Opening Statement of William L. Wehrum

Assistant Administrator

Office of Air and Radiation

U.S. Environmental Protection Agency (EPA)

EPA's New Source Review Program

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Chairman Shimkus, Ranking Member Tonko, and Members of the Subcommittee: thank you for the opportunity to testify today on the New Source Review (NSR) permitting program discussion draft. Although the Administration does not have an official position on this draft, I am very supportive of the Committee's efforts to improve the NSR permitting program. I have long believed that the NSR permitting program stands as a significant barrier to the implementation of many projects that would improve facility performance, enhance efficiency, and protect the environment. In addition, the program is unnecessarily complicated and confusing. The program can and should be improved.

Toward that end, and consistent with the Administration's efforts on regulatory reform and permit streamlining, as well as Administrator Pruitt's back-to-basics agenda for the Agency, EPA is pursuing a series of targeted changes to the NSR program. In my testimony, I provide a brief background on the NSR program, discuss a few of our NSR improvement efforts, and provide some thoughts on the Subcommittee's discussion draft.

The NSR permitting program is designed to protect air quality when large-emitting facilities like factories, industrial boilers, and power plants are newly built or undergo changes that result in significant emissions increases. NSR permitting assures that new or modified facilities employ state-of-the-art air pollution controls. The program is based on the sensible notion that significant investments in air pollution controls are most appropriately made when new, large-emitting facilities are built and when existing facilities are significantly modified.

EPA established a framework for the NSR program in its federal regulations. States are required to implement an NSR program as part of their Clean Air Act "State Implementation Plan" (SIP). As with most SIP requirements, States have flexibility in how they design and implement their NSR programs. But, all state programs must be at least as environmentally effective as the base federal program. EPA implements the NSR program in states that do not have approved programs and in other areas of federal jurisdiction.

In its current form, the NSR program is very complex and can be time consuming to implement. In the absence of additional statutory clarity, EPA is working on two separate but related tracks. First, we are looking at ways to simplify and improve the NSR permitting program. Second, we are looking at ways to expedite the federal permitting process.

In accordance with Administration-wide priorities for streamlining permitting requirements for manufacturing, EPA undertook an assessment of the Agency's implementation of the NSR permitting program. We quickly (and predictably) identified several areas that are ripe for improvement.

In December 2017 and in March 2018, Administrator Pruitt issued memoranda to EPA's regional offices to provide greater clarity as to how certain NSR rules should be interpreted.

The December memorandum focused on the NSR permitting applicability provisions. That memorandum set forth EPA's interpretation of the procedures contained in the NSR Rules for sources that intend to use "projected actual emissions" in determining NSR applicability and the associated pre- and post-project source obligations. One key aspect of this memorandum is that it clarifies that so long as a company complies with the requirements of the required preconstruction projected future emissions analysis, EPA will not "second-guess" a company's reasonable analysis.

The March memorandum set forth EPA's interpretation that, in determining whether a proposed project will itself result in a "significant emissions increase" (which is the initial step that a source must take in ascertaining whether its proposed project will result in an overall significant emission increase at the source) any emissions *decreases* that are projected to occur as a result of the project can also be taken into account in this first step of the NSR applicability

analysis. This common sense reading of the plain language of our NSR rules will pay big dividends in simplifying the NSR permitting analysis while at the same time having no adverse environmental effects.

These memoranda represent EPA's interpretation of existing regulatory language and reflect topics that could be further clarified for state and local permitting authorities and affected sources. While each state and local program is different, states generally should be able to implement the recently issued guidances without the need for changes to their state implementation plans.

In addition to the memoranda, EPA has also developed policies on several related issues which may be of interest to the Subcommittee.

- In April 2018, EPA's Office of Air and Radiation issued final guidance recommending "Significant Impact Levels" for ozone and fine particle pollution that may be used in the Prevention of Significant Deterioration (PSD) permitting program. These levels will reduce the cost and time for manufacturers to obtain this type of air pollution permit.
- In January 2018, based on a plain language reading of the Clean Air Act, EPA issued a guidance memorandum withdrawing the 1995 "Once In, Always In" policy for the classification of major sources of hazardous air pollutants (HAPs) under section 112 of the Clean Air Act. With the new guidance, sources of hazardous air pollutants previously classified as "major sources" (the source emissions threshold is 10 tons per year of any one HAP or 25 tons per year of any combination of HAPs) may be reclassified as "area" sources (simply put, any source of HAP emission that isn't a "major source") when the facility limits its potential to emit below major source thresholds. EPA's old approach discouraged sources from taking enforceable measures to reduce their HAP emissions below the major source threshold. This new approach provides them an incentive to do so. EPA will be following up this memorandum with rulemaking.
- While most NSR permits are issued by state or local air pollution agencies, EPA does issue permits in some cases. To expedite issuance of these federal permits, EPA is looking for ways to increase the efficiency of the permitting process and shorten the amount of time it takes to get an EPA issued permit under both Title V and NSR.

Regarding the subcommittee's discussion draft, the Administration does not have an official position on the bill. Having said that, I strongly support the overall goals of the discussion draft. The principal focus of the discussion draft on refining the definition of "modification" in the Clean Air Act would go a long way towards simplifying application of the NSR program. It makes clear that a project undertaken at an existing stationary source will trigger NSR only when that project would result in an increase in the source's maximum design capacity to emit – that is, result in an increase in the source's hourly emission rate, which is how emissions increases have always been determined under EPA's New Source Performance Standards Program (NSPS) program.

The bill also would resolve a long-standing and unfortunate anomaly in the NSR program, which is that the installation of pollution control equipment at existing sources can *itself* trigger NSR. This is because, sometimes, the operation of such equipment, while it results in tremendous emissions reductions for some pollutants, may in some instances actually lead to increases in the emissions of other pollutants. EPA has in the past attempted to incorporate into its NSR rules an exclusion for the installation and operation of pollution control projects, where the overall effect of such controls would be environmentally beneficial. But this prior regulatory effort was held to be unlawful by the D.C. Circuit, on the grounds that it would be inconsistent with the statutory language defining "modification." The proposed bill would fix this problem.

I appreciate the opportunity to testify today. I support the Committee's effort to provide clarity for the regulated community that can finally allow the private sector to invest in more efficient manufacturing in the US. I welcome any questions you may have regarding the discussion draft or on the Agency's efforts to improve the NSR program. Thank you.