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Legislative Hearing on H.R. 3797, the Satisfying Energy Needs and Saving the Environment (SENSE) Act and H.R. __, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act

Energy and Commerce, Energy and Power Subcommittee
United States House of Representatives
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Chairman Whitfield, Ranking Member Rush, members of the subcommittee, I appreciate the opportunity to provide written testimony on H.R. 3797, the Satisfying Energy Needs and Saving the Environment (SENSE) Act and H.R. __, the Blocking Regulatory Interference from Closing Kilns (BRICK) Act. Although the Administration does not have an official position on these bills, I would like to make several basic points that I hope will assist the committee in consideration of the legislation that the EPA views as unnecessary and harmful to public health and the environment.

The first bill under consideration by the committee, the SENSE Act, would place limits on the allocation and use of sulfur dioxide allowances issued under the Cross-State Air Pollution Rule

(CSAPR) for a selected subset of electric generating units (EGUs), those that use coal refuse as their main fuel source. The CSAPR protects the health of millions of Americans by requiring states to significantly improve air quality through the reduction of power plant emissions. These emissions cross state lines and contribute to ozone and fine particle pollution in other states, which is a threat to public health. An important feature of the CSAPR is the trading program that allows sources in each state to meet emission budgets in many different ways, including trading of emissions allowances between power plants within the same state and limited trading across states. This approach reduces the cost of compliance while ensuring reductions in air pollution for citizens across the CSAPR region.

While we recognize that the changes to the CSAPR outlined in the SENSE Act would not diminish the total amount of emissions reductions that CSAPR would achieve, those changes would remove economic incentives to reduce emissions at coal refuse units. The SENSE Act would provide allocations to these units that cannot be traded, thereby removing the economic value of these allowances and the economic incentive to reduce emissions in order to sell excess allowances. By re-allocating allowances from other sources within the state to these coal refuse EGUs and

then limiting the ability of these coal refuse sources to transfer allocated allowances to other facilities, the bill would economically advantage this subset of units at the expense of other units within the state—both in terms of losing otherwise available allowances and reducing compliance choices. The CSAPR's air quality goals and allowance market are best implemented with consistent market incentives for all participants. The bill would interfere with and manipulate market conditions, since the allowances allocated to this set of EGUs would be unavailable for use by any other sources and would be surrendered at retirement. The result would be in the aggregate a less efficient and more costly compliance with the CSAPR.

Language in the SENSE Act would seemingly also remove states' rights when determining their method of compliance with the CSAPR. The Clean Air Act gives states the authority to replace interstate transport Federal Implementation Plans (FIPs) with approved State Implementation Plans (SIPs). Further, the CSAPR expressly provides states with opportunities to reallocate allowances among their affected units. Indeed, a state that wished to reallocate the CSAPR sulfur dioxide allowances among its units in the manner provided in the SENSE Act could already have done so for the 2017 and 2018 compliance periods, and still

could do so for subsequent years, without this legislation or the restrictions it imposes on the transfer of the reallocated allowances. The SENSE Act would potentially deny states control over allocations of allowances by rendering any submitted state plan with a different allocation to these units unapprovable.

In addition to requiring changes to the CSAPR, the bill would also require the Administrator to set emission standards for acid gases from coal refuse units that are different than the limits established in the Mercury Air Toxics Standards (MATS). This would lead to increased health and environmental impacts due to increased emissions of hazardous acid gases, such as hydrogen chloride and hydrogen flouride, and sulfur dioxide.

Generally, the SENSE Act would create an uneven playing field by creating a special market of CSAPR allowances for refuse coal units that is separate, distinct, and different from the market-based implementation approach that the rest of the EGUs that participate in the CSAPR allowance trading program use.

The second bill under consideration by the committee is the Blocking Regulatory Interference from Closing Kilns (BRICK) Act. This legislation would extend compliance deadlines for sources

covered under the Brick and Structural Clay National Emission Standards for Hazardous Air Pollutants (NESHAP) finalized in October 2015. The brick and structural clay products manufacturing and the clay ceramics manufacturing source categories contain major sources of hydrogen fluoride (HF), hydrogen chloride (HCl), and hazardous metals. These hazardous air pollutants (HAP) are associated with a variety of acute and chronic health effects, including cancer. The EPA estimates that these rules will reduce the amount of toxic air pollution emitted during production, reducing nationwide air toxics by approximately 375 tons per year in 2018.

In developing this final rule, the EPA carefully considered the requirements of section 112 of the Clean Air Act. We developed flexible compliance options and also made distinctions between requirements for small and large kilns in order to reduce the impacts of the rule on small businesses, while still meeting the requirements of the law. We have provided the maximum time allowed for compliance under the law, and sources can apply to their state for an additional year under certain circumstances. The Clean Air Act required EPA to finalize all MACT standards by 2000, and during the ensuing decade and a half sources in many other source categories have been complying with MACT

standards that limit their emissions of cancer-causing toxic air pollutants.

This legislation would harm both public health and the environment by extending compliance deadlines that would allow further emissions of toxic air pollution into the atmosphere. The BRICK Act would extend all compliance deadlines for sources covered by the Brick and Structural Clay NESHAPS, not only until litigation on the main NESHAP rule is complete, but also until the completion of any litigation on a corrections notice published in December 2015. This bill would create an incentive for parties to litigate the rulemaking and the corrections notice for as long as possible, in order to delay air pollution reductions by prolonging the extension of the compliance deadlines. The EPA estimates that for every month of extension, about 30 tons of toxic air pollution will be emitted into the atmosphere.

The EPA appreciates the opportunity to provide written testimony about the public health effects of these two bills. We stand ready to offer our technical assistance to the Committee should the Committee have any further questions.