rules related to emissions standards for industrial boilers, process heaters, and incinerators. H.R. 2250 would prevent those rules from being implemented and require EPA to propose new regulations. EPA would have 15 months from the bill's enactment to finalize the new regulations; entities affected by those regulations would have at least five years to comply with the new rules. CBO estimates that enacting this legislation would have a net cost of $1 million over the 2012–2016 period, subject to the availability of appropriated funds. Enacting H.R. 2250 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2250 contains no new intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: CBO estimates that implementing H.R. 2250 would have a net cost of $1 million over the next five years. The costs of this legislation fall within budget function 300 (natural resources and environment).

Basis of estimate: For this estimate, CBO assumes that H.R. 2250 will be enacted by the end of 2011 and that the necessary amounts will be appropriated.

According to EPA, the agency spent about $2 million over the 2007–2010 period to develop and finalize the emissions standards addressed by H.R. 2250. Furthermore, CBO estimates that it would cost EPA about $2 million over the 2011–2016 period to implement and enforce those rules under current law. While enacting this bill would preclude EPA from spending resources on those activities, this legislation would require the agency to spend resources on proposing and finalizing new regulations.

The new regulations would be based on emissions limits that can be achieved in practice by facilities using available technology. At this time, EPA is uncertain how it would interpret this requirement for the new regulations and cannot say what the cost to develop the new rules would be. For this estimate, CBO assumes that rulemaking costs for the new rules would be similar to those for the prior effort ($2 million) to issue regulations. CBO estimates that implementing and enforcing the new regulations required under H.R. 2250 would have an additional cost of about $1 million over the 2012–2016 period.

On balance, CBO estimates that implementing this legislation would have a net cost $1 million over the next five years.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: H.R. 2250 contains no new intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Susanne S. Mehlman; Impact on state, local, and tribal governments: Ryan Miller; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1—Short title

Section 1 provides the short title of "EPA Regulatory Relief Act of 2011."

Section 2—Legislative stay

Sections 2(a) and 2(b) direct the Administrator of the EPA to promulgate new rules to replace four recently published, interrelated EPA rules setting MACT and other performance standards for industrial, commercial and institutional boilers and process heaters, and commercial and industrial solid waste incineration units. These rules were issued under Sections 112 and 129 of the Clean Air Act, and Sections 2002(a)(1) and 1004(27) of RCRA.

Section 2(a) directs the Administrator to finalize the new rules 15 months from the date of enactment of the Act.

Section 2(c) clarifies that the provisions of Section 112(j) and 112(g)(2), which direct the Administrator or State permitting authorities to establish on a case-by-case basis emission limits in certain circumstances where the Administrator has failed to promulgate a MACT standard, shall not apply prior to the effective date of the new standards.

Section 3—Compliance dates

Section 3(a) extends the deadline for compliance with the new rules from 3 years to at least 5 years from the date of enactment of the Act to allow sufficient time for facilities to install equipment and comply with the new standards.

Section 3(b) clarifies that for each of the new rules promulgated pursuant to the Act, the date on which the Administrator proposes the rule shall be treated as the proposal date for purposes of the definition of a "new source" under Section 112(a)(4), and of a "new solid waste incineration unit" under Section 129(g)(2) of the CAA.

Section 3(c) clarifies that nothing in the legislation should be construed to restrict the Administrator or a State permitting authority from granting an extension under CAA Section 112(i)(3)(B) allowing an existing source up to 1 additional year to comply if necessary for the installation of controls, or to restrict the President from granting limited national security-related exemptions under CAA Section 112(i)(4).

Section 4—Energy recovery and conservation

Section 4 provides that in defining the terms "commercial and industrial solid waste incineration unit," "commercial and industrial waste," and "contained gaseous material," the Administrator should adopt the meaning of those terms set forth in an EPA 2000 rule. These definitions provide that units designed for energy recovery should be regulated under Section 112 of the CAA, and should not be classified as incinerators and regulated under CAA Section 129. This section is intended to ensure the continued use of a wide range of alternative fuels and encourage energy recovery.

Section 5—Other provisions

Section 5(a) clarifies that the emissions standards set by the Administrator in the new rules must be achievable in practice. The section directs the Administrator to ensure that the emissions standards can be met under actual operating conditions consistently and concurrently for all pollutants regulated by the new rules. This section is intended to ensure that the standards are based on emission limits achieved in practice by real-world boilers, process heaters and incinerators.

Section 5(b) clarifies that in promulgating the new rules, the Administrator should impose the least burdensome regulatory alternatives, consistent with the purposes of the CAA and Executive Order 13563 (published January 21, 2011).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

The bill does not change existing law.

DISSENTING VIEWS

I. PURPOSE OF LEGISLATION

This bill's supporters have claimed that this bill simply gives EPA more time to modify and finalize rules for industrial, commercial, and institutional boilers and process heaters and commercial and industrial solid waste incinerators. The Committee report states that the purpose of the bill is "to provide additional time for the Administrator of the Environmental Protection Agency to issue achievable standards" for boilers and incinerators. Similarly, Congressman Pete Olson claimed that this bill "would give EPA the time that they requested to correct the seriously flawed boiler MACT rules."[1]

This is misleading. First, these standards are long overdue. The Clean Air Act amendments of 1990 identified toxic air pollution as a problem and set a statutory deadline of 2000 for setting emissions limits for polluting facilities.

Second, as explained in more detail below, section 2 of bill effectively nullifies EPA's boiler rules and prohibits EPA from finalizing new regulations for 15 months. In addition to this up-front delay, section 3 of the bill bars EPA from requiring facilities to reduce pollution to comply with any revised standards for at least five years once they go into effect. EPA does not want this delay. Gina McCarthy, Assistant Administrator for Air and Radiation at the U.S. Environmental Protection Agency, testified that this bill is not consistent with the extra time EPA had requested from the courts in 2010 to finish the boiler rules. She stated, "We did not ask for this. We do not need this."[2] In fact, Ms. McCarthy concluded that the bill's authors "have no mandatory timeline in mind for when these public health protections should be achieved."

Chairman Whitfield also claimed that this bill requires EPA to implement new emissions controls but replaces "unrealistic targets and timetables with achievable ones."[3] Full Committee Chairman Fred Upton reiterated this argument, stating that the bill simply requires EPA to promulgate regulations that "reduce emissions using reasonable and achievable targets and[4] timetables."[5] These

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[1] Statement of Congressman Pete Olson, Subcommittee on Energy and Power, Legislative Hearing on H.R. 2250, the EPA Regulatory Relief Act of 2011 and H.R. 2681, the Cement Sector Regulatory Relief Act of 2011, 112th Cong. (Sept. 8, 2011).

[2] Testimony of Gina McCarthy, Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency, before the Subcommittee on Energy and Power, Legislative Hearing on H.R. 2250, the EPA Regulatory Relief Act of 2011 and H.R. 2681, the Cement Sector Regulatory Relief Act of 2011, 112th Cong. (Sept. 8, 2011).

[3] Id.

[4] Statement of Chairman Ed Whitfield, Subcommittee on Energy and Power, Legislative Hearing on H.R. 2250, the EPA Regulatory Relief Act of 2011 and H.R. 2681, the Cement Sector Regulatory Relief Act of 2011, 112th Cong. (Sept. 8, 2011).

[5] Statement of Chairman Fred Upton, Subcommittee on Energy and Power, Markup of H.R. 2681, the Cement Sector Regulatory Relief Act of 2011 and H.R. 2250, the EPA Regulatory Relief Act of 2011, 112th Cong. (Sept. 13, 2011).

statements suggest that EPA's boiler rules set standards that are not achievable. But the Clean Air Act requires EPA to set specific emission limits for hazardous air pollutants based on pollution reductions that similar facilities already are achieving in the real world, not reductions achievable only in a laboratory or in computer models.[6] For existing sources, the emission standard must be at least as stringent as the average emissions achieved by the best-performing 12% of sources in that source category—not the top 1% or 2%, but the top 12%.[7] For new sources, the emission standard must be at least as stringent as the emissions levels achieved by the best-controlled similar source.[8] These minimum emissions levels are known as the Maximum Achievable Control Technology (MACT) floor.

The bill's supporters also claim that this bill will help create regulatory certainty. Congressman Pete Olson, for example, stated that the legislation "would provide regulatory certainty to businesses that are trying to create American jobs."[9] James A. Rubright, testifying on behalf of the American Forest and Paper Association, stated that he supports the bill because it offers "additional time and certainty."[10]

In fact, the bill creates substantial new uncertainty, both on the timing for compliance and the degree of emission control required. In response to questioning from Ranking Member Rush, Ms. McCarthy from EPA stated that the bill "raises significant uncertainty about whether or not we can move this forward and what standards would need to be applied."[11]

In particular, section 5 of the bill is ambiguous. It places new constraints and conditions on how EPA must set specific emission standards for toxic air pollution. It also requires EPA to select the "least burdensome" option when looking at how to cut pollution. But the bill does not explain what this means. Ms. McCarthy from EPA testified that this section could "raise legal uncertainty" because it is not clear whether or not it trumps current law.[12] Environmental lawyers who have been litigating these provisions for decades told the Subcommittee that this section would override current law and exempt industrial boilers and incinerators from requirements to achieve maximum reductions in toxic air pollution.[13] These are two distinct legal interpretations of the language. All that is certain is that this language will create new litigation to determine which interpretation prevails.

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[6] CAA § 112(d).
[7] CAA § 112(d)(3).
[8] CAA § 112(d)(3).
[9] Statement of Congressman Pete Olson, Subcommittee on Energy and Power, Markup of H.R. 2681, the Cement Sector Regulatory Relief Act of 2011 and H.R. 2250, the EPA Regulatory Relief Act of 2011, 112th Cong. (Sept. 13, 2011).
[10] Testimony of James A. Rubright before the Subcommittee on Energy and Power, Legislative Hearing on H.R. 2250, the EPA Regulatory Relief Act of 2011 and H.R. 2681, the Cement Sector Regulatory Relief Act of 2011, 112th Cong. (Sept. 8, 2011).
[11] Testimony of Gina McCarthy, Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency, before the Subcommittee on Energy and Power, Legislative Hearing on H.R. 2250, the EPA Regulatory Relief Act of 2011 and H.R. 2681, the Cement Sector Regulatory Relief Act of 2011, 112th Cong. (Sept. 8, 2011).
[12] Id.
[13] Testimony of John Walke, Senior Attorney, Natural Resources Defense Council, before the Subcommittee on Energy and Power, Legislative Hearing on H.R. 2250, the EPA Regulatory Relief Act of 2011 and H.R. 2681, the Cement Sector Regulatory Relief Act of 2011, 112th Cong. (Sept. 8, 2011).

In the end, this bill creates substantial uncertainty, ensures litigation, and goes far beyond providing EPA with extra time to finalize the rulemaking. This bill delays and may substantially weaken long overdue public health protections, allowing continued uncontrolled emissions of toxic air pollutants that cause cancer, developmental harm, and other serious health effects.

II. RULES BLOCKED BY THE LEGISLATION

Section 112 of the Clean Air Act requires EPA to set technology-based standards to reduce toxic air pollutants from distinct source categories (e.g., power plants, boilers, and cement kilns). Toxic air pollutants are pollutants that are known or suspected to cause cancer or other serious health effects, such as reproductive or birth defects or neurological effects, or adverse environmental effects. EPA rulemakings aim to reduce the release of 187 hazardous air pollutants including mercury, cadmium, lead, benzene and dioxin.

Mercury is a hazardous air pollutant of particular concern. Mercury is emitted into the air and is then deposited into water bodies, where it contaminates fish and other aquatic life. High levels of mercury in fish have triggered mercury advisories in water bodies around the country. Pregnant and nursing women, women who may become pregnant and young children who eat large amounts of mercury-contaminated fish are especially at risk because mercury damages babies' developing brains, harming children's ability to think and learn.

In April 2010, EPA proposed standards to reduce toxic air pollutants from industrial, commercial, and institutional boilers and process heaters and commercial and industrial solid waste incinerators. EPA held three public hearings and received more than 4,800 comments during an extended public comment period. Pursuant to a court order, EPA finalized these rules on February 21, 2011, eleven years after the statutory deadline.

EPA significantly modified the final rules from the proposals in response to the public comments. As a result, the final rules cut costs approximately in half.[14] The rules maintain significant public health benefits, which are estimated at between $22 billion to $56 billion each year, as well as the non-monetized benefits of reductions in mercury, dioxins, and other toxic air pollutants.[15] Annually, the final rules are estimated to avoid up to 6,600 premature deaths, 42,000 aggravated asthma cases and 320,000 days when people miss school or work.[16] EPA also estimates that the rules will create a net gain of 2,200 jobs, which does not include the jobs created to manufacture and install equipment to reduce air pollution.[17]

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[14] U.S. Environmental Protection Agency, Fact Sheet: EPA's Final Air Toxics Standard, Major and Area Source Boilers and Certain Incinerators, Overview of Rules and Impacts (Feb. 21, 2011).

[15] U.S. Environmental Protection Agency, Fact Sheet: Final Air Toxics Standards for Industrial, Commercial, and Institutional Boilers and Process Heaters at Major Source Facilities (Feb. 21, 2011); U.S. Environmental Protection Agency, Fact Sheet: Final Air Toxics Standards for Industrial, Commercial, and Institutional Boilers at Area Source Facilities (Feb. 21, 2011); U.S. Environmental Protection Agency, Fact Sheet: Final Amendments to New Source Performance Standards and Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (Feb. 21, 2011).

[16] Id.

[17] U.S. Environmental Protection Agency, Final Rules to Reduce Air Toxics from Boilers and Incinerators, Briefing for Congressional Staff (Feb. 2011).

On May 16, 2011, EPA announced that it would reconsider the final standards for boilers and certain solid waste incinerators to seek additional public comment and stakeholder input. EPA also issued a stay to delay the effective date of the standards for major source boilers and commercial and industrial solid waste incinerators.

III. BILL SUMMARY: H.R. 2250, EPA REGULATORY RELIEF ACT OF 2011

This bill delays issuance and implementation of the rules to reduce hazardous air pollution from boilers and incinerators, undermines EPA's authority to require application of the best performing emissions control technologies, and could allow more facilities to incinerate waste without being subject to the more stringent pollution control requirements that apply to waste incinerators.

Section 2 of bill effectively nullifies EPA's boiler rules, including the rule for area sources, which is not subject to EPA's regulatory stay, and directs EPA to promulgate new MACT standards for boilers and incinerators. As reported out of the Subcommittee on Energy and Power, the bill prohibited EPA from finalizing these regulations for at least 15 months and allowed for an indefinite further delay. During the Full Committee markup, Congressman Morgan Griffith offered an amendment to clarify that EPA must finalize the regulations on the date that is 15 months after the date of enactment. This language appears to preclude EPA from acting earlier or later than the date that is 15 months after the date of enactment. This amendment passed on voice vote.

In addition to this up-front delay of 15 months, section 3 of the bill bars EPA from requiring facilities to reduce pollution to comply with any revised standards for at least five years, and potentially longer. The Clean Air Act currently requires facilities to comply with emissions limits "as expeditiously as practicable" and within three years at most.[18] The bill requires EPA to consider numerous factors when establishing a compliance date, including the costs of achieving emissions reductions, feasibility, availability of equipment and labor, and potential net employment impacts. This provides a new basis for industry litigation on any final rules.

Gina McCarthy, Assistant Administrator for Air and Radiation at the U.S. Environmental Protection Agency, testified that delaying implementation of the major source boiler rule for three years would allow up to 20,000 additional premature deaths; 12,000 additional heart attacks; and 123,000 additional asthma attacks that could have been avoided.[19] Three years is likely on the short end of the possible delay, given the delays embedded in the bill and new litigation that would flow from several of the provisions.

Section 5 of the bill arguably undermines the fundamental premise of sections 112 and 129 of the Clean Air Act. Section 5 establishes two new criteria for EPA to consider when setting emissions standards for toxic air pollution. One could interpret these criteria as supplanting the existing criteria for determining MACT,

[18] CAA § 112(i)(3).

[19] Testimony of Gina McCarthy, Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency, before the Subcommittee on Energy and Power, Legislative Hearing on H.R. 2250, the EPA Regulatory Relief Act of 2011 and H.R. 2681, the Cement Sector Regulatory Relief Act of 2011, 112th Cong. (Sept. 8, 2011).

substantially weakening the existing standards for controlling toxic air pollution. Alternatively, one could interpret this section as complementing but not replacing current law. In that case, these criteria would merely inform decisions where EPA currently has discretion, such as in setting MACT standards more stringent than what is required by law. Both the intent of the provisions and the legal effect of the language are ambiguous, providing at minimum new legal risks and opportunities for litigation. During questioning by Ranking Member Waxman at the September 8 legislative hearing, Ms. McCarthy from EPA stated that section 5 of both bills could "raise legal uncertainty."[20]

If section 5 of the bill overrides current Clean Air Act standards, the result would be less stringent emissions reduction requirements and weaker protections for public health.

Section 5(a) of the bill requires EPA to set emissions standards that can be met under actual operating conditions "consistently and concurrently with emission standards for all other air pollutants" taking into account several mitigating factors. Committee Members supporting this provision and witnesses at the hearings suggested that this is intended to change how EPA sets air toxics standards.

EPA has set MACT standards for numerous sources since 1990. Sections 112 and 129 of the Clean Air Act require EPA to set toxic air pollution standards for a source category based on the average emissions levels achieved by the best performing 12% of facilities in that industry. EPA does this on a pollutant-by-pollutant basis. EPA reviews the emissions levels being achieved in practice and calculates the average of the cleanest 12% of sources for each pollutant.

The language in the bill suggests that EPA may have to set MACT limits based on the "best performing sources" for all pollutants in the aggregate. If this is what the language requires, it would be an impossible task for EPA. The agency would have to determine, for example, whether a plant that emits 150 pounds of mercury and 100 tons of lead each year is better or worse performing than a plant that emits 200 pounds of mercury and 50 tons of lead. Giving EPA open-ended and unworkable directions is a recipe for delay, litigation, and weak, if any, standards.

Similarly, section 5(b) could be interpreted to require EPA to forego numeric emissions limits in favor of less stringent work practice standards. Sections 112 and 129 of the Clean Air Act require EPA to set MACT standards for new and existing sources of pollution based on the emission levels achieved by relatively clean similar facilities. When the Administrator determines that it is not feasible to reduce pollution by prescribing or enforcing emissions standards for a source, she may promulgate less protective work practice standards instead.[21] In fact, that is what EPA chose to do for smaller, less polluting boilers as part of its MACT rulemaking for these sources. Section 5(b), however, may compel the Administrator to choose the least burdensome regulatory option, including work practice standards, without requiring a finding of infeasibility. As a result, EPA could be required to set work practice

[20] Id.
[21] CAA § 112(h).

standards across the board, even if a more stringent standard is feasible and more protective of public health. John Walke, a senior attorney at the Natural Resources Defense Council, testified that this section "would have the effect of exempting industrial boilers and incinerators from maximum reductions in toxic air pollution emissions, in contrast to almost any other major industrial source of toxic air pollution in the nation." [22]

Ranking Member Bobby Rush introduced an amendment in the subcommittee and full committee markups to clarify that section 5 is intended to supplement but not supplant EPA's existing authority under sections 112 and 129 of the Clean Air Act. This amendment was defeated in full committee by a vote of 16 to 34. Congresswoman Tammy Baldwin introduced an amendment during the full committee markup to strike this ambiguous language and replace it with a simple provision directing EPA to use its existing authority to address industry concerns about meeting the emissions limits for each pollutant at the same time. This amendment was defeated in full committee by a vote of 17 to 34.

Section 4 of the bill could exempt facilities that burn waste from the standards that apply to incinerators, which are subject to more stringent monitoring, reporting and pollution control requirements under section 129 of the Clean Air Act. The bill directs EPA to adopt the definitions of "commercial and industrial solid waste incineration unit," "commercial and industrial waste," and "contained gaseous material" as prescribed in the 2000 EPA rule on solid waste incineration.[23] In 2007, the U.S. Court of Appeals for the District of Columbia vacated these definitions as inconsistent with the plain language and intent of the Clean Air Act.[24] The court also determined that the narrow definition of commercial and industrial waste "substantially reduces" the number of facilities subject to the more stringent section 129 requirements by exempting any incinerator that recovers or has the potential to recover energy.[25]

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[22] Testimony of John Walke, Senior Attorney, Natural Resources Defense Council, before the Subcommittee on Energy and Power, Legislative Hearing on H.R. 2250, the EPA Regulatory Relief Act of 2011 and H.R. 2681, the Cement Sector Regulatory Relief Act of 2011, 112th Cong. (Sept. 8, 2011).

[23] U.S. Environmental Protection Agency, Standards for Performance of New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units, 65 Fed. Reg. 75338 (Dec. 1, 2000).

[24] Due to procedural errors in the rulemaking, EPA reconsidered and re-promulgated the 2000 definition in 2005 in substantially similar form. The court vacated the 2005 rule. See *Natural Resources Defense Council,* v. *U.S. Environmental Protection Agency,* 489 F.3d 1250 (D.C. Cir. 2007).

[25] Id.

For the reasons stated above, we dissent from the views contained in the Committee's report.

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