

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

STATE GOVERNMENT COMMITTEE
PUBLIC HEARING

STATE CAPITOL
HARRISBURG, PA

MAIN CAPITOL BUILDING
ROOM 60, EAST WING

TUESDAY, JUNE 6, 2017
9:03 A.M.

PRESENTATION REGARDING
STATE GOVERNMENT REGULATIONS:
BURDENS, ABUSES, AND LEGISLATIVE OVERSIGHT

BEFORE:

HONORABLE DARYL METCALFE, MAJORITY CHAIRMAN
HONORABLE CRIS DUSH
HONORABLE MATT GABLER
HONORABLE KRISTIN PHILLIPS-HILL
HONORABLE JERRY KNOWLES
HONORABLE BRETT MILLER
HONORABLE BRAD ROAE
HONORABLE FRANK RYAN
HONORABLE RICK SACCONI
HONORABLE THOMAS SANKEY
HONORABLE CRAIG STAATS
HONORABLE JUSTIN WALSH
HONORABLE JUDITH WARD
HONORABLE JEFF WHEELAND
HONORABLE MATTHEW BRADFORD, DEMOCRATIC CHAIRMAN
HONORABLE MARY JO DALEY
HONORABLE PANELA DELISSIO
HONORABLE STEPHEN MCCARTER
HONORABLE EMILIO VAZQUEZ

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*Pennsylvania House of Representatives
Commonwealth of Pennsylvania*

ALSO IN ATTENDANCE:

REPRESENTATIVE KERRY BENNINGHOFF

COMMITTEE STAFF PRESENT:

SUSAN BOYLE

MAJORITY EXECUTIVE DIRECTOR

AMY HOCKENBERRY

MAJORITY RESEARCH ANALYST

KAREN PRIEGO

MAJORITY RESEARCH ANALYST

PAM NEUGARD

MAJORITY ADMINISTRATIVE ASSISTANT

GLENDON KING

MAJORITY RESEARCH ANALYST

KIM HILEMAN

DEMOCRATIC EXECUTIVE DIRECTOR

KATHY SEIDL

DEMOCRATIC RESEARCH ANALYST

MATT HURLBURT

DEMOCRATIC RESEARCH ANALYST

LINDA HUNTINGTON

DEMOCRATIC LEGISLATIVE ASSISTANT

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SUBMITTED WRITTEN TESTIMONY

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P R O C E E D I N G S

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MAJORITY CHAIRMAN METCALFE: Please rise. I'm going to ask Representative Dush to lead us in the Pledge of Allegiance, please.

(The Pledge of Allegiance was recited.)

MAJORITY CHAIRMAN METCALFE: Is the Secretary with us yet this morning? Is Secretary McDonnell here yet? Secretary McDonnell, welcome. Good morning.

SECRETARY MCDONNELL: Good morning.

MAJORITY CHAIRMAN METCALFE: Thanks for joining us.

SECRETARY MCDONNELL: Thank you for having me.

MAJORITY CHAIRMAN METCALFE: We still have Members circulating in.

SECRETARY MCDONNELL: Sure.

MAJORITY CHAIRMAN METCALFE: The Chamber was just having a meeting in here, and Senator Scarnati just finished up his discussion with them a couple minutes ago, so we're --

SECRETARY MCDONNELL: And I'll offer, if it's helpful for timing, I can dispense with the testimony. Everybody has a copy. We can just go to questions if

1 that's helpful.

2 MAJORITY CHAIRMAN METCALFE: I appreciate it. If
3 you just give us maybe a summarized --

4 SECRETARY MCDONNELL: Sure.

5 MAJORITY CHAIRMAN METCALFE: -- in a couple
6 minutes your thoughts on the remarks that you're providing,
7 and then we can go to Q&A. I appreciate you coming today.

8 SECRETARY MCDONNELL: Certainly.

9 MAJORITY CHAIRMAN METCALFE: If I could ask our
10 Member Secretary -- Representative Benninghoff is here.
11 Feel free to grab a seat at the tables with us,
12 Representative Benninghoff. I know he's our Republican
13 Caucus Policy Chairman, and he and I have been working on
14 the regulatory issues together, and I invited him to join
15 us today. And any other Members that might be here in the
16 crowd are welcome to join us if there are seats available
17 up here or seats just behind.

18 If I could ask our Member Secretary,
19 Representative Hill, to call the roll, please.

20

21 (Roll was taken.)

22

23 REPRESENTATIVE PHILLIPS-HILL: Thank you,

24 Mr. Chairman.

25 MAJORITY CHAIRMAN METCALFE: Thank you.

1 Once again, welcome to this morning's State
2 Government Committee hearing. We appreciate Secretary
3 McDonnell joining us today --

4 SECRETARY MCDONNELL: Certainly.

5 MAJORITY CHAIRMAN METCALFE: -- and now that the
6 noise level has simmered down a little bit, we can truly
7 get started.

8 So, Secretary, you can begin when you're ready,
9 sir.

10 SECRETARY MCDONNELL: Sure. And in the interest
11 of time, I'll just take a couple minutes to summarize the
12 testimony you all have in front of you.

13 Chairman Metcalfe, Members of the Committee, I
14 appreciate the opportunity to testify here before you
15 today. In the testimony, we'll walk through a pretty
16 robust explanation of our regulatory process, but I think
17 the highlight of that is really the opportunities
18 throughout the process for stakeholder engagement, either
19 with our advisory committees or through some informal
20 dialogue with industry and other advocacy groups through
21 the development of regulations.

22 Once we have a regulation we think is in
23 relatively good order, bringing that to one of our three
24 rulemaking bodies, our main one is the Environment Quality
25 Board, but we also have a Board of Coal Mine Safety, as

1 well as a board for Coal and Clay Mine Subsidence and the
2 Mine Subsidence Insurance Fund that has regulatory review
3 responsibilities. Assuming the board provides the
4 approval, it then goes through the traditional regulatory
5 process that I think many of you are familiar with in terms
6 of going to the Attorney General, going to the Standing
7 Committees, going to IRRC, and then opening for a public
8 comment period for additional public input.

9 Typically, we'll do a 30- to 60-day public
10 comment period, but many times we'll do substantially
11 longer than that. We bring those comments in and review
12 and modify and continue the meetings with our advisory
13 committees and the informal outreach to interested
14 stakeholders as we're developing what is then the final
15 regulation, which again goes through the regulatory review
16 process in the end.

17 I included a couple other pieces of information
18 in here I think may be useful. One is back in 2013 there
19 was a hearing in this committee on this issue. There's a
20 doctor from Rutgers, you know, professor from Rutgers
21 University who testified about regulatory burden and has
22 done a State comparison since then showing that in 28
23 States that they looked at we have amongst the least amount
24 of regulations passed on a year-to-year basis, you know, 67
25 I believe in one year, 76 in the last year, compared that

1 to something like Washington State, which had almost 1,000
2 regulations that they approved within that. And as part of
3 that study also showing that we have more checks within the
4 process than most other States have.

5 I think important to note our regs are never
6 static. We constantly have new science, new technologies,
7 new pathological data, new industry information coming to
8 the State that we're evaluating and balancing both the
9 environment impact of decisions that we made against the
10 economic outcomes. And then I won't comment on it but just
11 point out we did include some information about our
12 individual permits, our general permits, and how that
13 process works.

14 So, I'll stop there and open it up for any
15 questions the Committee may have.

16 MAJORITY CHAIRMAN METCALFE: Thank you, Secretary
17 McDonnell. And as you talked about the number of
18 regulations, something that comes to mind for me that's
19 recent that I'd sent a letter to you on back a couple of
20 months ago is related to the use of a permit. I think it's
21 about four dozen pages long and in an email to the
22 legislators actually used the word regulations in
23 explaining what was coming about through it.

24 And, you know, one of my concerns is if we're
25 showing a certain number of regulations that our State has

1 promulgated compared to other States that we are also
2 having guidelines published or permits issued that are in
3 effect really regulations that aren't being categorized in
4 the correct way and not going through the regulatory
5 process in the right way.

6 SECRETARY MCDONNELL: Sure.

7 MAJORITY CHAIRMAN METCALFE: That's one of the
8 concerns that I have personally.

9 SECRETARY MCDONNELL: Sure. And if I may
10 comment, I'd say in that particular case, two things: One,
11 the form of the permit itself is relatively short. One of
12 the things we did within those 45 pages was include all of
13 the Federal regulatory citations, all of the State
14 regulatory citations and information rather than reference
15 them and send potential permittees off to find information
16 in some other forums, as is done in a lot of our permits.

17 So, the length of the permit in some ways is
18 attempting to include as much information as possible in
19 terms of those authorities, in terms of what those
20 regulatory requirements are to be helpful in filling it
21 out.

22 I'll also say we've been very much engaged in a
23 process with all stakeholders to look for how we can
24 improve those particular general permits. And certainly,
25 Penn is not down on them. We just had the comment period

1 close yesterday on those general permits.

2 MAJORITY CHAIRMAN METCALFE: Representative
3 Gabler for a question.

4 REPRESENTATIVE GABLER: Thank you, Mr. Chairman.
5 And, Mr. Secretary, I appreciate you coming to the
6 Committee.

7 SECRETARY MCDONNELL: Certainly.

8 REPRESENTATIVE GABLER: I share the concerns of
9 the Chairman regarding not only the substance but also the
10 process that's been followed on the GP-5A. And there's a
11 few different things now. I know we've got a short period
12 of time, so one thing I wanted to focus on what that under
13 the regulations being proposed by the Department, there's
14 an enhanced requirement for the use of advanced vapor
15 recovery trucks. Has the Department estimated the number
16 of vapor recovery trucks that would be needed under the new
17 regulations, and what would that estimate be? Because this
18 would include not only the wet gas areas of the State but
19 also the dry gas areas.

20 SECRETARY MCDONNELL: Sure. And I don't have
21 that information in front of me. I'd need to look at the
22 specific numbers. I know one of the things that has
23 created some issues around this is we have both the Federal
24 component of it, and then when that Federal component comes
25 into the Air Pollution Control Act, one of the requirements

1 on us is to look at best available technology. So, where
2 we see technologies that are already in use by segments of
3 the industry, you know, those things start becoming the
4 standard. And our air pollution statutes and regs
5 typically work on that technology basis.

6 REPRESENTATIVE GABLER: I would suggest that the
7 best available technology may not be the same with a broad
8 brush --

9 SECRETARY MCDONNELL: Sure.

10 REPRESENTATIVE GABLER: -- across all different
11 parts of the State. We've got the wet gas, we've got the
12 dry gas, and so --

13 SECRETARY MCDONNELL: Sure.

14 REPRESENTATIVE GABLER: -- to do a broad bush and
15 require these advanced trucks in the dry gas areas just
16 seems to not make sense. And the concern is without an
17 adequate supply of vapor recovery trucks, how long do you
18 think it might be before new drilling could be forced to
19 stop or the current wells that are there could be forced to
20 shut in and then we lose the supply of energy in the State?

21 SECRETARY MCDONNELL: Well, I'd say, you know,
22 two things. One, again, don't have the number; but two,
23 one of the things I've been clear about, you know, as
24 recently as my nomination hearing saying on these general
25 permits it's not the intent of the Department to issue a

1 permit that is not usable by the industry, so it needs to
2 meet both our regulatory requirements but also the
3 practical realities of how these operations work and what
4 is available to them. So, all of that is going to be
5 factored in as we approach what would be a final permit
6 based on comments and based on this ongoing interaction.
7 But we're not issuing anything that isn't usable on the
8 face of it.

9 REPRESENTATIVE GABLER: I think that it is
10 important that we make sure that whatever does move forward
11 is something that is usable and that actually enhances the
12 ability of resources to be recovered in this State in an
13 economically feasible manner.

14 I know one of the things that --

15 MAJORITY CHAIRMAN METCALFE: Representative
16 Gabler?

17 REPRESENTATIVE GABLER: Oh, yes?

18 MAJORITY CHAIRMAN METCALFE: We do have other
19 questions from other Members.

20 REPRESENTATIVE GABLER: I'll move on. I
21 appreciate it, Mr. Chairman.

22 MAJORITY CHAIRMAN METCALFE: Representative Roae.

23 REPRESENTATIVE GABLER: Got a little excited.

24 SECRETARY MCDONNELL: I bring that out in people.

25 MAJORITY CHAIRMAN METCALFE: And I appreciate

1 Representative Gabler's passion for the issue. I share it.
2 But we do have other questions and we only have a limited
3 time with the Secretary.

4 REPRESENTATIVE ROAE: Thank you, Mr. Chairman.

5 And thank you, Mr. Secretary.

6 One question I have is with the GP-5A permit, one
7 of the requirements is that, you know, serial numbers for
8 all equipment would have to be done, and I was kind of
9 thinking like, say, you know, this pen here had a serial
10 number and then this pen, the exact same model of pen, had
11 a serial number. How would you know which one you're going
12 to use a week or a month or a year from now? And then say
13 you use this one, it was on your permit, but it was broken
14 down so you use this one instead, you'd be in violation,
15 isn't that correct?

16 SECRETARY MCDONNELL: If that was the requirement
17 of the final general permit, that would be true. I think
18 one of the things that's come out in our discussions is
19 exactly the recognition of the fact that, oftentimes, when
20 they're coming in for their permit, they're not going to
21 know which piece of machinery, have some flexibility around
22 which engine goes where.

23 So, one of the things we're working through right
24 now is understanding exactly how we adapt to the way that
25 that process would work.

1 REPRESENTATIVE ROAE: Now, isn't that a good
2 example of why these should be going through the official
3 IRRC process?

4 SECRETARY MCDONNELL: I would say, again, you
5 know, we're going through a pretty robust stakeholder
6 process leading up to the release of the draft general
7 permit. We had over 20 meetings with industry
8 representatives. This went before our Air Quality
9 Technical Advisory Committee as well. And since the
10 release, we are taking in the public comments in order to
11 exactly identify these kinds of issues and are working
12 with, again, industry and other stakeholders to understand
13 what concerns remain and how we can best address them.

14 REPRESENTATIVE ROAE: And another concern --

15 MAJORITY CHAIRMAN METCALFE: Representative Roae,
16 we do have another --

17 REPRESENTATIVE ROAE: Okay.

18 MAJORITY CHAIRMAN METCALFE: -- question. Going
19 to Representative Knowles.

20 REPRESENTATIVE ROAE: Okay. Thank you.

21 REPRESENTATIVE KNOWLES: Thanks, Mr. Chairman.
22 Mr. Secretary, thank you very much for being
23 here.

24 SECRETARY MCDONNELL: Thank you.

25 REPRESENTATIVE KNOWLES: I'll be quick in terms

1 of the questions.

2 I've been here under a few Governors, and the
3 perception of the people that I represent under some of
4 those Administrations has been that we are going to do what
5 we can do to work with you in terms of helping you through
6 the process, and the perception of others has been that
7 they have been a stumbling block and they have made life
8 hell for people who are looking for specific permits.

9 I guess two questions: Number one is can you
10 talk about the approach that you intend to take; and
11 secondly, can you talk a little bit about getting permits
12 in terms of the time frame? We've heard complaints in the
13 past of how long certain permits have taken to get.

14 SECRETARY MCDONNELL: Sure. And I'll say a
15 couple things. I think, one, some of this is pieces that
16 have -- you know, I always say some of this is pieces that
17 have been done to the Department, some of this is the
18 pieces that we've done to ourselves. You know, on that
19 first point, we've had 10 years of budget cuts, 754
20 positions lost, a lot of those within the permit reviewer
21 realm. That's going to create issues around the ability to
22 issue permits.

23 But in trying to maintain a lot of that staff
24 early on, some of the decisions that were made within the
25 Department was deemphasis on spending money on training, on

1 IT, on travel just getting different regional folks
2 together to coordinate and understand what problems,
3 issues, and make sure we have a good coordination of that.

4 So I think in the interim, you know, what's
5 happened is we've seen lack of consistency, you know, some
6 of the standards being applied in different ways, and what
7 we're about now is trying to get back to how do we address
8 -- you know, if we're going to have a filled seat in the
9 Department, I want to make sure that's a person who's
10 properly trained, has good management support, has the IT
11 resources they need in 2017 to carry out the work, and that
12 we are coordinated as a department around how we deliver
13 that.

14 The caveat to it at the end is once we're at a
15 point of delivering consistent decisions in consistent time
16 frames, there may still be a conversation that it's too
17 long, and then that may be a resource conversation. But we
18 want to get to that point of being able to come back to you
19 with here's everything we've done to fix the current
20 situation.

21 REPRESENTATIVE KNOWLES: Thank you, Mr. Chairman.

22 MAJORITY CHAIRMAN METCALFE: Thank you,
23 Representative Knowles.

24 Representative Hill?

25 REPRESENTATIVE PHILLIPS-HILL: Thank you,

1 Mr. Chairman.

2 Secretary, McDonnell, thank you for being here
3 today.

4 SECRETARY MCDONNELL: Thank you.

5 REPRESENTATIVE PHILLIPS-HILL: Pennsylvania is a
6 highly regulated State. The vast majority of those
7 regulations pertain to environment protection under Title
8 25. We know that the combined regulations that you
9 administer, over 25,000, the next-closest title that we
10 have is about 15,000. That's under Title 58. So, my
11 question to you today is what do you do to periodically
12 review and update existing regulations, not just adding
13 those regulations but really looking at identifying
14 regulations perhaps to be modified or repealed if you find
15 them obsolete, inefficient, or perhaps otherwise
16 ineffective, as well as what do you do to really look at
17 what we can do to perhaps improve upon those regulations
18 and how they're implemented?

19 SECRETARY MCDONNELL: Sure. A couple things I'd
20 say, one, just on the volume, the thing I always think is
21 striking about us as an agency is implementing regulations
22 -- you know, statutes and regulations for every aspect of
23 water, you know, water, drinking water, stream restoration,
24 air emissions, waste, oil and gas, nuclear facilities,
25 dental x-rays through the radiation program, radon, et

1 cetera. So, we're a midsize agency with perhaps a bigger
2 mission than a lot of the other agencies, and that's not
3 even factoring in the Federal piece.

4 I'll say on the process question you ask, I can't
5 speak to prior Administrations and what they've done. What
6 I've asked our folks to do -- and it goes to some of that
7 previous question where some of the solutions to problems
8 in the past have been issue a new policy, issue a new memo,
9 and you pile, pile, pile. I've asked our staff, I'm like
10 let's take a step back and let's look at our erosion
11 sedimentation program and what should it be. Let's take
12 the entirety of it, how can we streamline things, how can
13 we improve things, what do we need, what don't we need
14 within that so that we have a more cohesive set.

15 An evaluation we're doing right now that's
16 something that -- the other thing I talk a lot about is
17 continual improvement within the agency that, as we're
18 engaged in these processes, I want to make sure they're not
19 one-off and that we are systematizing a lot of the work so
20 that it's an ongoing process and not a series of one-offs.

21 REPRESENTATIVE PHILLIPS-HILL: So do you believe
22 that the process that you're engaged in is significant
23 enough that at some point we will see a reduction in the
24 overall number of regulations that are put forth by your
25 agency?

1 SECRETARY MCDONNELL: I think you'll see it come
2 through in a series of, one, being clearer with the
3 regulated -- I worry about the volume question just in
4 terms of it may be that in some cases on a form we need
5 more information to be clearer to the regulated community
6 if we're getting deficiencies in, for example. And the
7 evaluation truly is soup to nuts, that we're looking at the
8 forms, we're looking at our policies, we're looking at our
9 standard operating procedures, we're looking at our regs,
10 and ultimately, we may be back with some statutory asks as
11 well to improve the situation.

12 So, I wouldn't want to put a number specifically
13 on it. My sense is the trend would be to push downward on
14 the amount of requirements. And as one just example
15 nonregulatory when we did our e-permitting initiative and
16 launched that with mining, one of the outcomes, besides all
17 the things you get in e-permitting, was we eliminated 20
18 percent of the modules from the permit by simply looking at
19 it and recognizing where we had duplication and things that
20 were not necessary in that form any longer.

21 MAJORITY CHAIRMAN METCALFE: Thank you,
22 Representative Hill.

23 REPRESENTATIVE PHILLIPS-HILL: Thank you,
24 Mr. Chairman.

25 MAJORITY CHAIRMAN METCALFE: Mr. Secretary, I was

1 talking with someone last night that brought up a point
2 that I've heard people complain about in the past, and
3 that's the differences between some of the regions in the
4 State within the DEP. Now, you move from one region to the
5 other, and there's drastic differences related to what they
6 believe should be enforced, shouldn't be enforced, you
7 know, ultimately, what the law says, what the law doesn't
8 say, what guidelines should be in place or what shouldn't
9 be.

10 When we pass State laws, it's certainly not the
11 intent of this Legislature to have regions in the DEP
12 across the State operating differently, but they're all
13 supposed to enforce the law in the same way. Do you agree
14 that that's an issue in Pennsylvania, and are you working
15 to resolve that issue so that we have, you know, common
16 enforcement amongst the various regions in the State?

17 SECRETARY MCDONNELL: That is absolutely
18 something we've identified as a problem amongst our
19 regions, and it goes to some of what I was talking about a
20 few minutes ago of when we deemphasize travel, deemphasize
21 training, deemphasize getting the right IT resources out,
22 it islands some of our regional offices and some of the
23 specific permit reviewers. So, we're engaged in a process
24 now of let's pull that all back together, work together so
25 that we have a consistent process across all six regions

1 and all of our district offices with relatively consistent
2 outcomes. I always describe this as a band, like we're
3 never going to get to automatons issuing exactly the same
4 answer, but I don't want the outcomes or the timing to be
5 this in terms of expectation. I want to narrow it to
6 something that gives regulated community confidence in both
7 what an outcome is going to be, as well as the timing of
8 that outcome.

9 MAJORITY CHAIRMAN METCALFE: I think the sense
10 that I've received in the past is within the regulated
11 community there's always a hesitancy of trying to go up the
12 chain of command so to speak to the Secretary or to
13 somebody here at the State level to rein in a rogue region
14 that seems to be coming down in a way that was never
15 intended by the law. Will your door be open to the
16 regulated community to ensure that the regions become
17 compliant with the law and are applying the standards
18 appropriately across the State?

19 SECRETARY MCDONNELL: Absolutely. I say I often
20 do not get -- I wish I got more data into my office, but
21 what I typically get is the anecdote. And it's my job to
22 take the information I'm getting in terms of a specific
23 issue you or one of your constituents have, understand both
24 what's the acute issue as well as what's behind it, and
25 then, you know, my goal is not to have that same

1 conversation in six months or get us on a path to that at a
2 minimum.

3 MAJORITY CHAIRMAN METCALFE: Thank you. For our
4 last question, Representative McCarter.

5 REPRESENTATIVE MCCARTER: Thank you,
6 Mr. Chairman.

7 Just a couple of things, and number one, you
8 mentioned a study at the very beginning about the number of
9 regulations. Could you repeat that again because I missed
10 it?

11 SECRETARY MCDONNELL: Sure. And it's in the
12 testimony but I'll repeat.

13 REPRESENTATIVE MCCARTER: Is it in there? Oh,
14 okay. I missed it.

15 SECRETARY MCDONNELL: And this is Dr. Debra
16 Borie-Holtz, who's with Rutgers. She testified here, and
17 since then, they've published a book, *The Politics of*
18 *Regulatory Reform*, evaluated 28 States, found that DEP had
19 one of the lowest volumes of rulemaking in the U.S. In
20 2007, Pennsylvania promulgated 68 regulations in 2016 and
21 promulgated 75 across all of State Government, not just my
22 department. And the comparison is in 2007 Washington State
23 promulgated 993 regulations.

24 They also looked at 50 States on three criteria
25 of reg reforms, executive review, legislative review,

1 fiscal analysis, found that Pennsylvania and North Carolina
2 have the most regulatory reviews of any State in the
3 Nation.

4 REPRESENTATIVE MCCARTER: Okay. Thank you. And
5 the second thing, you characterized the agency as a
6 midsized agency, and that's down considerably from what it
7 was --

8 SECRETARY MCDONNELL: Certainly.

9 REPRESENTATIVE MCCARTER: -- several years ago in
10 terms of its employee staff. How much of the agency's
11 ability has been hampered by a lack of staff and revenue to
12 carry out its mission to do much of the review that you
13 were talking about?

14 SECRETARY MCDONNELL: I think it's been a
15 significant impact on the agency in terms of our ability to
16 carry out the review. I think that is both not having some
17 of the horses -- and I'll just say, you know, when we --
18 you know, to put it in some stark terms that I get from,
19 for example, our oil and gas deputate, in one region where
20 we used to have five permit reviewers and we're turning
21 around a well permit in around 20 days, today, we have two
22 -- and we had six clerical staff. They'll process the
23 administrative piece. Today, we have two reviewers, one
24 clerical staff that we can afford, and we're up over 120
25 days in terms of those reviews.

1 So, in some cases it's having the horses to
2 actually carry out the work. In other cases, some of what
3 I know we're encountering is not having the training, not
4 having the IT tools and a modern department that can
5 deliver on some of these things.

6 So, I think, as I say, I want to get to
7 consistency across the regions and across the work that we
8 do. I'm not certain when I come back at the end of that,
9 though, I'll be able to say with confidence sitting here
10 today that we'll be getting to a permit time review that
11 everybody in the room will nod their head and say that's
12 good enough. And then that becomes a resource discussion.

13 REPRESENTATIVE MCCARTER: Thank you. Thank you,
14 Mr. Chairman.

15 MAJORITY CHAIRMAN METCALFE: Thank you,
16 Representative McCarter.

17 And related to the permit review, and I'm sure
18 you understand, as we all do, that this lower the permits,
19 this lower the job creation.

20 REPRESENTATIVE MCCARTER: Absolutely.

21 MAJORITY CHAIRMAN METCALFE: And this lower the
22 economic recovery for Pennsylvania, this lower our economy
23 moves forward. So --

24 SECRETARY MCDONNELL: I'll add, and I mentioned
25 this through some of the nomination process, that I think

1 previous Secretaries often come in identifying an issue
2 that they want to deal with, whether it's energy or, you
3 know, watersheds or whatever it is, and I've come to
4 realize that my issue is going to be the Department and
5 working through the issues that we have within the
6 Department and getting us functioning in as an effective,
7 efficient way as possible. So, my door is open to any and
8 all conversation you all want to have with us on a going-
9 forward basis around this.

10 MAJORITY CHAIRMAN METCALFE: Thank you. Thank
11 you, Secretary McDonnell, for being with us today. We
12 appreciate it.

13 SECRETARY MCDONNELL: Thank you.

14 MAJORITY CHAIRMAN METCALFE: Have a great day.

15 Our next testifier will be Layne Baroldi,
16 Esquire, Vice President of Legislative and Regulatory
17 Affairs with Synagro Technologies. Good morning, sir.

18 MR. BAROLDI: Good morning. Thank you very much.

19 MAJORITY CHAIRMAN METCALFE: You can begin when
20 you're ready, sir.

21 MR. BAROLDI: Thank you. And since you
22 introduced myself, I'll just go onto the next part of this.

23 Synagro is the largest biosolids recycler in the
24 Nation, providing what is essentially the last step in the
25 essential public service of wastewater treatment that most

1 municipalities do. They contract out the services for the
2 byproducts. We service roughly 600 different
3 municipalities throughout the Nation, and we do some
4 industrial sectors also.

5 And I did want to thank you for the opportunity
6 to talk today and provide testimony on what we perceive is
7 risk of the Department of Environment Protection's use of
8 its general permit process to make what we see as
9 significant regulatory changes.

10 In the interest of time, I have submitted written
11 comments, passed them out today, and I'm just going to
12 touch on a few points from the letter in the interest of
13 time.

14 And we acknowledge that the general permit is an
15 extremely useful process by which the regulatory burden can
16 be reduced on projects by also reducing the review time of
17 the permits and saving the taxpayers dollars. But I've
18 seen throughout the Nation where general permits are used,
19 the authority to regulate via general permits can be abused
20 when significant regulatory requirements are imposed
21 without a full vetting process of the science and balancing
22 the cost and benefits, as required in the Commonwealth here
23 by the Regulatory Review Act. We believe that such
24 balancing is necessary for the Governor and the General
25 Assembly to effectively develop a State budget.

1 To the members of the public, which constitute
2 the regulated community that we serve, the practice forces
3 us between accepting the dictates of a general permit or
4 accepting a long, and like you talked about, a laborious
5 individual permit process, which does impact job
6 production.

7 We do operate throughout the Nation, and we
8 employ roughly 850 folks nationwide. And the direct land
9 application program that has been proven time-testing,
10 environmentally sensitive, and ensures the beneficiaries of
11 biosolids and other residual products.

12 In Pennsylvania, we service 20 municipalities
13 right now managing approximately 200,000 tons per year of
14 biosolids, and we do that very safely, working in 25 of
15 your counties, and providing our services to roughly 200 of
16 your family farms here that use this material to
17 productively farm and profitably farm.

18 It's a safe process. U.S. Environmental
19 Protection Agency has recognized, along with DEP, that
20 biosolids are primarily an organic material produced during
21 the wastewater treatment process and which are suitable for
22 a safe and beneficial use.

23 And what this does is it replaces the essential
24 nutrients that are typically farmed off, it increases crop
25 growth, manages nitrogen and phosphorous properly, and

1 other micronutrients that the soils are depleted from. And
2 we have numerous reputable peer-reviewed researchers that
3 have found that land application is a safe practice. And
4 what we have here is this material that's thoroughly
5 regulated right now, does provide a different type of
6 nutrient source. It's a slow release nutrient source,
7 which is beneficial to crops and protective of the
8 groundwater within the Commonwealth, more so than
9 commercial fertilizers.

10 And I think what we've heard today and nationwide
11 is that climate change is a very big issues, and recycling
12 biosolids to the soil also mitigates on the effects on not
13 only nutrient uses in Chesapeake but also on climate
14 change. And by recycling biosolids, you have these
15 nutrients already in your basin, and rather than importing
16 new nutrients into Chesapeake watershed, this provides a
17 sustainable approach to protecting the bay, as each pound
18 of nutrients that we recycle reduces imported fertilizer
19 input by the same amount.

20 One of the things that researchers have found out
21 right now is that the land application of biosolids does
22 benefit the climate by sequestering carbon in the soil, and
23 thus, less use for fuel to produce every pound of inorganic
24 nitrogen fertilizer. So, the calculation is for every acre
25 of land which probably needs 200 pounds of nitrogen,

1 approximately 50 gallons of fossil fuel can be saved. And
2 otherwise, if you're not land-applying, you'll be
3 landfilling this material, which results in the production
4 of significant amounts of what we call fugitive methane
5 from the emissions that can contribute to climate change.
6 And many States right now are banning the importation and
7 the disposal of organics, including biosolids, to help
8 protect the environment from greenhouse gas emissions.

9 Unfortunately, it seems like the only alternative
10 to land application is landfilling. And assuming that
11 capacity exists -- many times, it doesn't -- landfilling
12 would approximately triple a municipality's line-item
13 budget for their biosolids management. And for just the 20
14 municipalities that Synagro represents and provides service
15 to in Pennsylvania, this could result in additional \$12
16 million per year in cost to their existing biosolids
17 management budget, and that would just be a pass-on through
18 rate increases to the ratepayers.

19 EPA and the Department of Environment Protection
20 are doing a great job enforcing clearly defined regulations
21 that are designed to protect and do protect human health
22 and the environment. And this comprehensive program is
23 based on decades of research that examine all aspects of
24 public health and protection of the environment.

25 And the actual studies in management has been

1 endorsed by two National Academy of Science review panels.
2 The most recent one in fact concluded that there is, quote,
3 "no documented scientific evidence that the Federal rules
4 have failed to protect public health and the environment."

5 And, you know, so why am I here today for this
6 general permit? We are being told that upcoming renewal of
7 our general permits, which are PAG-07, 08, and 09, that
8 there will be a phosphorous index requirement and other
9 changes in our general permit. And we don't have a clear
10 idea of what the exact phosphorous index to be utilized
11 will be, and it's going to be included in the permit, so
12 this lack of certainty makes it very difficult for us to
13 plan our businesses and contracts with the municipalities.

14 And we believe that this phosphorous index is a
15 significant policy change that if policymakers within the
16 Department of Environment Protection think is necessary, it
17 probably should be vetted through the Regulatory Review
18 Act's requirements by the Independent Regulatory Review
19 Commission and look at, you know, the science, look at the
20 costs and the benefits of using such an index, direct
21 costs, revenue changes to State and local Governments be
22 known and could be weighed against the benefits of the
23 environment to make an informed decision about the risk of
24 a policy.

25 MAJORITY CHAIRMAN METCALFE: I think out of

1 everything you've said this morning to reemphasize what you
2 just said --

3 MR. BAROLDI: Yes.

4 MAJORITY CHAIRMAN METCALFE: -- is probably the
5 crux of what this Committee is looking at related to the
6 impact of the regulatory environment on our taxpayers, on
7 job creation. And when you're talking about the phosphorus
8 index requirement -- and I was kind of reading through your
9 testimony ahead of you and got to that point, was waiting
10 for you to get there -

11 MR. BAROLDI: Yes.

12 MAJORITY CHAIRMAN METCALFE: -- because to me
13 that was what sparked my interest was that I'd recently
14 sent a letter to the Secretary related to using a permit to
15 regulate methane at the oil and gas wells, and this is
16 another change that you're bringing to our attention that
17 it appears that the DEP is skirting the regulatory process
18 by including this new phosphorous index requirement into a
19 permit rather than going through the regulatory process,
20 and that's correct from what you've said in here.

21 MR. BAROLDI: And we welcome fully vetted
22 science-based regulations. You know, we welcome that, and
23 that's what we'd like to participate in. I've seen in
24 different regions of the Nation where different phosphorous
25 indices and/or just straight, you know, total phosphorous

1 is used, and it does need a fully vetted long-term, lot of
2 input to get exactly what the right number should be for
3 the protection of the environment.

4 MAJORITY CHAIRMAN METCALFE: So prior to this
5 date, all of the work that you've been doing on behalf of
6 the 20 municipalities in Pennsylvania, you've never had to
7 meet a phosphorous index requirement related to dealing
8 with these biosolids?

9 MR. BAROLDI: Yes. I always look back at my
10 technical guy to get the nod up or down --

11 MAJORITY CHAIRMAN METCALFE: So now, they're
12 going to attempt to include a new criteria for phosphorous,
13 and your understanding is they're not planning on going
14 through the regulatory review process but that they're
15 going to do it just through a permit?

16 MR. BAROLDI: Through the general permit.

17 MAJORITY CHAIRMAN METCALFE: So a new regulation
18 but using a permit to implement a new regulation?

19 MR. BAROLDI: That's correct. But I heard
20 Secretary McDonnell today talk about in other venues about
21 the public input. We just haven't had any of that to date
22 yet on this issue.

23 MAJORITY CHAIRMAN METCALFE: Thank you.

24 MR. BAROLDI: Thank you.

25 MAJORITY CHAIRMAN METCALFE: If you wanted to

1 finish. I just kind of jumped in there because --

2 MR. BAROLDI: No, I mean --

3 MAJORITY CHAIRMAN METCALFE: -- that really
4 sparked my interest --

5 MR. BAROLDI: I think you've --

6 MAJORITY CHAIRMAN METCALFE: -- on that point you
7 were making.

8 MR. BAROLDI: You honestly finished my last three
9 paragraphs here with your questions because that's exactly
10 where I'm going because, you know, this use of the general
11 permit versus the regulatory process makes it very
12 difficult for us to really plan on how to do a business.
13 And if such policy is in place, this type of discretion
14 could, you know, make it very difficult for the
15 Administration and the General Assembly to have a very
16 consistent regulatory process that goes through all the
17 proper vetting and comments and review process, especially
18 when it's this significant and has this much potential
19 impact to the ratepayers of the Commonwealth.

20 MAJORITY CHAIRMAN METCALFE: Members with
21 questions?

22 Representative Gabler?

23 REPRESENTATIVE GABLER: Thank you, Mr. Chairman.

24 And thank you so much for your testimony. I know
25 this is kind of an awkward angle but --

1 MR. BAROLDI: Well, that's all right.

2 REPRESENTATIVE GABLER: -- I appreciate you
3 bearing with me.

4 I guess I just wanted to underscore the last
5 point that you made and make sure that -- I think it's
6 important for us as policymakers to hear from folks that
7 are actually working under a regulated environment. And
8 looking at the conclusion of your testimony, would it be
9 fair to say that what you're asking for in a regulatory
10 environment would be predictability?

11 MR. BAROLDI: I would say predictability but a
12 process to do the full vetting of -- you know, to create
13 good regulatory process through a legislative regulatory
14 development process that significant regulations, even by
15 our own laws, require.

16 REPRESENTATIVE GABLER: And I appreciate that
17 because -- you know, and there's a lot of aspects of this
18 that go together. There's the fact that we change
19 executive branch leadership every four or eight years in
20 this Commonwealth, we have different people that are
21 actually charged with implementing these rules and
22 regulations, and when it comes down to it, if we do this by
23 whim without a process that's predictable, then the actual
24 rules themselves become unpredictable. And then someone
25 who is trying to provide a service, as your organization

1 does, would be unable to do so in a way that is consistent,
2 one that is consistent in providing a means of dealing with
3 an environment question; but then, two, also providing it
4 in such a way that provides an economic solution to a
5 concern. Would that be correct?

6 MR. BAROLDI: Absolutely. It takes a lot of time
7 in order to put together a program to -- in effect, we are
8 the last stage of the essential public service. It's just
9 the municipality decides the contract with the private
10 entity to do that for many reasons. And the lead time, the
11 investment, the equipment and all this to actual get
12 something done in place to service the communities here, it
13 takes a lot of time and effort.

14 REPRESENTATIVE GABLER: Just to wrap up, would
15 you agree with me that the process of implementing new
16 regulations, to slow that down, while some people might
17 complain that that is red tape on government, slowing that
18 down and vetting it out actually would provide us with the
19 best economic means of vetting and making sure that the
20 final solution is done in such a way that it can be
21 complied with by the regulated community in a successful
22 and economic manner?

23 MR. BAROLDI: Exactly, and it also allows the
24 municipalities the time with their own budgets and their
25 own engineering at the plants that they have to change some

1 of the process to plan ahead instead of having something
2 come very quickly where they haven't done the groundwork to
3 be prepared for the change. And it also gives you a chance
4 to really fully vet a lot of the science related to this to
5 develop a regulation that is based on sound science.

6 REPRESENTATIVE GABLER: Thank you so much.

7 Thank you, Mr. Chairman.

8 MAJORITY CHAIRMAN METCALFE: Thank you,
9 Representative Gabler.

10 Representative McCarter?

11 REPRESENTATIVE MCCARTER: Thank you,
12 Mr. Chairman.

13 If I can understand again part of the -- and
14 again, I admit I am surely not an expert here in dealing
15 with a couple of the regulations that we're talking about
16 here, but the concept of the phosphorous index requirement
17 that you mentioned in your testimony that you have
18 difficulties with in trying to understand the scope of it
19 or what it's going to be and what would be used, if I
20 understand correctly, the reason that that has been
21 potentially added as a requirement coming down here is
22 because of the findings of finding more and more
23 phosphorous in various different -- as pollutants within
24 streams, et cetera. Is that correct?

25 MR. BAROLDI: That's correct.

1 REPRESENTATIVE MCCARTER: All right. So that the
2 addition of that -- is your objection to the index itself
3 or is it to the process by which that will be tested as to
4 whether that should be included or not?

5 MR. BAROLDI: Like I said, we support sound
6 scientific regulations, and we welcome a phosphorous index.
7 We have literature from different scientists here, Ph.D.'s
8 from Penn State that talk about how phosphorous is bound
9 with biosolids based on the chemistry of the wastewater
10 treatment plants. Is it water-extractable, is it not, is
11 the phosphorous index appropriate or not? And we just want
12 to talk about the adequacy of the science, the
13 appropriateness of it. But we do welcome the regulation,
14 but we just want it done in a process where you have the
15 opportunity to bring the right stakeholders to the table to
16 fully vet the information. And we'll comply with whatever
17 the science says.

18 REPRESENTATIVE MCCARTER: Thank you.

19 MAJORITY CHAIRMAN METCALFE: Thank you,
20 Representative McCarter.

21 And I think what Representative McCarter pointed
22 out when he started opening up to set up his question and
23 he said regulations that we are talking about here. And
24 that's the point is the phosphorous that they're proposing
25 to be added as a new index is a regulation, but they're not

1 proposing, from your understanding, to take it through the
2 regulatory process, put it into a permitting process --

3 MR. BAROLDI: That's correct.

4 MAJORITY CHAIRMAN METCALFE: -- so it bypasses
5 all of the statutory requirements that we've put in place
6 from the General Assembly to ensure that we have a process
7 that's based on good science, a process that will protect
8 the public's health at the same time as making sure that
9 it's not going to have an impact that kills jobs and has
10 not been vetted in the appropriate way in the public's eye.

11 So, my interest in these issues isn't from an
12 environment perspective. That would be under the
13 Environment Committee. Mine is from the State Government
14 Committee's perspective because we have the purview of the
15 IRRC. The Independent Regulatory Review Act comes under
16 this Committee, and that's why we're having these
17 hearings --

18 MR. BAROLDI: Right.

19 MAJORITY CHAIRMAN METCALFE: -- because we want
20 to make sure that the Independent Regulatory Review Act is
21 law that's being complied with by the various departments
22 and agencies. And, of course, you know the Secretary from
23 the DEP testified before you this morning, and we
24 appreciate your testimony here today. And thank you for
25 joining us and for making the trip here.

1 MR. BAROLDI: And thank you for the opportunity.

2 MAJORITY CHAIRMAN METCALFE: Thank you, sir.

3 Have a great day.

4 MR. BAROLDI: You, too.

5 MAJORITY CHAIRMAN METCALFE: Our next testifier
6 will be Mr. Michael Krancer. He's the Co-Founder and
7 Principal at Silent Majority Strategies, LLC. He's also a
8 former Secretary of the DEP under a previous
9 Administration.

10 So, we thank you, sir, for joining us today and
11 look forward to your testimony. You can begin when ready.

12 MR. KRANCER: Thank you, Mr. Chairman. I
13 appreciate the opportunity to come here. I've submitted
14 extensive written remarks, so I'll summarize them. A lot
15 of the themes have been covered already.

16 First of all, I want to say, and as the Committee
17 well knows, this is not only a DEP issue. This issue
18 crosses all State agencies and is much broader than just
19 DEP.

20 I also want to testify right up front to my
21 experience of the professionalism of the Department of
22 Environment Protection. I was lucky enough to be their
23 Secretary or its Secretary, and every day I came to work, I
24 was impressed with their professionalism and determination
25 to do a good job.

1 My background to testify today is in the
2 documents. The Chairman already referred to it.

3 Here's the big picture, and some of this has
4 already been touched on. Why are we here today? What's
5 the topic of the hearing? It's really about checks and
6 balances. It's about the Legislature having set up a
7 statutorily required system to make rules and regulations.
8 It's about going around that process to create regulation
9 by permit, as the Chairman had indicated, and it's about
10 making good or bad public policy decisions.

11 This procedure, the Regulatory Review Act, is
12 aimed at vetting out things so that the best possible
13 public policy is made with the broadest possible
14 constituency. In my opinion, and I highlight in the
15 testimony, the GP-5A -- and we'll use that as an example --
16 that is a go-around. It's a go-around of the regulatory
17 review process. DEP professionals were not equipped in
18 this case with the proper background, the proper
19 information, and the proper viewpoints to do the job that
20 they're required to do and the process was short-circuited.
21 And it puts the highly qualified technical folks in a very
22 unenviable situation I would submit to you.

23 Let me just say the result of this implementation
24 if this permit were implemented. My experts tell me,
25 number one, we're talking about an immediate moratorium, an

1 effective moratorium 12 to 18 months on new production and
2 an immediate within weeks shut-in of existing production.
3 So, these are dire consequences and reflect that it's a
4 huge policy move here.

5 So, what are the big-picture questions in making
6 policy and what were not done here? One is are these
7 regulations feasible? Two is do the regulations work?
8 Does this system that's being implemented work for the
9 intended purpose? Three, well, what other sources are out
10 there? If you're really concerned about methane, what
11 other sources are out there, and why are we focusing on
12 this one at this time?

13 In terms of the feasibility, I think the
14 Committee and everybody here needs to really hark to what
15 the Secretary said in answer to Representative Gabler's
16 question about the trucks. He doesn't know. And we didn't
17 hear "I've got the information back at the office; I'll get
18 it to you." The bottom line is I don't think they have the
19 information. That's a stark example of why the regulatory
20 process needs to be followed. We're rushing into this and
21 he doesn't know or the Department doesn't know how many
22 trucks are out there that are required to do this job.

23 Do the regulations work? Well, we don't know the
24 answer to that question because I've never seen verified
25 information. I've never seen numerics that show that even

1 if this were implemented that methane would actually be
2 reduced from the operations sought to be reduced. What's
3 the number? And what's the number, the delta over the
4 existing regime of category 38. We don't know that, and we
5 don't know that partially because the system was short-
6 circuited.

7 And frankly, DEP has admitted that a State-by-
8 State approach to GHG regulations doesn't work and probably
9 is also illegal. They've admitted that. It's in the *Funk*
10 papers. It's in my testimony.

11 What about this other-sources issue? Now, if we
12 had gone through a regulatory process like we were supposed
13 to, we would put on the table, okay, if we really want to
14 create methane control and reduce it, where do we start?
15 We've got abandoned conventional wells out there, okay, 5
16 to 8 percent, my figures for all the contribution that
17 adds. What about leaking retail distribution systems in
18 urban areas? What about those? I mean, those are major
19 sources. Why aren't we focusing on those first? And I'm
20 not saying we should or shouldn't, but I'm saying that the
21 regulatory process would have brought that kind of question
22 to the fore.

23 What about economic impact? We've heard about
24 that already from the gentleman from Synagro. Well,
25 there's revenue implications from implementing this GP-5A

1 as-is. There's budget implications from implementing the
2 GP-5A as-is, and the Chairman pointed that out. Well, we
3 never got a chance to vet these things out. I submit to
4 you, number one, that we might have gone in a very
5 different policy direction on what sources; and number two,
6 we might have figured out that this permit has adverse
7 consequences, unintended adverse consequences that affect
8 the very issue that the Secretary talked about, that the
9 Chairman asked him about, and that is the personnel level
10 and funding levels.

11 So, at the end of the day, the regulatory process
12 -- and that's why we're here today -- fits those important
13 goals, not just the lofty constitutional goals, not just
14 the lofty separation-of-powers goals, which are important,
15 but the very important goal of doing the right thing,
16 getting the best possible policy decision.

17 And there's no doubt in my mind -- and I
18 highlight this in my testimony -- that this is absolutely
19 regulation by permit. It fits all the criteria. It's
20 binding on the DEP when implemented. It's binding on the
21 regulatory community when implemented. It establishes a
22 statewide format, a prerequisite format in order to conduct
23 well-drilling operations in Pennsylvania. There's no
24 discretion by DEP whether or not to implement the
25 provisions of this permit, ergo, under the law, that is a

1 regulation, so this is classic regulation by permit.

2 There are many other policy deficiencies,
3 questions at least -- I won't even call them deficiencies,
4 but let's call them questions -- that this poses. Now,
5 what's wrong with the existing system that we have for
6 controlling methane on well sites? We have an existing
7 system, Category 38. That's never been demonstrated by the
8 Department satisfactorily, never gone through a regulatory
9 review process. Again, DEP has never provided a rationale
10 for this permit. What's the purpose of it? Is it really
11 going to work? Is it going to do any moving of the needle
12 on methane reductions?

13 The unintended consequences, I've talked about
14 that. We're talking about a de facto moratorium. I would
15 think the Legislature would want to be in on a policy
16 decision about a moratorium of gas production in
17 Pennsylvania.

18 Why is it more stringent than Federal law? Do we
19 have an answer to that? I don't think we do. We could
20 have asked all these kinds of questions in a regulatory
21 process.

22 And it's already been pointed out here, the
23 existing permit delays, not just region by region, but
24 we're talking about 200-plus days to review existing
25 general permits, so how is it that a new general permit in

1 the queue is going to help the situation, especially when
2 we're talking about an important economic activity in the
3 Commonwealth of Pennsylvania. And both natural gas
4 production and biosolids are important economic activities,
5 as are 100 economic activities that are not here today that
6 are impacted by this issue that the Committee is rightfully
7 examining this morning.

8 So, with that, I will leave it open to any
9 questions.

10 MAJORITY CHAIRMAN METCALFE: Thank you very much,
11 Mr. Krancer.

12 Representative Dush.

13 REPRESENTATIVE DUSH: Thank you. Thank you,
14 Chairman.

15 And I want to thank you, too, Mr. -- is it
16 Baroldi?

17 MR. KRANCER: No, I'm Mr. Krancer.

18 REPRESENTATIVE DUSH: Krancer, yes, all right.
19 Sorry.

20 MR. KRANCER: That's all right. I get confused
21 all the time for him, but that's okay.

22 REPRESENTATIVE DUSH: Actually, it was -- the
23 fact that they are changing the regulation through
24 permitting, I think -- I didn't get to actually a chance to
25 ask Mr. Baroldi --

1 MR. KRANCER: Yes.

2 REPRESENTATIVE DUSH: -- but I went over and
3 asked him afterwards. His permits right now are being
4 extended until they finalize this regulation, which is
5 exactly what it is --

6 MR. KRANCER: Okay.

7 REPRESENTATIVE DUSH: -- the permit renewals.
8 And, as you testified, the fact that we are making these
9 changes in violation of the documents law -- well, I'm
10 going to have to --

11 MR. KRANCER: Well, maybe I can help. It's the
12 documents law, it's the Regulatory Review Act, it's the --

13 REPRESENTATIVE DUSH: Right.

14 MR. KRANCER: -- Commonwealth's Attorney's Act,
15 it's the Administrative Procedure Act, Administrative Code
16 of 19 -- gosh, what is it -- '59, about the time I was
17 born.

18 REPRESENTATIVE DUSH: Right.

19 MAJORITY CHAIRMAN METCALFE: Which I believe
20 you've laid all that out in your testimony.

21 MR. KRANCER: It's all out in my testimony.

22 MAJORITY CHAIRMAN METCALFE: You cite specific
23 law.

24 REPRESENTATIVE DUSH: Right. And the thing of it
25 is the Secretary actually said that we're trying to get

1 commonsense regulations and get a rein on this, but we are
2 apparently going completely the other direction. We have
3 what Representative Roae commented on with the pencils and
4 the serialized pencils. The effects on the methane, we're
5 serializing or getting the serial number for a
6 compressor --

7 MR. KRANCER: Right.

8 REPRESENTATIVE DUSH: -- and if that compressor
9 breaks down and has to be replaced, you can't bring in
10 another compressor and put it on these sites and operate
11 because all of a sudden you've got a different serial
12 number on it and you're operating outside of the permit.
13 This kind of stuff --

14 MR. KRANCER: Well, my overall point is, look, I
15 think given what the Secretary said today, maybe that'll be
16 corrected. Maybe it will, maybe it won't. But that's
17 really not the point. The point is how do we get into that
18 pickle in the firstplace? We got into that pickle in the
19 first place by doing that sort of thing, regulation by
20 general permit, in the dark with an invitation-only process
21 that he described. It was not the regulatory process
22 prescribed by law. And that's what happens when we do
23 things not only in the dark but at the last minute, in a
24 rush. If we follow the --

25 REPRESENTATIVE DUSH: And also without knowing

1 exactly what we're actually going to affect is going to be
2 the end state.

3 MR. KRANCER: Yes, well, we shouldn't be in a
4 situation where we're doing regulation by shooting first
5 and aiming later. I mean, that's exactly what the
6 Regulatory Review Act and all these other acts I've cited
7 and that this Committee has under its purview are all
8 about.

9 REPRESENTATIVE DUSH: Thank you.

10 MAJORITY CHAIRMAN METCALFE: Thank you,
11 Representative Dush.

12 Representative Roae?

13 REPRESENTATIVE ROAE: Thank you, Mr. Chairman,
14 and thank you, Mr. Krancer.

15 Now, I have another question here about the
16 GP-5A. This is, you know, 43 pages long. Now, how old is
17 this GP-5A?

18 MR. KRANCER: Well, it was released I believe it
19 was in January --

20 REPRESENTATIVE ROAE: So this isn't like --

21 MR. KRANCER: -- for the public.

22 REPRESENTATIVE ROAE: -- an updated version of
23 this that was done 10 or 20 -- this was like a brand-new
24 thing.

25 MR. KRANCER: That's an excellent point and I

1 should have brought it up my testimony. This GP-5A is
2 really a different animal because it's brand new. It's a
3 first-time-ever preconstruction -- you can't even go out
4 and do the roads until you get a permit, but you can't get
5 a permit until you figure out what your emissions are going
6 to be so it's a total Catch-22, which I think I do describe
7 in my testimony.

8 REPRESENTATIVE ROAE: And for people who haven't
9 seen it, when you look through it, it's 43 pages long.
10 It's basically 43 pages, and it constantly says things like
11 requirements, it says you must do this, you shall do this.
12 Can you briefly remind us like what's the difference
13 between shall and may? If something says you shall do
14 this, if it says it's required you do this, that means -- I
15 mean, not to sound dumb, but you have to do it. It's
16 required. It's a regulation, right?

17 MR. KRANCER: That is a very good synopsis. I
18 agree with that completely. I couldn't have said it better
19 myself.

20 REPRESENTATIVE ROAE: So basically --

21 MAJORITY CHAIRMAN METCALFE: Thank --

22 REPRESENTATIVE ROAE: Yes, go ahead.

23 MAJORITY CHAIRMAN METCALFE: Thank you,
24 Representative Roae.

25 REPRESENTATIVE ROAE: Okay.

1 MAJORITY CHAIRMAN METCALFE: Representative Ryan?

2 REPRESENTATIVE RYAN: Thank you very much for
3 your testimony.

4 Is it possible that, say, the GP-5A, if the
5 science is not stable enough, it could actually have an
6 adverse impact on the environment, and in fact the need to
7 have this reviewed in an appropriate way is such that we
8 need to find out whether or not it's going to have a
9 positive or negative effect?

10 MR. KRANCER: Yes, that's an excellent point.
11 And DEP actually made that point in the filings in the *Funk*
12 case, that a State-by-State approach to regulation of
13 greenhouse gases results in what they call carbon leakage.
14 In other words, the emission will just move somewhere else
15 which are less regulated or even a foreign country which
16 are zero regulated, and by trying to impact methane in
17 Pennsylvania, the end result is you're increasing methane
18 worldwide. You're simply exporting the problem.

19 So not only is it illegal the way they're doing
20 this in my opinion, it is not feasible on a State-by-State
21 basis, and that's DEP speaking in the *Funk* case, not just
22 me. It's actually counterproductive. It boomerangs on
23 you.

24 MAJORITY CHAIRMAN METCALFE: Thank you,
25 Representative Ryan.

1 Representative Roae, did you have a follow-up?

2 REPRESENTATIVE ROAE: Yes, I just kind of wanted
3 to say that, so basically, this 43-page document is
4 basically illegal because in Pennsylvania law it's illegal
5 for a State agency or a State department to make a
6 regulation unless that regulation goes through the
7 Independent Regulatory Review Commission process. And the
8 only reason these regulations aren't going through the
9 legal process is DEP says they're not regulations. Is
10 that --

11 MR. KRANCER: Well, that's an interesting way you
12 put it. I used to be a judge and I used to be able to make
13 those final calls. I am certainly now entitled to whatever
14 opinions I have, and whatever my opinion is, what you've
15 just stated is correct. A regulation is a regulation is a
16 regulation. And this is why we have the Regulatory Review
17 Act and all the other acts that we're talking about here in
18 this Committee.

19 REPRESENTATIVE ROAE: All right. Thank you, sir.

20 MAJORITY CHAIRMAN METCALFE: Thank you,
21 Representative Roae. And actually, on page 4 of
22 Mr. Krancer's testimony, in the middle of the page spells
23 out in bold print the GP-5A is, quote, "regulation by
24 permit," unquote, which is illegal.

25 MR. KRANCER: That is my opinion.

1 MAJORITY CHAIRMAN METCALFE: And I share your
2 opinion. As you know, I'd sent a letter to the acting
3 Secretary at the time related to this same issue, and this
4 has not been resolved to my satisfaction or the majority or
5 our satisfaction from my conversations with my colleagues
6 on the Committee or outside the Committee with
7 Representative Benninghoff being here and we had
8 Representative Keefer and Representative Rothman here
9 earlier today that had joined us that are interested in the
10 regulatory environment issue.

11 But we have grave concerns that an Administration
12 that is charged constitutionally with enforcing the law
13 would be ignoring the law and creating their own new laws
14 through permits and guidelines.

15 We're ready for the next testifier, but,
16 Representative Saccone and Representative Wheeland, either
17 one of you have a quick question for Mr. Krancer to wrap
18 up?

19 Representative Wheeland?

20 REPRESENTATIVE WHEELAND: Thank you.

21 And, Mr. Krancer, we heard the Secretary comment
22 that he believes his door's open, and from a former
23 Secretary of DEP to the current Secretary of DEP, have you
24 met with him? Have you expressed your opinions on this
25 overreach?

1 MR. KRANCER: That's a good question. I've known
2 Pat -- Secretary McDonnell for a while. I've not had the
3 opportunity to express my opinions to him on this. I have
4 now publicly, and I'm happy to share them.

5 Look, a Secretary's door is by definition always
6 open. Every Secretary's door is always open, every one
7 I've ever known, even ones that I completely disagreed with
8 philosophically. The point, though, is how are we going to
9 make regulations in this Commonwealth? And doors are open,
10 that's great, but we still have to do the right thing in
11 terms of process in passing what are in essence -- not in
12 essence -- what are regulations.

13 MAJORITY CHAIRMAN METCALFE: Representative
14 Saccone for the wrap-up with this testifier?

15 REPRESENTATIVE SACCONI: Thank you, Mr. Krancer.
16 Good to see you again.

17 So, every government agency is going to say,
18 look, to implement the law, we have to have some discretion
19 to be able to write these guidelines and rules. And I'm
20 sure DEP -- I don't know; I'd like you to tell me if you
21 know, what is DEP's strongest argument why they're saying
22 we haven't violated the regulatory process; we're just
23 implementing the laws that you put out for us, and we have
24 to be able to do that as an agency. The law doesn't say
25 everything specifically. You know this, as being the

1 Secretary. We have to have some discretion to do this.
2 So, what's their argument for that, and how do we defeat
3 that?

4 MR. KRANCER: Well, that's a great question, and
5 I don't know what their strongest argument would be that
6 this GP-5A is not a regulation. We're going to have to
7 maybe hear that later, I hope not in court because that's
8 just not the way to operate government either. The way to
9 operate government is to do it right in the first place,
10 and that's to follow the Regulatory Review Act and all the
11 other acts that are under the purview of this Committee.

12 MAJORITY CHAIRMAN METCALFE: And I think they've
13 already dismissed any arguments because an email that they
14 sent to legislators actually called it a regulation at one
15 point through their communications to us prior to my letter
16 to them --

17 MR. KRANCER: Well --

18 MAJORITY CHAIRMAN METCALFE: -- to go through the
19 regulatory review process.

20 MR. KRANCER: And one other point that's
21 interesting to make along the same lines, Mr. Chairman, is
22 that the Air Pollution Control Act talks about thall shalt
23 be able to do general permits by regulation, so there you
24 go. Even the Air Pollution Control Act calls whatever this
25 thing is, 38 pages, a regulation.

1 MAJORITY CHAIRMAN METCALFE: Thank you. And
2 Representative Gabler for a final short --

3 REPRESENTATIVE GABLER: Very short question.

4 MAJORITY CHAIRMAN METCALFE: -- he's motioning a
5 very short question.

6 REPRESENTATIVE GABLER: Thank you, Mr. Krancer.

7 Secretary McDonnell had said that his intent --
8 and he stated before this Committee that his intent was
9 that any general permit be usable by the regulated
10 community in question and that they would take input.
11 Could you speak from your perspective in your work with the
12 regulated community, is the GP-5A usable in its current
13 draft form?

14 MR. KRANCER: No, 100 percent no. It is not
15 usable in its current draft form. That's a major point.
16 We've already talked about the truck load-out requirements
17 that are not feasible, not usable, not doable, or at least
18 DEP doesn't know that they are. And I'm not a technical
19 person. There are plenty of other people commenting on
20 these technical things. To regulate to be preconstruction,
21 you can't even get out on the road, do your road to get to
22 your site, and the temporary sources. I mean, temporary
23 sources, we're talking about regulating engines, which are
24 already regulated by the Federal Government, and engines
25 aren't even a source of methane, so what's that about? I

1 don't get it.

2 And I would quip in conclusion to that -- and
3 look, I do not question intentions of this Secretary or any
4 Secretary. I know this Secretary, and I know his
5 intentions are well, but, you know what they say, the road
6 to hell is paved with good intentions.

7 MAJORITY CHAIRMAN METCALFE: Thank you,
8 Mr. Krancer. Have a great day, sir. I appreciate you
9 sharing --

10 MR. KRANCER: Thank you.

11 MAJORITY CHAIRMAN METCALFE: -- your expertise
12 today.

13 Our next testifier is Mr. Kevin Shivers,
14 Executive State Director from -- excuse me. I just jumped
15 over one. Timewise, we would have been. Our next
16 testifier is Mr. Kevin Sunday, Director of Government
17 Affairs, Pennsylvania Chamber. And then we'll get to
18 Mr. Shivers from the NFIB.

19 Kevin, not to rush you, I just was ahead of my
20 schedule here.

21 MR. SUNDAY: Quite all right.

22 MAJORITY CHAIRMAN METCALFE: We appreciate you
23 being here today, and you can begin when ready, sir.

24 MR. SUNDAY: Well, good morning, Chairman
25 Metcalfe, Chairman Bradford, Members of the Committee.

1 It's an honor to appear before you this morning. My name's
2 Kevin Sunday, Director of Government Affairs at the
3 Pennsylvania Chamber of Business and Industry.

4 The PA Chamber is the largest broad-based
5 business advocacy organization in the Commonwealth, and our
6 mission is to advocate for pro-growth policies and create a
7 better environment for job creators across this State.

8 The PA Chamber continues to support thoughtful
9 enhancement to legislative oversight over the regulatory
10 development process, as well as the uniform and reasonable
11 implementation of regulations throughout the State via a
12 properly funded permitting program.

13 In addition, we advise that State lawmakers and
14 policymakers be aware of the Federal regulatory development
15 process as it stands, as well as the sue-and-settle dynamic
16 at play there insofar as these dynamics inform regulatory
17 obligations on the State and businesses. We encourage this
18 Committee and State lawmakers in general to support efforts
19 to increase transparency and accountability in the
20 regulatory process at the Federal level as well.

21 In recent years, the regulatory process at both
22 the State and Federal level has been disruptive to business
23 planning and continually involving requirements,
24 particularly as they relate to energy and environment
25 issues, have resulted in a lack of certainty and a

1 discouragement to new investment. We appreciate the
2 opportunity to briefly discuss some of these issues and
3 identify a few remedies.

4 At the State level, for all intents and purposes,
5 any given Administration has both the first and final say
6 with respect to a regulation rulemaking. While there's a
7 lengthy, very involved process to finalize a regulation, as
8 has been discussed today, several key policy documents such
9 as technical guidance or other policies, are not subject to
10 formal review by IRRC or OAG. In recent years, we've seen
11 some of these policy documents establish regulation by any
12 other name.

13 And we've heard this morning about whether or not
14 certain things go through the regulatory process, but I
15 would note that even if it does and a regulation is
16 disapproved by all or a majority of the five-panel
17 Independent Regulatory Review Commission, an agency still
18 has the option to enact the regulation as final. The only
19 material outcome of an IRRC disapproval vote is that the
20 Committees are allowed to start moving a resolution that
21 would reject the regulation, but only if the Governor signs
22 the resolution into law. And it would be, in most cases,
23 his rulemaking that's in question.

24 In short, there's no meaningful way for the
25 General Assembly to intercede in the regulatory development

1 process should the Legislature believe an agency is not
2 faithfully exercising the powers or duties it has delegated
3 to the agency absent bringing suit in court after the fact
4 or enacting legislation that abrogates a final regulation.

5 We believe that a remedy is in order. Last
6 session, we strongly supported Senator Gordner's bill,
7 Senate Bill 562, which would allow the Legislature to have
8 meaningful input in the regulatory development process.
9 That bill passed the Senate unanimously. It was passed out
10 of this Committee. It was approved by the House, and it
11 was vetoed by the Governor. And we understand this
12 legislation is going to be introduced again soon with some
13 changes made to address the Administration's concern
14 regarding timing of review in between sessions. And we
15 would urge that this Committee, should that legislation
16 again reach you, report it out and get it to the Governor's
17 desk again.

18 I want to turn our attention now to several
19 dynamics at play at the Federal level. What occurs in
20 Washington, D.C., has a significant impact on what the
21 State regulators must implement and the obligations on
22 businesses. Just as we believe Pennsylvania's rulemaking
23 process needs reform, there's a dire need to update the
24 Federal process, which has not been meaningfully done since
25 1946. Bipartisan legislation has been introduced. It's

1 passed the House and it's in the Senate now, the Regulatory
2 Accountability Act, and it would Federal regulations to be
3 narrowly tailored, supported by transparent and credible
4 science and data, conform to congressional intent, and
5 impose the least possible burden.

6 Similarly, Federal rulemakings are often fast-
7 tracked by the sue-and-settle tactic by which third-party
8 activist groups sue a Federal agency, who in turn declines
9 to defend itself for having missed various deadlines
10 imposed by decades-old law and enter into closed-door
11 negotiations that ultimately establish significant and
12 costly new requirements on industry and resource-
13 constrained State agencies. This process was used 140
14 times during the Obama Administration, with the result
15 being our State, local governments, and businesses are
16 expending billions of dollars a year on regulations like
17 the Chesapeake Bay mandates and other air quality rules.

18 There's been sensible legislation introduced in
19 Congress to bring transparency and accountability to these
20 types of settlements, and I would encourage this Committee
21 and, more broadly, the General Assembly to contemplate
22 communicating to Congress via a resolution your support for
23 both of these important pieces of Federal legislation.

24 Again, thank you for the opportunity to testify.
25 I'm happy to answer any questions that you might have.

1 MAJORITY CHAIRMAN METCALFE: Thank you, sir, for
2 your testimony today. We appreciate it.

3 Members with questions?

4 Representative Gabler?

5 Representative Roae?

6 Representative Ryan?

7 The points that you made, and I circled one here
8 on this first page of your testimony where you emboldened
9 it, "In order to ensure the faithful exercise of any
10 delegated powers or duties, the General Assembly must
11 strengthen its ability to intervene in the regulatory
12 development process." And then under that section is where
13 you talked about the legislation that we had passed last
14 session, Senate Bill 562, which the Governor had vetoed.

15 And you go on to make a point here that you
16 believe "it's reasonable for the General Assembly to have
17 the option to intervene in a rulemaking process should it
18 be apparent the agencies are not faithfully exercising
19 powers" -- excuse me. I've got staff discussions to the
20 left of me here, if you could just lower the tone. It's
21 kind of interrupting my ability to finish my thought.

22 MALE SPEAKER: Oh, I'm sorry.

23 MAJORITY CHAIRMAN METCALFE: Thank you.

24 So, in your testimony you say that you believe
25 that "it's reasonable that the General Assembly have an

1 option to intervene in a rulemaking process should it be
2 apparent the agencies are not faithfully exercising the
3 powers and duties with respect to the legislative intent."

4 And so, I assume that you would support other
5 pieces of legislation then beyond Senate Bill 562 because I
6 know I've been talking a lot with my colleagues in the
7 House about various pieces of legislation that they've
8 already introduced or are currently working on, and we're
9 planning on having a second hearing week after next on the
10 regulatory process and solutions to some of the problems
11 that we're exposing here today.

12 MR. SUNDAY: Yes, we're constantly reviewing
13 proposals as they're introduced and discussed. We know on
14 the permitting side of things there's a number of bills out
15 there that we believe are well-intentioned and worthy of
16 further consideration.

17 On regulatory review amendments, we believe that
18 it's best that the General Assembly have the option. I
19 would urge caution that the General Assembly, to the extent
20 they want to vote on every single regulation, given the
21 process, again, some caution there. But concepts like -- I
22 believe Representative Phillips-Hill has a bill that would
23 establish an Office of Repealer to do regulatory review on
24 things that are in place. You know, it's certainly worthy
25 of further consideration by this body.

1 MAJORITY CHAIRMAN METCALFE: Thank you.

2 Representative Hill, do you have any comments or
3 questions for the testifier?

4 REPRESENTATIVE PHILLIPS-HILL: I just want to
5 thank Mr. Sunday for his support. So often, we see
6 legislation that looks at how we address perspective or
7 future regulations when we know that, you know, we need to,
8 you know, thoughtfully review those regulations that are
9 already on the books. And that was really the question
10 that I was getting at when I spoke with Secretary McDonnell
11 earlier today. So, thank you very much.

12 MAJORITY CHAIRMAN METCALFE: Thank you.

13 Now, I was speaking -- actually had a meeting
14 with Secretary Minnich of the Office of Administration
15 earlier this year, and we were discussing her concerns
16 about the Civil Service Commission and the regulations they
17 were attempting to promulgate related to some laws that
18 we'd passed last session that the Administration had asked
19 for the that the Legislature agreed with. And at the time
20 I talked to Secretary Minnich about potentially testifying
21 at one of these hearings to talk about how the regulatory
22 process was impacting even one of the offices in the
23 current Administration in a negative fashion and slowing
24 down their ability to operate efficiently and to operate
25 more modernized to help the State move forward and save tax

1 dollars ultimately.

2 She's not lined up to testify currently, but the
3 conversation that we had was striking because, you know, so
4 often, we're talking about the executive branch is the
5 regulator. Here, the executive branch was being regulated.
6 I actually sent a letter over to the Independent Regulatory
7 Review Commission related to those regulations, and
8 Chairman Kauffman did also from the Labor Committee. So,
9 that's one example that I have internally from somebody
10 that's being overregulated, a Secretary of the current
11 Administration.

12 And so often at home in the district I hear from
13 business owners that have a multitude of complaints about
14 the regulatory environment. You're here today as a
15 representative of the Chamber here in Pennsylvania,
16 Pennsylvania Chamber, and the Chamber representing many
17 businesses across the State. And as I've talked to various
18 business owners and sometimes with the complaints they've
19 had or the process that they are going through, and they
20 have been very hesitant to ask me to engage with a
21 department on behalf of what was occurring because they
22 feared reprisal.

23 You're sitting here today in place of many
24 business owners that are standing behind and supporting
25 your organization, but could you share with us a little bit

1 about the concerns of your members that are business owners
2 and the regulatory environment and how that's impacting
3 their ability to create jobs in Pennsylvania?

4 MR. SUNDAY: Sure. There is some concern that if
5 a given business had questions about its ability to comply
6 and they go to the Department -- and this has been the case
7 I think more in the past than maybe right now -- if they
8 raise a question about how exactly do I comply with the
9 regulation, do they subject themselves to enforcement?
10 Now, under the original Administration there was an office
11 within DEP that would do regulatory compliance assistance
12 that was walled off from the enforcement agencies that
13 would help businesses navigate the red tape.

14 And we've heard again the regional
15 inconsistencies among the DEP. I give credit to Secretary
16 McDonnell. He's aware of that and working on it. But you
17 mentioned the civil service issue. To a great extent, that
18 is going to constrain any agency, regardless of who the
19 Governor is, and their ability to enforce, given permit
20 review time expectations and uniform implementation of the
21 law.

22 MAJORITY CHAIRMAN METCALFE: Thank you. And
23 thank you for joining us today.

24 MR. SUNDAY: Thank you.

25 MAJORITY CHAIRMAN METCALFE: We appreciate your

1 testimony.

2 Now, we're ready for Mr. Shivers, Kevin Shivers,
3 Executive State Director, NFIB. I tried to jump the agenda
4 earlier. We appreciate Mr. Sunday being with us today.

5 And thank you, Mr. Shivers, and you can begin
6 when ready, sir.

7 MR. SHIVERS: The second Kevin.

8 MAJORITY CHAIRMAN METCALFE: Second Kevin, two
9 Kevins in a row.

10 MR. SHIVERS: Yes.

11 MAJORITY CHAIRMAN METCALFE: Maybe that's why I
12 jumped ahead.

13 MR. SHIVERS: Let's hope I stack up.

14 Mr. Chairman, Members of the Committee, good
15 morning. I will be brief no matter how long it takes me.

16 So, on behalf of our 14,000 small business
17 members here in Pennsylvania, I want to thank you for the
18 opportunity to comment on the issue of regulatory review
19 and the process for regulatory review here in Pennsylvania.

20 As a matter of introduction, NFIB members
21 represent virtually every sector in Pennsylvania's economy.
22 A typical NFIB member employs five or fewer workers and
23 generates gross sales of \$400,000 a year. Small employers
24 make up an enormous segment of Pennsylvania's business
25 community. Nearly 98 percent of businesses employ 100 or

1 fewer workers here in our State. And just like NFIB's
2 membership, most small employers are organized as sole
3 proprietors, partnerships, subchapter-S corporations or
4 limited liability companies, and some C corporations as
5 well. Businesses organized in this fashion report their
6 business income and pay business taxes through their
7 personal returns.

8 And despite their importance to the economy,
9 small businesses are heavily burdened by the costs of
10 government regulation and excessive paperwork. Because of
11 their size, small businesses are particularly sensitive to
12 regulatory changes. The cost of compliance for small firms
13 is much higher than for their larger counterparts in the
14 business community, and it makes sense. In many instances,
15 in a small business with five employees, you may not have a
16 chief counsel on staff or you may not have a regulatory
17 specialist, so the cost of compliance goes to the owner,
18 and so you're paying a considerably higher rate for
19 compliance than you would be in a larger corporation.

20 The cost of tax paperwork, as an example, is the
21 most expensive form of paperwork that government imposes on
22 small business owners, an average of \$74 an hour in tax
23 preparation and compliance costs for small business. And
24 think about this: For every dollar in State sales taxes
25 that are collected by a small business owner and remitted

1 to the State Government, it costs about 13 cents in
2 bookkeeping and compliance and filing costs just to do that
3 operation.

4 Another challenge is that many small employers
5 often stumble across regulations during the normal course
6 of their business operations. We've had members in the
7 past who, you know, might have bought a property, then they
8 purchase an adjacent piece of ground and over the years
9 they save up their nickels and pennies, and they're getting
10 ready to expand and they go to get the building permits
11 only to find out that the property had been rezoned next to
12 them for other purposes and they can't build or expand.
13 And again, small businesses aren't fortunate enough to have
14 a regulatory department or somebody that can go and keep
15 track of all of the various changes that happen, so a lot
16 of times they often will find out about these regulations
17 as they are just going through their normal course of
18 business and find out they might have run afoul of a rule
19 or regulation.

20 NFIB members appreciate the desire of the
21 Committee to examine the regulatory climate here in
22 Pennsylvania and examine the regulatory review process. To
23 that end, we'd recommend that lawmakers consider a
24 moratorium on new regulations while they establish a review
25 process to repeal outdated rules and regulations that

1 provide little value.

2 You know, there are many rules and regulations
3 that we would argue today may not provide the same level of
4 public protection that was the intent of the General
5 Assembly. And we would encourage you to do that regulatory
6 review.

7 One of the things that we often talk about with
8 policymakers that is, you know, it's really hard to
9 identify any one regulation that's extremely onerous, but
10 it's the totality of those regulations. I illustrate it
11 this way -- and every summer I'm involved in a business
12 camp with entrepreneurs called Pennsylvania Free Enterprise
13 Week up in Lycoming at Lycoming College. And last year, I
14 was doing a presentation about regulations and we invited a
15 young entrepreneur up on the stage and we said tell us a
16 little bit about your business. And they were so proud to
17 tell us what they wanted to do, and so I said, well, let's
18 get started and talk about how government interacts with
19 you.

20 And I said, so, have you thought about how you're
21 going to organize your business? Is it going to be a
22 corporation or an LLC or a sub S? And he told me, and I
23 took a piece of red tape and I stuck it to the kid, and I
24 said, so now, you're going to have to file for a tax
25 license, correct? You're going to sell stuff? Yes. And I

1 stuck another piece of red tape to the kid.

2 And so then, we started talking about, you know,
3 now, you're going to hire employees and so you have to
4 follow the ADA law, you're going to have to follow -- and
5 so we went through rule by rule by rule just sticking red
6 tape on this kid. And so, we just go through with just
7 getting to the point where you open your business, and this
8 kid was covered in red tape. And the question that I posed
9 to the students that were assembled is how can you operate
10 your business when your hands are tied like this?

11 And so that's something that's important for all
12 of you to recognize, that it may not be one regulation
13 that's going to break the camel's back, but it's just the
14 totality of the rules. And for small businesses, there's a
15 cost of doing business that, you know, now, there's a
16 tradeoff. If I'm going to follow this regulation, that
17 means I can't invest in maybe a new piece of equipment, et
18 cetera.

19 In 2012, the State's Regulatory Review Act was
20 amended to require State agencies to consider the impact of
21 proposed regulation on small business and consider less
22 costly alternatives. Specifically, the law added "small
23 business" to the existing list of stakeholders on economic
24 impact statements with the goal of sensitizing government
25 regulators to how mandates affect small employers. And we

1 appreciate the work that the Independent Regulatory Review
2 Commission has done to ensure agencies include this
3 information in their impact statements, but we recommend a
4 judicial review process added to the law as an important
5 check on agencies and the State executive where there is a
6 regulatory overreach.

7 Another observation we would make is that there
8 are no penalties for agencies who do overregulate. And so,
9 you know, if you are, as the Legislature, establishing a
10 legislative mandate and you're relying on these agencies to
11 carry out that rule, I mean, in reality you're not asking
12 those agencies to do any more. You're asking them to
13 follow the law. And so, the question is what sanction is
14 available if an agency goes beyond that statutory rule, and
15 that's something that judicial review would provide an
16 important point for the regulated community.

17 A recent example of that was the Administration's
18 overzealous way that they were going to regulate
19 conventional oil well drillers up in northwestern
20 Pennsylvania where, literally, the Department of
21 Environment Protection took an existing draft regulation
22 that already was through the rulemaking process or halfway
23 through the rulemaking process and then they gutted it and
24 then replaced it with new language that hadn't been gone
25 through the regulation review process and was an

1 extraordinary burden. Again, the Independent Regulatory
2 Review Commission certainly was challenging in terms of
3 getting public comment in that process, and the Legislation
4 actually stepped in on that overreach. Providing judicial
5 review would be an important way to help to mitigate that
6 and protect against that in the future.

7 Another improvement to the statute would be to
8 require agencies to establish in the economic impact
9 statement the actual cost estimate to the regulated
10 community of the draft regulation. It would be similar to
11 a fiscal note for legislation. This requirement would
12 estimate the economic cost of regulation on businesses,
13 workers, and the State economy.

14 Legislation like House Bill 911 proposed by State
15 Representative Greg Rothman would be valuable toward this
16 end. That legislation requires any draft regulation which
17 has a fiscal impact of \$1 million on the economy or more to
18 be approved by majority votes of both the House and the
19 Senate. And, importantly, should either the Senate or the
20 House reject that regulation, the agency would be barred
21 from implementing that rule.

22 Other recommendations to the Committee would be
23 to require agencies proposing regulations to conduct
24 education and provide guidance to the regulated community
25 before the new regulations are imposed. You know, again,

1 for many small businesses in our State, they only learn
2 about these types of rules or regulations when they are
3 affected by them, whether it's an inspection or they need
4 to go for a building permit or something other than that,
5 and now, all of a sudden, you find out about a rule
6 because, unfortunately, most businesses are focused on
7 actually doing their job and not necessarily focusing on
8 what happens here in Harrisburg on a day-to-day basis.

9 Another recommendation would be to enable
10 employers who have shown a history or willingness to comply
11 with regulations an opportunity to rectify a discrepancy or
12 violation before penalties are imposed. Again, this
13 shouldn't be just, you know, looking to find violations and
14 to raise money for the General Fund. You know, the
15 regulations are intended to protect public health, safety,
16 and welfare. And there are lots of businesses who want to
17 follow the rules and regulations and they just simply may
18 not be aware of it. Or it could be a simple paperwork
19 snafu that could easily be addressed without the benefit of
20 any type of penalty, and I would encourage the Committee to
21 take a look at that.

22 Another key recommendation would be to establish
23 a self-audit system that reduces or eliminates penalties if
24 violations are voluntarily discovered and promptly
25 disclosed by that particular business to the regulating

1 agency.

2 Also to improve the regulatory climate,
3 policymakers should examine and fix the permitting process,
4 and that's something we've heard an awful lot about today,
5 and I got to tell you, on a day-to-day basis, that's
6 something we hear an awful lot about at NFIB.

7 Countless business owners have waited years to
8 get permits from the Department of Environmental Protection
9 or the local governments. One member actually said it to
10 me. He thought DEP meant "don't enact permits." That was
11 their rule. That was the sheer frustration that they had
12 with the permitting process. And there's an economic cost
13 to that. Many frustrated business owners simply give up or
14 divert business capital to projects in other States.

15 Another key recommendation there would be to
16 require that regulators be held to strict timelines to
17 review applications. Decisions should be based on law and
18 not subjective criteria determined by the government
19 bureaucrat.

20 And I have a couple of examples in that regard.
21 There's a member of ours in Lancaster who called, irate.
22 You know, they have a business along Route 30, and there's
23 a lot of truck traffic down Route 30, narrow passageway.
24 The parking lot at his business is not large enough to
25 accommodate all of the cars. They were told by the local

1 law enforcement authorities, look, you have to get these
2 vehicles off of the roadway. They have to park on your
3 property. And this business owner called me. He was irate
4 because he was told it's going to take two years to get a
5 permit to be able to pave over his land in front of his
6 property to expand a driveway.

7 And so, you know, those are the kinds of stories
8 you're like, good God, we're talking about just paving over
9 some land. Certainly, there are environment impacts that
10 need to be done there, but, you know, at that point,
11 because of the public safety issues involved with that
12 truck traffic along Route 30 and the impact to pedestrians,
13 maybe there could have been a workaround with the
14 regulatory agencies to help avert any of those types of
15 issues.

16 In other circumstances, you know, we've had
17 members who've complained they're going to build a
18 warehouse and they, you know, have to travel to, you know,
19 their county seat to talk with the regulators about, you
20 know, what is all required for putting together this new
21 building. And so, they're told, all right, here's what you
22 need and they go back and they get drawings and they bring
23 them back to be reviewed. And now, all of a sudden, the
24 regulator says, oops, well, you forgot something that they
25 weren't told about before, and so having a clear list of

1 rules, you know, that need to be followed with the
2 permitting process would be significantly important to help
3 move, you know, government at the speed of business.

4 So, with that, I want to thank you for the
5 opportunity to appear before the Committee and happy to
6 answer any questions.

7 MAJORITY CHAIRMAN METCALFE: Thank you,
8 Mr. Shivers, and thank you for the recommendations that you
9 made. I appreciate those. We'll be discussing those
10 further amongst the Committee.

11 Representative Ryan?

12 REPRESENTATIVE RYAN: By way of full disclosure,
13 I'm a very proud member of the NFIB, and thank you for
14 supporting our efforts.

15 I'm reminded of a situation in 2005. I was in
16 Iraq and we were undergoing a missile attack. And one of
17 the young Marines that was standing there had never been
18 through one of those before, and he was pretty unnerved.
19 We were in a bunker, so we were relatively safe. So, after
20 it was all over with, we left and we were outside and he
21 was smoking a cigarette, and I saw him and I said, you
22 know, it's really dangerous to be smoking. And he said,
23 sir, the same government that put the warning label on the
24 pack of cigarettes sent me to Iraq. And you can't help but
25 look at some of these regulations as a small business owner

1 and realize what this does.

2 But I think people need to hear and understand
3 and feel this. If we make a mistake in government, if
4 there's overreach, whether it has any impact or not,
5 companies are spending inordinate amounts of money to
6 defend themselves. Environment attorneys are not
7 inexpensive. I've seen some, it's \$400-\$500 an hour. And
8 when you get those kinds of letters -- the sales tax issue,
9 just as an example, I'm a CPA, and as a CFO, if I make a
10 mistake on sales tax and we don't catch something and five
11 years later the Department of Revenue finds it, I've got a
12 personal liability for that if the company didn't pay it.
13 So, you know, we're dealing with people's lives.

14 And so, Kevin, the question I would ask you is
15 would it be helpful if there was some recourse for
16 restitution to a business in the event that government
17 overreach finds out that the businesses prevailed so that
18 there's an opportunity to recover costs, and if so, what
19 would you might recommend?

20 MR. SHIVERS: Absolutely. I think, you know,
21 knowing for that employer -- because the challenge that
22 many employers face, to the cost issue that you mentioned a
23 minute ago, is to just simply pay the fine, which is less
24 expensive than actually doing the due diligence to show
25 that you were following the letter of the law. So

1 certainly, having that recourse would be there.

2 But importantly to that point, you know, these
3 regulators need to be -- you know, their charge is to
4 follow the letter of the law, what you have established,
5 and anything else is a gray area that shouldn't count. And
6 so, you know, something that, you know, as your Committee
7 is taking a look at the regulatory climate in the State,
8 you know, there are certain regulations that are handed
9 down from the Federal Government. We're always complaining
10 about those mandates. Well, then, you have, you know, the
11 regulations, the mandates that are handed down by the
12 Legislature, by anything else, there needs to be a real
13 question as to why that actually is occurring and then why
14 are we penalizing job creators in particular, even
15 municipalities or others in following rules where there is
16 no legislative direction that these things need to happen.

17 MAJORITY CHAIRMAN METCALFE: Thank you,
18 Representative Ryan.

19 Representative DeLissio.

20 REPRESENTATIVE DELISSIO: Thank you,
21 Mr. Chairman.

22 Good morning. About five years ago, I think I
23 met with representatives of the Independent Regulatory
24 Review Commission. I come out of the field of long-term
25 care, highly regulated, mostly Federal but State as well,

1 and happened to ask them if they can -- is there a process
2 to take regulations off the books? And I'm just curious to
3 see if you're aware of this. If something's been on the
4 books for 36 months, you can make a request, anybody can
5 make a request, John Q. Public, Jane Q. Public, to have
6 that regulation reviewed. Their review of it will then
7 determine if it's in fact -- if I remember correctly --
8 within the spirit and intent of the law. It would be
9 subsequently up to the Legislature to repeat something if
10 it was put in place via statute. But that is a mechanism.
11 Is your association aware of that mechanism?

12 MR. SHIVERS: Yes, I mean, our belief would be to
13 make that a brighter-line evaluation, that this shouldn't
14 be something that someone would take to the Independent
15 Regulatory Review Commission to decide, that this should be
16 a normal course of business of the Legislature. Your job,
17 as elected officials, is to make law in Pennsylvania and to
18 establish these mandates. And then it's incumbent upon you
19 to know whether or not those rules are actually fulfilling
20 the legislative intent that you established.

21 And so, in several States there's an automatic
22 review process that would occur, and we certainly would
23 support that here in Pennsylvania, that if you create a
24 regulatory mandate, that there should be an automatic
25 review by the regulating Committees within the Legislature

1 to make that happen after a period of time, you know, going
2 to the Commission first, then getting their blessing before
3 going to the Legislature. It just creates more of a
4 bureaucratic process.

5 REPRESENTATIVE DELISSIO: And then just if I may,
6 Mr. Chairman, when you've mentioned several times a
7 judicial review process, what does that mean? Are you
8 talking about going to the courts and filing suit?

9 MR. SHIVERS: That's correct. Yes --

10 REPRESENTATIVE DELISSIO: Well --

11 MR. SHIVERS: You know, we don't have that --

12 REPRESENTATIVE DELISSIO: -- is that --

13 MR. SHIVERS: -- as part of our regulatory review
14 law, so if there is an aggrieved party -- so, for example,
15 with the Small Business Regulatory Flexibility Act, the
16 provisions that were added to the statute that said, you
17 know, an agency needs to consider the impact on small
18 business. And we also tasked in that law to consider
19 alternatives. But there really isn't any teeth there that
20 would require agencies to examine those alternatives like
21 there are at the Federal level, and there is no judicial
22 recourse. There is nothing in that statute that
23 specifically allows for someone who's aggrieved through
24 that process to be able to go to the courts and say, you
25 know, the agency ignored, you know, doing this due

1 diligence to measure the economic impact on small business
2 or to consider alternatives; you need to force them to do
3 that. There is no standard I guess in the -- and I'm not
4 an attorney, but it's not a very strong -- the application
5 right now is not strong enough.

6 REPRESENTATIVE DELISSIO: So I'm not an attorney
7 either, but you're saying an association couldn't bring
8 suit over any -- I mean, I --

9 MR. SHIVERS: Oh, you can sue for any reason,
10 right? We're talking about the success. I mean, if you
11 had it as a bright line in the law that said that an
12 aggrieved party has the ability to do that -- and several
13 States do. And if you take a look at the Federal
14 Regulatory Flexibility Act at the Federal level, there is a
15 standard in there for -- I believe there's a standard in
16 there for judicial review where you can say, look, you go
17 to the courts, they didn't follow this particular part of
18 the process, and we're looking for redress.

19 I think years gone by and it's a little before --
20 I've been in this town for about 25 years, and, I mean, we
21 were one of the first States that established an
22 Independent Regulatory Review Act and an Independent
23 Regulatory Review Commission. I mean, I think around that
24 time when it was created, the intent was to give the IRRC
25 the ability to do those kinds of things and to -- you know,

1 we don't need a judicial review process if we actually have
2 this commission doing its job. But I think over the years
3 what we've seen as far as the implementation, there could
4 be places where judicial review could have been helpful.

5 REPRESENTATIVE DELISSIO: Thank you,
6 Mr. Chairman.

7 MAJORITY CHAIRMAN METCALFE: Thank you,
8 Representative DeLissio.

9 Thank you, Mr. Shivers, for testifying today. We
10 appreciate your testimony, and I'm sure we'll be talking to
11 follow up on some of your recommendations in the near
12 future.

13 MR. SHIVERS: Thank you.

14 MAJORITY CHAIRMAN METCALFE: Thank you, sir.

15 Our next testifier is Dr. James Broughel,
16 Research Fellow at the Mercatus Center at George Mason
17 University.

18 Thank you for joining us today, sir, and you can
19 begin when ready.

20 DR. BROUGHEL: Mr. Chairman and Members of the
21 Committee, thank you for inviting me to speak today about
22 the regulatory landscape in Pennsylvania. My name is James
23 Broughel. I'm a Research Fellow for the Mercatus Center at
24 George Mason University where I study State regulatory
25 issues as part of our State and Local Policy Project.

1 My message here today can be summarized in three
2 basic points: One, Pennsylvania has a significant amount
3 of regulation on the books both in absolute terms and
4 relative to many other States; two, the accumulation of
5 regulations can be a drag on State economic growth and can
6 even weaken the effectiveness of the most important
7 regulations in place by making the regulatory code
8 unnecessarily complex; and three, capping the level of
9 regulation is a way to help Pennsylvania grow its economy
10 and can make the State a more attractive place to do
11 business and also improve the performance of the most vital
12 rules for protecting the health and safety of citizens.

13 At Mercatus, my colleagues and I have launched a
14 project that we call State Reg Data, which is a first-of-
15 its-kind project to quantify the level of regulation across
16 the 50 States. Now, generally, State codes are too large
17 and complex for any single individual to read through from
18 start to finish, so as an example, the Pennsylvania code
19 contains roughly 12.8 million words, and it would take a
20 person about 713 hours or just under 18 weeks to read the
21 entire code. That's assuming that a person just reads
22 regulations as a full-time job, 40 hours a week.

23 So, of course, this isn't practical, so at
24 Mercatus we're using computers to pull key information from
25 State regulatory codes, information like word counts or

1 counts of regulatory restrictions, which are words like
2 shall and must and required that can signify legal
3 constraints and obligations of various kinds.

4 As of earlier this year, Pennsylvania has 153,661
5 regulatory restrictions in its administrative code. Now,
6 some of these restrictions are vital for protecting the
7 health and safety of citizens, but others just make the
8 code unnecessarily complicated.

9 So, there are 208 restrictions governing the
10 design and use of ladders in the State. There are 190
11 restrictions setting standards for consumer packages and
12 containers, so surely, some of these restrictions are not
13 necessary for safeguarding public health, safety, or the
14 environment.

15 Pennsylvania's code is 140 percent larger than
16 Arizona's code, so more than double the size of Arizona's
17 code in terms of regulatory restrictions. It's 40 percent
18 larger than Missouri's.

19 Now, Michael Mandel of the Progressive Policy
20 Institute in Washington, D.C., likens the effect of
21 regulations on the economy to dropping pebbles in a stream.
22 The first pebble may not slow the flow of water in a
23 noticeable way but the thousandth pebble might and the
24 millionth pebble might stop the flow of water altogether.

25 As more and more rules are added to the books,

1 complexity increases. And scholarship from the fields of
2 psychology, economics, and organizational science suggests
3 that people are more likely to make mistakes. They're less
4 motivated and able to comply with regulations when they're
5 required to follow too many rules simultaneously.

6 Scholars are also finding a relationship between
7 regulation and economic growth. Recent studies, for
8 example, from researchers at the World Bank and my
9 colleagues at the Mercatus Center estimate the impact of
10 regulation on growth to be somewhere between .08 and 2.3
11 percentage points annually. Now, this may not sound like a
12 lot, but consider this: If Pennsylvania's economy were to
13 grow at 4 percentage points a year, it would take just 18
14 years for GDP to double. Growing at 1 percent, it takes 70
15 years. That's nearly a lifetime.

16 And since the year 2000, Pennsylvania's real GDP
17 growth has averaged about 1.5 percent a year, and this slow
18 growth jeopardizes the future for the approximately 140,000
19 children born in Pennsylvania each year.

20 Now, several regulatory reform proposals under
21 consideration in the General Assembly would create a
22 requirement that regulations receive legislative consent
23 before being finalized, at least the biggest regulations.
24 These kinds of proposals aim to incorporate more democratic
25 accountability into rulemaking. However, it's important

1 that Pennsylvania also maintain flexibility to modify or
2 eliminate old rules as needed, and requiring legislative
3 consent for all major rules could make it more difficult to
4 modify or repeal old rules. There may also be
5 constitutional issues raised when the Legislature has the
6 authority to veto regulations without the consent of the
7 Governor.

8 And I would also point out that making the
9 rulemaking process itself more burdensome can actually
10 encourage the kind of backdoor rulemaking activity that
11 we've heard a lot about today where agencies actually
12 implement regulation-like actions without actually going
13 through the formal regulatory process.

14 A cap on regulation levels on the other hand
15 would preserve the flexibility needed to maintain a modern
16 and up-to-date regulatory system. And a cap has some
17 additional benefits like limiting regulatory accumulation,
18 so a cap prevents too many pebbles from blocking up the
19 stream so to speak. Demonstrated success, the cap approach
20 has been tried and proven effective in other places like in
21 Canada. Locking in a competitive edge, so in terms of
22 regulation, Pennsylvania actually looks relatively
23 attractive when compared to other States like New York or
24 Illinois that have even higher levels of regulation. So, a
25 cap on regulation levels could help lock in this

1 competitive edge.

2 And perhaps most importantly, a cap can induce a
3 culture change at State agencies. After the Canadian
4 province of British Columbia instituted a cap on rulemaking
5 in the early 2000s, one public official noted it changed
6 her role from a regulation maker who simply writes new
7 rules and adds them to the existing pile each year to a
8 regulation manager who oversees and balances a portfolio of
9 rules.

10 And since implementing a policy whereby for every
11 new regulatory requirement introduced, one would have to be
12 eliminated, regulation levels have actually fallen in
13 British Columbia. The reforms did not come at the expense
14 of public health or the environment, and in fact, the
15 reform effort was deemed so successful it inspired a
16 Federal law in Canada.

17 So, in conclusion, the Commonwealth of
18 Pennsylvania has tens of thousands of regulatory
19 restrictions on its books, far higher than some other
20 States like Missouri and Arizona. A cap on regulation
21 levels could help prevent unwanted regulatory accumulation
22 while also granting regulators flexibility to address new
23 and evolving problems. And a cap can even enhance the
24 effectiveness of the most important rules on the books by
25 making the code simpler and easier to follow.

1 The successful experience of British Columbia
2 from the early 2000s offers a roadmap for how to implement
3 such a reform and also suggests that reforms could spur
4 economic growth. If Pennsylvania can increase its economic
5 growth rate by even 1 percentage point over the long term,
6 this would have profound implications on opportunities
7 available to Pennsylvanians both now and in the future.

8 Thank you.

9 MAJORITY CHAIRMAN METCALFE: Thank you, sir, for
10 your testimony today. We appreciate it.

11 Representative Hill for our first question.

12 REPRESENTATIVE PHILLIPS-HILL: Thank you,
13 Mr. Chairman.

14 Mr. Broughel, thank you very much for being here
15 today. You spoke in your testimony very prospectively
16 about what we can do in the future, but you really didn't
17 speak to what we can do to I guess reform or improve our
18 existing regulatory structure with those regulations that
19 we have on the books. So, can you talk about in your
20 research what you have found to be the best way for States
21 to periodically review and update their existing
22 regulations so, you know, how we can identify what is
23 obsolete, inefficient, ineffective? I have proposed
24 legislation looking at examples in Kansas and Rhode Island
25 and Tennessee where they take a systemic approach to

1 repealing those types of regulations. Can you speak
2 from --

3 DR. BROUGHEL: Sure.

4 REPRESENTATIVE PHILLIPS-HILL: -- your research
5 and --

6 DR. BROUGHEL: So most of what I've seen in the
7 States and at the Federal level in terms of retrospective
8 lookbacks at the regulations on the books are -- these
9 reviews are done in a mostly ad-hoc basis and they're not
10 really done in a systematic way generally. Now, some
11 States have things like sunset provisions where regulations
12 automatically expire and either the agency or the
13 Legislature has to renew them. But very often what happens
14 in these instances is they just kind of automatically renew
15 the regulations without it spurring some kind of real
16 analysis of what the actual outcomes were associated with
17 the regulation.

18 So, part of what I like about this cap approach
19 is that, first, it'll probably require some sort of
20 inventory-making to determine how many regulations are on
21 the books, where are they in the code. This is what we've
22 done to some extent with our State Reg Data process
23 project. And then additionally, every time an agency
24 issues a new regulation, it needs to look back and say what
25 do we have on the books, maybe what needs to be changed,

1 what can go in order to add this new regulation? So, it
2 really forces retrospective lookbacks on a recurrent basis
3 that becomes systematized in the process. And that's this
4 kind of culture change that I'm talking about, which I
5 think is critical.

6 REPRESENTATIVE PHILLIPS-HILL: Pardon me,
7 Mr. Chairman, if I may follow up.

8 When you say that that cap goes into place and it
9 requires that every time a new regulation is issued that
10 they have to look retrospectively at what they have
11 existing on the books, how do they eliminate then what is
12 on the books and no longer applicable or efficient or
13 needed? Do they not require some sort of action by a
14 Legislature, a Governor?

15 DR. BROUGHEL: So it would require a new
16 rulemaking, which could either be a part of the rulemaking
17 where you're introducing a new requirement or it could be
18 its own separate rulemaking, and then that new regulation,
19 which might be a deregulatory action, would have to go
20 through the usual rulemaking process.

21 And then the Legislature, as it has in
22 Pennsylvania, has the opportunity to comment on new
23 regulations, and rules go through the IRRC review process,
24 so deregulatory actions would go through that process as
25 well and the Legislature would have its opportunity to

1 comment.

2 REPRESENTATIVE PHILLIPS-HILL: Thank you very
3 much.

4 DR. BROUGHEL: Sure.

5 MAJORITY CHAIRMAN METCALFE: Thank you,
6 Representative Hill.

7 Representative Dush?

8 REPRESENTATIVE DUSH: Thank you, Chairman.

9 Just a quick question. Could you please expand
10 on what happened in British Columbia when they were from
11 back in the days when they called themselves --

12 DR. BROUGHEL: Sure.

13 REPRESENTATIVE DUSH: -- B.C. stood for basket
14 case.

15 DR. BROUGHEL: Sure. So, British Columbia was
16 sometimes referred to -- the initials are sometimes
17 referred to as basket case, or the 1990s were sometimes
18 referred to as a dismal decade in terms of economic growth
19 in the province. And so, in the early 2000s, they decided
20 that they wanted to do something pretty dramatic, and the
21 government that took over, the Liberal Party I believe,
22 they had promised during the campaign that they were going
23 to reduce regulatory burdens by one-third within three
24 years. And when they came into power, they actually
25 accomplished this.

1 And so, some of the unique elements of this
2 reform were that they actually set a target for how much
3 they wanted to reduce their regulatory burdens by, and they
4 set a deadline for when it was to be achieved. So, another
5 thing that I've learned in reviewing different lookback
6 efforts across States and at the Federal level is that it's
7 very rare to see anyone actually commit to reducing
8 regulation levels by a specified amount.

9 British Columbia also came up with a concrete way
10 to measure a regulation. They counted up all of the
11 individual requirements that they had on their books both
12 in the regulatory code and the statutory code, and they
13 also included policy documents. It was a very
14 comprehensive measure. They said we're going to reduce
15 regulatory requirements by a third within three years.
16 They implemented a requirement that, for every new
17 requirement issued, two would have to be eliminated. And
18 that helped them achieve that one-third reduction. At the
19 end of that period, they instituted a one-in, one-out
20 policy. And regulation levels have actually fallen since
21 then and have fallen nearly 50 percent in total. And in
22 the time since 2001 when they instituted this policy,
23 they've experienced an economic turnaround. They're now
24 one of the best-performing economies in Canada. I'm not
25 saying this is only factor, but I think it was one factor

1 that contributed to their turnaround.

2 MAJORITY CHAIRMAN METCALFE: Thank you,
3 Representative Dush.

4 And thank you, sir, for traveling here to
5 Pennsylvania today.

6 Did you have a question? Representative Bradford
7 has a question for you.

8 DEMOCRATIC CHAIRMAN BRADFORD: One of the things
9 -- and I don't in any way want to impugn the integrity of
10 your organization, but one of the things that continues to
11 be a concern because obviously with these issues is, you
12 know, who's backing up these comments? Mercatus Center, I
13 get a lot of your information. You guys are a pretty -- I
14 know you bill yourself as a free-market think tank. You
15 guys get considerable financial support from the Koch
16 brothers?

17 DR. BROUGHEL: Well, my research is completely
18 independent. None of our research is driven by any of our
19 funders --

20 DEMOCRATIC CHAIRMAN BRADFORD: I appreciate that.

21 DR. BROUGHEL: -- and I'm not involved in our
22 fundraising in any way. So, Charles Koch is on the board
23 of the Mercatus Center, as is a Nobel Prize winner Vernon
24 Smith, as is a former Attorney General of the United
25 States.

1 DEMOCRATIC CHAIRMAN BRADFORD: No, and to be
2 clear, I don't want to impugn anyone's integrity. The one
3 thing I would say, and this is just to wrap up, and I've
4 been largely quiet and I appreciate the fact that I was
5 also a little late getting in the door, the issue of
6 regulation, look, nobody supports absurd regulations or
7 over-regulations, and I don't think that's a Democrat or
8 Republican thing. I grew up working in my parents' small
9 business, literally a mom-and-pop flower shop, so I totally
10 understand there are absurd government regulations.

11 The only thing that some of us have a concern
12 with -- and you guys are right on both sides to point out
13 the absurdities that exist -- whenever there's a Governor
14 and the party opposite, I think there's a feeling like that
15 party may be overreaching, and I wonder sometimes. You
16 know, I remember the Act 13 regs and how that played out as
17 well, and I remember our party not loving that experience
18 as well.

19 So, the one thing I would just point out is
20 there's a lot more to this, I think. I think a little more
21 balance -- and I know the Chairman made an effort late in
22 the process to let us bring some balance folks -- there's a
23 lot of folks here from the oil and gas or at least funded
24 or supported through the oil and gas industry. I would
25 hope in the future we get a little more time, a little more

1 notice ahead of time so that we can bring in both sides of
2 the story because I believe some of these issues need
3 further discussion. I appreciate the discussion. I think
4 it's a conversation that needs to be had. I think nobody
5 supports overregulation or absurd use of regulation, but I
6 think we also want to make sure that we're not doing damage
7 to our environment.

8 Thank you.

9 MAJORITY CHAIRMAN METCALFE: Thank you,
10 Representative Bradford.

11 DR. BROUGHEL: So I would just say in response to
12 that, so right now, we only have a snapshot of how much
13 regulation exists in Pennsylvania. We know right now, but
14 we don't have a time series of how that's changed over
15 time. But we do have that at the Federal level, and I can
16 tell you that the accumulation of regulation is not a
17 partisan issue. It's not something that just happens
18 during Democratic Administrations and then there's a
19 rollback during Republican Administrations. There is a
20 tendency for the level of regulation to rise over time,
21 whether a Democrat is in power, whether a Republican is in
22 power.

23 DEMOCRATIC CHAIRMAN BRADFORD: Agreed.

24 DR. BROUGHEL: And that's because thousands of
25 new regulations are added to the books each year. Very

1 rarely are serious numbers of regulations removed, and so
2 the level of regulation at some point does actually become
3 absurd, even if every individual regulation itself sounds
4 like it has a good purpose.

5 DEMOCRATIC CHAIRMAN BRADFORD: And again, and I
6 don't mean to counter, I agree largely with what you're
7 saying. There is a process. I think the absurdities are
8 apparent often, so I don't think this is a political issue.
9 I think making regulation in itself a partisan issue, we do
10 a disservice. Regulation has to be part of the process.
11 It is one of those things, but politicizing regulation I
12 think is problematic.

13 The Legislature obviously has its will. We pass
14 these bills knowing full well that there's going to be
15 subsequent regulation. So, thank you.

16 MAJORITY CHAIRMAN METCALFE: Thank you for
17 testifying today. We appreciate you making the trip up.

18 DR. BROUGHEL: Thank you.

19 MAJORITY CHAIRMAN METCALFE: And to wrap up, this
20 is the first of two planned hearings right now on the
21 regulatory environment here in Pennsylvania and what we can
22 do to improve it for job creation and for our citizens. We
23 really appreciate all the information provided today to
24 give us an overview of the regulatory environment and some
25 of the specific instances of abuse.

1 And I would say I've been critical of both
2 Republican and Democrat Administrations over the years that
3 I've been here and their heavy-handedness using the
4 regulatory process. Right now, we have some serious issues
5 with what was outlined here today, both the permit related
6 to methane and another permit related to phosphorous I
7 believe was the other issue that was brought up where it's
8 skirting the regulatory review process that's put in place
9 by the Legislature, so we need to make sure that we expose
10 that and correct it with future legislative remedies if
11 needed.

12 So, thank you all for your time today. Motion to
13 adjourn by Representative Wheeland, seconded by
14 Representative Dush. Everyone have a great day.

15
16 (The hearing concluded at 11:02 a.m.)

1 I hereby certify that the foregoing proceedings
2 are a true and accurate transcription produced from audio
3 on the said proceedings and that this is a correct
4 transcript of the same.

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Christy Snyder

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