

**Opening Statement of Regina McCarthy
Assistant Administrator for Air and Radiation
U.S. Environmental Protection Agency**

**Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives**

**Legislative Hearing On H.R 2250, the EPA Regulatory Relief Act of 2011, and H.R. 2681,
the Cement Sector Regulatory Relief Act of 2011**

**September 8, 2011
Written Statement**

Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee, thank you for inviting me to testify today regarding the EPA Regulatory Relief Act of 2011, and the Cement Sector Regulatory Relief Act of 2011. I appreciate the opportunity to testify today on these legislative initiatives, initiatives that are a direct attack at the core of the Clean Air Act.

These two bills would roll back existing Clean Air Act public health protections. We have a number of serious concerns about these bills. Most importantly, they would indefinitely delay the important health benefits associated with rules that establish national limits on emissions of air toxics, including mercury, from certain boilers, solid waste incinerators, and cement kilns. Depending on the degree to which people are exposed, air toxics may be associated with numerous adverse effects, including cancers, respiratory, neurological or developmental effects, and reproductive dysfunction. Mercury and other toxic emissions also damage the environment, polluting our nation's lakes and streams, and contaminating fish. Mercury in fish is a particular concern for women of childbearing age, unborn babies and young children, because high levels of methylmercury are linked to damage to the developing nervous system. This damage can impair children's ability to think and learn.

I want to reiterate my first point because it is a critical to understanding the effects of these bills – they would indefinitely delay public health protections required under the existing Clean Air Act. While I am aware that many advocates for these measures describe them as delaying the final rules for only a specifically limited period of time, the actual language in the bills is not consistent with that description. The bills prohibit EPA from issuing replacement standards prior to 15 months after enactment, but set no deadline by which replacement standards must be issued. The bills also prohibit EPA from requiring compliance earlier than 5 years after the replacement standards are promulgated, but sets no date certain by which compliance must occur. These two provisions combined make it clear that the authors have no mandatory timeline in mind for when these public health protections should be achieved. The bill would thus undermine deadlines for rulemaking and compliance under the Clean Air Act. I will provide more detail on the effects of the legislation later in my testimony, but first I want to remind the Members of the Committee of the tremendous success of the Clean Air Act.

For 40 years, the nation's Clean Air Act has made steady progress in reducing the threats posed by pollution and allowing us all to breathe easier. In the last year alone, programs implemented pursuant to the Clean Air Act Amendments of 1990 are estimated to have reduced premature mortality risks equivalent to saving over 160,000 lives; spared Americans more than 100,000 hospital visits; and prevented millions of cases of respiratory problems, including bronchitis and asthma.¹ They also enhanced productivity by preventing 13 million lost workdays; and kept kids healthy and in school, avoiding 3.2 million lost school days due to respiratory illness and other diseases caused or exacerbated by air pollution.²

However, few of the emission control standards that gave us these huge gains in public health were uncontroversial at the time they were developed and promulgated. Most major rules have been adopted amidst claims that that they would be bad for the economy and bad for employment.

Some may find it surprising that the Clean Air Act also has been a good economic investment for our country. In contrast to doomsday predictions, history has shown, again and again, that we can clean up pollution, create jobs, and grow our economy all at the same time. Over that same 40 years since the Act was passed, the Gross Domestic Product of the United States grew by more than 200 percent.³ In fact, some economic analysis suggests that the economy is billions of dollars larger today than it would have been without the Clean Air Act.⁴

Some would have us believe that "job-killing" describes EPA's regulations. It is terrifically misleading to say that enforcement of the Clean Air Act costs jobs. It doesn't. Families should never have to choose between a job and healthy air. They are entitled to both. Studies led by Harvard economist Dale Jorgenson in 2001 to 2002 found that implementing the Clean Air Act actually increased the size of the US economy because of lower demand for health care and a healthier, more productive workforce.⁵ By 2030 the Clean Air Act will have prevented 3.3 million work days lost and avoided the cost of 20,000 hospitalizations every year, based on recent EPA estimates.⁶

A study that examined four heavily regulated industries (pulp and paper, refining, iron and steel, and plastic) and concluded that:

¹ USEPA (2011). *The Benefits and Costs of the Clean Air Act from 1990 to 2020*. Final Report. Prepared by the USEPA Office of Air and Radiation. February 2011. Table 5-5. This study is the third in a series of studies originally mandated by Congress in the Clean Air Act Amendments of 1990. It received extensive peer review and input from the Advisory Council on Clean Air Compliance Analysis, an independent panel of distinguished economists, scientists and public health experts.

² Ibid.

³ Bureau of Economic Analysis, National Economic Accounts, "Table 1.1.5. Gross Domestic Product," <http://bea.gov/national/index.htm#gdp>

⁴ Dale W. Jorgenson Associates (2002a). *An Economic Analysis of the Benefits and Costs of the Clean Air Act 1970-1990. Revised Report of Results and Findings*. Prepared for EPA. [http://yosemite.epa.gov/ee/eerm.nsf/vwAN/EE-0565-01.pdf/\\$file/EE-0565-01.pdf](http://yosemite.epa.gov/ee/eerm.nsf/vwAN/EE-0565-01.pdf/$file/EE-0565-01.pdf).

⁵ Jorgenson (2002a)

⁶ Jorgenson (2002a)

“We find that increased environmental spending generally does not cause a significant change in employment. Our average across all four industries is a net gain of 1.5 jobs per \$1 million in additional environmental spending These small positive effects can be linked to labor-using factor shifts and relatively inelastic estimated demand.”⁷

The EPA’s updated public health safeguards under the Clean Air Act will encourage investments in labor-intensive upgrades that can put current unemployed or under-employed Americans back to work. Environmental spending creates jobs in engineering, manufacturing, construction, materials, operation and maintenance. For example, EPA vehicle emissions standards directly sparked the development and application of a huge range of automotive technologies that are now found throughout the global automobile market. The vehicle emissions control industry employs approximately 65,000 Americans with domestic annual sales of \$26 billion.⁸ Likewise, the environmental technologies and services industry employed 1.7 million workers in 2008 and led to exports of \$44 billion of goods and services⁹, larger than exports of sectors such as plastics and rubber products.¹⁰ In fact, the world market for environmental goods and services is worth over \$700 billion, a size comparable to the aerospace and pharmaceutical industries.¹¹

Jobs also come from building and installing pollution control equipment. For example, the U.S. boilermaker work force grew by approximately 35 percent, or 6,700 boilermakers, between 1999 and 2001 during the installation of controls to comply with EPA’s regional nitrogen oxide reduction program .¹² Over the past seven years, the Institute for Clean Air Companies (ICAC) estimates that implementation of just one rule – the Clean Air Interstate Rule Phase 1 – resulted in 200,000 jobs in the air pollution control industry.¹³ Similar effects have been recognized by the electric power industry as well. In an Op-Ed in the Wall Street Journal, eight major utilities that will be affected by our greenhouse gas pollution standards said, “Contrary to claims that EPA’s agenda will have negative economic consequences, our companies’ experience complying with air quality regulations demonstrates that regulations can yield important economic benefits, including job creation, while maintaining reliability.”

⁷ Morgenstern, R. D., W. A. Pizer, and J. S. Shih. 2002. “Jobs versus the Environment: An Industry-Level Perspective.” *Journal of Environmental Economics and Management* 43(3):412-436.

⁸ Manufacturers of Emissions Control Technology (http://www.meca.org/cs/root/organization_info/who_we_are)

⁹ DOC International Trade Administration. “Environmental Technologies Industries: FY2010 Industry Assessment. [http://web.ita.doc.gov/ete/eteinfo.nsf/068f3801d047f26e85256883006ffa54/4878b7e2fc08ac6d85256883006c452c/\\$FILE/Full%20Environmental%20Industries%20Assessment%202010.pdf](http://web.ita.doc.gov/ete/eteinfo.nsf/068f3801d047f26e85256883006ffa54/4878b7e2fc08ac6d85256883006c452c/$FILE/Full%20Environmental%20Industries%20Assessment%202010.pdf) (accessed February 8, 2011)

¹⁰ U.S. Census Bureau, Censtats Database, International Trade Data--NAICS, http://censtats.census.gov/naic3_6/naics3_6.shtml (accessed September 6, 2011)

¹¹ Network of Heads of the European Environment Protection Agencies, 2005. “The Contribution of Good Environmental Regulation to Competitiveness.” http://www.eea.europa.eu/about-us/documents/prague_statement/prague_statement-en.pdf (accessed February 8, 2011).

¹² International Brotherhood of Boilermakers, *Boilermaker Labor Analysis and Installation Timing*, March 2005, EPA Docket OAR-2003-0053 (docket of the Clean Air Interstate Rule).

¹³ November 3, 2010 letter from David C. Foerter, Executive Director of the Institute of Clean Air Companies, to Senator Thomas R. Carper (http://www.icac.com/files/public/ICAC_Carper_Response_110310.pdf (accessed February 8, 2011)).

The air toxic standards at issue today continue the Clean Air Act's 40-year success story. In contrast, the two bills you have asked me to discuss today would roll back important clean air provisions and further delay already long overdue public health protections from toxic air pollution. More than twenty years ago, Congress and President George H.W. Bush, amended the Clean Air Act to establish a path to addressing airborne toxic chemicals within a decade. This goal, although ambitious, seemed within reach. In fact, industrial emissions of carcinogens and other highly toxic chemicals have been reduced by 1.7 million tons each year through actions taken by more than 170 industries. President George H.W. Bush said it best when he proposed the legislation, "Our best minds will apply the most advanced industrial technology available to control these airborne poisons...it will make state-of-the-art technology an everyday fact of doing business. And that's the way it should be."¹⁴

We are now more than 10 years late in meeting this goal for certain boilers and incinerators. The EPA Regulatory Relief Act of 2011 would delay us even further. It would block EPA from issuing new final standards to control air toxic emissions from certain boilers and solid waste incinerators prior to March 2013 (if the bill were enacted at the end of this year) -- a year later than EPA's current schedule. It would also prohibit EPA from requiring compliance earlier than 5 years after promulgation of the replacement standards and would not set a statutory deadline for compliance. The Clean Air Act currently requires compliance with the boiler MACT standard no later than 3 years after promulgation of the standard, or 2015 under EPA's current plan. As a result, this bill would cause -- at a minimum - at least a 3-year delay in compliance with the air toxic control requirements.

According to EPA's analysis accompanying the rulemakings, for just the major source boiler rule and just a 3-year delay, the bill would allow up to:

- 20,000 additional premature deaths;
- 12,000 additional heart attacks; and
- 123,000 additional asthma attacks that could have been avoided.

For every year of delay beyond the minimum 3 years, the avoidable premature deaths, heart attacks and asthma attacks would continue to mount.

Proponents of this bill reportedly are saying that the delay is consistent with what EPA told the Court we needed to finish the rules. It is not. EPA asked the Court to extend the deadline for finalizing the rules to April 2012. In contrast, if the boiler bill were enacted at the end of this year, it would prevent EPA from finalizing the rule prior to March 2013.

Because there has been some confusion on how much time EPA needs, let me explain what the process has been to date and how EPA intends to proceed in the future. EPA received more than 4,800 comments from businesses and communities on the proposed rules, including a

¹⁴ President George H.W. Bush, June 12, 1989, Remarks Announcing Proposed Legislation To Amend the Clean Air Act
<http://www.presidency.ucsb.edu/ws/index.php?pid=17134&st=clean+air&st1=toxic#axzz1W9OCujA9>

significant amount of information that industry had not provided prior to the proposals. EPA was under a court order to issue the final standards in January 2011. Given the extensive public input, EPA asked the Court for an April 2012 deadline for issuing the rules, which the Court denied. The Court required EPA to issue final rules in February, 2011, but noted that EPA could avail itself of an administrative reconsideration process. EPA is doing so.

EPA issued the final standards in February. Although EPA is currently reconsidering these standards, any final version of these standards would save enormous numbers of American children and adults from harm, as evidenced by the public health benefits described above that would be lost if the boiler bill were enacted. The public health benefits are particularly important for people living in communities close to these facilities.

Moreover, the standards would provide these benefits without imposing hardship on America's economy or jeopardizing American job creation. In fact, the analyses accompanying the standards found that for every \$1 dollar spent to comply with these standards, the public will receive \$15 to \$36 in health and other benefits. EPA estimated that the net employment effects in the sectors regulated by these rules are likely to be small.

The final standards included a number of significant changes from the proposed standards. Those changes were based on the real-world information that the Agency gained from the public comments. For example, we received information at proposal that changed how the rule categorizes different kinds of boilers. This led to emissions limits that the boilers can meet in a more cost-effective way. As a result, the final standards would achieve public health benefits while being more practical to implement and about 50 percent less costly than the proposed standards.

I am proud of the work that the EPA did to craft protective, sensible standards for controlling hazardous air pollution from boilers. These standards reflect what industry told us about the practical reality of operating these boilers. When we issued the rules, however, we were also sensitive to the fact that the standards were substantially different from the ones on which the public had an opportunity to comment last year. That is why EPA announced that it would reconsider certain issues, and also solicited and accepted comments from members of the public regarding what issues EPA should reconsider. In the meantime, EPA has stayed the effective date of the major source rule for certain boilers and incinerators.

EPA intends to issue a reconsideration proposal this fall that will proposed reconsideration of some aspects of the major source boiler and incinerator standards that were promulgated in February. That proposal will be based on our review of issues identified in petitions for reconsideration submitted by the public, along with our further examination of issues that we identified when we announced the reconsideration in January. We intend to take final action on the proposed reconsideration by the end of April 2012, at which time the rules will be final.

The boiler bill would also delay implementation of the area source rule for smaller boilers. Of the smaller boilers that are affected by this rule, virtually all will need only to

perform a tune-up every other year in order to remain in compliance. Many of these smaller boilers already perform tune-ups as part of a regular boiler maintenance program.

The Cement Sector Regulatory Relief Act of 2011 would roll back EPA's 2010 air toxics standards for Portland cement kilns. The cement kiln rules that EPA issued in August 2010 have combined benefits that significantly outweigh costs, yielding an estimated \$7 to \$19 in public health benefits annually for every dollar of costs.

The cement bill would indefinitely delay the important health benefits associated with the cement standards, which establish limits on emissions of mercury, total hydrocarbons, hydrochloric acid (HCl), and particulate matter from Portland cement kilns.¹⁵ The bill would prohibit EPA from issuing replacement rules for cement kilns prior to March 2013 (if the bill were enacted at the end of this year), and would prohibit EPA from setting a new compliance deadline earlier than five years after promulgation. This would delay compliance with the new standards for at least 4 and half years.

If compliance were delayed even by 5 years, according to EPA's analysis accompanying the rulemakings, this bill would allow tens of thousands of adverse health effects from particulate matter exposure alone, including up to:

- 12,500 additional premature deaths;
- 7,500 additional heart attacks; and,
- 85,000 additional asthma attacks that would be avoided under the 2010 cement MACT rules.

Although I have highlighted our concerns based on the bills' harm to public health by indefinitely delaying these important standards, the bills also raise additional public health concerns by weakening substantive Clean Air Act provisions. For example, EPA would be required to select the least burdensome of the range of regulatory alternatives authorized under the Act even if a slightly more stringent standard is feasible, economically viable, and would cost effectively provide far greater public health protection.

Efforts, like the two bills we are discussing today, attempt to halt continued monumental achievements for America based on claims we have heard before - claims that EPA standards would be bad for the economy and bad for employment. In contrast to doomsday predictions, history has shown, that we can clean up pollution, preserve jobs, and help grow our economy all at the same time. Over that same 40 years since the Act's was passed, our air has become enormously cleaner, and the economy of the United States more than doubled.

¹⁵ The Portland cement MACT and New Source Performance Standards (NSPS) rules were published together, and the Federal Register notice bore the title "National Emission Standards for Hazardous Air Pollutants From the Portland Cement manufacturing industry and Standards of performance for Portland Cement Plants". It is unclear whether the bill is intended to vacate both rules or just the air toxics rule.

Again, I appreciate the opportunity to provide the Agency's views as you develop this legislation. I look forward to your questions.