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

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

Staff present: Maryam Brown, Chief Counsel, Energy and Power; Allison Busbee, Legislative Clerk; Cory Hicks, Policy
Coordinator, Energy and Power; Heidi King, Chief Economist; Mary Neumayr, Counsel, Oversight/Energy; Greg Dotson, Democratic Energy and Environment Staff Director; Caitlin Haberman, Democratic Policy Analyst; and Alexandra Teitz, Democratic Senior Counsel for Energy and Environment.
Mr. {Whitfield.} We will call the hearing to order this morning, and I look forward to the testimony of our panel. Before we get started, I just want to make a couple of comments relating to administrative issues. We had invited EPA representatives to testify at our hearing on Wednesday as well as today, and they were unable to attend. As a result of that, we are going to have another hearing and we are going to invite representatives of the agency to come. We know that there is more than one or two people that can testify over there, and I think on this issue that we are looking at today, as well as others, it is imperative that we have testimony from EPA. So my staff is going to work with Minority staff to schedule a time for Administrator Jackson or her designee to come before us in May after the Easter recess for a hearing with them.

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

In an interview with the San Francisco Chronicle back in January of 2008, then presidential candidate Barack Obama,
when asked a question, said that his Administration was going to have the most aggressive cap and trade system that was out there. Then he said so if somebody wants to build a coal power plant, they can. It is just that our policies will bankrupt them because they are going to be charged a huge sum for all that greenhouse gas that is being emitted. That will generate billions of dollars that we can invest in solar wind and other alternative energies. Well, he was not successful in adopting a cap and trade system, but it is quite clear that EPA is taking up the mantle, and they are determined to pass regulations to increase the cost of coal and make other energy sources more competitive.

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

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

Third, we have HAP standards for large and small boilers. We also have a rule establishing new standards of
performance in environment and emission guidelines for commercial and industrial incinerators.

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

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

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

Now we know from these regulations that plants are going to close. We know jobs are going to be lost. We know wholesale electric rates are going to go up. We know America is going to be less competitive in the global marketplace. And we know that there are some witnesses today who are going to speak in favor of these regulations. There are those who say these regulations are good for America because it is going to create new industries and create new jobs. And as one of our witnesses said, that may be true sometime in the future, but we know with certainty it will eliminate real
jobs today and inflate wholesale power rates today, not in
the future. And then we need to be concerned about our
capacity, we need to be concerned about preserved margins, we
need to be concerned about the cost. These regulations alone
under EPA’s conservative estimates will cost industry over
$14 billion a year.

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

[The prepared statement of Mr. Whitfield follows:]

*************** COMMITTEE INSERT ******************
Mr. {Whitfield.} So at this time I recognize the
gentleman from Illinois for his 5-minute opening statement.

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

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

We will all understand that EPA is required by law under
the Clean Air Act to issue each of these rules on a specified
schedule, and all of these schedules were actually mandated
to be completed by the year 2000. Initially we all know that
facilities will have an additional 3 and in some cases even
up to 4 years to comply with these rules, plus we are
finalizing in State or federal authorities determines that additional time is necessary to install pollution control.

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

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

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

These forward-thinking companies which must be commended
and applauded and lifted up will also testify that implementing these pollution control technologies can indeed advance economic growth, inspire innovation and competitiveness, and actually create well-paying jobs through the installation of scrubbers, air quality control systems, and other pollution control equipment.

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

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

[The prepared statement of Mr. Rush follows:]

*************** COMMITTEE INSERT ***************
Mr. [Whitfield.] Thank you. At this time I recognize the Chairman of the Energy and Commerce Committee, Mr. Upton of Michigan, for 5 minutes.

The [Chairman.] Well thank you, Mr. Chairman. I too regret that EPA was not able to be with us this morning.

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

What is most disturbing is how many of these energy challenges are self-imposed. Two days ago this subcommittee heard from Alaska’s entire congressional delegation—many of them—as well as local officials—all of them—and energy company representatives from the State. Alaska is practically begging to produce more of its substantial reserves of domestic oil and help bring down future gasoline prices. The fact that EPA continues to stand in the way is both inexplicable and unacceptable. America has plenty of
outside enemies who would love to cut off our energy
supplies. We don’t need to make things worse by being our
own enemy as well.

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

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

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

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

I yield to Mr. Barton.

[The prepared statement of Mr. Upton follows:]

*************** COMMITTEE INSERT ***************
Mr. {Barton.}  Thank you, Mr. Chairman--both Mr.
Chairmans. Thank you for holding this hearing.
We have a very difficult economy. We all know that.
The Environmental Protection Agency, I think this is our
third or fourth hearing this week in which they have been
invited to attend and I think they have come to one. We
could call them the Evaporating Personnel Administration, I
guess. They don’t seem to ever show up and be accountable.
Mr. {Rush.}  Will the gentleman yield?
Mr. {Barton.}  I will, on your time. I am always happy
to yield on your time.
They have consistently--they being the EPA--made
problematic decisions with their proposed regulations,
rulings, and in some cases, pulling the existing permits as
they have done in Texas without cause. These threaten our
Nation’s energy security at a minimum and our economic
opportunity for sure.
The regulations that EPA is proposing as the subject of
this hearing will decrease reliability in our energy sector,
increase the cost of our energy, and kill jobs. The latest
and greatest scheme to regulate the hazardous air pollutants
from power plants under the Clean Air Act Section 112 will
amend the new source performance standards with regard to the
new utility maximum achievable control technology, or MACT. Some people call it big MACT standards. This would cause an adverse effect on coal and oil electric generating plants throughout our country.

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

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

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

And finally, last but not least, I do find it troubling that Lisa Jackson, once again, is a no-show at a very
important hearing that she has had every opportunity to be in attendance. The MACT truck is about to overrun us all, and she is not even here to comment on the proposed regulations.

With that I yield back, Mr. Chairman.

[The prepared statement of Mr. Barton follows:]

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

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

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

So Mr. Fanning, I will recognize you for 5 minutes for your opening statement.
STATEMENTS OF TOM FANNING, CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, SOUTHERN COMPANY; ANTHONY F. EARLEY, JR., EXECUTIVE CHAIRMAN, DTE ENERGY; MICHAEL J. BRADLEY, EXECUTIVE DIRECTOR, THE CLEAN ENERGY GROUP; PAUL KEMPF, DIRECTOR OF UTILITIES, UNIVERSITY OF NOTRE DAME; JOHN WALKE, SENIOR ATTORNEY AND CLEAN AIR DIRECTOR, NATURAL RESOURCES DEFENSE COUNCIL; DIRK KROUSKOP, VP, SAFETY, HEALTH & ENVIRONMENT, MEADWESTVACO CORPORATION; AND ARIS PAPADOPOULOS, PRESIDENT AND CEO, TITAN AMERICA LLC.

STATEMENT OF TOM FANNING

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

Southern Company is the leading energy supplier in the Southeastern United States, and one of the largest generators of electricity in the Nation. We work hard every day to ensure that our customers have access to reliable and affordable power. Like the rest of our industry, we are committed to working with our communities, stakeholders, and our customers to continue reducing our environmental impact. That is why Southern Company in recent years has invested
over $8 billion in environmental controls, and intends to spend up to $4.1 billion to comply with existing, revised, or new rules over the next 3 years.

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

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

I have four points for your today.

The first is that the timeline for this rule is unreasonable. The Agency has proposed to allow only 60 days to comment on one of the most burdensome and expensive rules that was ever put forward. We looked at nine other less
complex rules, and found that EPA has allowed between 120 and 180 days for comments on each of them. This is nearly a 1,000-page rule with nearly 1,000 more pages of technical supporting documents. Sixty days is plainly inadequate for the industry to analyze this rule and its effects, and to offer meaningful comments.

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

That leads to my second point, which is that this rushed timeline could put the reliability of the Nation’s electric generating system at risk. The major challenge of complying with these new rules is ensuring adequate reserve margins, that is, the generating capacity that is available during times of high demand or during interruptions in service from base load plants. According to Bernstein Research, the impact of utility MACT rule on smaller plants will cause
regional capacity margins to plummet by 7 to 15 percentage points into the single digits in some regions. Other studies have reached similar conclusions. The result will be a greater risk of power outages.

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

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

To conclude, we believe that the utility MACT proposal on its current schedule and in its current form puts at risk the reliability and affordability of power in the United States. These risks can be reduced by extending the
rulemaking schedule and the timeline for compliance. During that time, we can work to improve and refine the proposed rule, and simultaneously better prepare for any changes in our generation fleet. This is a commonsense solution that all stakeholders should be able to support.

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

[The prepared statement of Mr. Fanning follows:]

*************** INSERT 1 ***************
Mr. {Whitfield.} Thank you, Mr. Fanning, and Mr. Earley, you are recognized for 5 minutes.
STATEMENT OF ANTHONY F. EARLEY, JR.

Mr. Chairman and members of the subcommittee for the invitation to address a subject with critical implications for the future of our industry and your constituents, the customers that we serve.

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

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

My message today is not do nothing. My message today is to do something that will continue the tremendous progress we have already made. The key to success will be managing the timing, using a commonsense approach to achieve improvements,
and ensuring the benefits actually do justify the very real
cost in terms of money and jobs.

I want to make it clear why this commonsense measured
approach is appropriate by dispelling the myth that we face
some immediate environmental crisis. The progress that our
industry has made in cleaning the air since the Clean Air Act
was adopted in 1970 is one of the great environmental success
stories, and I will use my own company, DTE Energy, as an
example. Over the last 35 years, we have reduced particulate
emissions by more than 90 percent, and sulfur dioxide and
nitrogen oxide by more than 70 percent; at the same time
increasing generation output by approximately 45 percent.
Other electric utilities have accomplished similar results.
The bottom line is our children are breathing air today that
is far cleaner than the air that we inhaled as children.

Having said that, we continue to make improvements. We are
investing billions of dollars in environmental controls and
clean energy technology.

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

First, it provides insufficient time to address these
extremely complex issues. This rule will have far-reaching
economic and energy supply impacts. Allowing just a 60-day
comment period is totally inappropriate. The goal of completing these regulations by November seems equally inappropriate, considering the enormous amount of public comment that this rule is going to generate. Too much is at stake to move forward without proper vetting.

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

The third and most troubling flaw of the proposed rule is choosing not to pursue health-based standards. The EPA is committing our customers to funding billions of dollars in
technology investments without knowing the potential health implications and without serious consideration of the ramifications to the economy and ultimately to the public. EPA’s own analysis concludes that reducing the emissions covered by the rules offers only minimal health benefits. Almost all of the benefits they assigned to these regulations is associated with the expected coincidental reductions in particulate emissions, something that is already regulated under another part of the Clean Air Act.

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

In closing, I would like to stress that our end goal is the same: continued progress on the environmental front. I ask that you ensure that there is sufficient time for EPA to make sound decisions, to understand whether a health-based standard would reduce the real impacts on our customers and the economy, and to evaluate the adequacy of control
technologies so we don’t unnecessarily undermine the viability of a diverse energy mix. This approach has served us well in the past, and it will continue to serve us well in the future. Thank you.

[The prepared statement of Mr. Earley follows:]

*************** INSERT 2 ***************
The {Chairman.} [Presiding] Thank you, Mr. Earley.

Mr. Bradley?
Mr. Bradley. Good morning, Chairman—
The Chairman. You need to hit that mic button down below.
Mr. Bradley. Good morning, chairman, Ranking Member Rush, and members of the subcommittee. My name is Michael Bradley, the executive director of The Clean Energy Group. I am testifying today on behalf of The Clean Energy Group’s Clean Air Policy Initiative, a coalition of electric power companies. The member companies are some of the Nation’s largest generators of electricity, serving nearly one-fifth of all U.S. electric customers. On behalf of my member companies, I appreciate the opportunity to speak with you today and offer the following observations on the proposed Utility Toxics Rule.

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

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

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

The technologies to control hazardous air emissions, including mercury and acid gasses, are commercially available. Also, the industry has extensive experience with installation and operation of these controls. Companies will
generally have 3 years to comply once the rule is final. We believe that the vast majority of generating units can meet this schedule for several reasons.

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

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

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

Fourth, most of the controlled technologies that will be required to comply, like activated carbon injection and dry sorbent injection, can be installed in less than 2 years. If a company is unable to comply in time, the Act allows up to one additional year to install the necessary controls. This will allow companies to manage multiple control installations
and avoid potential reliability concerns. Furthermore, EPA has the authority and has used this authority in similar situations to provide additional time beyond the 1-year extension.

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

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

[The prepared statement of Mr. Bradley follows:]
The {Chairman.} Thank you. Mr. Kempf?
STATEMENT OF PAUL KEMPF

Good morning, Chairman Upton and members of the committee, and thank you for inviting me to testify before the committee today.

I am the director of utilities at the University of Notre Dame. The university is a national Catholic university located in Northern Indiana, 90 miles east of Chicago. It has a campus of 1,250 acres with over 140 buildings and a student enrollment of 12,000. Notre Dame was the first university in the U.S. to generate electricity powering lights in its main building shortly after Edison made incandescent lighting practical. The university takes seriously its leadership role in demonstrating stewardship, sustainability and social justice, and therefore seeks to be a leader in all areas, including energy and environment. We are proud of the efforts of our student group, Green ND, and our Office of Sustainability, which have led a number of energy and environmental projects. I appreciate the opportunity to tell the committee about the challenges facing Notre Dame and many other universities across the Nation as we strive to comply with the full range of pending EPA regulations.
We at Notre Dame are most immediately concerned about the suite of four rules known as the boiler MACT rules. These rules will significantly impact many universities, including Notre Dame, which installed their own utility plants to ensure reliable and affordable source of energy for their campuses. These plants are efficient, cost effective, and environmentally sound source of energy for universities. EPA’s final rules, however, impose unrealistic and costly requirements that EPA has not justified by corresponding reduction of hazardous air pollutants.

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

Universities face unique challenges in adapting to new rules. Most universities plan over a decade or more. Also, universities are unable to make the types of changes that are options for businesses. We cannot consolidate with other universities, move to a different state, or even overseas.
Raising prices for our customers would be a hike in tuition imposed on our students and their families, already stretched by the Nation’s struggling economy.

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

When the original boiler MACT rule was issued in 2004, the university upgraded its control to achieve that regulation, but then the boiler MACT rule was vacated by the courts. The university was left to decide whether to proceed with its $20 million investment in pollution control equipment, or halt the project. We decided to complete the project and achieve emission reductions. We were left to see whether our new system would be sufficient to comply with the EPA’s revised boiler MACT. Now nearly 4 years later, we are faced with a revised rule that is patently different from the original rule, and one that presents uncertain compliance.
capabilities for our investment. EPA’s capital cost estimate for compliance in the ’04 rule was estimated at half a million dollars per solid fuel boiler. We spent nearly $7 million to comply with that rule. Now for new boiler MACT, EPA projects capital costs of $2.2 million per unit. With this wide disparity between EPA projected costs and actual costs, it is difficult to plan.

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

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

[The prepared statement of Mr. Kempf follows:]

*************** INSERT 4 ***************
The {Chairman.} Thank you. Mr. Walke?
Mr. {Walke.} Thank you, Chairman Upton and members of the subcommittee. My name is John Walke and I am Clean Air Director and Senior Attorney for the Natural Resources Defense Council, a national public health and conservation organization with 1.2 million members and online activists nationwide.

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

Yet these industrial facilities still are failing to comply with basic clean air requirements to reduce their toxic pollution after two decades after passage of the 1990 Clean Air amendments. This inexcusable situation is due to unlawful delays, along with plainly illegal standards by EPA under the prior administration, standards that were overturned in courts by unanimous decision rendered by judges
appointed by Republican and Democratic presidents alike. These delays in court decisions resulted in EPA under the present Administration inheriting the obligation to re-propose and reissue standards that comply with the Clean Air Act and protect the public.

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

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

If delay is pursued, I am unaware of any other proposal
or legislation to have been entertained in Congress that
would inflict this level of hardship upon the American
people’s health in a single year. I respectfully appeal to
the members of this committee to be straight with the
American people about the deadly consequences of delay. The
American people deserve to have these choices put in sharp
relief. The choice between enforcing the law and securing
these tremendous health benefits every year are blocking law
enforcement and sacrificing public health.

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

Before Congress even considers setting the country on
this course, I urge you to convene legislative hearings not
with lawyers, lobbyists, and corporate executives, but with
doctors, nurses, and respiratory therapists. Please invite a
panel with a pregnant mother-to-be, a religious leader, and a
specialist in neurotoxins to discuss the impacts of delayed
cleanup on the most vulnerable in our care, the more than
300,000 newborns each year in the U.S. that may have been
overexposed to mercury in utero, increasing their risk of
neural developmental effects.

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

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

In conclusion, there can be no claim that EPA lacks
statutory authority to protect Americans against poison and
cancer-causing chemicals. There can be no complaint that EPA
is acting too quickly after well over a decade of delay, fueled by special interest and law-breaking. There should be no willingness to entertain delays of health protections that will avoid up to 26,000 deaths, nearly 180,000 asthma attacks, and mercury poisoning of society’s most vulnerable. I respectfully ask you to let the clean air work to protect the health of all Americans.

Thank you.

[The prepared statement of Mr. Walke follows:]
Mr. {Whitfield.} Thank you. Mr. Krouskop, you are recognized for 5 minutes.
STATEMENT OF DIRK KROUSKOP

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

Today I am here representing MeadWestvaco; however, we are also members of a number of organizations that represent manufacturers whose members share concerns similar to those that I am expressing today on behalf of MeadWestvaco. I would like to thank you for the opportunity to discuss the challenges that manufacturers face in boiler MACT and other related rules. We applaud this subcommittee for your commitment to ensuring that laws are implemented in a reasonable and fair manner. Environmental legislation has
produced significant improvements in air and water quality over the past several decades, and improvements year over year continue.

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

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

I have attached a diagram to my written testimony that shows the clean air regulations in the pipeline that will affect forest products manufacturers. This picture gives you an idea of the regulatory train wreck from just one EPA program, and it doesn’t even take into account the hundreds
of other regulations we must comply with every day.

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

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

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

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

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

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

So what are we asking? Well, we applaud the subcommittee’s effort to address the impacts of EPA regulations, and we believe Congress needs to act. As you know, EPA requested from the court an extension of a deadline for finalizing the Boiler MACT rules to get them right. The court did not grant this request. We would respectfully request that Congress act to stay the final Boiler MACT rules until EPA does get it right, reset the date for defining resources, allow facilities more time to comply, clarify that renewable and recyclable materials are traditional fuels, and ensure that the rules are achievable and less burdensome.
We also urge this committee to continue its efforts to shine light on the impact of EPA regulations facing manufacturers over the next decade. The threat of continued erosion of global economic competitiveness in the United States is real. Contributing to transparency and analysis of the impacts of regulations on the United States is critical to a future healthy and robust economy.

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

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

[The prepared statement of Mr. Krouskop follows:]
Mr. {Whitfield.} Thank you. Mr. Papadopoulos, you are recognized for 5 minutes.
Mr. Papadopoulos. Mr. Chairman and committee members, my name is Aris Papadopoulos. I serve as CEO of Titan America, a cement manufacturer and concrete--

Mr. Whitfield. Would you turn your microphone on?

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

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

The Great Recession hit our industry hard. Cement demand dropped in half. Profitability has been wiped out. Yet, we sought neither handouts nor bailouts. We cut costs, which sadly included more than 4,000 jobs. What remains are
15,000 well-paying jobs, with average compensation of $75,000, and a higher presentation of minorities.

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

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

In a time when our industry is crippled by recession, the EPA has bombarded us with multiple regulations that we believe both undermine economic recovery and damage the long-term environment. Several rules in particular pose immediate damage—danger to the industry. Referring to their acronyms, NESHAP, with a 2013 compliance deadline, and CISWI plus a
companion to the definition of recycled materials threaten to
destroy the industry’s recycling success story.

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

EPA needs to wake up and stop treating our industry as
if we are utilities, realizing that we are not assured to
return on capital, and production can move overseas. These
regulations represent a hidden tax imposed on domestic
production. PCA recently completed a study analyzing the
impacts of EPA rules and concludes that NESHAP and CISWI
rules impose a combined compliance burden of $5.4 billion in
the next 4 years, equal to 85 percent of the industry’s total
annual sales, while increasing production costs by 20
percent. NESHAP and CISWI would force almost 25 percent of
U.S. plants to shut down. We could lose an additional 4,000
jobs. Assuming economic recovery through 2015, reduced
capacity will raise foreign imports to 56 percent of U.S.
consumption.

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

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

Congress needs to step up and take back legislative
ownership by establishing win-win policies like those
suggested by MIT’s research, create a climate that encourages rather than discourages domestic investment by taking immediate action to address onerous regulations and place a near term moratorium on more rules. With construction sector unemployment near 30 percent, Congress must craft legislation that replaces harmful regulations with policies that promote job growth, investment certainty, responsible environmental stewardship, and collaboration. This will revive private sector confidence, create good jobs for Americans, and restore economic prosperity.

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

[The statement of Mr. Papadopoulos follows:]

*************** INSERT 7 ******************
Mr. Papadopoulos. We appreciate the testimony of everyone on the panel, and Mr. Waxman has come in so I am going to recognize him for 5 minutes for his opening statement.

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

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

Toxic air pollution from power plants, industrial boiler, and cement plants include mercury, lead which harm brain development in babies and children, arsenic, chromium and nickel which cause cancer, and acid gasses which damage the lungs and contribute to asthma, bronchitis, and other chronic respiratory disease, especially in children and seniors. These facilities also emit particulate matter which
causes heart attacks, strokes, asthma attacks, hospital admissions, and premature death.

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

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

Let us be clear. Delaying these rules will hurt a large number of people, especially children. Cleaning up cement plants will avoid 17,000 cases of aggravated asthma and 1,500 heart attacks each year. Cleaning up boilers will avoid
2,600 and 6,600 premature deaths, 4,100 heart attacks, 4,400 hospital and emergency room visits each year. Cleaning up power plants will avoid somewhere between 7,000 and 17,000 premature deaths, 11,000 heart attacks, and 120,000 cases of aggravated asthma each year. For every year these rules are delayed, thousands of Americans will die prematurely. Each year there will be over 150,000 cases of aggravated asthma, and many of them children. There will be 1.3 million additional lost days of work.

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

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

But that won’t happen if Congress repeals or blocks the Clean Air Act and stops EPA from doing its job. Some of these regulations have been delayed over a decade, and it is
time that we let EPA get on with its job.

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

[The prepared statement of Mr. Waxman follows:]
Mr. {Whitfield.} Thank you, Mr. Waxman. I think the last amendments to the Clean Air Act were 1990, and I do think Congress has a responsibility to review these acts and even make changes when necessary, and one of the reasons we have had these hearings is to try to get the testimony of different groups to see what they think about it.

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

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

First of all, the Clean Air Act amendments of 1990 gave us tremendous flexibility. The concept of emissions allowances gave us the opportunity to schedule the addition of new environmental controls over a timeframe that made sense to minimize costs. This rule does not give us that flexibility. It is on a very tight timeframe that is going to drive costs up and actually strain the ability to actually install the equipment because of limitations on people and equipment and the like.
The second issue is around the availability of technology. As I mentioned in my testimony, with respect to acid gasses, the EPA assumes that dry sorbent injection technology will achieve the standards that they have set, and yet, they admit that it is based on one 3-week study on one particular type of boiler. Well, in our industry there are dozens of different boiler types and when you start injecting materials into the boiler, it does have an impact on how the system operates. We have no assurance that that technology is going to work. I don’t think it is appropriate to bet millions or billions of dollars on a technology that may or may not work. It doesn’t make sense.

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

Mr. {Whitfield.} Mr. Fanning?

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

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

When you think about the evaluation period that we have
for this rule, 60 days for a 1,000 page proposed regulation, with 1,000 pages of underlying documentation, some of which we haven’t even seen yet, it is not clear that the science being proposed will, in fact, work. There are significant disagreements that we have, nod I must say that Southern Company is by far the leader in our industry in proprietary research and development. We have deployed over $10 billion—will have deployed over $10 billion of environmental control equipment. We have developed our own environmental control equipment that performs at levels well in excess of industry standards and is able to be deployed 10 to 20 percent cheaper that what our peers are able to do.

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

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

Mr. Dingell, I yield to you.
Mr. {Dingell.} You are most courteous, Mr. Chairman.

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

Mr. {Earley.} Yes, sir.

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

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

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

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

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

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

Mr. {Papadopoulos.} Well, we are talking about 18 plants in just one room, and probably another two or three
plants from the recent rule on waste, CISWI rule.

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

Mr. {Rush.} I thank the chairman.

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

Are you all--here?

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

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

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

Mr. {Rush.} Thank you.

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

Mr. {Papadopoulos.} I am sorry, Congressman, I didn’t understand your question.
Mr. {Rush.} I said are you familiar with what they--
when they talk about slap suit?

Mr. {Papadopoulos.} No.

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

What do you say about this suit?

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

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

Mr. {Papadopoulos.} Excuse me?

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

Mr. {Papadopoulos.} Of course.

Mr. {Rush.} Do you support the Constitution?
Mr. {Papadopoulos.} Did you ask if I swear to the Constitution?

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

Mr. {Papadopoulos.} Support, yes.

Mr. {Whitfield.} Your time is expired.

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

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

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

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

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

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

Mr. {Earley.} We would be forced to purchase power on
the open market.

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

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

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

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

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

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

The {Chairman.} Mr. Fanning, is that about the same case for Southern Company, too?
Mr. {Fanning.} Yes, sir, we estimate the economic impact would be an increase in prices of about 25 percent for the southeast, and it would impair reliability potentially, which hurts economic growth.

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

Mr. {Papadopoulos.} Back when we had—

The {Chairman.} I don’t know if your mic button is on. Mr. {Papadopoulos.} When we had a very strong construction industry, let us say in 2005, the U.S. was importing about one-third of its cement needs, and the countries it was coming from, Asia was a big importer, China, Thailand, Korea, countries in Latin America, Mexico—

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

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

The {Chairman.} Decades behind us.

Mr. {Papadopoulos.} Decades behind us.

The {Chairman.} And what will the—if you kept all your production in the U.S., what will the additional costs be?
Mr. {Papadopoulos.} Well, as we pointed out here through our study is to comply with just a couple of these-- and we don’t know if this is the end of the pipeline. This is a big uncertainty in our industry and probably other industries. It is going to take $5.5 billion, 85 percent of our annual sales. It is, on the other hand, not even going to help our costs. It is actually going to increase our costs by 20 percent, making us even less competitive with imports from overseas.

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

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

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

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

What they would do is pull together the maximum available control technologies for each different design, and therefore create a plant, frankly, that may not be workable. That is why we use the phrase ``Frankenplant''.
Mr. Kempf, I confess I am a Michigan man.

Mr. Kempf. That is okay.

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

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

Correct, that was our activity to achieve the original MACT that was promulgated.

And it does not comply with these regs?

Well, the equipment that we purchased, obviously we sought a margin of compliance below the limit so we are in the ’04 rule, but the new limits that are proposed are below the guarantees that we achieved from the manufacturers of the equipment.

Thank you, and my time is expired.

Gentleman’s time is expired. Chair now recognized Chairman Emeritus Waxman for 5 minutes.

Thank you, Mr. Chairman.

There was testimony, Mr. Fanning told us that "The
major flaw in EPA’s analysis is that it makes overly optimistic assumptions about the effectiveness and availability of certain control technologies, specifically, dry sorbent injection, or DSI. Mr. Earley’s testimony stated that EPA makes its determination about DSI based on one 3-week trial. Mr. Bradley, what can you tell us about DSI?

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

Mr. [Waxman.] So it is already in use?

Mr. [Bradley.] Absolutely.

Mr. [Waxman.] I see. It is my understanding that the industry’s cost assumptions and projected retirements depend on DSI not being available as EPA projects. Could you elaborate? Is that--

Mr. [Bradley.] Certainly. I think there have been a variety of analyses looking at this situation, prior to EPA proposing the rule. Now that the rule is out and the standards are set, and the standards are not as aggressive as I anticipated--this is for mercury, for PM and for acid gasses--and they introduced quite a bit of flexibility that I
think a lot of folks in the industry didn’t anticipate. When you take all that into account, I think you are going to see the costs are going to be lower than what has been projected, and certainly the retirements will be less.

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

Mr. {Waxman.} Well, Southern Company disagrees with you. Now that we have heard from Southern on this topic before today, in 2004, Southern weighed in on EPA’s first attempt to reduce mercury from power plants. They say that mercury control technologies were not commercially available and that the industry couldn’t meet standards based on such controls. In fact, Southern official Larry Monroe stated, and I want to quote him, ``With straining to do it, it is in the 2015 to 2018 timeframe that industry can get there.''

Three years later, without any EPA requirements to use mercury specific control technology, it was already in use on 11 units. Today, almost 100 units are using the technology.
These standards could and should have been adopted years ago, and if industry hadn’t said the cleanup couldn’t be done, we would have already done it.

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

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

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

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

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

Mr. {Walke.} Not only did a court with Republican and
Democratic appointees reject the arguments, but in fact they quoted Lewis Carroll’s Alice in Wonderland for the absurdity of the legal argument that the Bush EPA had relied upon in unanimously rejecting that rule.

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

Thank you, Mr. Chairman.

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

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

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

Having said that, it is a puzzlement to me that if you look at the indices for air quality in the United States, according to the criteria of pollutants that are covered under the Air Quality Act, our air quality is improving
almost everywhere in the country. In the areas it is not, it is primarily places like Southern California where you have just a tremendous number of people and huge number of mobile sources and a geography that traps the pollution from tailpipes, and it is just very, very difficult to clean that up.

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

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

Now I want to apologize to you, Mr. Wade--Walke--Wade--
Mr. {Walke.} Walke, Congressman.

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

Mr. {Walke.} No, sir.

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

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

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

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

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

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

Mr. {Barton.} Very briefly.

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

Mr. {Barton.} They have had since November, the first Tuesday in November to get ready, Mr. Rush, and we have had a number of hearings. I would encourage you to encourage them
to show up so we don’t have to--

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

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

Mr. {Rush.} I have no objection.

Mr. {Whitfield.} Without objection.

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

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

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

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

Mr. {Walke.} Yes, sir.

Mr. {Barton.} I want to ask every private sector individual here, I will start with Mr. Fanning. How many
cases in your company were there last year of mercury poisoning reported?

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

Mr. {Barton.} Does anybody know of any mercury poisoning because of emissions from any of your plants? Do you know how many there were in the country last year? Zero.

What about SO2, any of you have any history in your plants of SO2 poisoning? We cut SO2 emissions by 50 percent in the last decade, and this, if implemented, cuts it another 50 percent but takes it from four million tons a year annually to two million.

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

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

Mr. {Barton.} Do you know how many--let me ask you.

How many pounds of mercury is omitted from an average 500 megawatt coal plant a year?

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

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

Mr. {Walke.} --not mercury, so I want to be clear on the basis for my claim. It is particulate matter that kills people. EPA is not claiming--
Mr. {Barton.} All right, then let us see that backed
up.

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

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

Now to actually cause poisoning or a premature death,
you have to get a large concentration of mercury into the
body. I am not a medical doctor, but my hypothesis is that
is not going to happen. You are not going to get enough
mercury exposure or SO2 exposure or even particulate matter
exposure. I think the EPA numbers are pulled out of the thin
air, and I am going to ask that we send an official document
to EPA. Let us back them up, because the entire premise for
going forward with these standards is that you get such a
tremendous ratio of benefits to cost because they claim,
according to Mr. Walke’s testimony, which he is an honest man
and he has got it from somewhere, is $140 billion annually.
But if you really don’t have the benefit because you are not
having the medical negative, but you really have the cost--
and if you don’t think the costs are real, just look at how many factories are closing and going to Mexico and China. Look at the population of Mr. Dingell’s home city, Detroit, Michigan. It has fallen by 40 percent, I think, in the last 20 years. If you don’t think those are real—so if we are going to have a real debate about these standards, Mr. Chairman, we need to start getting some real numbers from the EPA and getting the EPA up here—if it takes Mr. Rush’s help, Mr. Dingell, Mr. Waxman’s, because if their benefits are not real and the costs are real, we are absolutely wrong to force these standards.

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

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

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

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

Mr. {Dingell.} Mr. Chairman, I thank you and I thank you for your courtesy in yielding to me earlier. I would like to welcome my old friend Mr.--constituent friend. He
heads a very fine public spirited company and I would like to 
ask him this question. Is there a difference between what 
DTE has been able to do at several power plants in my 
district? I know that you have been making significant 
investments as you referenced in your testimony to upgrade 
the environmental performance of these facilities, and I know 
that there are some problems in what is being contemplated 
under the proposed rules. Is that a correct statement? 

Mr. {Earley.} That is correct.

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

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

This rule will require every single unit on our plant to 
comply by a specific date. That will drive the costs up and
it will force us, in many cases, up to 25 percent of our coal-fired power plants will have to be shut down because it will just not be economic.

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

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

Mr. {Earley.} That is absolutely correct.

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

Now if--let us see. As I understand, then, that there are several older electrical generating facilities that are scheduled to be shuttered in the next decade, and as you have indicated, that that shuttering will be hurried up and you
will be compelled essentially to move instead of to nuclear, which you are contemplating doing, moving to natural gas combined cycle generating systems. Is that right?

Mr. Earley. Yes, sir.

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

Mr. Earley. Yes, sir.

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

Mr. Krouskop. For the boilers rule, yes, sir.

Mr. Dingell. All right, and you agree with that statement, Mr. Earley?

Mr. Earley. Yes.

Mr. Dingell. Has industry filed a motion for a stay on the Boiler MACT?

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

Mr. Dingell. I have been hearing that this would be a good solution to the problem, that EPA would not oppose that kind of step and that that would help us resolve the problem
that lies before us. Am I correct in that?

Mr. {Krouskop.} I think that it is generally correct.

I think EPA certainly indicated they needed quite considerable additional time to get the rule right. At the same time, though, there are some elements of the Boiler MACT rule which EPA has been resistant to correcting the way we believe they are, and that really is around the health-based compliance alternative, which is part of the Clean Air Act, and we believe that is appropriate.

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

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

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

Mr. {Whitfield.} At this time I recognize the gentleman
from Illinois, Mr. Shimkus for 5 minutes.

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

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

Mr. {Bradley.} Have I ever denied?

Mr. {Shimkus.} Designed.

Mr. {Bradley.} Designed, no.

Mr. {Shimkus.} Sited?

Mr. {Bradley.} No.

Mr. {Shimkus.} Built?

Mr. {Bradley.} No.

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

Mr. {Bradley.} No.
Mr. Shimkus. Conducted a payroll for the power plant?

Mr. Bradley. No.

Mr. Shimkus. Provided healthcare benefits for the employees?

Mr. Bradley. No.

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

Mr. Bradley. The construction itself took 26 months.

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

Mr. Bradley. I can provide you with more--

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

Mr. Fanning and Mr. Earley, what happens if there is a race to build in this 3-year timeframe on cost of equipment,
metal, employees? What happens to the overall cost of these projects?

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

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

Mr. {Fanning.} Sure.

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

Mr. {Fanning.} Raise prices.

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

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

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

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

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

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

Mr. {Kempf.} Correct.

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

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

Mr. {Shimkus.} And I think that is part of this debate.

Cost benefit analysis, again, we welcome EPA to justify the loss of jobs for negligible toxic emittent benefits. Negligible, zero. Now, we could talk with Mr. Walke on particulate matter, but we are using particulate matter to address toxicity. EPA is not addressing toxicity. All this debate is on PM.

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

Mr. {Walke.} That was.

Mr. {Shimkus.} Does the NRDC have a position on abortion?
Mr. {Walke.} Not to my knowledge.

Mr. {Shimkus.} And you know that is the destruction of—a fetus, right? An unborn child is a fetus. You are concerned about the fetus and mercury poisoning, but NRDC doesn’t have a position on the protection of a fetus on abortion? Is there a conflict here between life and health?

Mr. {Walke.} I don’t think there is a conflict, but—

Mr. {Shimkus.} I think there is a huge conflict, and I would—

Mr. {Walke.} Fetus—neurotoxicity by mercury poisoning—

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

I yield back my time.

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

Mr. {Gonzalez.} Thank you very much, Mr. Chairman. I have 5 minutes, and we have so many witnesses so I am going to employ the John Dingell method, and that is just a yes or no answer. We will start with Mr. Fanning. Do you believe that the Clean Air Act should be repealed? I mean, let us
just forget about it. Let us just go straight to it. Is it relevant? Do we need it? Should it be repealed? Yes or no.

Mr. {Fanning.} No.

Mr. {Earley.} No.

Mr. {Bradley.} No.

Mr. {Kempf.} No.

Mr. {Walke.} No.

Mr. {Krouskop.} No.

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

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

Mr. {Papadopoulos.} The Act is functional.

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

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

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

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

Mr. {Gonzalez.} Okay, you are for repealing, then you--that is good. That is an honest answer. You are for repealing the Clean Air Act. Now I am assuming that you said that--those that answered no, is that it is still irrelevant and that EPA has the responsibility to protect the public’
health, and this is one way of doing it. Should we disregard a rule that is promulgated by EPA, simply based on the fact that it does add some cost to protect the public’s health? Yes or no, and we will start with Mr. Fanning.

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

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

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

Mr. {Gonzalez.} Mr. Bradley?

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

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

Mr. {Gonzalez.} Mr. Walke?

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

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

Mr. {Papadopoulos.} Cost is essential.
Mr. {Gonzalez.} Yes or no, does the EPA have the expertise presently to be able to promulgate rules that get the science right, the technology right, and the cost right? Yes or no?

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

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

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

Mr. {Kempf.} Not in a vacuum.

Mr. {Walke.} Yes.

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

Mr. {Papadopoulos.} A very strong no.

Mr. {Gonzalez.} All right. You expect us as Members of Congress to basically listen to one side or the other’s experts. It has been my experience it just depends who the expert is basically representing at that point, because they are defending their opinions. Should we just be listening to industry’s experts or just EPA’s experts? How do we determine which is a legitimate source of good, solid information? Because I am going to tell you right now, we will argue up here over whether there is climate change taking place and we even argue over evolution. So good luck. Who do we listen to, industry or EPA? Whose experts? Should we have some other referee other than Congress? And I am not
trying to shirk our duty, I am just telling you the stuff that you present to us is really many times incomprehensible because we are not experts, and we expect that experts from industry and experts from EPA are going to give us an honest opinion, but you guys don’t agree, so who do we listen. I only have 30--40 seconds. Tell me who should we have as the disinterested third party expert?

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

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

Thank you very much, and I yield back.

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

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

Now I know some of my colleagues on the other side of
the aisle say oh, that doesn’t matter because they are not
really for jobs in the private sector anyway, some days, I
believe. This is going to devastate the economy and the
economy of the rural eastern Oregon county I represent. The
difference between 95 percent and 98.5 percent is the
equivalent of less than a teaspoon of mercury a day. Over
that, we probably are going to lose this plant and those
manufacturing jobs, and will end up importing more cement
from China.

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

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

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

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

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

Mr. {Walden.} Right.

Mr. {Papadopoulos.} --not a win/lose litigation,
fighting heavy-handed, you know--

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

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

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

I got to tell you, I represent a district where I have got counties that have been averaging 15 and 16 percent unemployment for way too long. We have 55 percent of the land out there is owned by the Federal Government and mismanaged or not managed at all. There are groups, some of them represented at this table, who could care less about the livelihood of the men and women who live out in these
forested communities who are fighting us on biomass, turning wooded biomass into productive, renewable energy. They would rather let the forest get overstocked, bug infested, rot and die, and then catch fire and burn. They wouldn’t let us go in. They go in and sue us to go in and cut the burn dead trees while they still have value. These are not environmentalists. I don’t know what they are, but they are sure destroying my part of the world and the economy there.

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

So we are going to go after this agency. We are going to bring some damn common sense to the process and these groups that are killing the folks out there, they need to have some skin in the game and not just use these things as
big fundraising efforts, which is what generally happens.

There is common sense here. We can get America working again. We can get back on our feet out there, if you will just let us.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. {Green.} Do you have any idea? I mean, I know we
are just guessing, but--
Mr. {Earley.} Yeah, I think it is going to be more in the range of 50 to 75.

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

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

Mr. {Bradley.} Yes, I think 10 gigawatts is on the low side. I think EPA targeted that specifically to the Utility Toxics Rule. I think they have acknowledged that more retirements will happen through just market pressures. I think it is also important to go back and reassess the retirement issue based on the proposal itself and the flexibility that is included. The--certainly NERC is more on the ball park with EPA, but I think it is going to be hard to project exactly what is driving retirements. Is it singly the Utility MACT rule or is it low natural gas prices, depression of demand, the inefficiency of some of these old plants?

Mr. {Green.} Okay. This question, Mr. Fanning, in your testimony you say that `EPA goes to set limits separately for individual pollutants using different sets of best
performing plants. EPA’s resulting suite of emission limits does not reflect the performance of any existing plant, but instead reflects the performance of so-called ‘Frankenplant,’ one consisting of mixed-suite performance characteristics that do not represent the technology applications across all pollutants for that individual facility.'

Mr. Earley, do you agree with Mr. Fanning’s statement?

Mr. Earley. I agree with that.

Mr. Green. Okay. Mr. Bradley, you argue that the EPA proposal is based on standards performance that is already achieved by existing plants, so how do you respond to Mr. Fanning’s statement about the ‘Frankenplant’?

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

Mr. Green. I would appreciate that. In my 26 seconds, Mr. Fanning, you talked about the delay—and I know there are other questions from other members—can you specifically talk about how long do you think it would take to need to implement the rule? I know 30 days is too short,
60, what is the time? I know Congressman Gonzalez mentioned that.

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

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

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

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

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

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

Mr. Krouskop, you gave me the chart so I want to ask you just a couple questions. There was a piece in your testimony
about the secondary materials rule and how that impacts your
business. Can you tell me a little bit more about that?

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

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

So there was this notion that there has been this delay,
a decade, 12 years, 13 years, and that you all should have
been doing something in that time. The notion was hey, you
have had 15 years to get ready for this, but the truth is, if
you would have taken action, much like your university did
during this 15-year timeframe, I would like to ask you if you
think you would all be looking at something that was going to
cost you even more money? That is, you would have been
trying to guess what EPA was going to do. I want to ask you
if that is something that when you present to your employees and your regulated—the folks that regulate your utilities or your shareholders, if that is something that they would say hey, that is exciting, we want to go invest some money trying to guess what EPA is going to do. We can start down here with Mr. Fanning.

Mr. Fanning. I am proud to say we have already committed to invest more than $10 billion on improving the climate. We are the leader in the industry in that respect, and we are going to invest more.

Mr. Pompeo. I hope you guessed right.

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

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

Mr. Earley. Congressman, we have done the same thing. We have invested well over $2 billion, but what this rule shows is we will have to invest even more, and as I say in my
testimony, we have slashed emissions over the last 30 years, and it is a lot of great success stories. I think we have to use some common sense going forward. At some point enough is enough, and you just can’t afford to spend the next dollar for another piece of equipment just because the equipment is available, because these costs are borne by our customers, your constituents.

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

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

Mr. {Bradley.} These have been clearly on the books and on the horizon for more than 10 years. The companies I represent have a responsibility to their shareholders, to their customers, to their employees to plan ahead, to do risk
assessment, and manage their investments, and they have made those investments in a way they are in a pretty good position--

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

Mr. {Bradley.} That is correct.

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

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

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

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

Mr. {Inslee.} Thank you.

Mr. Fanning, I was interested in your technology, reading your written statement, you said `Second, we need a national robust research and development effort to create new energy technologies for the future,' and I very much agree with that. Apparently so does President Obama. He said
yesterday `I will not sacrifice the core investments we need to grow and create jobs. We will invest in medical research and clean energy technology.''

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

Mr. Fanning.) Absolutely. I am on record as saying that this should be a national imperative.

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

Mr. Walke, I have--I want to ask you to comment on something that I found fascinating. Mr. Earley talked about yearning for the good old days of a proposal to have something like a cap and trade system where we gave
flexibility to industries to try to figure out what actions
and what investments to take to clean up our skies. I am not
liking this what you might call a command and control system
that sets up regulatory systems about specific behavior. Now
it seems to me a little bit ironic that one side of this
aisle here rejected Congress doing something that would have
given industry flexibility on how to decide where to make
investments. Then when we take the alternative approach,
which is a regulatory approach, rejecting that approach. Now
that to me seems a little bit ironic. What do you think?

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

Mr. {Inslee.} Thank you. Mr. Krouskop, if I can ask
you a question. If you had in your broadly industry--three
industries kind of associated with this rule, if these
industries were taking some action that resulted in the
premature deaths of 26,000 people a year in America, not
China, in America, 26,000 Americans a year, and if your
industry could make an investment that would return to the national economy at a minimum five times more benefits by eliminating those premature deaths for every dollar of investment, would you make that investment? Would you suggest that we as a community make that investment?

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

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

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

Mr. {Inslee.} Well, I don’t think it is of course, because I have heard at least five witnesses say and we say to ignore this cost benefit analysis. This is very problematic to me, and let me tell you why. The only
comprehensive assessment of the cost benefit analysis is the one presented by the EPA. I don’t see anything coming from industry that is really presented a contrary opinion. Now, that is problematic to us as a policymaker. Mr. Papadopoulos wants to say something. Go ahead.

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

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

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

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

Mr. {Whitfield.} The gentleman’s time is expired.

Recognize the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. {Griffith.} Thank you, Mr. Chairman. If we could put up a map showing the percentage of mercury deposits from outside the United States, I believe the committee has that. Oh, there it is. Mr. Papadopoulos, thank you for having a facility--I guess I should ask before I get to the map, when you talked about closing down older plants, I hope that
doesn’t include Roanoke Cement just outside of my district in Botetourt County.

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

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

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

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

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

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

Mr. {Krouskop.} Krouskop.

Mr. {Griffith.} Krouskop. I do appreciate your facility there in Covington. Obviously you employ a lot of people, as does Mr. Papadopoulos, in the 9th Congressional District of Virginia, and both of you all have great
But let me ask you, looking at Boiler MACT as well as other current EPA air regulations that are looming over the next several years, can you explain in general terms the investment and technology control issues that a mill like yours is facing with these regulations?

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

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

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

So when you look at the true number of boilers that could achieve these rules today, they are much less than 10, based on our analysis, of about over 3,000 boilers nationwide.

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

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

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

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

Yesterday Subcommittee Chairman Whitfield confirmed that legislation to delay air toxic standards will be introduced after the congressional recess. We have heard from some in the energy industry that a delay is needed because of "importance of a smooth transition and more deliberate
schedule'' to ease the strain on industry and reduce risks to consumers with the proposed rules for utilities. If the proposed standards to reduce air toxics from power plants were delayed by even a year, a single year, what would it mean for public health? Give us a couple of examples.

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

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

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

Mr. {Walke.} I do not. The agency is following well-established law that unfortunately it was created by the courts in the last decade when they overturned far greater overreaching by the Bush Administration that--
Mrs. {Capps.} That is what I wanted to turn to next. As EPA has moved to implement the law and issue standards to control air toxics from power plants, go further to illustrate—I wanted to find has there ever been an action that can be characterized as an EPA overreach, and finish that description that you were giving.

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

Mrs. {Capps.} And finally, Mr. Walke, some folks today have said that the EPA standards for boilers and cement factories are just too hard to achieve, and that the industry will not have enough time to meet the long-awaited standards. You disagree. Now just to use a few seconds and maybe a minute to comment on these claims that they have made so we
Mr. {Walke.} Sure. The Clean Air Act gives up to 4 years, that includes a 1-year extension if it is necessary, to install the controls. We have had over 100 of these standards issued in the past 20 years, covering 400 to 500 industries. It is really these laggards who have benefited from lawbreaking by the last Administration that are now complying with these rules for the first time, some 15 years overdue. The law gives them the flexibility. The boilers rule came in far more flexibly and cost effectively than anyone anticipated. Mr. Bradley has testified that the power plant rule is the same. The cement final rule is weaker than the proposed rule. EPA does not agree with the Portland Cement Association’s claims about closures and job losses. These are hotly disputed topics, and I just want you to be aware that it is very important to have EPA appear as a witness, as Chairman Whitfield has invited at a future hearing.

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

Mr. {Whitfield.} Thank you very much.

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

Mr. {Markey.} I thank the gentlelady very much.
Mr. Bradley, in 2004 Governor Mitt Romney of Massachusetts adopted regulations to control mercury from coal-fired power plants in Massachusetts that require 85 percent of mercury emissions to be captured by 2008. Were utilities able to keep the lights on while this standard was being met?

Mr. {Bradley.} Absolutely.

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

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

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

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

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

Mr. {Bradley.} Absolutely.

Mr. {Markey.} The Southern Company says they can build two new nuclear power plants and guarantee the safety of people, but they can’t really figure out how to install these technologies that already exist that would protect against the poisoning of the children in our country. Do you think
that Southern Company should be able to figure that out if
they can build two new nuclear power plants in our country?
Mr. {Bradley.} I think they have a tremendous track
record--
Mr. {Markey.} I do, too.
Mr. {Bradley.} --and in the end, they will figure it
out.
Mr. {Markey.} I just--I think this can’t do attitude
that is not like President Kennedy’s can do attitude to put a
man on the Moon with alloys that had not yet been invented,
but here the technology has already been invented and are
already installed. We are not asking them to invent
anything, but yet, it is kind of disconcerting to me to hear
the Southern Company and others here saying they can’t figure
out how to install something while guaranteeing us they can
make nuclear power plants safe, after Fukushima, without even
waiting until they really install all the lessons from
Fukushima. So that is a great concern to me, and I would
hope that this can’t do Republican majority can turn into a
can do majority and take existing technologies and mandate
that we can install them, but I am afraid that those public
health lessons are going to be lost upon them.
I thank the gentlelady and I thank the chairman for his-
Mr. {Whitfield.} I am glad the gentleman from Massachusetts is so intimately involved with Southern Company and knows their facts.

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

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

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

I want to ask Mr. Fanning, in your testimony you talked about the impacts on the economy of some of these EPA
proposals and regulations coming down. Can you expand a little bit upon the true impacts to the economy that would be imposed if this were to go forward?

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

Mr. {Scalise.} And that is what I wanted to ask as my final question before my time expires. We talk about
international competitiveness, and of course, our American companies, we want them to be successful not only here in America, but for those who do operate in other countries, we want them to be able to play on a level playing field. Right now, they are being pushed further and further out in their ability to compete globally because of some of the things happening by this Administration, EPA, and others that are actually making it harder for American companies to survive. So if you have regulations like this that basically say if you are an American company, you can’t even manufacture. Your electricity costs would be so high if you do business in America. What does that mean to us internationally as other countries would love to take our jobs? Unfortunately, other countries are already taking too many of those jobs. It seems like an EPA regulation like this would push even more tens of thousands of jobs from America out of our country.

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

Mr. {Scalise.} And obviously, they don’t have the same environmental protections that we enjoy today, so the things that EPA seems to be concerned about would actually be exponentially increased if those jobs here in America would
go to those foreign countries like China and India.

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

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

Mr. {Whitfield.} Without objection.

[The information follows:]

*************** COMMITTEE INSERT ***************
Mr. {Whitfield.} Well, that concludes today's hearing.

As I said, we have a number of votes on the Floor relating to the budget, but I want to thank all of you for coming. I look forward to working with our friends on the--our Democratic friends to craft legislation that can accommodate some of the concerns we have heard today. And with that, the hearing is concluded and the record will remain open for 10 days for additional material or questions. Thank you.

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