The subcommittee met, pursuant to call, at 10:15 a.m., in Room 2322 Rayburn House Office Building, Hon. John Shimkus [chairman of the subcommittee] presiding.

Members present: Representatives Shimkus, McKinley, Barton, Harper, Olson, Johnson, Flores, Hudson, Walberg, Carter, Duncan, Walden (ex officio), Tonko, Ruiz, Peters, Green, Dingell, Matsui, and Pallone (ex officio).

Also present: Representative Griffith.

Staff present: Samantha Bopp, Staff Assistant; Daniel Butler, Staff Assistant; Kelly Collins, Legislative Clerk, Energy
and Environment; Wyatt Ellertson, Professional Staff Member, Energy and Environment; Margaret Tucker Fogarty, Staff Assistant; Jordan Haverly, Policy Coordinator, Environment; Mary Martin, Chief Counsel, Energy and Environment; Drew McDowell, Executive Assistant; Peter Spencer, Senior Professional Staff Member, Energy; Austin Stonebraker, Press Assistant; Hamlin Wade, Special Advisor, External Affairs; Jeff Carroll, Minority Staff Director; Jean Fruci, Minority Energy and Environment Policy Advisor; Caitlin Haberman, Minority Professional Staff Member; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; Jourdan Lewis, Minority Staff Assistant; Alexander Ratner, Minority Policy Analyst; C.J. Young, Minority Press Secretary; and Catherine Zander, Minority Environment Fellow.
Mr. Shimkus. The Subcommittee on Environment and the Economy will now come to order. The chair recognizes myself for five minutes for an opening statement.

At today's hearing, we are examining a discussion draft led by Mr. Griffith with reforms and new sources review program. The goal of this discussion draft is to add greater certainty to the New Source Review permitting process, making it easier for industry to modernize existing facilities and carry out environmentally beneficial projects.

At a February hearing in this subcommittee, we learned that the uncertainty, complexity, and burdens associated with New Source Review permitting programs are deterring companies from properly maintaining and upgrading existing manufacturing plants, power plants, refineries, and industrial facilities. This is disappointment because it means we are missing out on opportunities to increase the nation's industrial capacity to create more American jobs and to improve our environment.

The discussion draft before us today reforms the New Source Review program by clarifying which types of facility upgrades require an owner to obtain a New Source Review permit. Historically, there has been a great deal of controversy and uncertainty surrounding this very issue.

The main reason for this controversy is due to the fact that the New Source Review program uses a complicated annual emissions projection approach to determine whether a project triggers New
Source Review.

Projecting future annual emissions is a difficult and confusing process requiring the consideration of many complex factors such as future demand of the product being produced and a facility's future hours of operation.

Because of this complexity, it is difficult for companies to know whether they are correctly projecting a facility's future annual emissions and in many instances companies are being targeted by EPA enforcement actions for having carried out these emission projects incorrectly.

The end result of this regulatory confusion and enforcement risk is that many companies are choosing to no modernize and upgrade their existing facilities because they fear that these types of activities could trigger the New Source Review permitting process.

In contrast, the new source performance standards program under the Clean Air Act uses a much better test to determine if an emissions increase has occurred, known as the hourly emissions rate test.

This hourly rate test has proven to be much less controversial, much easier to carry out, and only relies upon engineering design factors, not complicated future emissions projections.

The hourly rate test simply looks at whether a project at an existing facility will increase the facilities ability to
release emissions at a higher hourly rate.

In order to provide more certainty to the New Source Review program, the discussion draft takes the hourly rate test used by the new source performance standard program, applies that same test to the New Source Review program.

I am doing that because I don't like to say NSPS and NSR all the time. This targeted reform to the New Source Review program would provide much-needed regulatory clarity and would make it easier for companies to properly maintain and modernize their facilities.

Lastly, the discussion draft before us today includes provisions making it easier for owners to carry out pollution control projects, energy efficiency upgrades, and projects that keep facilities in good working order.

The fact that the New Source Review program can be a barrier to projects that would result in better air quality is unacceptable.

We have to remove the red tape that is discouraging companies from doing things like installing carbon capture technology or making manufacture equipment more fuel efficient.

This discussion draft does exactly that. At our hearing this morning we will first hear from EPA Assistant Administrator Wehrum who will explain the agency views on this discussion draft.

And then we will hear from a second panel of witnesses consisting of state air regulators, industry witnesses, and Clean
Air Act experts who will provide important perspectives on how this bill address New Source Review reform.

With that, I'd like to thank Congressman Morgan Griffith for the good work he has done on this bill and I'd like to thank our witnesses for joining us this morning.

And I have five minutes left so -- no -- so I yield back my time and I will yield to the ranking member of the subcommittee, Mr. Tonko, for five minutes.

[The prepared statement of Mr. Shimkus follows:]
Mr. Tonko. Thank you, Mr. Chair, and we have a magic clock this morning.

I also want to thank EPA Assistant Administrator Wehrum and other witnesses who are joining us today for attending the hearing.

First, Mr. Chair, I want to congratulate you on getting the nuclear waste bill through the House last week. This subcommittee has demonstrated it can get difficult things done in a bipartisan fashion.

However, I am afraid the discussion draft we are considering today will not be added to that list. I am not interested in Clean Air Act amendments that will result in dirtier air.

EPA's New Source Review program plays an important role to ensure that new and modified major sources utilize the best available pollution controls to limit emissions of criteria pollutants.

But in recent months, EPA has issued a number of troubling Clean Air Act policy changes including to the NSR program by memorandum.

In December 2017, EPA announced that it will not second guess permit applicants' analysis on emissions projections nor enforce against applicants that provide invalid estimates.

In January 2018, EPA withdrew the long-standing "once in always in" policy for major source MACT standards, and in March 2018 the EPA decided to change the project emissions accounting
formula that will allow facilities to ignore contemporaneous emissions increases.

These are not new ideas. Some were tried over a decade ago by Administrator Wehrum during the Bush administration through the rulemaking process.

Sadly, EPA's political leadership has spent its time reviving these policies rather than taking any proactive steps to actually reduce air pollution and, make no mistake, today's discussion draft is no different.

The draft would make a number of changes to EPA's New Source Review program. The NSR program is probably the most important Clean Air Act program for controlling pollution from new sources.

It might surprise some of my colleagues to learn that was a quote from Mr. Holmstead's testimony, who will be a witness on today's second panel.

And to be fair to him, he also said the NSR program was not intended to be a key program for controlling emissions from existing facilities.

Now, if we are being honest, we also must acknowledge that in the 1970s, Congress did not intend for existing facilities to be able to avoid installing pollution control technology for 40 years.

But that has been the case for many facilities across our country, which were grandfathered into the program until they underwent a major modification.
The NSR modification rules attempted to ensure that, over time, existing sources add pollution controls when those facilities made investments and upgrades that increased emissions.

Among other things, the discussion draft would change the definition of modification at an existing source to consider whether it would increase the maximum achievable hourly emissions rate rather than total annual emissions.

This would permit facilities to make upgrades that do not increase hourly emissions but do enable the source to operate much more frequently, which will greatly increase overall pollution.

We will hear that the NSR program is preventing facilities from undertaking efficiency and reliability upgrades.

But we are failing our constituents if we do not acknowledge that operation of these facilities comes with a serious cost -- harmful air pollution and oftentimes a lot of it.

That, frankly, could be drastically reduced with pollution controls. Today, many old coal-fired power plants are entering end of useful life unless they undertake significant capital investments.

Under the current NSR program, if these facilities make a major modification, the grandfathering is over and modern pollution controls would need to be installed.

This has caused these facilities to call the program
unworkable. The reality is they just do not like how it works. The discussion draft before us today would enable those old facilities, which have put off adopting modern pollution controls for decades, to continue polluting out air indefinitely.

Just yesterday, the Center for Public Integrity reported that in 2017, nearly a quarter of the nation's coal-fired power plants lacked pollution controls limiting emissions of sulfur dioxide and, on average, plants without scrubbers discharged more than twice the amount of SO2.

One hundred and seven of the 145 coal plants without control technology for sulfur dioxide were built prior to 1978.

We know how to reduce harmful air pollution, and I understand that businesses need time to transition and plan for the investments needed to install pollution controls.

But many of these facilities have had for decades. The Clean Air Act has been successful because it is premised on making progress over time.

Since the 1970s, we have made major strides in reducing air pollution. We have demonstrated that we can grow the economy while protecting public health.

But allowing major polluters to extend their lives without -- excuse me, while avoiding installation of avoidable technology to prevent unnecessary pollution is unacceptable and runs counter to the bipartisan intent of the Clean Air Act. I believe we will not be able to find common ground based on the discussion draft
under consideration today.

Moving forward, I hope this subcommittee and EPA will abandon these notions and policy memos and get back to considering policies that will actually reduce air pollution and improve public health in our country.

With that, Mr. Chair, I thank you and yield back.

Mr. Shimkus. Gentleman yields back his time.

The chair now recognizes the chairman of the full committee, Congressman Walden, for five minutes.

The Chairman. Thank you very much, Mr. Chairman, and to everyone just thank you for being here today.

Today's legislative hearing represents another important step in this committee's work to advance reasonable updates to our environmental laws.

Our goal has always been to ensure more effective environmental programs and also a more productive economy. A clean environment and a strong economy are not mutually exclusive.

The draft legislation being developed under the leadership of Representative Morgan Griffith aims to address problems that have been identified in the Clear Air Act's New Source Review program, and I know he has a very specific example that he shared with us about how we need to modernize these laws.

This legislation reflects the committee's goal to implement reforms that will more efficiently preserve and improve air quality.
It'll also help responsibly reduce barriers to increasing productivity of manufacturers in industries and communities around our country.

New Source Review was initially developed some 40 years ago. It's well past time for reform. Over the past several decades, the program has evolved in regulatory complexity, leading to time-consuming permit decisions, expensive regulatory requirements, and, frankly, litigation.

We learned in testimony three months ago how costly and lengthy reviews associated with NSR permitting can lead businesses to forego making beneficial investments in existing facilities and these investments can include efficiency upgrades, pollution control projects and other environmentally beneficial changes to operations.

This does not make sense. Decisions to not make such investments deprive communities of the benefits gained from environmental improvements in addition to the increased jobs and economic activity that flow from the activity.

We learned that even when facilities choose to run the NSR gauntlet with efficiency projects the result is unnecessary expense and costly delay with the required bureaucracy providing no additional environmental benefit.

In addition, state and local permit authorities are tied up on the NSR matters instead of working on more pressing environmental reviews.
I mentioned before the needless costs of poorly administered environmental regulations and the example of a proposed data center expansion in my district in Prineville, Oregon. That expansion ran headlong into permitting issues because of a dispute over a single air monitor, which made it unclear whether the expansion could go forward.

It was only after the city of Prineville persuaded the EPA to add an additional air sampling location that the issue cleared and the expansion was able to go forward.

That instance involved hundreds of millions of dollars in investments and hundreds of construction jobs.

At our NSR hearing earlier this year, we learned of a case in the pulp and paper and packaging industry in which a facility was forced to make more than $100,000 in additional assessments and incurred substantial delay for a project that would actually reduce pollution.

In another project, a paper mill sought to shut down two older and inefficient boilers and upgrade a large boiler to meet the same power needs more efficiently.

But due to EPA NSR interpretations that ignored the replaced boilers, this project was subject to 18 months in costly red tape and scope adjustments, again, for a project that would not increase emissions.

We should have an NSR program that presents clear standards for when reviews are necessary. This will lead to more efficient
business decisions, more efficient permitting decisions, and more environmentally beneficial operations.

We should have a program that works within the broader framework of state decision making concerning permitting and meeting clear air standards.

I am looking forward to hearing from EPA's assistant administrator for air and from our second panel, which includes state, industry, and legal perspectives, these discussions will go a long way in helping us perfect the discussion draft.

So I want to thank Mr. Griffith. Morgan, thank you for your hard work on this specific piece of legislation. I think we are taking really important steps to both grow America's economy and improve our air quality and the environment.

Doing this will ultimately benefit American workers, consumers, and others around the country.

With that, Mr. Chairman, unless someone wants the remainder of my time, Mr. Griffith, do you want to make any comments? With the remaining minute I would so yield.

[The prepared statement of Chairman Walden follows:]

**********INSERT 2**********
Mr. Griffith.  I thank you, Mr. Chairman, and I appreciate the kinds words.  I will be discussing this but I think one thing we have to remember, as everybody else has pointed out, this is not just about the big businesses or the big electric plants.

It's about small businesses as well, and I will detail how a medium-sized business in my district has been impacted on this and how silly it is when you're trying to deal with issues that have nothing to do with air pollution. You're just trying to make your factory better.

Also, we sometimes ignore, and I thought it was interesting in Mr. Tonko's opening statement, he said, you know, nobody intended for this to last for 40 years without people doing upgrades.

The problem is the rule itself forced people not to do upgrades because they couldn't afford to completely redo the facility.

How much cleaner would the air be if we'd have had reasonable rules in place from the get-go that would have let them slowly move forward a little bit at a time instead of having to bite off the whole apple -- eat the whole apple in one swallow?

I yield back.

Mr. Shimkus. The gentleman --

The Chairman. And I yield back as well.

Mr. Shimkus. The gentleman yields back his time.
The chair recognizes the ranking member of the full committee, Congressman Pallone from New Jersey, for five minutes.

Mr. Pallone. Thank you, Mr. Chairman.

We are here this morning to discuss draft legislation to amend the New Source Review permitting program of the Clean Air Act and I am pleased that Paul Baldauf, the assistant commissioner for air quality, energy, and sustainability at New Jersey's Department of Environmental Protection, is here as a witness.

Good to see you.

The NSR program has existed since the 1970s but it's not been as effective in reducing air pollution as Congress hoped.

Lax enforcement and the ability to exploit legal loopholes have helped or have allowed old facilities to game the system, and too often these facilities have been able to avoid installing modern pollution controls, which has left neighboring communities exposed to tons of dangerous pollution.

And these pollution problems are not only local; they also impact downwind states like New Jersey. With all the pollution control technology development over the past 40 years, there is no reason for any facility to operate without modern pollution control equipment.

The ultimate test for any legislation to reform the NSR program is simply this -- will it reduce air pollution -- and by that test, this bill fails.
There is no doubt this bill will increase pollution. Republicans are simply resurrecting previously rejected ideas promoted during the Bush administration by two of today's witnesses -- Assistant Administrator Wehrum and Mr. Holmstead.

Together, they have worked for years to undermine the NSR program. And when we enacted the NSR program, Congress recognized that existing facilities would need time to plan for and install pollution controls and that's why existing facilities were required to install new equipment when undergoing capital improvements, expansions, and life-extending renovations.

But industries have spent years employing legions of attorneys with the sole mission of creating carve-outs in the NSR program for their clients just to avoid controlling their pollution.

And so what happened? We ended up with the situation Congress tried to avoid -- new facilities disadvantaged to the benefit of old polluting ones that have remained around well past their design life.

The proponents of this bill claim it will fix this problem but it will not. Without a firm requirement that facilities reduce the levels of all the dangerous pollution they emit, they simply will be allowed to pollute more and that's what the language in this bill on maximum achievable hourly emissions rate is all about.

Rather than closing loopholes in the NSR program, this draft
bill expands them. It continues to disadvantage new facilities by allowing old facilities to operate without modern pollution controls.

If these changes go forward, air pollution will only increase. Communities that have fought to reduce toxic air pollutants including benzene, mercury, and other dangerous chemicals will see pollution and their health problems increase, and that means more asthma attacks and more people getting cancer and heart disease and lung disease.

And Congress never intended to grant a permanent license to pollute to any facility. But that is exactly what this legislation would achieve.

The provisions in this bill will guarantee that no existing facility will be subject to the NSR program when it's modernized or expanded and it will ensure the public will be subject to greater pollution from these plants after they are modified.

And no one has a choice about breathing. Each of us does it between 17,000 and 23,000 times every day.

However, we can choose to limit air pollution so that each breath delivers the clean and healthy air we need. The NSR program can certainly be improved but not with this bill.

It's long past time for old coal-fired generation and refineries to reduce their emissions and do their fair share to keep the air clean and safe to breathe.

I don't know if anyone wants my minute or so. If not, Mr.
Chairman, I will yield back.

Mr. Shimkus. The chair thanks the gentleman and the gentleman yields back his time.

We now conclude with members' opening statements. The chair would like to remind members that pursuant to committee rules, all members' opening statements will be made part of the record.

We want to thank all of our witnesses for being here today and taking the time to testify before this subcommittee. Today's witnesses will have the opportunity to give opening statements followed by a round of questions from members.

Our first witness panel for today's hearing includes the Honorable William Wehrum, assistant administrator for the Office of Air and Radiation, U.S. Environmental Protection Agency. We appreciate you all being here today. We will begin the panel and, Mr. Wehrum, you're now recognized for five minutes for your opening statement. Your full statement has been submitted for the record.
STATEMENT OF THE HONORABLE WILLIAM WEHRUM, ASSISTANT
ADMINISTRATOR FOR THE OFFICE OF AIR AND RADIATION, U.S.
ENVIRONMENTAL PROTECTION AGENCY

Mr. Wehrum. Thank you, Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee.

I appreciate the opportunity to testify today on the New Source Review permitting program. Although the administration does not have an official position on the draft, I am very supportive of the committee's efforts to improve the NSR permitting program.

I have long believed that the NSR permitting program stands as a significant barrier to the implementation of many projects that would improve facility and performance, enhance efficiency, and protect the environment.

In addition, the program is unnecessarily complicated and confusing. The program can and should be improved.

In accordance with the administration wide priorities for streamlining permitting requirements for manufacturing, we have undertaken an assessment of the agency's implementation of the NSR program.

We quickly and, I would have to say, predictably identified several areas that are ripe for improvement.

In December 2017 and March of 2018, Administrator Pruitt issued memoranda to EPA's regional offices to provide greater
clarity as to how certain NSR rules should be interpreted. The December memo focused on NSR permitting applicability provisions. That memo set forth EPA's interpretation of the procedures contained in the NSR rules for sources that intend to use projected actual emissions in determining NSR applicability and the associated pre- and post-project source obligations.

The March memo set forth EPA's interpretation that in determining whether a proposed project will result in a significant emissions increase, which is the initial step that a source must take in determining whether the project will result in an overall significant net emissions increase, that any emissions decreases that are projected to occur as a result of the project also should be taken into account in this first NSR applicability step.

We have done other things as well. In April of 2018, we issued a memoranda on so-called significant emissions levels, which are common sense provisions intended to simplify and expedite the permitting process and the analysis that's necessary to go along with the permitting process focus on air quality.

In January of 2018, although this is not strictly an NSR issue, as has been mentioned already we issued clarifying guidance on the so-called "once in always in" policy under our air toxics programs.
Regarding the subcommittee's discussion draft, the administration does not have an official position on the bill. But as I've said before, I personally strongly support the overall goals of the discussion draft.

The principal focus of the discussion draft is on refining the definition of modification in the Clean Air Act, and that would go a long way towards simplifying application of the NSR program.

It would make clear that a project undertaken in the existing stationary source will trigger NSR only when that project would result in an increase in the source's maximum design capacity to emit.

That is, the project would result in an increase in a source's hourly emissions rate, which is how emissions increases have been determined under the new source performance standard program since its inception.

The bill would also resolve long-standing and unfortunate anomaly in the NSR program, which is that the installation of pollution control equipment at existing sources by itself can trigger the onerous New Source Review program.

I appreciate the opportunity to testify today. I support the committee's effort to provide clarity for the regulated community that can finally allow the private sector to invest in more efficient manufacturing in this country and I welcome any questions you may have regarding the discussion draft for
the agency efforts to improve the NSR program.

Thank you again.

[The prepared statement of Mr. Wehrum follows:]

**********INSERT 3**********
Mr. Shimkus. The gentleman yields back the time and the chair thanks you and I'll now begin with the round of questioning with myself and I recognize myself five minutes for questioning.

Mr. Wehrum, aside from your current role as assistant administrator for Air at EPA, you have a lot of experience with the New Source Review program both as a regulatory lawyer and working for EPA in past administrations.

Given your experience, let me ask, from a big picture perspective, what is the role of the New Source Review in improving air quality?

Mr. Wehrum. New Source Review program is one but only one of many tools that we have under the Clean Air Act to protect air quality.

The NSR is different than many of the other programs that we implement because, you know, it doesn't apply to you just because you exist, as many of our ambient air quality programs or air toxic standards do.

It applies to you depending on what you do and that creates the real problems under the NSR program and as has been pointed -- as I pointed out in my testimony and as several of the members here including yourself, Mr. Chairman, pointed out, you know, because the applicability is based on what you do, then the program has an effect on decisions affected facilities make as to what projects they implement and which ones they don't, and in many cases I firmly believe -- and I've been doing this for a long,
long time now and I've seen it -- that facilities choose not to implement common sense improvements to their facility that would improve efficiency, would improve productivity, in a lot of cases would improve environmental performance because those projects stand the possibility of triggering the NSR permitting program. So they just don't do them. That makes no sense whatsoever.

Mr. Shimkus. We are talking today about the New Source Review permitting reforms that make it easier for existing sources to carry out efficiency improvements and other measures that would provide environmental benefits.

Do you see the discussion draft reform approach as creating a large loophole that will lead to unhealthy emission increases?

Mr. Wehrum. No, Mr. Chairman, not at all. I see the discussion draft as significantly improving the program and how it operates right now.

As I pointed out in my testimony, you know, primarily what the discussion draft would do is align the applicability process under New Source Review with the applicability process under the new source performance standard program.

They are closely aligned. They are both programs that apply to new modified sources and, interestingly, they both rely on the very same statutory definition of modification and yet, for the past 30, 40 years the agency has used different definitions under the new source performance standard program versus the New Source Review program to determine how emissions -- you know,
whether an emissions increase has occurred as a result of a project.

So the primary benefit of the discussion draft is it would align the programs, make them simpler to implement, and I think significantly improve their implementation.

Mr. Shimkus. The discussion draft's most significant policy change concerns a switch from the annual emissions projection test to an hourly emission rate test used under the new source performance standards program to determine if a project will cause an emission increase.

Would you speak to the benefits of reforming the New Source Review program to use an hourly emissions rate test? You kind of already did mention it but can you restate that?

Mr. Wehrum. Yes, Mr. Chairman. I certainly will.

I mentioned it in passing in my testimony, but the other significant problem with the New Source Review program is it's just confusing.

It's very complicated. It's very confusing. It says something that, you know, very sophisticated operators -- refinery operators, power plant operators, big companies that have a lot of resources on staff and available -- have to hire people like me when I was in private practice to help them figure out how the program applies.

That speaks volumes. So, you know, in addition to eliminating the barriers to common sense projects I described
before, I think a real value of the discussion draft would be it simplifies the program and gets people like me, you know, a lawyer in private practice, you know, before I rejoined the EPA, out of the equation and lets, you know, people on the plant floor do this.

And I am sorry, I don't want to take up too much of your time, Mr. Chairman, but I started my career as a chemical engineer. I worked in chemical plants and I was responsible for implementing this permitting program.

And I can tell you it's impenetrable to somebody like that and that's part of why I went into law, part of why I came to EPA because fixing this program is a very high priority.

Mr. Shimkus. We are going to hear from two states in the second panel. Do you think this change will undermine states' efforts to ensure air quality?

Mr. Wehrum. I do not, not one bit, Mr. Chairman.

Mr. Shimkus. And why?

Mr. Wehrum. Because this is but one of many, many elements of the Clean Air Act and all of these elements work together in concert. They each serve a purpose and the totality of the Clean Air Act requirements is what should be measured and not the function of each individual piece.

So this is not going to result, in my judgment, in any significant reduction in the overall effectiveness of the act.

Mr. Shimkus. I thank the gentleman, and now I yield back
The chair recognizes the gentleman from New York, Mr. Tonko, for five minutes.

Mr. Tonko. Thank you, Mr. Chair, and Administrator Wehrum, thank you again for being here today.

As I mentioned, many members have concerns about a number of EPA rulemakings, memos, and other regulatory actions that will consequence for the Air Office.

I particularly want to highlight the recently proposed strengthening transparency and regulatory science rulemaking, which will have significant impact on Clean Air Act regulations, including NAAQS.

And a few days ago, the chair of the Science Advisory Board working group on EPA planned actions for SAB consideration issued a memo recommending that this proposal merits further review by the board.

Obviously, you oversee a number of programs that rely on epidemiological studies and private health data so you are more than qualified to weigh in on this.

Do you believe the Science Advisory Board should have conducted a review of the proposal before it was published in the Federal Register?

Mr. Wehrum. No, Mr. Ranking Member, I don't think that's necessary at all.

Mr. Tonko. Do you believe the Science Advisory Board should
be asked to conduct the review now?

    Mr. Wehrum. Mr. Ranking Member, taking a step back, I think
the overall concept and the goal of the transparency proposal
I think is indisputable, which is to make sure that the science
the agency relies upon is replicable and --

    Mr. Tonko. I understand that, but do you believe the Science
Advisory Board should be asked to conduct a review now?

    Mr. Wehrum. And Mr. Ranking Member, the --

    Mr. Tonko. Yes or no.

    Mr. Wehrum. The importance of making sure --

    Mr. Tonko. Yes or no, sir.

    Mr. Wehrum. -- the science is replicable -- well, it's
important to put this in context, Mr. Ranking Member, because
you're -- it's a basic scientific principle that science that
-- studies that scientists create, part of science is the ability
of other scientists to replicate their work and either confirm
the findings that were made or possibly refute --

    Mr. Tonko. Well, I am not hearing a yes that the advisory
board should be asked to conduct a review now so I'll move on.

    Do you believe the Office of Air and Radiation should have
been involved in the review of the proposals through a formal
intra agency review process before it was published?

    Mr. Wehrum. Yes, and in fact, we were. I mean, we had a
copy of the draft before it was --

    Mr. Tonko. Did --
Mr. Wehrum. -- before it was proposed. We circulated it to our office directors and key staff and we had an opportunity to review and provide input.

Mr. Tonko. Was that amongst political appointees only?

Mr. Wehrum. No. No.

Mr. Tonko. There were career staff involved?

Mr. Wehrum. Yes.

Mr. Tonko. Would you share the Air Office's comments on the rule with this subcommittee and the committee?

Mr. Wehrum. I don't know what form they take but I'd be happy to do that.

Mr. Tonko. Well, we'd ask that you share those comments with us, please. So that's a yes, you'll offer them?

Mr. Wehrum. Yes, Mr. Ranking Member.

Mr. Tonko. The SAB working group's memo notes the proposed rule appears to have been developed without a public process for soliciting input from the scientific community.

A number of scientific organizations, state attorneys general, and members of Congress have called for an extension of the public comment period in order to more fully consider the impacts of the proposal.

This is particularly important since the proposal sought comment on issues fundamentally related to its design.

Do you believe this proposal warrants an extended public comment period in public hearings similar to what has been done
for other consequential rulemakings?

Mr. Wehrum. Well, OAR is responsible for lots of things but this rulemaking is not one that's actually in my office and I believe Administrator Pruitt is prepared to speak to that question in the hearing that he's participating in as we speak.

Mr. Tonko. So would he support extended public comment periods and public hearings?

Mr. Wehrum. I believe the administrator will speak to the issue and he'll speak for himself.

Mr. Tonko. Do you have a sense that he would want to see more comment period and more public hearings?

Mr. Wehrum. Well, what I would say is we have nothing to hide, I mean, which is a bit redundant. This is all about transparency. So it's important.

I mean, I'll just speak for myself. The rulemaking process is enormously important. When we put out rules for public comment, that's a meaningful thing.

It allows for us to get input and data and thoughts from affected folks and people who are knowledgeable on the issues.

And so --

Mr. Tonko. Thank you.

Mr. Wehrum. -- you know, I know the administrator shares those views.

Mr. Tonko. Thank you. Last week, Administrator Pruitt issued a memorandum on the NAAQS standard-setting process.
Moving forward, EPA intends to act the Clean Air Scientific Advisory Committee to address several issues, including any adverse public health, welfare, social, economic, or energy effects.

Did EPA consider soliciting feedback from the public SAB or the CASAC before this memo was released?

Mr. Wehrum. We received input on a continuous basis in a variety of ways on how we do NAAQS reviews, on the NAAQS decisions that we make and the implementation decisions that we make. So --

Mr. Tonko. Would that include soliciting comments from the public?

Mr. Wehrum. We always solicit comments from the program -- public when we set NAAQS standards and do implementation rules.

Mr. Tonko. Mr. Chair, I yield back.

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

And Mr. Wehrum, can you pull your mic a little bit closer?

I think --

Mr. Wehrum. Yes.

Mr. Shimkus. Okay. And the chair now recognizes the gentleman from Texas, Congressman Barton, for five minutes.

Mr. Barton. Mr. Chairman, could I pass and let you go to some members who've been here while I --

Mr. Shimkus. That would be great.

The chair recognizes the gentleman from West Virginia, Mr.
McKinley, for five minutes.

Mr. McKinley. Thank you, Mr. Chairman, and thank you, Mr. Wehrum, for being here.

Mr. Shimkus. Come sit next to me. Get closer. It's okay.

Mr. McKinley. Yes, I've heard that before.

[Laughter.]

The -- so if I could -- and now they've already run off half a minute on me on this thing. Thank you. Thank you. Yes, there we go.

I want to focus -- I know a lot of the discussion is going to be about some of the other matters on NSR but I want to stay as focused as I could on energy and the coal-fired power plants and gas-powered power plants.

And I am trying to -- I am trying to reconcile the differences or the questions about the NSR versus -- and grid reliability and ability of our electric grid, because we have had so many hearings about grid reliability, and over a dozen hearings we have had about grid reliability and the concerns we have, particularly when we hear from FERC -- their comments about the concern of whether we are going to have enough power plants.

So as a result of this uncertainty that I am trying to reconcile the differences between the two, I see how that many of our power plants are just simply saying because of the uncertainty that you referred to and our chairman has referred to, are just prematurely shutting down the power plant because
they don't want to go through the process of upgrading a facility that may not be used for 12 months and be faced with something that would cost hundreds of millions of dollars.

So they are concerned. I want to get -- I want to get to one issue here, if I could, just quickly with you. Would you agree that if a power plant replaced a part in maintenance with, essentially, the original part maybe 40 years ago, would it fall -- would it not be exempt from the NSR ruling if they are just going to replace in maintenance a part that was the original part that had just worn out?

Mr. Wehrum. Congressman, there are a couple questions that would have to be asked and answered about that. One is would that project represent so-called routine maintenance and the very first part of the applicability process is if you're doing something --

Mr. McKinley. I am just saying, Mr. Wehrum, it's a worn-out part that they are just -- it's routine maintenance -- we are going to replace that part.

Mr. Wehrum. Right. So --

Mr. McKinley. It may be a 40-year-old part.

Mr. Wehrum. So what you described very well could be considered routine maintenance and that may be the beginning and the end of the applicability determination.

Mr. McKinley. Thank you.

So I want people to understand that what we are saying if
you -- if Tonko is correct that 25 percent of our power plants
don't have fundamental SOCs and NOx air controls, here the plant
now wants to upgrade -- wants to do some work on their plant to
do that.

They are going to go through a delay process that might be
a year or more and the uncertainty that perhaps it might cost
$100 million to $200 million dollars to do something when they
just simply want to put in some new control devices.

So, again, I am trying to understand. If you do nothing
-- if you don't improve your air quality, you don't follow the
NSR, because if I am just doing routine maintenance, I am okay.

But if I try to improve the efficiency and the operation
and the emissions of my plant, then I fall into something else.

Does that make sense to you?

Mr. Wehrum. Absolutely not, and you put your finger on one
of the two key problems as I see with the New Source Review, which
is it very much stands as a barrier to the implementation of
projects that are necessary to maintain facilities, improve
efficiency and, as I said earlier, in many cases improve
environmental performance.

And, as you pointed out, relatively minor projects in this
-- in the grand scheme of the facility, you know, an expansive
view of NSR applicability could trigger the program and trigger
the obligation to spend hundreds of millions of dollars on air
pollution controls and as a result -- I've seen it real live,
first hand -- companies decide not to go forward with those projects and they leave plants in a dilapidated condition and in a condition that's worse for the environment than it would be if they were able to continue to maintain it.

Mr. McKinley. Not only worse, but doesn't it put us in a concern for reliability of the grid when we don't have these power plants available for implementation?

Mr. Wehrum. Yes. So I think it's really important for EPA to stay in its lane. I am not a grid guy. I am an air guy, and I think part of the problem in the past with the EPA is it's tried to assume responsibility for things it's not responsible for.

So I am going to take off my AA hat and put on my -- you know, maybe my engineer hat and my common sense guy and just say yeah, grid reliability is enormously important and there is a real live debate going on right now about all the coal plant retirements which are resilient.

They have fuel onsite. They can operate for days and sometimes weeks without additional fuel delivery and that's very different than a natural gas-fired plant that if the pipeline delivery is disrupted for whatever reason there is no onsite storage and there is no generation.

So there is a real live debate going on right now about the issues that you raise. I am not the expert but I think it's important to run that to ground.

Mr. McKinley. Perhaps on the next panel. I want to
continue that line of reasoning, questioning. So thank you.

I yield back.

Mr. Shimkus. Gentleman's time has expired.

The chair recognizes the gentleman from Texas, Mr. Green, for five minutes.

Mr. Green. Thank you, Mr. Chairman, and welcome to our subcommittee.

The New Source Review program has been an important program for protecting air quality in districts like I have. I have a very urban district in east Houston that -- we have lots of industry in the district that brings in many high-paying jobs for our constituents.

But Houston also struggles with meeting attainment levels under the Clean Air Act and I am worried that some of the EPA's recent moves would threaten many of the gains we have made in recent years in improving the air quality in Houston.

Again, thank you for being here today. It's not always easy to get officials from our administration here to talk about legislation and I appreciate your involvement.

In 1995, the EPA created the "once in always in" policy for regulation of hazardous air pollution, or HAPs. Many of these HAPs, like benzene, are produced by numerous plants in our district.

Only "once in always in" industrial facilities that were determined to be major sources of HAPs were required to employ
strong pollution controls under the maximum achievable control
technology measure, or MACT.

Under the previous policy, sources must apply MACT if they
are emitting more than 10 tons per year for a single hazardous
chemical or 25 tons per year for combined hazardous chemicals.

And your January 25th guidance changed this policy now for
major sources to be classified as area sources under the Clean
Air Act if they were below this threshold.

While I understand that many facilities have done a great
job of reducing their emissions through upgrades and would not
now fall under the major source classification when "once in
always in" was created in the tonnage decision or was based on
defining a major source not on what level of emissions were
necessarily safe.

Under the new policy, our district will see as much of 200
more tons a year in emissions. Has the EPA done any of the new
studies on what a safe level of emission is for the HAPs that
prompted this decision?

Mr. Wehrum. Well, thank you for your question, Mr.
Congressman. There is a lot packed into what you just said.

Mr. Green. I know. Well --

Mr. Wehrum. So let me just --

Mr. Green. -- we all represent our districts.

Mr. Wehrum. Oh, absolutely. So let me take a shot and you
can tell me if I get to the point that you want.
So the "once in always in" policy is a very important policy. We issued the memo that we did because, like the NSR program, we think that policy stood in the way of people doing common sense things to reduce emissions.

So, for instance, prior to issuance of the policy, there was absolutely no incentive for any industrial facility to reduce emissions to lower the major source thresholds because, you know, they -- it's nothing but additional cost and expense for them and produces nothing in the way of regulatory benefit.

So under the "once in always in" policy, if they take voluntary measures to reduce emissions further than the law requires and they take limits to below major source thresholds, then we will see emissions reductions and they see real regulatory relief and it's a win-win situation.

Now, there are those who say look at -- you know, so what I just offered is the glass half full perspective, which I think is absolutely right. But there is a glass half empty perspective and there are those who say, oh no, there is going to be huge emissions increases associated with these people who are going to, you know, shuck off the standards that apply to them and then, you know, intentionally increase emissions all the way up to just under the major source thresholds.

You know, the studies that purport to show that are basically -- they are just shoddy, and I'll tell you, if we try to rely on those kind of studies in a rulemaking, we'd get laughed out
of court.

Mr. Green. Well, I only have a very short time. Has the EPA done any new studies on what a safe level of emissions for these HAPs that prompted the decision? Has the EPA done that study?

Mr. Wehrum. You know, part and parcel of the program this toxics program that the policy applies to is a two-step program. Step one says we have to apply technology standards and step two says we have to follow up after a period of years with a risk assessment to make sure that there is no unacceptable remaining risk. So we are --

Mr. Green. Okay. The emissions from HAPs from these facilities are they classified as area sources considered a safe level, that you know of?

Mr. Wehrum. I am not -- I am sorry, Mr. Congressman. I don't understand the question.

Mr. Green. Okay. Well, you can get back. Have you done any estimates on the potential increase in emissions that this guidance will allow that --

Mr. Wehrum. Yes. We took a very hard look and, as was pointed out earlier in this hearing, in my prior tenure at EPA during the Bush administration this is an issue we talked about and actually proposed a rule to make a change in the regulations to accomplish what we did in the memo just a couple months ago.

And so we have abundant public comments that were received
when that rule was proposed and we have taken a hard look at those public comments.

There, honestly, is no way to comprehensively analyze because of the broad, broad applicability of these programs. But what we have done is looked at very targeted sectors based on comments that we have received and what we have seen is a preponderance of information indicating that we think ultimately this policy is going to produce emissions reductions and is not going to result in the hypothetical increases that many people are worried about.

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

Mr. Green. Mr. Chairman, I'll submit the rest of the questions. Thank you.

Mr. Shimkus. And the chair now recognizes the gentleman from Texas, Mr. Barton, for five minutes.

Mr. Barton. Thank you. Thank you, Mr. Chairman.

Thank you, sir, for testifying. This is a very complicated issue. The average person doesn't understand the difference, you know, between a New Source Review or whatever else we are talking about here.

But it's an important issue. So I am going to ask some questions, and I am not sure I understand myself what I am asking. But, hopefully, you will.

Under current law, if an hourly emission per unit of output stays the same or goes down, is it possible to have an annual
increase in emissions? So you change your process. You have -- you have equal or less emissions.

But on this annual standard, would it be possible in such a case for the annual standard to be violated? I would think the answer would be no.

Mr. Wehrum. Well, it is theoretically possible to not have an increase in hourly emissions but to have an increase in annual emissions. So that's theoretically possible.

Mr. Barton. It is.

Mr. Wehrum. And one of the primary criticisms of the discussion draft is that it may allow that to -- you may not see a short term -- the hourly measured short-term emissions. You may not see a short-term increase in emissions.

But there is a possibility -- a hypothetical possibility to see a long-term in annual emissions.

Mr. Barton. I would think it's not possible unless you increase the output.

Mr. Wehrum. That's exactly right. That -- Mr. Congressman, that is exactly right. You put your finger on it, and I think it's important to point out, and this must be kept in mind as work on the discussion draft goes forward, this is only one of many, many tools we have in the Clean Air Act toolbox.

So I have said hypothetical possibility and I use that word intentionally because I believe it is just hypothetical and so let's just talk about power plants, and this program applies to
way more than just power plants.

So just look at power plants. There is the acid rain program. There are interstate transport requirements that apply. There are, in some cases, nonattainment requirements that apply.

There is state-level requirements that apply. There are air toxic standards that apply. There is a plethora of emissions limitations that apply to these standards.

So is it hypothetically possible you'll see an emissions increase with an hourly emissions test? Yeah. But in reality, you can see that --

Mr. Barton. Let's --

Mr. Wehrum. -- but it's hard to see because we are not operating in a vacuum. We are operating in a heavily, heavily regulated --

Mr. Barton. Let's use a real-world example. ERCOT, down in Texas, is predicting that there could be -- there is a possibility of rolling power outages this summer in Texas because the maximum generation for electricity, if you had the worst case scenario -- 105 in Houston, 105 in Dallas, 105 in Austin -- I mean, just a hellacious hot summer all over the state -- that we might not have the ability to handle that.

So we try to get more -- get existing plants to generate electricity to expand so they can generate more electricity.

Okay. But their emission per unit of output, since they are going
to use newer technology, you get more output than the old technology.

But the overall emissions are going to go up because they are going to generate a lot more electricity. Would that -- would that trigger a New Source Review under existing law?

You've got -- you've got a shortage. You're trying to -- a potential shortage. You're trying to plan for that. You don't have time to build a brand new power plant so you're going to expand and existing one but use new technology.

You get more output for the same level of emissions but the overall level of emissions will go up because you're going to generate 25 or 30 percent more output. So that would trigger a New Source Review?

Mr. Wehrum. It could.

Mr. Barton. Under new --

Mr. Wehrum. Under current law, and one of the -- one of the real benefits of the discussion draft is it would allow for the use of a so-called output-based measure of emissions increases.

And so it would solve the problem you just described because it would recognize that in the situation you described we all want plants to run more and be more efficient because that is better for the environment.

Mr. Barton. So my time is about to go out.

Does the Trump administration support the discussion draft
as it's currently drafted?

Mr. Wehrum. The administration has not taken a position on the draft but, in my capacity -- as I said, in my testimony, I strongly support what you're --

Mr. Barton. You would recommend my support?

Mr. Wehrum. Yes, Mr. Congressman.

Mr. Barton. Thank you, Mr. Chair.

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

The chair now recognizes the gentlelady from Michigan, Mrs. Dingell, for five minutes.

Mrs. Dingell. Thank you, Mr. Chairman.

Chairman, I've got a number of questions for you today on ongoing policy changes at the EPA. Before I get -- I am going build on what my colleague, Mr. Green, was asking you.

But I care very deeply about one of the activities that you were doing and that is the mid-cycle review on the fuel economy standards.

First, given recent press reports, I thought there was a good meeting at the White House on Friday. But yesterday afternoon's Post made me think that that was not the case.

Mr. Wehrum, I understand that Administrator Pruitt sat down with the president and a number of the auto -- CEO automakers last Friday to discuss automotive fuel economy and GHG emission standards.

In that meeting, I understand the president directed
Administrator Pruitt and Transportation Secretary Chao to reach out and negotiate a possible deal with California to ensure that we have one national program in this country for fuel economy and that GHG standards are maintained.

I was happy to hear that. That's what the autos say that they need. California has said that they will work with everybody.

But I am concerned that yesterday I heard that that was not the case -- that you were not going to work with California, signaling the exact opposite of what we heard on Friday.

It's troubling, because the auto industry needs stability. They need to know where they are going. Can you tell me what EPA is doing on this, please?

Mr. Wehrum. Yes, Mrs. Congresswoman.

I wasn't in the meeting with the president so I can't speak to what was said or what was not said. Like you and like everyone else, I got no reports about it. So I am not going to do a he said, she said about that.

But I can tell you we are working very hard on a proposed rule. You know the administrator issued the determination not long ago saying he thinks a change needs to be made to the current standards in the 2021 and 2025 time frame, and we are hard at work on that in conjunction with NHTSA on a proposed rule that would suggest some possible changes based on the administrator's findings and Secretary Chao's similar concerns.
Mrs. Dingell. But does EPA understand the importance to the auto industry of one national standard and that the importance of what was originally negotiated was having all players at one table and that if you care about jobs having two sets of standards so that they are producing one car for 14 states and another is not going to give the companies the certainty they need?

Mr. Wehrum. I'll speak for myself and say absolutely. I understand the importance of that and what I would say is it's a priority of, you know, my office and I believe a priority of the administration to try to maintain one national program.

And so I think to the degree the press reports are saying that's not a goal I would say that's wrong.

But what I would say is we think changes need to be made and we have started a dialogue with the state of California.

I've personally been involved in those conversations.

We plan to continue that dialogue consistent with what the president said in last week's meeting and, in fact, as we speak are trying to set up the next discussion with our colleagues at CARB for Wednesday.

They are going to be here this week for meetings and we are hoping to get together with them while they are here in town.

So we have the dialogue underway.

We intend to continue that dialogue and if we can find a way to maintain one national program we certainly want to do that.
I know California wants to do it. I know the OEMs want to
do it and we are going to try.

Mrs. Dingell. I find that reassuring. I would love your
personal commitment to keep trying to make that happen because
we all care about the health of the auto industry.

Mr. Wehrum. We are going to keep trying.

Mrs. Dingell. Let me go quickly, because I am going to run
out of time, and build on what my colleague, Mr. Green, was asking
about in "once in always in."

Is it -- when Administrator Pruitt testified at a Senate
Oversight hearing, he said that the decision to end "once in always
in" policy was made outside of your office.

Is that accurate? Was the decision to rescind the "once
in always in" policy made outside of your office? What was your
role, if any, in the decision to rescind this policy?

Mr. Wehrum. Well, I signed the memo. But anything I do
is based on the authority of the administrator.

So I can tell you that he was highly involved in the vetting.
He was highly involved in setting the policy and I ultimately
issued the memo. But it's a reflection of the agency's position.

Mrs. Dingell. So I've got 25 seconds left and I'll probably
ask you to do more of this for the record. But you were talking
that you did do do studies -- studied the issue but we haven't
seen anything and we need to have more transparency about what
the impact was going to be about when it was conducted, is it
You know, we have got the Union of Concerned Scientists saying that there'll be an additional 155 tons of hazardous air pollutants per year. Can we make that data available that you've analyzed?

Mr. Wehrum. Well, an important part of what we said when the memo came out is we intend to follow up the memo with the rulemaking so we can lock in our new policy as actually part of the codified regulations.

So that will be an opportunity for everyone with an interest to look at our assessment, to look at our analysis, and to give us their comments as to whether they think it's right or not.

Mrs. Dingell. Thank you.

Mr. Shimkus. Gentlemady's time has expired.

The chair recognizes the gentleman from Ohio, Mr. Johnson, for five minutes.

Mr. Johnson of Ohio. Thank you, Mr. Chairman, and I'd like to start out by thanking you and Representative Griffith for your work on this really important bill and for holding this legislative hearing today.

I am also appreciative of the EPA's work to date to inject some certainty and common sense into NSR permitting.

It's now incumbent on Congress to further that certainty through advancing this discussion draft. As Mr. Johnson, with America's Electric Cooperatives, who will testify in the second
panel, explains in his testimony, innovative technologies and systems to improve facilities are being left on the shelf because of current NSR processes, essentially undermining the goals and intent of the Clean Air Act.

I think everyone here can agree that's an issue. The discussion draft we are looking at and discussing today will rectify that issue while addressing much-needed other reforms and I am supportive of these efforts.

So, Mr. Wehrum, seeing that there is only one definition for the term modification in the Clean Air Act, why has the EPA interpreted this definition differently for the NSR program than it did for the NSPS program?

Mr. Wehrum. That's hard to answer, Mr. Congressman. That decision was made a long, long time ago. The NSR program was first put in place just by regulation in the mid-70s and then followed up with, you know, a revised program after the law was changed in 1977.

But the fact is there has been a differently regulatory definition for a long, long time now and the idea of creating consistency between the two programs makes perfect sense.

As I said earlier, there is a lot of overlap between the two programs. They are intended to accomplish a lot of same thing and creating that kind of consistency would improve understandability and implementation.

Mr. Johnson of Ohio. Well, it seems to me that if Congress
wanted the definition to be different it would have provided a separate definition for each program. That's the way I look at it.

Mr. Wehrum. That seems logical, Mr. Congressman.

Mr. Johnson of Ohio. Okay. Thank you.

State regulators and the EPA both play an important role in administering the NSR permitting program. In what ways are you seeking to improve this federal-state interaction related to the NSR program?

Mr. Wehrum. Well, you're right. I mean, the Clean Air Act, in many respects, is an exercise in cooperative federalism. We, at the federal government level, have a lot of responsibility.

But Congress intended states to take a lot of responsibility themselves and, in fact right at the beginning of the Clean Air Act it says air pollution control at its source is the responsibility of the states under the Clean Air Act.

So Administrator Pruitt takes that very seriously. I take that very seriously. Part of our concern with the program is it has been too federal heavy, as a lot of what we do has been federal heavy.

And so in addition to improving the federal program. Our intention is to make sure the states understand they have flexibility in what they do and how they do it under the NSR program.
The things we do we think make good sense and would be real improvements and we hope states pick up those ideas. But if they have other ideas they want to implement we are going to be flexible because we should be flexible. That's how the law was intended to be implemented.

Mr. Johnson of Ohio. Well, I -- you know, while it's not perfect I certainly applaud the efforts of the EPA to engage the states across the spectrum in policy making because I agree with you -- I think that's important.

Can you talk about the role of the policy office and enforcement offices at the EPA? Specifically, should the policy office or the enforcement office determine what defines a modification under NSR?

Mr. Wehrum. As I like to say, they is us. I mean, the EPA is an entity and the EPA is part of a larger entity, which is the executive.

So, you know, as things currently stand, the responsibility of rulemaking sits with my office. But a responsibility for interpretation and implementation, you know, in some cases, including NSR, sits in other offices -- in the enforcement office.

So we -- in a lot of ways -- you know, that was done intentionally during the Clinton administration for reasons but for a lot of reasons that doesn't make a lot of sense and, you know, we have had a conversation in the way as to whether those delegations should be reassigned because a lot of people think
and, frankly, I believe that people who write the rules should be the people who interpret the rules.

Mr. Johnson of Ohio. In the last 30 seconds I've got, what are you doing to ensure that there is clear up-front guidance, which will reduce uncertainty about future enforcement penalties?

Mr. Wehrum. Oh, boy. Well, I said earlier I need to stay in my lane. So enforcement penalties is not in my lane. That's a question that's best asked to the enforcement office administrator.

Mr. Johnson of Ohio. Okay. All right.

Mr. Chair -- Mr. Chairman, I yield back.

Mr. Shimkus. Gentleman yields back his time.

Chair recognizes the gentleman from California, Mr. Peters, for five minutes.

Mr. Peters. Thank you, Mr. Chairman. Thank you, sir, for being here.

As you well know, in 2011 the EPA entered into an agreement to settle a lawsuit brought by states and environmental groups in which EPA agreed to set standards for GHG emissions from new and existing fossil fuel-powered fired power plants under Section 111 of the Clean Air Act.

The Supreme Court ruled that EPA must regulate greenhouse gases if EPA finds that they endanger the health and welfare of current and future generations.

Following the Supreme Court's decision, EPA issued what is
known as an endangerment finding. That finding requires the EPA to take regulatory action under the Clean Air Act to curb emissions of carbon dioxide, methane, and four other heat-trapping air pollutants from vehicles, power plants, and other industries.

That ruling allows the EPA to regulate greenhouse gases as air pollutants covered by the Clean Air Act.

This led to the clean power plan and essentially the endangerment finding gave EPA its mandate to regulate fuel economy standards for vehicles, permitting requirements for new construction, or the GHG regulation of vehicles and new stationary sources.

So now that you're on the job, I wanted to ask you specifically do you believe that greenhouse gas emissions endanger the public health?

Mr. Wehrum. Well, as I said in my confirmation hearing, there is a progression you need to go through to kind of get to where you are and one question is, is the climate changing and I think the answer is, clearly, yes.

The second question is do manmade emissions contribute to that and I think the answer is, clearly, yes.

The third question is, how much do manmade emissions contribute to that, and what I said in my confirmation hearing and what I continue to believe is I am not sure.

And what I said then was, you know, in -- for the last 10 years before coming here I was an attorney in private practice
and nobody every hired me to go dive into the mountain of data that exists on climate and so there is a lot I had to learn and that's what I said six months ago.

Mr. Peters. So right now, you have no opinion on whether greenhouse gas is a danger to the public health?

Mr. Wehrum. Well, where I was going was I said I have a lot to learn and, you know, I am putting my money where my mouth is and the climate protection division is, you know, one of the divisions within my office and what I asked them, you know, beginning a few months ago is to do a series of briefings on the state of climate science to help me better understand, you know, what science is out there --

Mr. Peters. Have you taken those briefings yet?

Mr. Wehrum. We are in the process. I've done several and we have more to go. There is a mountain. There is a lot out there and --

Mr. Peters. Has the staff indicated that they've changed their conclusions about this at all?

Mr. Wehrum. Well, the endangerment -- I mean, all decisions like that flow from the administrator. So that wasn't a staff decision. That was a decision by the administrator at the time.

Mr. Peters. Has the administrator expressed to you whether he has an opinion on whether greenhouse gases endanger the public health?

Mr. Wehrum. He has a process concern, at a minimum. His
concern is the endangerment finding you describe was made without consideration of alternative views.

Mr. Peters. I want to get to that in a minute. But I am asking his particular opinion on the -- whether --

Mr. Wehrum. Well --

Mr. Peters. -- what's the opinion of the administrator of whether greenhouse gases endanger the public health? Has he expressed that to you?

Mr. Wehrum. Well, I am not going to speak for the administrator. But, again, I just -- to complete the thought, he -- he's very concerned about process and, you know, believes -- the way he talks about I think is the way to talk about it is, you know, people with a different view haven't had a voice so far in this process and, you know, he's been trying to find a way to allow them to have some voice and --

Mr. Peters. What's the schedule for that process? Do you know what his process is going to be?

Mr. Wehrum. Well, there is no process in place and there is no schedule right now. So we have talked about it but we are not --

Mr. Peters. Is it your intention or do you understand it to be the administrator to revisit the endangerment finding with respect to the greenhouse gases?

Mr. Wehrum. We don't have any plans right now. As I said, we have talked a lot about the integrity of the process that led
to that determination and so far we are focused on process and integrity and we haven't talked about outcome.

Mr. Peters. I am totally willing to accept your answer except there is no process either. There is no answer on whether the administration believes that greenhouse gases pose a threat to human health and the environment.

There is no answer. I don't get it from the administrator. I don't get it from you. Apparently, you haven't gotten it yet from your staff.

And then everyone talks about a process, but there is no process either. There is no process for these voiceless oil and gas companies to get their voices heard.

So I am just -- I am just expressing a little bit -- I mean, I am uncomfortable staying where we are but I am suspicious that that's not where you want to be.

Mr. Wehrum. Well, what I would say is it's important to look at the broader context. So we -- well, what I mean by that is Congresswoman Dingell asked me a question a second ago about car and truck standards that exist at least from an EPA standpoint because of greenhouse gas emissions.

And, you know, my answer was we will work on a proposed rule to maybe change those standards. I didn't say we are working on a proposed rule to eliminate those standards and, you know, we are not going to do that.

Mr. Peters. Just to conclude, there is no -- there is no
action right now to revisit the endangerment finding pursuant to greenhouse gas. Is that correct?

Mr. Wehrum. There is -- that's correct.

Mr. Peters. Thank you. I yield back.

Mr. Shimkus. Gentleman yields back his time.

The chair recognizes the gentleman from Texas, Mr. Olson, for five minutes.

Mr. Olson. I thank the chair, and welcome, Mr. Wehrum.

As you know, many projects we see being undertaken at large sites are designed to improve emissions. One of the best examples is from home, Texas 22.

It's called the Petra Nova Project. That's a power plant owned by NRG. They have four coal generators and four natural gas generators.

On their own, they had a goal to reduce greenhouse gas emissions. Their solution was to capture carbon emissions from the coal production and use those captured CO2 to increase oil production.

Their capture right now the equivalent of 350,000 emissions daily from automobiles -- a big amount of carbon captured by this one power plant.

Its NRG -- the capture system was designed by JX Nippon and the oil companies, Hilcorp, that has an old oil field that's about 75 miles southwest with a pipeline in existence that would get rid of that.
I invite you to come down there, all my colleagues, to see what's working. It's the only one in the whole world that's actually viable for carbon capture.

But that's unique. Can you talk about some of the other types of large-scale projects like Petra Nova that you have seen that make our air cleaner and what are you doing to clear the pathway for those guys to get through this bureaucracy and help us make our air cleaner?

Mr. Wehrum. Mr. Chairman, I am not aware of any other ongoing projects like Petra Nova. I think it's a very unique facility -- at least in the United States. I think there are some internationally.

But I think enormous strides continue to be made in controlling air emissions generally and CO2 emissions, more specifically.

So that's a very unique technology doing a very unique thing. But when you set that aside and look at -- just thinking about the world of power generation, tremendous progress has been made and continues to be made.

And we have talked a little bit about the shift away from coal power into natural gas-fired and that's happening for a variety of reasons. But as a result of that alone there have been substantial reductions in emissions from the power sector nationwide over the past few years.

So think substantial progress has been made. Substantial
progress will continue to be made and our job as an agency is to be smart about how we implement our program so that we accomplish good results but don't accomplish adverse results at the same time.

Mr. Olson. Again, Petra Nova is just one example of what we can do with our technology right now.

My question is are there other projects out there, big ones, that you're looking at that you can help them get through this bureaucracy, get that project online and make our air cleaner like Petra Novas? Doing anything else out there in the country as a model that you're working on?

Mr. Wehrum. And, again, the Petra Nova technology is very, very specific. But the answer to your broader question is on a daily basis we work with individual facilities who come to us seeking help and understanding how to interpret and apply our regulations.

So we do applicability determinations. We do interpretive memos of the sort that we have been talking about. So we put a tremendous amount of time and effort into helping affected facilities, understand how the program applies and help them navigate or, you know, as you said, navigate the complex programs that do apply.

Mr. Olson. Thank you.

Final question -- you commented that the New Source Review process can be very complex and time consuming. It hurts my
brain, it's so time consuming.

Can you talk about why reducing complexity does not mean necessarily improving air quality? If we have reduced complexity, can we have reduced air quality? Or is it -- is it direct tie? How does it work? No complexity -- have to get more complex or can we do less complexity cleaner air?

Mr. Wehrum. Oh, I think we can have it all. You bet.

Mr. Olson. There we go. I've got 52 seconds -- a colleague want my time?

Mr. Shimkus. Yield back.

Mr. Olson. The chair will yield back.

Mr. Shimkus. The gentleman yields back the time.

The chair recognizes the gentleman from -- the other gentleman from Texas, Mr. Flores, for five minutes.

Mr. Flores. Thank you, Mr. Chair, and I appreciate the witness for being here today.

We talked through several of the concerns about the NSR program this morning and one of the ones we haven't talked about is the penalties for lack of compliance.

And it's my understanding that by statute the EPA may impose fines of more than $95,000 per day for Clean Air Act violations.

Is that correct?

Mr. Wehrum. I believe that's true.

Mr. Flores. Okay. So if the EPA believes that a facility should have gone through an NSR for a change at the facility it
could threaten to fine that facility $95,000 for every day that
the facility operated since that change was made? Is that also
correct?

Mr. Wehrum. That's correct, Congressman.

Mr. Flores. Okay. So in this case, just hypothetically, if the EPA identifies a change more than three years after the fact, this could be a potential -- could involve fines of more than $100 million.

Would you agree that this type of penalty and the uncertainty driven by the penalty serves as a disincentive for companies to carry out efficiency improvements?

Mr. Wehrum. Well, Mr. Congressman, let me take a step back.

Mr. Flores. Sure.

Mr. Wehrum. I've said a couple times in this hearing it's really important for me to stay in my lane and, you know, I am responsible for program development and implementation but not for enforcement.

So I have personal views on the questions you're asking but I think from an institutional standpoint they are best directed to the assistant administrator for the enforcement.

Mr. Flores. But if you put yourself into the shoes of a company that's trying to improve their efficiency and they determine that they -- they make a determination that they didn't need to do an NSR because they are trying to improve efficiency and to reduce their emissions, but then the EPA comes in after
the fact and says, oh, here's a $100 million penalty, then the folks making the decision about whether or not to invest may elect to not invest at all because of the uncertainty regarding the fines that could happen to them.

Mr. Wehrum. Mr. Congressman, so notwithstanding what I just said --

Mr. Flores. I understand.

Mr. Wehrum. -- the point you're raising is, is there significant liability associated with possible violations with New Source Review, the answer is absolutely yes.

You've been focusing in penalties, but penalties are one piece of the overall picture if there is an enforcement action. They can add up, as you say, over a period of years to a big number. But they are also -- often the bigger number in the enforcement cases is the injunctive relief, which is the order to install air pollution controls and take other mitigation measures.

So all of that together can turn into a very big number for, you know, a typical power plant, and your point is do affected facilities think about that as they are making decisions about how to implement projects and the risks that may come with that, and the answer is absolutely positively yes.

Mr. Flores. Right. And that sort of leads to the next question is does it make sense that a company making a small investment or a change in an existing facility should be required
by the NSR program to spend hundreds of millions of dollars on
a new study of their pollution control equipment if they were
just trying to improve efficiency, reduce emissions already.

Mr. Wehrum. Right. And that doesn't make sense at all.

Mr. Flores. Okay. Also, some equipment manufacturers
report that there is little demand for energy efficiency products
that they are selling because companies are unwilling to retrofit
old equipment with newer technologies due to the concern about
triggering an NSR.

This is the whole purpose of the hearing and that is how
can we reform the NSR program so that companies can be -- certainly
won't be penalized for doing activities that actually reduce
pollution.

And that gets us into the discussion draft and I think you've
said that you support the direction we are going in the discussion
draft.

Mr. Wehrum. Yes, Mr. Congressman. I think it would mark
real improvement.

Mr. Flores. Okay. Thank you. I yield back.

Mr. Shimkus. Gentleman yields back the time.

The chair now recognizes the gentleman from Georgia, Mr.
Carter, for five minutes.

Mr. Carter. Thank you, Mr. Chairman.

Thank you, Mr. Wehrum, for being here. I appreciate you
being here.
I wanted to change our focus. I know we are here to talk about NSR but there is the subject that is very important to me that I brought up in a number of meetings with Secretary Pruitt that I'd like to ask you about.

And not only -- and that is about marine engine waivers for pilot boats. That's something that's very important. I have two major seaports in my district. They are struggling with this issue.

I brought it up, as I said, to EPA staff and to Secretary Pruitt when he's been before our committee. Not only do I want to change the subject but I want to change the tone because I want to say thank you. You've responded, and I would ask that you convey my thanks to Secretary Pruitt as well.

He committed, last time he was here, that he would personally look into this, and he did, and I want to thank you for that. And my confidence has been restored and I appreciate it very much, so kudos to EPA for this.

I want to ask you, because what happened is that three staff members were sent out to one of the -- one of the engine manufacturers to look at this and to study in and see what a problem it was and, particularly, for the high-speed commercial vessels between 45 and 80 feet, which is what we use in the Savannah Harbor and what is very important to us.

And this is -- we feel like we are the tip of the spear here because we are kind of the first ones that have had to deal with
So we are trying to get it resolved as quickly as we can and it's very important because if we don't have those harbor boats out there -- those pilot boats out there, business stops and commerce is business for us down there.

And I wanted to ask you, the staff that visited the boat manufacturer indicated that they were going to be putting together a report.

Have they come back with any initial findings yet or any feedback that you might be able to share with us?

Mr. Wehrum. They have not, but they were just out there last Thursday. So they haven't had much time to --

Mr. Carter. I understand. Any idea -- I hate to be impatient but, you know, I got -- they are bearing down on me and this has, in all honesty, been going on a while -- any idea about -- because we have heard that it may take up to two years and that is simply not acceptable. That's just not going to work.

Mr. Wehrum. Well, we are moving expeditiously, Congressman. I've talked with my staff on a number of occasions about this issue. I understand exactly what's going on.

Mr. Carter. Thank you.

Mr. Wehrum. You know, it was important for our folks to get some boots on the ground out at the engine manufacturers.

So we were happy to have that opportunity and we plan to press forward as quickly as we can.
And, I think as you know, it may not be a few weeks kind of thing. It may be a few months kind of thing just because we may have to revise our rules to accommodate what's going on.

Mr. Carter. Well, let me ask you this.

Mr. Wehrum. May was the key word there --

Mr. Carter. Okay. I understand.

Do you not normally put waivers in your rules like that with anticipation that there will be, you know, exceptions to those rules?

Mr. Wehrum. We do sometimes. But usually when we know there is an issue to be resolved. This was something we didn't see coming. So there is nothing in the rule that says, you know, there is a way to -- well, there may not -- again, may is the key word.

Mr. Carter. I understand.

Mr. Wehrum. We are trying to find a way.

Mr. Carter. Well, two more things real quick. First of all, I just -- I would just ask your commitment to keep this on the front burner and to please, you know, go back and if you can provide my staff with any information we would certainly appreciate it.

Mr. Wehrum. Absolutely.

Mr. Carter. And secondly, do you know of -- if you see any other regulatory hurdles that we are going to have to overcome if you'll please let us know about those as well.
Mr. Wehrum. Will do.

Mr. Carter. And then, finally -- and I'll yield after this -- again, please convey my sincere thanks to the secretary for acting on this and fulfilling his commitment.

Mr. Wehrum. We will do that.

Mr. Carter. Thank you, and I yield back, Mr. Chair.

Mr. Shimkus. Gentleman yields back his time.

The chair recognizes the gentleman from South Carolina, Mr. Duncan, for five minutes.

Mr. Duncan. Thank you, Mr. Chairman.

I want to begin by saying that I am supportive of Mr. Griffith's efforts to improve and reform the NSR permitting program.

In my opinion, the NSR program in its current seems like a counterproductive policy that disincentivizes companies from pursuing projects that would increase efficiency and mitigate environmental pollution.

And I would say that frustration with the American people and federal bureaucracies and the speed of permitting, whether it's this or whether it's getting a Class III license with ATF, it permeates the whole government the frustration of the American people.

They expect our government to be more efficient and I think that's what the purpose of Mr. Griffith's efforts are -- to make government and at least the EPA and its permitting process a little
more efficient.

So I agree with your remarks, Administrator Wehrum, that we need to simplify the program and provide clarity to companies regulated by this.

I want to talk about some of the confusion on how much construction companies are allowed to do prior to obtaining an NSR permit. I do not believe that this is addressed in the discussion draft.

Can you speak to this a little bit? What can construction companies do prior to getting approval?

Mr. Wehrum. This is another example of why the NSR program drives people crazy. So it's a preconstruction permit program, which means, you know, you need to have the permit in hand before you begin the permitted activity -- begin constructing the permitted activity.

So that sounds simple but it's complicated in practice because what is the permitted facility? You go out and pour a foundation -- is that part of the facility? You go out and, you know, if you build roads, security gates, is that part of the permitted facility?

You go out -- if you're building a boiler, wouldn't you buy the boiler and put it in place? So a judgement has to be made as to what point in the physical construction process is the point that you can, you know, that marks the beginning of the regulatory process.
The EPA has spoken to that many times in the past but it's a subjective thing, not an objective and there is no bright line here and, you know, EPA has made several case-specific determinations.

I said in my opening remarks and in my written testimony, you know, we have begun what I believe to be an aggressive process of identifying problems with rules and opportunities for improvement in the rules and the issue that you've raised is one of those things that's on our radar right now.

You know, what we want to do is encourage investment in facilities, allow for projects to go forward in anticipation of, you know, getting the permits that are necessary.

So the permits shouldn't stand as an unnecessary obstacle to common sense activity. And I think there -- you know, I think we could put a finer point on this issue and it's something that we intend to do, going forward.

Mr. Duncan. And I appreciate that. Let me ask, how much technology is used? I applied for a big game permit for my son online. Got a notification we got accepted. I can dial up a buoy in the Charleston Harbor and find out what the weather conditions are.

Is the agency using the technology to find out what the air quality emissions are at a plant in Easley, South Carolina, and whether they are in attainment or not, or a construction project that may be expanding an operation there, looking at current air
quality and I guess the whole application process online with feedback from the agency.

How are you guys using technology and what can you do better?

Mr. Wehrum. We are trying very hard to keep up. Technology and the air quality monitoring and information management areas is growing by leaps and bounds. So substantial improvement is being --

Mr. Duncan. Are all these monitors transmitting to Washington or wherever the field office is our is somebody having to drive their pickup truck out there and pull that data?

Mr. Wehrum. A little bit of both. A little bit of both.

Mr. Duncan. Little bit of both?

Mr. Wehrum. Yes. So, you know, the answer to your question is we have room for improvement and we are trying -- I have a whole office down in North Carolina that's focused on emissions measurement technology and I can tell you this is very much a focus of ours.

Mr. Duncan. What do you need from Congress to help make that happen? To help make the technology into the 21st century?

Mr. Wehrum. You know, I don't think there are barriers under the law for us right now. You know, I think what we need to do just as an institution is be smart about using our resources and be smart about keeping up with the technologies and we are committed to doing that.

Mr. Duncan. Okay.
Mr. Chairman, I don't have anything further. I yield back.

Mr. Shimkus. The gentleman yields back his time. The chair now recognizes the gentleman from Virginia, Mr. Griffith, who's been patiently waiting, for five minutes.

Mr. Griffith. Thank you very much, Mr. Chairman. I greatly appreciate it and I want to thank you, the E and C staff and everyone who has helped get this bill to this critical point in the process and I do appreciate it.

And I appreciate you, Administrator Wehrum, for being here as well today. The current EPA has made New Source Review reform a priority. I share this priority and appreciate your comments on my legislation today.

I've heard from folks in my district as well as industries here and in the previous hearing how complicated and burdensome this program is and it was singled out multiple times in the Department of Commerce's report on regulatory burdens for domestic manufacturing.

That being said, I have a story in my own district which I think brings home the need for this reform. It doesn't cause a lot of pollution nor any pollution at all.

What we have is a manufacturer of furniture, and when touring that manufacturer of furniture who was -- it was Vaughan-Bassett Company that was the subject of "Factory Man," the fight of John Bassett to keep American furniture going when it looked like China and the Asians were going to chase us out of the marketplace and
he did a great job.

But I am touring his factory and there is a conveyer belt that runs down and runs back and there is nothing out there, and they built ramps to get over -- get back over it again on the other side.

And I said to him at the time, five or six years ago when I was first touring, and I said, "What's this here for?" "Oh, we got some regulation. If we change it, we have to redo everything. So we have this conveyor belt that goes out to nowhere and comes back. And it's not efficient, but we don't want to deal with it."

In checking to make sure it was New Source Review before I came to this hearing, we checked on this last week. They had to check with their regulatory guy who handles all this because they are not really sure. They just know they can't touch it. Goes to nowhere. Adds time to the production of the pieces of furniture.

They don't use what the original purpose was but they have to keep the conveyor belt going. That affects their factory, and let me detail from the book how I know it affects their factory.

So he's getting heavy competition from the Chinese and he's going to have to do something about it. He's taken apart one of the pieces they are doing to see what they are doing more efficiently than what he's doing in his factory, and it states in this book by Beth Macy, "In his sweat-stained golf hat, John
Bassett stood atop a conveyor belt and told his workers he had no intention of closing the factory. Bassett asked his workers to not only work faster but also suggest ideas for factory floor improvements. What he didn't want to hear, what he never wants to hear, was the phrase, 'It can't be done.' If something was wrong with a machine and it was slowing production down, the workers should personally let him know."

That conveyor belt is slowing down that process. That conveyor belt means his factory is less efficient. He gets fewer pieces of furniture out every day than it might otherwise be able to do.

That conveyor belt is a part of the problem and the New Source Review keeps him from changing that conveyor belt because they are afraid that they will -- EPA will whisk in on changing that conveyor belt and make them comply with every new standard that's come about since whenever it was they put their process in place.

Instead of being able to make small improvements along the way or even change this conveyor belt, they can't get it done because this regulation is too burdensome, so burdensome they had to even go check with the regulatory guy to find out for sure that that was the rule that caused the problem, and it was.

I am not going to tell Mr. Bassett it can't be done. We need to change this rule and I appreciate your help in that regard.

So you disagree with anything I've just said?

Mr. Wehrum. I do not.
Mr. Griffith. And I appreciate that.

You know, we have heard a lot about electric generation and other things today, and I've just told you this story.

But, you know, whatever it is, can you speak to what the EPA is doing on its own? I mean, I think the bill is the best way to do it but what's the EPA doing on its own to try to reform the NSR?

Mr. Wehrum. So a couple comments.

First of all, thank you very much for what you're doing, Mr. Congressman. As you know, I've spent a lot of time on this program in my career. It's a very high priority of mine to make it better and I appreciate your efforts.

I think your example highlights an important aspect of NSR, which is it applies to everybody who emits stuff, not just power plants, not just petroleum refineries.

So a big reason why we need to improve the program is for the furniture makers of the world and the brick plants of the world and the small businesses and the small entities and facilities that grapple with this on a daily basis.

We, at EPA, are working very hard, you know, within the authority we have to improve the program through rule changes and interpretations and policy memos and we are going to continue to try as long as I am here.

Mr. Griffith. Well, and I am glad that we agree that narrow and targeted NSR is necessary but that we need to make some
reforms.

And with that, I yield back.

Mr. Shimkus. Gentleman's time has expired.

The chair thanks Mr. Wehrum for being here and being patient and answering our questions, and seeing that there is no other members wishing to ask you questions, we will dismiss you and impanel the second group.

[Pause.]

Okay. Thank you all for being here. You all saw the first panel so we will recognize each one of your for five minutes for an opening statement.

Your full record is -- testimony is submitted for the record and we will start with Mr. Sean Alteri, director, Division of Air Quality, Kentucky Department of Environmental Protection.

Sir, you are recognized for five minutes.

And I think there is a button on there and make sure -- you kind of pull the mic a little bit close to you.
Mr. Alteri. Thank you.

Good morning, Chair Shimkus, Ranking Member Tonko, and members of the subcommittee.

My name is Sean Alteri and I currently serve as the director of the Division for Air Quality in Kentucky. I am honored to testify today and share a state's perspective relative to New Source Review.

As an air quality regulator, I applaud your efforts to address elements of the New Source Review permit program.

The New Source Review permit program is necessary to protect public health and carry out the congressional declaration of purpose, which is to ensure that economic growth will occur in a manner consistent with the preservation of existing clean air...
resources.

To effectively administer the New Source Review program, permitting authorities must be provided with regulatory certainty. During this February's New Source Review hearing, Chair Shimkus correctly noted that there are over 700 guidance memos and documents related to New Source Review.

Under Kentucky law, unlike the federal government, the cabinet is prohibited from regulating by policy and guidance. Codification of EPA's New Source Review guidance memos will provide regulatory certainty to the permitting authorities as well as the regulated community.

Regarding the proposed reform legislative discussion paper included with this hearing, the narrow scope of the language further defined modification highlights issues related to routine maintenance, repair, and replacement.

Pursuant to Section 111 of the Clean Air Act, a physical change to an emissions unit or a change in the method of operation constitutes a modification and it may subject the facility to New Source Review.

Due to potential New Source Review requirements and the applicability of new source performance standards, facilities have, unfortunately, foregone efficiency improvements that could provide significant environmental benefits.

In an effort to reduce significant delays in permitting, the proposed amendment to the definition of modification does
not apply to projects that implement the efficiency measures. The proposed amendment also addresses projects that are designed to restore, maintain, or improve the reliability or safety of the source and limits the emissions increases to the maximum achievable hourly emission rate demonstrated in the last 10 years.

These proposed amendments will provide the timely issuance of permits. Permitting energy efficiency projects effectively will be critical when EPA issues a clean power plant replacement rule and states are mandated to reduce its CO2 emission rates from its existing electric-generating units.

In addition, the proposed legislative text also clarifies the term construction under the New Source Review program and when a modification should be subject to New Source Review as a major modification.

The proposed statutory text clarification eliminates confusion as to when NSR applies. Currently, the most difficult aspect of permitting a major emitting facility under NSR is the air dispersion modeling.

Last March, I testified before this subcommittee and expressed the need for EPA to fully develop and codify implementation requirements at the same time the EPA revises a national ambient air quality standard.

H.R. 806 proposed to extend the review time of a NAAQS to a period of 10 years, which would allow EPA to resolve the
technical deficiencies of the NAAQS evaluation and provide regulatory certainty to permitting authorities.

Specifically, air dispersion modeling requirements necessary to evaluate the consequences of any decision to permit increased pollution in an area must be promulgated at the same time the EPA revises a national ambient air quality standard.

As an example, EPA revised the national ambient air quality standard for particulate matter less than 2.5 microns in July of 1997.

However, due to technical issues and limitations associated with the inventories as well as the modeling techniques, EPA applied the PM 10 surrogate policy until March 23rd, 2010.

EPA's inability to promulgate clear regulatory requirements unnecessarily led to several Title V permit objections.

And to reiterate, EPA must promulgate implementation requirements at the same time it promulgates a new or revised national ambient air quality standard to avoid costly unnecessary delays.

Another example is the 2010 revision to the SO2 standard. Although the sulfur dioxide standard was revised in 2010, the EPA promulgated amendments to the modeling techniques in February of 2017.

These amendments addressed significant unresolved technical limitations of the models. As a result of the regulatory uncertainty, several projects were not able to conduct the
necessary evaluations required by the New Source Review program and thus limiting the potential for economic growth and development.

In closing, state, tribal, and local permitting authorities must be provided with regulatory certainty throughout the New Source Review permitting process.

The regulatory certainty is necessary to carry out our statutory obligations, which include providing for economic growth and development.

And thank you for the opportunity to participate in today's hearing and I look forward to any questions you may have regarding my testimony.

[The prepared statement of Mr. Alteri follows:]

**********INSERT 4**********
Mr. Shimkus. Thank you.

The chair now recognizes Mr. Paul Baldauf, professional engineer, assistant commissioner, Air Quality, Energy, and Sustainability, New Jersey Department of Environmental Protection.

Sir, you're recognized for five minutes.
STATEMENT OF PAUL BALDAUF

Mr. Baldauf. Thank you, Chairman Shimkus, Ranking Member Tonko, and members of the committee for the opportunity to testify today.

My name is Paul Baldauf. I am the assistant commissioner for Air Quality, Energy, and Sustainability at the New Jersey Department of Environmental Protection.

I have 30 years of engineering and management experience related to environmental protection. I would like to take the opportunity today to provide a state perspective on the regulatory challenges associated with our mission to protect and improve air quality.

As we all understand, air pollution has no respect for state borders. Individual states with effective and robust regulatory programs have little influence to encourage upwind states to similarly control their emissions.

The Environmental Protection Agency must lead to ensure a level playing field with all entities held to the same emission standards. Any discussion of New Source Review permitting reform must focus on emissions reduction.

Amendments to the NSR process that have the potential to increase emissions cannot be tolerated and these amendments will cause New Jersey to fall out of attainment to the National Ambient Air Quality Standards.
New Jersey is the most densely populated state in the nation with a long history of air quality challenges. New Jersey has made major improvements in air quality over the last two decades. Today, New Jersey is attaining all the NAAQS except the 70 parts per billion ozone. About half of the air pollution responsible for causing ozone in New Jersey comes from outside of New Jersey.

The NSR program and the cost-effective control technologies that exist to reduce emissions have been critical to the improvements of New Jersey's air quality.

If the proposed changes are adopted, emissions from out-of-state sources are likely to increase, not only for ozone but for other air pollutants including particulates and air toxics.

Governor Murphy has set numerous ambitious climate change goals such as 100 percent clean energy by 2050 in New Jersey. States will be unable to attain the air quality benefits from clean energy if upwind states continue their current levels of emissions.

Adverse health effects -- adverse health impacts can come from both short-term and long-term exposure to air pollution.

Maintaining the current NSR program and its associated requirements to reduce emissions with plant upgrades will not only improve the ability of states to attain or maintain NAAQS but will result in greater air toxic reductions.
Co-benefit reductions are frequently called out in rulemaking as a secondary benefit. Annual emissions of mercury and hexavalent chromium, a known neurotoxin and a known carcinogen, respectively, both of which are trace elements in coal, would also increase with associated ton per year increases of other pollutants.

Mercury and hexavalent chromium are closely associated with coal power plants and any increase, short term or long term, will have detrimental effects on the environment and public health.

The proposed amendments would alter when a source would be subject to NSR in two key ways -- first, a project that increases the efficiency of a unit, regardless of whether the project also increases the annual emissions of the unit, would be exempted from NSR and its associated emission reductions.

While increasing efficiency may be desirable, the increase in emissions associated with the change should be evaluated for their impacts.

Second, the proposal would eliminate the requirement to evaluate the project for increases in annual emissions. This could result in major sources expanding the annual capacity of a plant, increasing the number of hours it operates each year without the inclusion of modern air pollution controls or the replacement of older equipment with modern, more efficient equipment and associated lower air pollution.

These amendments would allow it to continue to keep operating
at the same level of hourly emissions indefinitely, even though
cost-effective technologies exist to reduce emissions, undermine
the continuous emissions reductions we've achieved over the last
40 years.

Without the required air quality evaluation, there would be no way of knowing if the existing source operation was having adverse effects to the airshed and a source's useful life could be extended indefinitely with no consideration for reducing air pollution leading to continued operation with old and inefficient equipment.

These annual emission increases would negatively impact annual air quality standards. Such states as New Jersey to find it challenging to remain in attainment within NAAQS if the NSR program eliminated the requirement to evaluate a project for increases in annual emissions.

NSR amendments as proposed could result in extension of the life of older power plants with modifications that result in small improvements to energy efficiency while causing significant increases in annual emissions of air contaminants, including carbon dioxide, sulfur dioxide, nitrogen oxide, particulates, mercury, and other hazardous air pollutants.

That would be inconsistent with the Clean Air Act, which requires its sources to install best available control technology, lowest achievable emission rate, and maximum achievable control technology when modifying equipment.
facilities including energy efficiency modifications that would increase emissions of applicable air contaminants.

Thank you again for the opportunity to appear today and to convey New Jersey's perspective on the importance of the NSR program.

I welcome any questions you may have.

[The prepared statement of Mr. Baldauf follows:]

**********INSERT 5**********
Mr. Shimkus. Thank you very much.
The chair now recognizes Mr. Ross Eisenberg, vice president, energy and resources policy, National Association of Manufacturers.
You're recognized for five minutes.
Mr. Eisenberg. Thank you, and good morning, Chairman Shimkus, Ranking Member Tonko, members of the subcommittee.

Thank you for the opportunity to be here today to talk about manufacturers' continued dedication to reducing air emissions.

The manufacturing sector is cleaner, more efficient, and, frankly, more responsible than we have ever been. This is not merely lip service.

About 94 percent of the manufacturers listed on the Fortune 500 have in place a sustainability plan and they are keeping to it.

Now, this commitment has yielded extremely positive results in terms of air emissions. Since 1970, the manufacturing sector has reduced its emissions of nitrogen oxides by 53 percent, carbon monoxide by 70 percent, sulfur dioxide by 90 percent, coarse particulate matter by 83 percent, and VOCs by 47 percent.

Fine particulate matter, PM 2.5, is down by 23 percent since its peak for manufacturers in 1999 and greenhouse gases are down by 10 percent over the past decade.

The industrial sector actually produces less greenhouse gas emissions than it did in 1990, which is considerably different than the broader economy.

We appreciate the opportunity to testify today on a draft bill that would clarify the degree of physical or operational
change to an emissions source that would constitute a modification under NSR.

The NAM supports this bill because it would remove barriers that have prevented manufacturers from investing in efficiency projects and installing modern pollution control equipment at their facilities.

The purpose of NSRs for requiring industrial facilities to install modern pollution control equipment when they are built or when they're making a change that it results in significant increase of emissions.

In practice, however, NSR does stand in the way of the technologies that the statute was supposed to promote. I realize this is well-worn territory here and one that EPA has four years tried to fix.

But I believe the need today is even greater than it was before. First of all, there is near universal adoption, as I said, across the manufacturing sector -- the sustainability plans that are driving continued targets and continued progress. It's spurring a continuing need on shop floors to do things differently and make those technology upgrades.

Secondly, there is the recently enacted tax reform package which, because of things like full expensing and other things, now provides an interesting little window for manufacturers to justify making these investments in more efficient emissions-friendly technologies.
And then, finally, there's, honestly, the regulatory reality -- that there are significant new laws like MATS and boiler MACT that require -- requiring and demanding cleaner and more efficient electricity generation.

And if you believe, as we do at the NAM, that the EPA should fill the void left by a repeal of the Clean Power Plan with a replacement regulation, you're still going to need to fix NSR at some point to make that work.

A significant portion of the existing gas turbine and steam turbine fleet could benefit from equipment upgrades to improve their efficiency and operational flexibility, particularly given that many are now being used in a different fashion because of the onset of renewable energy and the way that the grid operates.

These upgrades for gas and steam turbines will ensure higher grade efficiency and lower emissions in supporting renewable energy use.

However, NSR has stood in the way of customer adoption of these technologies. For example, an NAM member company that manufactures gas turbine upgrade technology could improve the vast majority of those in-service turbines by 22 percent and reduce their total CO2 emissions by 62 percent. They report their customers are choosing not to install this equipment simply because it triggers NSR.

An inability to define what is routine maintenance has resulted in NSR notices of violation being issued for
environmentally beneficial projects.

The Utility Air Regulatory Group has cited more than 400 instances in which a regulated entity took on a project to improve the efficiency of a power plant only to face notices of violation or citizen suits over violating NSR.

Same thing happens at industrial facilities. Our members have had trouble with projects involving switching from coal to gas or from number six fuel oil to low-sulfur distillate oil.

Despite the obvious emission benefits of this, these projects have periodically triggered NSR because they -- because of collateral emissions for carbon monoxide and VOCs, which becomes a barrier to undertaking the project.

One of our members estimates that there's 100 million tons of CO2 that could be possibly reduced by deploying the full suite of available turbine upgrades into power plants.

If these were to happen, we are talking about the equivalent of more than 20 million cars being taken off the road. That's 10 percent of the entire automobile fleet.

And that's just for the power plant sector. The same technologies would work for turbines and industrial facilities as well. Many of these upgrades have been impeded because they may, honestly, potentially trigger an NSR.

The draft legislation that is the subject of the hearing today would create flexibility in the definition of modifications so that these heat rate improvements and efficiency upgrades would...
not be deterred by NSR.

It would eliminate a situation where a piece of this new modern equipment would trigger it because it generates collateral emissions of another pollutant and, most importantly, it would unlock a potentially massive market for the installation of energy efficient technologies that would drive our already impressive emissions down even further -- emissions reductions down even further.

No matter our political, personal, or employment background, we all share the same goal, which is to permanently reduce pollution. We believe this bill will get us to that end goal by reducing barriers to the installation of efficient and environmentally beneficial technologies.

Thank you.

[The prepared statement of Mr. Eisenberg follows:]

**********INSERT 6**********
Mr. Shimkus. The chair thanks the gentleman.

The chair now recognizes Mr. Kirk Johnson, senior vice president, government relations, National Rural Electric Cooperative Association.

You're recognized for five minutes. Thank you.
STATEMENT OF KIRK JOHNSON

Mr. Johnson. Thank you, Chairman Shimkus, Ranking Member Tonko, members of the subcommittee. It's a pleasure to be with you here. Thank you very much for the invitation.

I am here representing 900 rural electric cooperatives, representing 47 states across the country. We, collectively, power rural America but we do much, much more than that.

We are the engines of economic development across much of rural America and we are very proud of our history of doing that, doing things that other companies would not do.

Mr. Eisenberg referenced Fortune 500 companies. We are not Fortune 500. We are purely Main Street and that's who we represent. Being consumer owned means we have our consumers' best interests at heart 24 hours a day, seven days a week, 365 days a year.

We employ 71,000 people across the country. We serve 88 percent of the counties across the country. One of every eight people gets their electricity from a rural electric cooperative nationwide. That's 42 million Americans.

We have a different generation portfolio than much of the rest of the industry at retail. Overall, 41 percent of our power comes from coal, 26 percent comes from natural gas, 17 percent comes from wind, hydropower, solar, and other renewable resources, and 15 percent comes from nuclear. But we generate
just 5 percent of the power generated in the country and we sell at retail 13 percent.

So the remaining balance of the power that we provide at retail comes from other sources. But of the power that we self-generate, 61 percent comes from coal -- that's down from 80 percent in 2003 -- 26 percent comes from natural gas -- up from 7 percent in 2003 -- 10 percent from nuclear.

We don't self-generate much by way of renewables because the tax credits to incentivize those renewables are available to the taxpaying utilities, the investor-owned utilities, but not to -- not to us. So we generally get that power through purchase power agreements.

We've made significant reductions in our emissions profile over the past 15 years. Between 2009 and 2016, SO2 emissions are down 66 percent, NOx emissions are down 24 percent, and CO2 emissions are down 8 percent.

Let's talk about New Source Review, the subject of this hearing. We have been seeking reforms to the NSR program for two decades now and we think the time is now to act.

Representative Barton said this is a complicated issue. He's absolutely right. When I first heard about New Source Review, I thought it was a one-hit wonder 1990s boy band name. But it certainly is not that. It's something that actually impedes our ability to make progress on running our power plants as efficiently as we can and it certain has a role in protecting
the air quality of the country.  

Well, we need to remember that the goal of the Clean Air Act is not to ensure that power plant X or power plant Y has a piece of equipment X or piece of equipment Y on it.  

The goal and purpose of the Clean Air Act is to protect the air quality of this country so that people can breathe well.  

As a child, I had asthma. I know what it -- I know what it feels like not to be able to breathe and none of us want that situation in our country anywhere in our country, and that's why we continue to make these reforms.  

But the driving forces behind the emissions reductions coming from the electric cooperative sector and the electric utility sector overall don't just come from the NSR program. In fact, that's probably a very limited role.  

Under the other rules we have to follow, under the MATS rule, the CSPAR rule, our Title V permits, all of those are what keep our emissions on a downward trajectory, coupled with changes in the economy.  

So we should not and must not look at NSR in a vacuum and we must look at the overall effort that is under the Clean Air Act and whether we are making that progress or not.  

On NSR reform, we see NSR as a barrier to making common sense efficiency improvements in our power plants and there are circumstances in today's power sector that are changing that are making it even more difficult for us to do that.
Coal-based power plants didn't used to cycle up and down. Now they're being required to cycle up and down to follow renewable resources, especially in the Great Plains, and I know great examples in my home state of North Dakota.

That cycling up and down puts more wear and tear on those power plants and the need to maintain those power plants then is even more central to keep that power flowing to the places that they're going, even as we are building up more renewables in those areas.

So being able to address that in today's world. What was considered routine maintenance maybe 20 years ago may be different than what is routine today because of some of those changes in the power sector and the rules of the road need to recognize that.

So we are seeking those common sense reforms such as those contained in Congressman Griffith's draft bill. All we are asking and all we've ever asked is for clear rules of the road. We will follow them. We will make sure that we accomplish the objectives that are laid out in the Clean Air Act.

But if we don't have clear rules of the road, we become very risk averse and we leave opportunities on the shelf that can improve the performance of the electric power sector, keep our consumers' costs down while continuing to meet all the clean air goals of this country.

Thank you for the opportunity to be here, Mr. Chairman, and I look forward to your questions.
[The prepared statement of Mr. Johnson follows:]

**********INSERT 7**********
Mr. Shimkus. Thank you very much.

Now I would like to recognize Mr. Bruce Buckheit, and the title is analyst and consultant. Maybe I can have that title someday. That sounds pretty cool. Simple.

You're recognized for five minutes.
Mr. Buckheit. Chairman Shimkus, Ranking Member Tonko, and distinguished members of the subcommittee. Yes, that's an easy title to come by when you work out of your house.

As senior counsel for the Department of Justice and then as director of EPA's Air Enforcement Division, I've investigated and enforced and, most important, settled NSR cases starting in 1984 including leading the enforcement initiative against the coal-fired power plants for their NSR violations.

And so my view of the world is not the 50,000-foot high altitude overview. My experience is in the trenches, working with the plant managers and their counsel and others to parse the difference between these sort of theoretical arguments and the real world realities of what they need to do to keep their plants going and how these programs actually work on the ground.

And so that's my focus over the next couple of minutes is how do these things actually work on the ground. Before I got there, I just want to touch on one point and that is that Congress did intend in the 1977 amendments that over time, gradually, the existing sources that were grandfathered would lose that grandfathered status.

They expected plants to modify and have to put on controls and that would end a competitive advantage that those old uncontrolled plants would have over new plants that have to spend
hundreds of millions of dollars to put on controls and those controls add operating costs that continue thereafter.

So the overall intent was to level the playing field over time. Let me touch on some of these arguments that are floating at the 50,000-foot level that aren't true on the ground.

First of all, it's been said that the NSR rules prevent operators from making repairs needed to improve safety. That is not true.

Ongoing maintenance occurs all the time. There is no plant manager that I ever came in contact with who would tell you that he would defer a project needed for safety because of some potential Clean Air Act rule.

The current rules actually encourage ongoing maintenance because if you let your plant decline hugely and then you do a project, you have a risk of liability.

If you do your ongoing maintenance year in year out to maintain your plant in a good state, you don't trigger NSR.

The issues respecting the complexity in the NSR permitting process -- first of all, NSR permitting for existing sources is extremely rare. Other than a handful of plant expansions in some industrial settings, these permits are simply not needed with any frequency and so don't pose a substantial burden.

I am not aware of any power plant that has ever gone through an NSR permitting process, okay, for anything other than expanding the size of the unit.
The reason for this is simple. If you don't increase emissions, you don't need an NSR permit. You have a number of other options rather than going through the full NSR permitting process.

It includes incorporating a limit in your operating permit so that you do the project but your emissions are capped.

You can also avoid NSR by decreasing emissions elsewhere in your facility to offset the emissions from the project.

And thirdly, you can do incremental pollution controls, such as the use of slightly lower sulfur coal to offset any minor increases without having to go, you know, the route of the $100 million pollution controls.

And further -- last point here -- is that if a project actually improves the efficiency of a unit, emissions go down. You burn less coal to make the same amount of electricity or the same number of widgets.

And so all of this focus on energy efficiency, I think, is overblown. With the power plants, the issue is life extension programs -- programs where not routine maintenance but replacing large chunks of the plant -- an equivalent to replacing the engine in the car, not just changing the spark plugs, and it was those sorts of projects and case law that stems from 1988 that got us at EPA involved in the forcing of these provisions.

Today, roughly, half of the existing coal-fired plants don't have state-of-the-art controls for SO2 and three-quarters of them
don't have full controls for NOx.

This is the best most economic place to get your emissions reductions, not the small factories and not from individuals.

I see I am out of time so I will say thank you to the chair.

[The prepared statement of Mr. Buckheit follows:]

**********INSERT 8**********
Mr. Shimkus. Thank you very much.

And then I will turn to Mr. Jeffrey Holmstead, partner of Bracewell LLP -- testified numerous times before this committee -- recognized for five minutes.
STATEMENT OF MR. HOLMSTEAD

Mr. Holmstead. Thank you very much for giving me the chance to be here today. I hope, during the questions, I can maybe address a couple of things.

Where I don't necessarily agree with my friend, Bruce, and explained why -- and EPA's theory by which they prevent energy efficiency projects and a rather strange theory about how you calculate emissions increases, but I want to focus on something different during my oral statement. I just have a minute.

Look, we are talking about just one of the many programs that regulate emissions from manufacturing plants and power plants. New Source Review, and despite the name we are not talking about how it applies to new sources. We are only talking about how it applies to existing sources.

In their testimony, Mr. Buckheit and Mr. Baldauf both focused primarily on power plants and how they believe the NSR program should work to reduce SO2 and NOx emissions from these plants.

The problem is that the NSR program has been in place for more than 40 years and it has never worked that way. As Bruce said, very few power plants -- in fact, unless they expand their capacity, they don't voluntarily go through NSR and even if the program worked the way that they want it to, you would not get overall reductions in power emissions because we have cap and trade programs in place.
So if one facility goes through NSR and installs controls, that doesn't reduce the total number of allowances that plants are allowed to emit.

You might be surprised to hear that there are actually 14 different Clean Air Act programs that regulate these very same emissions that we are talking about -- SO2 and NOx emissions from power plants.

Thankfully, although the NSR program has essentially done very little to reduce emissions from these plants, other programs have been very effective.

My friend Bruce, Mr. Baldauf, did not discuss any of these other 14 programs. Based on their testimony, you might be left with the misimpression that the NSR program is the only way to require power plants to reduce their emissions. They appear to believe that if we just leave the NSR program alone, all power plants will be forced to install what Mr. Buckheit calls the full modern suite of controls that he would like them to have.

So even though all these plants have been covered by the NSR program for decades, in some cases more than 40 years, we just need to give the NSR program a little more time.

But when Congress passed the 1990 Clean Air Act amendments, it gave EPA much more effective programs that were specifically designed to reduce emissions from power plants and these programs have been remarkably effective.

One of these programs, the acid rain program, as some of
you remember, was the centerpiece of the 1990 amendments. It was specifically designed to reduce SO2 and NOx emissions from power plants and it seems odd that if Congress expected the NSR program would force all those plants to install emission controls, it seems odd that it would have spent so much time and effort developing the acid rain program.

Here are just a few things that I hope you will keep in mind. The Clean Air Act was passed in 1970. The NSR program came into place a few years later.

Between 1970 and 1990 when the amendments were passed, SO2 emissions from U.S. power plants decreased by about 9 percent. NOx, during that same period when they were covered by NSR and only NSR, NOx emissions actually increased by 30 percent.

Now, since 1990 when Congress passed the acid rain program to reduce emissions from power plants and also gave EPA authority to impose other cap and trade programs when further reductions were needed, here is what has happened.

Since 1990, SO2 emissions from power plants have been reduced by more than 92 percent -- more than 92 percent from almost 15 -- almost 16 million tons to 1.3 million tons.

Since 1990, NOx emissions from power plants have fallen by about 83 percent. What regulatory programs have been responsible for these reductions?

Well, according to EPA's own analysis, it's not the NSR program. EPA itself says that these reductions have come because
of a series of cap and trade programs, and I don't have time to
go through them but there's been four that have been put in place
by successive administrations, a Democrat and Republican.

The NSR program does make it harder and more expensive for
facilities to maintain their plants and make them more efficient.
The NSR program is long and can often be very costly.

I know of several companies that have teams of engineers
and lawyers who devote their time to figuring out how they can
maintain their plants without triggering NSR.

I have said in rooms where companies have evaluated projects
that would make their plants more efficient and then decided not
to do them because of concerns that they would trigger NSR.

Look, these policies are very complicated and I am grateful
that we are having this discussion. I sincerely hope that this
committee will show that Republicans and Democrats can work
together to remove unnecessary regulatory burdens.

The bill being considered today would do just that and I
hope that you will give it serious consideration.

Thank you.

[The prepared statement of Mr. Holmstead follows:]

**********COMMITTEE INSERT 9**********
Mr. Shimkus. Thank you very much.

I will now recognize myself for the round of questions.

I recognize myself for five minutes and I want to start with Mr. Alteri.

The discussion draft seeks to make it easier for companies to carry out energy efficiency and pollution control projects.

Would accelerating efficiency improvements and pollution control adoption even on just existing sources be a net benefit for meeting clean air standards?

Mr. Alteri. Yes.

Mr. Shimkus. Let me go to Mr. Eisenberg. In your testimony you described how the National Association of Manufacturers' member companies are struggling to sell gas turbine upgrade technologies because customers are not willing to buy and install equipment that would trigger New Source Review permitting.

That being the case, would you agree that New Source Review is slowing innovation and the adoption of newer technologies?

Mr. Eisenberg. I would agree.

Mr. Shimkus. Very simple answers.

Would today's discussion -- same person -- would today's discussion draft make it easier for companies to install newer and cleaner equipment at existing facilities?

Mr. Eisenberg. We believe it would, and it's a massive potential market. I mean, as I said during my oral remarks, that
one particular manufacturer, just looking at its own turbine, said it could be somewhere on the order of over a 100 million tons of CO2 potential reduced if everyone were to upgrade the steam turbine and gas turbine efficiency upgrades that they make available.

Mr. Shimkus. And I think you made a good point with our tax bill that was passed -- the expending provision. We are seeing it throughout, really, the country -- a great increase in capital for new development and expansion and stuff like that. So this would segue very well into the ability of modernizing, retrofitting facilities, refineries and even small furniture makers.

Mr. Eisenberg. That's absolutely true and the idea wasn't mine. It came from a member of ours who said hey, just change the internal rate of return on a project we were thinking about undertaking, and now we can do it and it's beneficial to the environment. So we are going to look more into that ourselves, too.

Mr. Shimkus. Great. Thank you.

Mr. Holmstead, concerning -- concerns have been raised that the discussion draft reforms would enable existing facilities to collectively produce higher annual emissions.

Even if hourly emission rate at the facility goes down, how do you respond to this concern?

Mr. Holmstead. It's just not true. These facilities are
covered by many, many other different programs that would -- that
would assure that emissions continue to decrease over time.

So anybody who claims that this bill would increase emissions
is just wrong.

Mr. Shimkus. Yes. We have a pretty good record, I think,
on the subcommittee of trying to find that middle ground. This
one's going to be a little bit tougher, I assume.

And it's really over this debate about the question that
I just posed is I think there can -- that my friend's concerns
are that emissions are going to go up.

I think you make a good point -- there's a lot of other air
standards out there that are going to make sure that that doesn't
happen.

Mr. Buckheit, riddle this for me, will you? Is there a lot
of other clean air rules and regs that'll prohibit that from
increasing?

Mr. Buckheit. With all due respect with my good friend Jeff,
we've had these debates for decades. There are a lot of other
programs about there, none that would specifically address this
issue.

It is only the NSR program that will prevent each of these
plants that we've been talking about from increasing annual
emissions, and this is -- it's not all about power plants but
it's mostly about power plants.

Refineries and the like -- they tend to run 87/60 full time
year round and so the hours of operation are not the issue for them so much. But and so reducing it -- there's already an embedded hourly test for them.

If you increase your hourly emissions you're going to increase your annual emissions. This is more about the power sector where because of forced outages they can't run for, you know, three weeks a year and then they make the plant more reliable and they run those three weeks a year.

Mr. Shimkus. Well, let me claim -- my time's almost expired. I want to go to Mr. Alteri.

Do states and other permitting authorities have other tools besides New Source Review to control existing facilities' annual emissions?

Mr. Alteri. We do, and I think you really have to look at the nexus between the National Ambient Air Quality Standards. Previously, the standards were on an annual basis.

Now they're hourly basis, and really, it is comparative that the maximum hourly emission rate is limited and not allowed to exceed -- to violate those standards.

Mr. Shimkus. And that's what Congressman Griffith in his bill is attempting to do -- marry a successful standard with what is viewed out there as an unsuccessful. Would you agree?

Mr. Alteri. I would, and you have the new source performance standards also that play a role.

Mr. Shimkus. Great. Thank you very much. My time is
The chair now recognizes the ranking member, Mr. Tonko, for five minutes.

Mr. Tonko. Thank you, Mr. Chair.

It's been suggested that short-term such as hourly emission rates are more meaningful from an environmental perspective, since the number of NAAQS are based on short time frames.

Mr. Buckheit, I want to ask you what you think about that assertion and let me perhaps put it in the context of communities that are in that range of those facilities.

Do these communities located near these facilities, which may be dealing with unsafe levels of particulates or other pollutants, benefit from maintaining an hourly emissions rate even if it causes a significant increase in overall pollution?

Mr. Buckheit. It's kind of both, Congressman. There are some local impacts, particularly for the one-hour SO2 standard where if you're near a power plant such as the facility in Alexandria here, you can have certain weather conditions where you will get an exceedance -- unhealthy levels on a short-term basis.

The larger public health issue is chronic exposure to PM 2.5, which is annual or multi-year exposures to lower levels. That is the more consequential form of air pollution -- most consequential form of air pollution in this country.

Mr. Tonko. Thank you.
And Mr. Buckheit, you said that NSR permits for existing power plants are very rare. I believe that was the term you used.

Why do you think that permits are rare? Is it because they're costly, over burdensome, or easily avoided?

Mr. Buckheit. They're -- I would say easily avoided is the right answer.

Mr. Tonko. And your testimony mentioned that the courts have weighed in on the so-called routine maintenance exemption in the past, and to make it clear, it was only for legitimate maintenance and not large capital projects.

Is it fair to say there's been a strategy over the years by these facilities to find loopholes that might enable them to make modifications without needed to undergo NSR program requirements?

Mr. Buckheit. Yes. The case you're referring to, Congressman, is the Webco case back in 1988, which the courts enforced a decision under the Bush I administration where replacing these large projects would not be considered routine maintenance.

Thereafter, a number of those lobbying law firms in town continue to press the notion that you could do anything or almost anything and call it routine maintenance and the number of the large utilities followed that advice, did projects without offsetting, without, you know, any of the other legal routes to avoid NSR permitting and without going through NSR permitting.
and that was the basis of our enforcement initiative back 10 years -- 1998 and thereafter.

Mr. Tonko. Thank you.

Can you give us a sense of the current operating status at facilities that have been putting off these major modifications? Generally speaking, are they in need of significant investments in order to keep running?

Mr. Buckheit. Well, our fleet is getting pretty old -- our coal fleet. Most of the coal-fired power plants came online in 1972 and before, and more and more the maintenance budgets have been cut at the plants as cost becomes an issue and competition in the electric market with natural gas and others become an issue. So I can forecast that as these plants -- they're, you know, now 60 years old, then coming on 70 years old and then coming on 80 years old.

There's going to be a time when engineering is going to force them to replace these components all over again.

Mr. Tonko. So if the modification definition is expanded to allow projects designed to, and I quote, restore, maintain, or improve the reliability or safety of the source, would that essentially cover any investment needed for life extension projects?

Mr. Buckheit. Yes. You could fundamentally replace the plant.

Well, you can't go all the way there because then you might
trigger some part of the NSPS rule. But you could spent 20, 30, 40 percent of the cost of the new plant replacing these very large components without having to put on controls.

Mr. Tonko. And, finally, do you believe this discussion draft is just the latest attempt to create new loopholes to enable these sources to avoid some of the NSR program's requirements such as installing pollution controls?

Mr. Buckheit. This is the current wave. It happens every eight years or so.

Mr. Tonko. Okay. Thank you for your response and, Mr. Chair, I yield back.

Mr. Shimkus. Gentleman yields back his time.

The chair now recognizes the gentleman from West Virginia, Mr. McKinley, for five minutes.

Mr. McKinley. Thank you, Mr. Chairman.

Mr. Holmstead, if I could direct perhaps my comments to you. Earlier, you were in the room when you -- I think you were in the room when we were asking the previous speaker whether this idea of maintenance -- routine maintenance, and what we were going -- because I had had conversations with some utility companies that have considered replacing the fins on their boiler as routine maintenance and that's apparently been deemed that's an -- that is a routine maintenance type of work.

So if that's -- if that's the case that they can maintain their existing boiler, which is probably inefficient because it's
40 or 50 years old, and then I go back to what Congressman Tonko
and I have bee -- we've been working on now for three or four
years getting research money to upgrade our and improve our
turbine efficiency, here we have an opportunity to replace --
we can either replace the fins due to turbidity or erosion or
whatever that might have caused and keep the efficiency low or
we can use the research that we've paid for to implement a new
technology, a new boiler, in that and improve the efficiency --
the operation of that plant.

But in so doing, that potentially triggers and likely
triggers an NSR, and then you have to keep into consideration
that from the February testimony we had here that you can go --
you can go back as long as -- there's 700 -- I think, Mr. Allen,
you said this, 700 documents that we have to -- have to be filed
to comply. But in Region 9 -- Region 9, the average approval
is 777 days to get that approval.

You may find it -- you may not -- it's over two years to
get an answer of whether or not you're going to be in compliance
with the NSR.

How would you react to that? Is that -- am I reasonable
about what -- what's the incentive for people to improve the
efficiency of their -- of their plant if it may take two and a
half years to get the approval?

Mr. Holmstead. Well, you have highlighted a big problem,
that in a series of cases EPA has argued that if you improve the
efficiency of a power plant you trigger NSR.

So it might be in your interest to invest in something that would reduce your CO2 emission rate. It would reduce the emission rate of other pollutants.

But here's the theory that Bruce has propounded in several cases. If you make your plant more efficient you will reduce the operating costs. So the cost of producing a megawatt hour will go down.

That will make you more competitive than other plans so your plant will run more often, will run more hours. So the claim is that if you make your plant a little bit more efficient you might have a lower operating cost.

Therefore, you would run more hours. Therefore, you can't make your efficiency improvement unless you go through this NSR process that can take, for a coal-fired power plant, two years.

It would be -- would be the blink of an eye, and you might have to install brand new controls that would cost several hundred million dollars.

So how many companies are actually going to make a decision to become more efficient if those are the consequences?

Mr. McKinley. Thank you.

I yield back.

Mr. Shimkus. Gentleman yields back his time.

The chair now recognizes the gentleman from Michigan, Mr. Walberg, for five minutes.
Mr. Walberg. Thank you, Mr. Chairman. Thanks to the panel for being here.

Mr. Eisenberg and Mr. Johnson, I've got a couple questions -- a question I would like to ask you here.

Due to the positive impacts of the recently enacted tax reform bill, many companies are looking to make greater investments in new construction projects and facility upgrades. I've seen it in my district in plenty of sites. What effect does NSR have on a company's ability and willingness to pursue new projects or upgrade existing facilities?

I will go with Mr. Eisenberg first.

Mr. Eisenberg. Thank you, Congressman.

So it's a barrier. It's a barrier that is in the way of a pretty amazing window that we now have to -- that we are seeing on the ground in real time -- manufacturers taking on new projects because of tax reform.

I appreciate that this has been a coal-dominant discussion. But for us, I want to make clear that it is very much about manufacturing.

The industry -- we asked our members at the beginning of last year, you know, tell us what you care about in the regulatory space that we should be working on, and this issue was number one in the environmental space.

So, you know, when I -- when I talk about NSR I hear from aerospace and defense and steel and aluminum and cement and pulp
and paper and chemicals.

These are the folks that are doing those things on the ground that you just mentioned because of tax reform and other things that need -- that real or perceived have to deal with NSR and need a clear signal that NSR is a problem.

You know, to borrow a phrase from another context, the first step to solving a problem is admitting you have a problem.

Mr. Walberg. Yes.

Mr. Eisenberg. We have a problem, and we really hope that Congress and EPA will help us fix it.

Mr. Walberg. Mr. Johnson. Thank you.

Mr. Johnson. Thank you, Congressman.

In the not for profit sector, the tax bill has not had as big of an impact on us but we are constantly looking for ways to improve the economics and the efficiency of the power plants that we run to generate electricity to keep our costs down for the electricity in much of rural America and that's just a constant effort by all of our generation and transmission cooperatives to do that, and NSR is a barrier.

We have had a number of our member cooperatives who's indicated they've considered undertaking projects and have decided not to do that because of the uncertainty of the NSR permitting program.

But they have taken other projects. We've installed lots of pollution control equipment and Mr. Buckheit's testimony
implied that older units have not added pollution control equipment.

That is just not the case. The utility industry has invested over $100 billion on pollution control equipment to reduce those emissions and make the accomplishments that have been documented here.

So we are constantly looking for those opportunities this is in fact a barrier and the bill would help remove that barrier.

Mr. Walberg. And, of course, you have that symbiotic relationship with business and industry -- manufacturing that goes with it. You have to be prepared for it and I've seen -- I've seen those upgrades at a great expense in my district as well in the utilities.

Mr. Johnson. A big part of what we do is try to make sure the economies of our communities are strong and that we are investing in businesses and bringing those jobs to our communities.

Mr. Walberg. Okay. Let me -- let me follow up with both of you. Does the NSR program create an incentive for manufacturers and utilities to operate their plants exactly as they were built, and secondarily, if -- so what challenges is this creating?

Mr. Eisenberg. So yes, I mean, and not every time but by and large it does create a perverse sort of incentive that -- to only replace your equipment with the vintage of the equipment
that was from when it was first manufactured.

   It doesn't really make any sense in the grand scheme of things. Certainly, technology develops and gets better and manufacturers have an interest in installing that.

   NSR is a barrier and, you know, I've had, you know, countless companies say, look, the time line that we needed to get through to upgrade this boiler or do this or do that, NSR -- you know, my fear of waiting two years to get a permit and maybe having to litigate it isn't worth that expense. I can't justify it to my board and my CEO.

   So it is a barrier. It is not the only barrier but it is one that we hope we can fix.

   Mr. Johnson. And Congressman, the utility sector -- not to be evasive, but there are lots of things we have to consider when making determinations about how to improve plants, what to go through.

   This is -- this is but one of those, but it is one that slows things down, doesn't speed things up.

   Mr. Walberg. Yes. To have a drag on your process is just that and we take as many drags away from it then it works better.

   So thank you. I yield back.

   Mr. Shimkus. The gentleman yields back his time.

   The chair recognized the gentleman from Georgia, Mr. Carter, for five minutes.

   Mr. Carter. Thank you, Mr. Chairman, and thank all of you
for being here. We appreciate your presence here today and the work that you're doing.

Mr. Johnson, I will start with you. In your testimony, you talked about the current system and how flawed it is for companies and organizations that are wanting to do the right thing and trying to do the right thing and how easy it is for them to receive enforcement actions.

How important is it for us to change the metric that's used to determine emissions from the annual emissions rate to an hourly rate?

Mr. Johnson. Going to the hourly emissions rate would harmonize the rules between the NSR and the NSPS programs.

So it would make some internal consistency. It would give our members much more clarity about what the rules of the road are and then they can make informed decisions about what they would to do to improve the efficiency of their power plants or do other maintenance activities because they would know what that clear line is between routine maintenance and what a major modification is.

Giving them that clarity would speed their processes, cut our costs, while maintaining the environmental performance of the plant --

Mr. Carter. Have you communicated that to the EPA? I mean, do they ever ask for any input or --

Mr. Johnson. We went through a process during Bush II
administration. Mr. Holmstead was at EPA at the time, trying
to clarify rules of the road on New Source Review.

   Ultimately, that was -- that was not successful. We've
asked for legislative clarifications, as I've testified, for --
we've been looking for some clarity in this program for two decades
and, you know, now is a good a time to act as any.

Mr. Carter. Wow. Have you ever -- do you have any examples
of any plants were just -- it was no longer feasible and they
-- and they just, you know, had to shut down as a result of the
NSR being triggered?

   Mr. Johnson. I can't point to a this moment a particular
plant that closed because of NSR, per se. But where we've had
plants that have closed or reduced their operations has been due
to a multitude of factors and there have been times when plants
have considered making, say, turbine upgrade projects or other
improvements that improved the efficiency of the plant, that,
as I said, they declined to do because of the uncertainty of the
NSR process, its time line, the litigation that would follow from
that, and ultimately our members tend to operate in a small C
conservative business manner to try to keep those costs down and
avoid risks when possible.

   Mr. Carter. Okay. Thank you.

   Mr. Alteri, I want to ask you -- Chairman Shimkus has
mentioned in our February meeting that -- and when we were talking
about the New Source Review that were over 700 guidance memos.
How do you -- how do you sieve through all that? I mean, that's got to be unbelievable.

Mr. Alteri. It surely is. EPA does a nice job in -- out of Region 7 of trying to capture all of those applicability determination through an index. But there's also ongoing litigation that we have to be aware of because, ultimately, they decide.

But, again, in Kentucky we are prohibited from regulating by policy and guidance and it should be noted that kind of the basis for what all NSR permitting actions are taken are through the 1990 puzzle book and it is still in draft form.

And so we just want EPA to give us the certainty that when we make a decision that it's a final decision and then the companies can make the adjustments and the changes without fear of ongoing litigation.

Mr. Carter. Let me ask you, from your perspective, if we were to shift to an hourly emissions rate would that help? I mean --

Mr. Alteri. Well, again, the idea is that you're going to make that unit as efficient as possible and, you know, to Mr. Buckheit's point is that it would be utilized more in increased emissions.

But now with the 2010 standards for NOx and SOCS, they're one-hour standards and that's what the health-based standards are. They're not annual-based standards any longer.
So I think it makes sense to focus on the hourly emission rates.

Mr. Carter. Good. Good.

Thank you all, again, for being here and, you know, I hope you will not be discouraged. I hope you will continue work. I want to think it's a new day at EPA and that they're more receptive and more input from you. So thank you for what you're doing.

Mr. Chairman, I will yield back.

Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes again the very patient author of the legislation, Mr. Griffith from Virginia, for five minutes.

Mr. Griffith. Thank you very much. If we could get the map put up on the board.

Mr. Eisenberg, I've told the story earlier about the conveyor belt to nowhere because they didn't want to mess with the conveyor belt because -- and maybe their wrong.

But the confusion and the concern about NSR is a problem. In response, we heard from Mr. Baldauf that they were concerned about New Jersey's mercury and other chemicals going up, and I knew I had this map somewhere in the back and if you can read it -- and if we need the bigger one we can bring it out -- I got it on foam board -- but that's a listing of the mercury deposited in the United States from foreign sources and you can see New Jersey is in the 40 to 45 to 50 percent range of foreign sources.
Am I not correct that a large amount of that comes from manufacturing and electrical generation in Asia and other -- I see Florida's got a high percentage so I would assume some of it may be from Central America, too.

Wouldn't that be correct, yes or no?

Mr. Eisenberg. That would be correct, and not just on mercury but other pollutants as well.

Mr. Griffith. And so when we have situations where the confusion in the United States is a manufacturer of furniture can't change the conveyor to nowhere because he's no longer putting the lacquer on at that end of the conveyer belt, that tends to make our Asian competitors more competitive, does it not, when they're manufacturing goods?

Mr. Eisenberg. It does.

Mr. Griffith. And in fact, I would submit -- and I want to know if you agree -- that in some ways, by having rules that don't make sense we actually might increase the mercury being deposited from foreign sources in New Jersey that Mr. Baldauf is worried about, aren't we?

Mr. Eisenberg. Well, certainly, if we are not promoting more efficient generation and more efficient technologies, yes. It would only exacerbate the problem.

Mr. Griffith. But usually we are trying to be more efficient but we've got this rule in the way.

Mr. Holmstead, I don't know if you can answer this question
or not, and if not if you can get back to me later -- I think it's interesting, as I've been listening to the discussion.

My understanding is that the Obama administration EPA, which was very aggressive on a lot of these issues -- a lot of these issues never tried to take the New Source Review rule and implant that into the new source performance standards. Am I not correct on that?

Mr. Holmstead. No, that is right.

Mr. Griffith. And if the New Source Review rule was so much better, because we heard from Mr. Johnson earlier, the language is the same in the bill but it's been interpreted differently. And if that was so much better, I would have thought they would have done that.

Now, the hourly emissions rate test utilized by the new source performance standards program and included in this legislation provides an objective measure based on the facility's design and we've heard that it's easily determined by facility operators.

Why is it easier to calculate and what is so complicated about the current emission project process?

Mr. Holmstead. So the hourly emission rate is really the capacity of the plant and people who design the plant, people who buy that equipment, that's what they care about.

That's an objective number, and I am not aware that there's ever been an issue whether that was triggered under the NSPS.
People do trigger it sometimes which means that they have to meet more efficient standards. With the annual test, Mr. Buckheit said something that's very revealing.

So if you have a plant that in some time over the last five years had a forced outage, so you had a part that broke down and you had to shut down your plant for a day, even half a day, if you replace that part, then under the theory of -- that EPA has taken in these cases, you increase your emissions because it was shut down for 24 hours or eight hours, you know, during some period and now that that part's not going to break down, the theory is well, you're going to increase your annual emissions.

Some courts, but not all, have accepted that, and that's one of the other problems. We have different NSR rules around the country based on decisions by circuit courts on some of these theories.

Mr. Griffith. So, basically, if you're more efficient, that's bad from the viewpoint of those that don't want to --

Mr. Holmstead. Or --

Mr. Griffith. -- or if you're just not closed down some --

Mr. Holmstead. Or more reliable.

Mr. Griffith. Or more reliable.

Mr. Holmstead. Right. So if you're more reliable then you can operate more hours and that should trigger NSR.

Mr. Griffith. And whether we are dealing with manufacturing
or we are dealing with electric generation or refining, we actually want those people to be more reliable, don't we?

Mr. Holmstead. I would -- I would think so. But we also want them to reduce their pollution where we can and we have all these other tools.

We are not waiting for them to trigger some program. We are saying, here's how you need to reduce your pollution and we are going to focus on it.

Mr. Griffith. I think you pointed out earlier there are 14 overlapping programs with the NSR -- is that accurate?

Mr. Holmstead. Well, there's -- for the power sector there's at least 14 other programs that regulate the very same pollutants from the same plans.

Mr. Griffith. Kind of makes it hard for folks to comply when you have got all these overlapping and sometimes confusing regulations, isn't it?

Mr. Holmstead. Well, it's good for Clean Air Act lawyers.

Mr. Griffith. Yes, sir. I can appreciate that. As a lawyer, I am not sure I would be upset about that part of it but I hate it for the American people.

I yield back.

Mr. Shimkus. The gentleman yields back his time.

Before I do the closing document, I was asked by the minority -- I am going to ask unanimous consent to allow Mr. Baldauf to at least respond to the air transport issue, if you would like,
since the state of New Jersey was mentioned in my colleague's
comment.

Is that correct? Is that what you wish.

Mr. Baldauf. Sure. So, generally, the transport issue just
has to do with the simple fact that, you know, as a state we are
probably almost in the top couple cleanest energy-generating
states in the country.

But the reality is no matter how clean your in-state
generation is, if there's no control on the upwind states, you
have the same amount of pollution, unfortunately, for your
citizens as the other states do.

One of our focus is on NSR. There's been talk about all
the tools in the toolbox. Well, at the end of the day, these
grandfathered facilities have remained unchanged for 40 years.
So those other tools don't seem to be helping.

I agree that the NSR rules are flawed. They're complicated,
and I do think they need revised. But they need revised in such
a way to make sure these grandfathered facilities reduce emissions
and not increase emissions.

Mr. Shimkus. Well, I thank you very much and you're welcome
to give us some input on -- I mean, we do try to get to some type
of compromise.

We'd sure like to get this fixed. This might be a bridge
too far but we could give it a try, right, Congressman Griffith?

Mr. Griffith. Absolutely.
Mr. Shimkus. So with that, seeing no other further members wishing to ask questions, I would like to thank you all for being here again today.

Before we conclude, I would like to ask unanimous consent to submit the filing documents for the record: a joint letter from the American Forest and Paper Association and the American Wood Council.

We also have a letter from the -- what did I do with it -- from the National Parks Conservation Association. Without objection, so ordered.

[The information follows:]

**********COMMITTEE INSERT 10**********
Mr. Shimkus. In pursuant to committee rules, I remind members that they have 10 business days to submit additional questions for the record and I ask that witnesses submit their responses within 10 business days upon receipt of the questions.

Without objection, the subcommittee is adjourned.

[Whereupon, at 12:48 p.m., the committee was adjourned.]