

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

STATE GOVERNMENT COMMITTEE
PUBLIC HEARING

STATE CAPITOL
HARRISBURG, PA

IRVIS OFFICE BUILDING
ROOM G-50

TUESDAY, JUNE 20, 2017
9:00 A.M.

PRESENTATION REGARDING
STATE GOVERNMENT REGULATIONS:
POTENTIAL SOLUTIONS TO IMPROVING
OVERSIGHT AND RELIEVING REGULATORY BURDENS

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 CRAIG STAATS
HONORABLE JUSTIN WALSH
HONORABLE JUDITH WARD
HONORABLE JEFF WHEELAND
HONORABLE MATTHEW BRADFORD, DEMOCRATIC CHAIRMAN
HONORABLE DONNA BULLOCK
HONORABLE MARY JO DALEY
HONORABLE PAMELA DELISSIO
HONORABLE MADELEINE DEAN
HONORABLE ISABELLA FITZGERALD
HONORABLE STEPHEN MCCARTER
HONORABLE JARED SOLOMON
HONORABLE EMILIO VAZQUEZ

* * * * *

*Pennsylvania House of Representatives
Commonwealth of Pennsylvania*

ALSO PRESENT:

REPRESENTATIVE KERRY BENNINGHOFF
REPRESENTATIVE DONNA OBERLANDER

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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(See submitted written testimony and handouts online.)

1 P R O C E E D I N G S

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3 MAJORITY CHAIRMAN METCALFE: -- lead us in the
4 Pledge.

5
6 (The Pledge of Allegiance was recited.)

7
8 MAJORITY CHAIRMAN METCALFE: Thank you, sir.

9 REPRESENTATIVE: You're welcome, sir. Thank you.

10 MAJORITY CHAIRMAN METCALFE: If I could ask our
11 Member Secretary to call the roll, please.

12
13 (Roll was taken.)

14
15 MAJORITY CHAIRMAN METCALFE: Thank you,
16 Representative Hill.

17 Representative Dush is here also.

18 REPRESENTATIVE PHILLIPS-HILL: Mr. Chairman, we
19 have a quorum.

20 MAJORITY CHAIRMAN METCALFE: Thank you.

21 This morning's hearing is kind of part two of the
22 hearings that we're having on regulatory reform, the title
23 today, "Potential Solutions to Improving Oversight and
24 Relieving Regulatory Burdens." We've had a number of
25 pieces of legislation introduced by several of my

1 colleagues. I know there's legislation that they're
2 working on in the Senate related to the regulatory
3 environment here in Pennsylvania. And today's hearing, we
4 look forward to the testimony being received.

5 Just a reminder to our Members, the testifiers
6 today are our guests. They're not here for us to debate
7 with them. They're here for us to receive testimony
8 related to their thoughts and expertise on the issue that
9 we have before us. There'll be an opportunity for debate
10 amongst ourselves at a future meeting, but today is for
11 information gathering, and we look forward to hearing from
12 our guests today.

13 We're going to have 15 minutes per testifier, and
14 I would ask our testifiers to make sure that they keep
15 their testimony to seven to eight minutes long and then
16 leaving seven to eight minutes of additional time for Q&A.
17 If you get to the eight-minute mark and you've not finished
18 your testimony, I will advise you that your time is up for
19 testifying and we'll enter the Q&A session at that point.

20 So I appreciate you all being with us today. Our
21 first testifier is Mr. Larry Schweiger, President and CEO
22 of PennFuture. Sir, you can take a seat, take the
23 microphone, and begin when you're ready, sir. Thank you
24 for joining us.

25 MR. SCHWEIGER: Thank you. Chairman Metcalfe,

1 Chairman Bradford, and Members of the State Government
2 Committee, I want to thank you for this opportunity to
3 testify. I am the President and CEO of PennFuture, a
4 statewide environment advocacy organization that currently
5 represents more than 60,000 members and supporters.

6 To the point of this hearing, the hearing this
7 Committee hosted on this topic recently and to the ongoing
8 debate in the capital on government regulations, I believe
9 we're grossly missing the mark. Let me explain.

10 First, the public wants and deserves an effective
11 environment oversight to protect their air and water and
12 public lands. I worked for this General Assembly when 82
13 percent of the people of Pennsylvania voted for Article 1,
14 Section 27 of the Pennsylvania Constitution. I won't read
15 it, but it's clear that it guarantees people the right to
16 clean air and pure water. This promise, if it were placed
17 in the ballot this fall, would get the same result.
18 Pennsylvania votes want their air and water and
19 environmental resources protected, and they want
20 environment regulations that can do so.

21 We must now protect the public health by
22 regulating methane pollution. Methane, the main component
23 when released into the environment, traps heat. The first
24 two decades after its release, the methane molecule is 84
25 times more potent than a carbon dioxide molecule in

1 trapping heat. Methane also interacts with NOx and
2 sunlight to create ground-level ozone that is known
3 throughout human health as a potent asthma trigger. I
4 believe circumstances warrant legislative action to cut
5 methane emissions and to protect the public health and
6 safety.

7 Methane emissions reported under the Federal New
8 Source Performance Standards by drillers and compressor
9 station owners have seen a 28 percent increase in methane
10 leakage from 2014 to 2015 while at the same time
11 Pennsylvania's gas production rose about 12 percent
12 according to the Energy Information Agency. Any time
13 emissions are rising faster than production, we can assume
14 that voluntary efforts to cut emissions are not working.

15 Pennsylvania, as the second-largest natural gas-
16 producing State, must join other major gas-producing States
17 like Colorado, Wyoming, Ohio, and California and enact
18 State-level methane controls and other best-management
19 practices for gas development.

20 Second, I believe the discussion at the previous
21 hearing and the recently passed Senate Bill 561, which now
22 resides in this Committee, would provide for a legislative
23 veto of regulations. I believe that's dangerous and
24 unconstitutional. Without a doubt, the General Assembly
25 has an important role to play in providing oversight of the

1 many statutes and agencies before them. Having worked for
2 the General Assembly from 1971 to '81, I also served as a
3 voting alternate for the Environment Quality Board for
4 then-Republican Senator Roy Wilt, and I'm well aware of the
5 duties and responsibilities of the Committee of
6 jurisdiction to provide consistent and meaningful oversight
7 of respective agencies and the laws that they're charged to
8 implement.

9 In short, the General Assembly already has the
10 power and the staff resources to address regulatory and
11 enforcement oversight through the constitutional pathway of
12 passing legislation. Senate Bill 561 and similar
13 legislation introduced into the House failed to follow the
14 basic constitutional pathway. Instead, each aimed to break
15 the separation of powers crafted in our Constitution to
16 allow legislative veto of new regulations the executive
17 branch is carrying out to follow the law.

18 It would provide yet another bureaucratic hurdle
19 in the regulatory process that puts the public health and
20 safety and environment at risk. Pennsylvania already has
21 the most burdensome and slow regulatory process in America,
22 and the solutions offered to date would do nothing but make
23 that process worse.

24 Third, this Committee has almost solely heard
25 testimony from those aiming to reduce rules that protect

1 our citizens. The public is increasingly bewildered by all
2 the delays and disillusioned by the failure to protect
3 their air from methane, carbon pollution, toxics, and their
4 water supplies from lead, toxics, and fracking fluids.
5 Instead of creating a byzantine labyrinth of oversight
6 agencies and additional time-delaying impediments to proper
7 promulgation of regulations, the Legislature should be
8 working to strengthen the rules and make the process more
9 streamlined, not adding more barriers to it.

10 Fourth, the budget cuts, coupled with efforts to
11 weaken regulations, threaten our air and water protection.
12 In recent years, the power of the purse has been applied in
13 a punitive way to constrain DEP's enforcement capacity,
14 including a reduction of 754 positions over the past decade
15 at a time when Pennsylvania's gas production grew 30-fold
16 across the Marcellus gas field.

17 The newly proposed cuts pending in the House
18 budget passed recently puts Pennsylvania's environmental
19 health at risk. Witnessing the draconian budget cuts that
20 have been made to the DEP budget over the past number of
21 years, it's clear that this underfunded agency is now
22 unable to protect drinking water supplies or provide
23 oversight to an extensive and expanding energy
24 infrastructure. In fact, these budget cuts should be the
25 center of hearings as such as they are directly causing

1 permit delays plaguing certain regions of the State.

2 Finally, we must learn from past mistakes. The
3 failure to properly regulate coal, oil, and gas development
4 has had profound consequences for generations of
5 Pennsylvanians. Lax laws, inadequate rules, and lack of
6 law enforcement have privatized profits while socializing
7 the external cost in the form of air and water pollution.
8 Much of the real cost of past energy development have been
9 passed on to future generations.

10 When the original Clean Streams Act was passed in
11 1937, the coal industry was explicitly exempted from the
12 regulations. More than 100 years of unregulated and poorly
13 regulated anthracite and bituminous coalmining has
14 profoundly changed the surface and ground water hydrology
15 and contaminated streams with acidity and toxic metals. At
16 one time, drainage from thousands of abandoned coalmines
17 affected more than 10,000 miles and seriously contaminated
18 more than 3,000 miles of streams and associated groundwater
19 in Pennsylvania. Mine drainage continues to be the most
20 extensive water pollution problem affecting the watersheds
21 of Pennsylvania.

22 In February 1971, I was hired by the Joint
23 Legislative Conservation Committee in part to provide
24 oversight over Project 500. We monitored the \$200 million
25 that was spent under Project 500 to address mine drainage,

1 burning coal banks and the removal of dangerous highwalls.
2 The money expended in the '70s solved many serious threats
3 but barely scratched the surface of mine scars.

4 Recent studies by U.S. Geologic Survey summarized
5 this way: "Because coalmine drainage can contain toxic
6 concentrations of acidity, metals, and sediments, many
7 mining-impacted streams contain no fish. Consequently,
8 Pennsylvania loses about \$67 million annually that could be
9 generated if sport fishing were restored in affected
10 streams." The estimated cost for restoring damaged
11 watersheds today is about \$5-15 billion.

12 As early as 1899, John D. Rockefeller of Standard
13 Oil lobbied the Legislature to avoid any regulatory
14 restraint on the oil industry. Shallow oil and gas
15 drilling remain largely unregulated through its heyday.
16 Today, taxpayers of Pennsylvania are facing at least \$7.5
17 billion in liability to address these historic failures to
18 properly regulate oil and gas drilling. No one is really
19 sure how many abandoned wells exist, but best estimates are
20 that Pennsylvania has about 300,000 orphan and abandoned
21 oil and gas wells, many of which leak unknown quantities of
22 methane and brine to the surface or groundwater. The
23 average cost to plug a well has been pegged at about
24 \$25,000, while the Commonwealth has actually spent over
25 \$250,000 on a few wells.

1 Pennsylvania currently has about 104,000 active
2 oil and gas wells, compressor stations, and processing
3 facilities, leaking aging gas pipelines that expose about
4 1.5 million Pennsylvanians to two types of health impacts:
5 increased cancer risk and respiratory health issues
6 resulting from toxic gas and infrastructure air emissions.
7 This infrastructure must be properly regulated, and the
8 laws must be enforced.

9 The Commonwealth must avoid socializing the cost
10 of energy extraction by handicapping responsible rulemaking
11 and enforcement. The State must empower its regulatory
12 agencies to establish adequate regulations to protect the
13 public health through rulemaking and enforcement and make
14 sure adequate fees and sufficient bonding are available to
15 restore all damage.

16 Instead, the title of this hearing seems to be
17 asking the question tailored to a specific outcome, further
18 relieve requirements on permittees who potentially impact
19 the environment or threaten the health and safety or the
20 welfare of the people of Pennsylvania.

21 It's said that history repeats itself because we
22 failed to read the minutes from the previous generations.
23 We must stop making the same mistakes again and again by
24 vilifying government regulations to benefit the few at the
25 cost of the health and safety of the Commonwealth and its

1 people.

2 Thank you.

3 MAJORITY CHAIRMAN METCALFE: Thank you.

4 Representative Dush for our first question.

5 REPRESENTATIVE DUSH: Thank you, Chairman.

6 You gave us a lot of information here that I

7 could go on with, but I've got two specific questions.

8 First of all, the purpose of this hearing is basically to

9 take on the regulatory environment. Now, in page 2 of your

10 testimony you say that legislative veto of regulations is

11 dangerous and unconstitutional. I'll have you know the

12 sovereignty in this government resides with --

13 MAJORITY CHAIRMAN METCALFE: Representative Dush,

14 this is not a debate with the testifier. It's just an

15 opportunity for questions and information-gathering,

16 please.

17 REPRESENTATIVE DUSH: Okay. How is this

18 unconstitutional if the Legislature are the sovereigns?

19 MR. SCHWEIGER: Well, the way I read the

20 Constitution is that the Legislature passes legislation,

21 the Governor signs that legislation. Without the

22 Governor's signature, that chain is broken so there's not a

23 balance of power. So simply giving the Legislature

24 jurisdiction to block executive actions in my view is an

25 unconstitutional procedure that should not be undertaken.

1 REPRESENTATIVE DUSH: We determine what the laws
2 are, and that's why -- I happen to disagree with you on
3 that.

4 The second question I have, you're reporting a 12
5 percent increase in methane production after the increases
6 by the Federal Government on source -- on the reporting of
7 that. Now, is this actually a 12 percent increase because
8 of the increase in reporting and the production or is that
9 an actual increase of 12 percent in the existing wells
10 based on what was already known?

11 MR. SCHWEIGER: Well, we have an increase in
12 production overall. These are numbers that are reported by
13 the producers, so we're taking those numbers and simply
14 sharing them back to you. So, these are the numbers coming
15 from those people, those entities that are producing the
16 gas.

17 REPRESENTATIVE DUSH: Well, then I have to --
18 where you say -- I assume that voluntary efforts to cut our
19 emissions are not working, then it would seem that that is
20 not actually the case.

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

23 Representative McCarter.

24 REPRESENTATIVE MCCARTER: Thank you,
25 Mr. Chairman.

1 Again, thanks very much for the testimony today
2 for the testimony, Mr. Schweiger.

3 You give a lot of the history in terms of what
4 has happened over the past 100-and-some-odd years now in
5 terms of the coal, gas, and oil industry in Pennsylvania
6 and the impacts of that, which I think for all of us we can
7 surely see the scars across the landscape of Pennsylvania.

8 What I'd like to hear a little bit more about,
9 though, is the impact of that in terms of the water
10 resources of Pennsylvania. You mentioned it briefly in
11 your testimony, but could you elaborate a little bit more
12 on that in terms of what the cost has been to Pennsylvania
13 with an unregulated environment that has taken place?

14 MR. SCHWEIGER: Let me personalize it and say
15 that I grew up in western Pennsylvania, and as a boy, I
16 didn't have a chance to fish in many of the streams because
17 they were acid-impregnated. So when I came to work here in
18 1971, I was really impassioned to see this money to be
19 spent properly to clean up those waters because I know a
20 lot of other young people who live along degraded streams.

21 And let me also say that, during that time, the
22 Secretary of Forest and Waters and the Secretary of
23 Commerce did a study, and they found that every place where
24 we had degraded water quality from mine drainage we also
25 had lower economic health. And so the counties that were

1 most impacted by mine drainage also had much lower job
2 opportunities and many more difficulties in attracting new
3 industry.

4 REPRESENTATIVE MCCARTER: And the second question
5 I have is in terms of promulgation of regulations and the
6 development of these regulations to take place, using
7 methane as the example, what is your experience in terms of
8 who's involved in actually writing those regulations?

9 MR. SCHWEIGER: Well, I think from my experience,
10 the Department has experts that are narrowly focused in the
11 area that they are responsible for, and they begin to
12 develop the regulations based on what they know from a
13 technical standpoint. It's given then to lawyers in the
14 Department to review and to put into proper language. The
15 Citizens Advisory Committee has long been a part of that
16 process, giving good information.

17 I believe there are two separate technical
18 committees that are involved in the development of these
19 regulations. Then, it comes before the Environment Quality
20 Board, and as you may know, there are four Members of the
21 General Assembly, two from the House, two from the Senate,
22 who then have an opportunity to participate in the
23 rulemaking process. There are a lot of public hearings
24 involved. In the case of methane, there were 12 hearings
25 that were held. So it was a very vigorous process that

1 took over five years.

2 REPRESENTATIVE MCCARTER: Isn't it true also that
3 the industry itself actually has a role that it plays in
4 helping to write many of these regulations that take place?

5 MR. SCHWEIGER: Absolutely. And the industry has
6 appointments to the Citizens Advisory Committee, they have
7 members on the technical committees, and they of course
8 participate in the public process that everyone else gets a
9 chance at as well.

10 REPRESENTATIVE MCCARTER: Thank you very much.
11 Thank you, Mr. Chairman.

12 MAJORITY CHAIRMAN METCALFE: Thank you,
13 Representative McCarter.

14 Representative Knowles for our final question
15 from this testifier.

16 REPRESENTATIVE KNOWLES: Thank you very much,
17 Mr. Chairman.

18 MAJORITY CHAIRMAN METCALFE: You have time for --

19 REPRESENTATIVE KNOWLES: And thank you,
20 Mr. Schweiger.

21 MAJORITY CHAIRMAN METCALFE: We have two more
22 minutes, so Representative Knowles, and then if we have
23 time, we'll have one more question after that.

24 REPRESENTATIVE KNOWLES: Okay. I'm going to be
25 real quick. You talked about your history with the

1 coalmines. Schuylkill County, Tamaqua, I'm proud to be a
2 coal cracker. I can tell you that when I was a young boy,
3 when I would look up at the mountains, I would see nothing
4 but black silt. I can tell you that when I went down to
5 the river, you saw orange running. Now, today, thanks to
6 our cogen plants, which have done away with much of the
7 waste coal in a good fashion, and if you look up on those
8 mountains now, you see nothing but green vegetation.
9 People are fishing in the Schuylkill River, which was
10 unheard of 30, 20 years ago.

11 And when I look at your headline, "poorly
12 regulated coalmining," I don't quite get it. I think that
13 we've done marvelous things in terms of our environment in
14 dealing with coal.

15 MAJORITY CHAIRMAN METCALFE: Representative
16 Knowles, do you have a question there?

17 REPRESENTATIVE KNOWLES: That's it. Can you
18 comment on that?

19 MR. SCHWEIGER: Yes. I would suggest that the
20 early history of coal up until 1964 was basically
21 unregulated. The State of Pennsylvania Legislature in the
22 '60s began to regulate coal appropriately. I was involved
23 in many of those activities in the '60s as a volunteer, and
24 then in the '70s, we passed the All Surface Mining Act,
25 which further tackled the issue. At first, it was putting

1 the lands back to approximate original contour. Later, it
2 was adding topsoil recovery. And so in modern days coal is
3 actually doing what it should have been doing all along.

4 What we have is a legacy of damaged landscapes,
5 and I can take you -- I've spent enough time in the
6 anthracite region to take you to places where the entire
7 streams are still running with high aluminum, high metals,
8 and also high acid. So we still have problems.

9 While the Schuylkill has recovered from the days
10 when it ran black, we still have a lot of work to be done.
11 I think there's well more than \$10 billion worth of damage.

12 REPRESENTATIVE KNOWLES: I just think it's good
13 to be noted that we have made progress and we are doing
14 good things in terms of dealing --

15 MR. SCHWEIGER: I agree, and I would also suggest
16 that we should make sure that the current oil and gas
17 drilling that occurs in Pennsylvania is under more
18 appropriate regulations based on best available control
19 technologies.

20 REPRESENTATIVE KNOWLES: Somebody else can argue
21 for gas and oil. I'm arguing for coal.

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

24 Representative Dean for a final question.

25 REPRESENTATIVE DEAN: Thank you, Mr. Chairman.

1 Thank you, Mr. Schweiger, for your testimony.

2 I wanted to focus on your fourth point, which you
3 say what I think, that these hearings ought to really talk
4 about cuts to funding to DEP. And if I recall correctly
5 from the budget, the Governor had a modest increase for
6 DEP, maybe \$1 million, and then some additional fees that
7 they were seeking. But the House Bill 218 that went over
8 to the Senate cut DEP by about \$10 million if I'm
9 remembering accurately roughly.

10 MR. SCHWEIGER: That's right.

11 REPRESENTATIVE DEAN: Can you talk about what the
12 long-term underfunding of DEP and now a drastic cut to DEP
13 actually means for clean water?

14 MR. SCHWEIGER: Well, I think it's clear that the
15 Department has been under siege for a number of years.
16 We've seen a winnowing away of the resources that the
17 Department has to carry out its functions. At some point
18 that breaks. I think we're at that point now where it's
19 breaking, and the public will not be protected in its
20 drinking water. You know, in my home town of Pittsburgh we
21 have serious lead issues. I don't think they're being
22 properly addressed by the Commonwealth or by the local
23 officials. I also believe that we have other problems that
24 are developing across the State as a result of the
25 aggressive development of energy that need to be properly

1 regulated, need to be overseen by the Department. And when
2 they have limited resources at an expanding industry, the
3 two simply don't align, and I think it's a serious
4 oversight to cut their budget and to put them at even
5 greater harm.

6 REPRESENTATIVE DEAN: Can you give us a thumbnail
7 sketch of the lead issues in Pittsburgh?

8 MR. SCHWEIGER: Well, you know, we have a lot of
9 old lead pipes in the city. Most of them are owned
10 privately, but they've altered the chemistry of the water,
11 frankly, similar to what happened in Flint. And so now
12 children are being exposed to lead. And let me point out
13 that when kids have lead levels that exceed the hemoglobin
14 formation impacts, they actually have about four points
15 lower IQ, they have learning disabilities. We're simply
16 setting up an entire generation for impaired health as a
17 result of the lead exposure that they're getting.

18 REPRESENTATIVE DEAN: Thank you.

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

21 Thank you, sir, for your testimony today.

22 Our next testifiers will be Mr. Kevin Moody,
23 Esquire, General Counsel and VP of Government Affairs,
24 Pennsylvania Independent Oil and Gas Association; Carl J.
25 Carlson, Director of Government Affairs, Range Resources-

1 Appalachia, LLC; and Jennifer Hoffman, VP, EHS and
2 Regulatory, Huntley & Huntley Energy Exploration. Thank
3 you for joining us today, and you can begin when you're
4 ready.

5 MR. CARLSON: Okay. I believe I was nominated to
6 go first by our group. Chairman Metcalfe and Members of
7 the State Government Committee, my name is Carl Carlson,
8 Director of Government Affairs for Range Resources-
9 Appalachia, LLC, and a longstanding member of the Board of
10 Directors of the Pennsylvania Independent Oil and Gas
11 Association or PIOGA.

12 Thank you for the opportunity to comment on the
13 issue of regulatory burdens facing the oil and gas industry
14 in Pennsylvania.

15 I don't have time to review my testimony. I hope
16 you all take time to review it, but I'm going to try to hit
17 some of the high points.

18 You've all heard about the economic benefits that
19 shale gas has brought to every Pennsylvanians in the form
20 of lower energy prices, cleaner air, higher-paying jobs,
21 and impact tax revenues. Pennsylvania has also experienced
22 the initial benefits of natural gas use and use of the
23 natural gas liquids that actually promise to be the biggest
24 long-term benefit.

25 You may be less aware that Pennsylvania is in

1 fierce competition with other States and Canada to be the
2 low-cost producer of natural gas. Actions by the
3 Pennsylvania DEP are severely impeding that effort.
4 Regulatory permitting delays and continued layering of new
5 regulations and policies are crippling the industry's
6 ability to compete with other States that also have
7 enormous shale gas reserves.

8 Regulatory certainty is an essential component of
9 business growth in any industry, but it's particularly
10 important in the natural gas industry where our cycle times
11 are very short. There's currently 35 rigs, growing rigs
12 running in Pennsylvania. Average drill time for a well is
13 down to about two weeks, so we need a constant new stream
14 of erosion and sediment control permits to build new well
15 pads and well permits to drill new wells.

16 When permits required in Pennsylvania cannot be
17 obtained in a timely manner, operators simply can't shut
18 their rigs down. We're contracted long term for those
19 rigs. We pay when they sit, and if we don't have permits
20 to drill, those rigs are going to move to where permits are
21 available. And if that's not in States proximal to
22 Pennsylvania, those rigs can be lost for the long term to
23 other States.

24 To be clear, my comments are not about relaxing
25 environment protection, although we do support a thorough

1 review of all regulations to see if they're effective.
2 Companies that have invested heavily in Pennsylvania shale
3 gas industry are well aware that we will not get a return
4 on investment without safe and environmentally responsible
5 conduct. This discussion is about regulatory certainty,
6 which is an absolute and undeniable requirement for capital
7 investment.

8 There are two permit programs where current
9 permit delays are causing extreme hardship for our
10 industry. The handout just provided to you, it's a one-
11 pager with a graph on each side, represents data downloaded
12 recently from the Department's eFACTS database. The first
13 graph on the handout shows permit application review times
14 for the ESC GP-2, which is an erosion and sediment control
15 permit required to construct new well pads and gathering
16 facilities.

17 You can see the southwest district office in
18 Pittsburgh, the review time to issue these permits has gone
19 from 101 days in 2013 to 263 days so far this year. The
20 northwest district in Meadville increased from 74 days in
21 2013 to 179 days so far this year. And only the eastern
22 district in Williamsport has maintained a relatively flat
23 90-day review period. All these review times are
24 unacceptable for a general permit, but the review times in
25 the southwest and northwest district offices are most

1 disturbing, as the trend is increasing over time.

2 And waiting a ridiculous six to nine months for a
3 simple E&S permit has prevented operators from constructing
4 new pads and force us to go back and drill additional wells
5 on existing pads. This seems like a desirable outcome from
6 a land-use standpoint, and it is, but it's not sustainable
7 over the long term. We've already eaten up a lot of our
8 inventory of these available sites to drill more well, so
9 we need to build new well pads and need to get permits.

10 The flip side of the handout shows permit review
11 times for well permits. These are the permits required to
12 drill and operate new wells. Pennsylvania's Oil and Gas
13 Act, which was revised by Act 13 of 2012, provides that
14 well permits must be issued by the Department within 45
15 days of submittal unless the Department shows good cause.
16 The top graph -- well, let me say that that provision goes
17 all the way back to the original Oil and Gas Act in 1984,
18 so it's unchanged from that time.

19 The top graph shows the performance of the
20 southwest district office in Pittsburgh, shows that this
21 45-day threshold has not been met on average for the past
22 four years and that review times during the past year have
23 skyrocketed to three times the statutory limit.

24 Review times in the northwest district office,
25 which issues permits for that region, as well as the

1 eastern region, are not quite as long but clearly well
2 beyond the statutory limit with a very disturbing upward
3 trend.

4 So let me quickly mention two additional permit
5 programs. The first is the GP-5 air quality permit
6 required for gas compressors and processing plants. This
7 permit program has existed for 20 years but only in its
8 present form since 2011. So despite a 30-day statutory
9 limit for issuing general air quality permits under
10 Pennsylvania Air Pollution Control Act, the actual issue
11 times over the past year have exceeded six months. And in
12 February of this year, the Department proposed significant
13 additional changes to the GP-5 permit that, if finalized,
14 will certainly lengthen the review times.

15 MAJORITY CHAIRMAN METCALFE: You have about a
16 minute-and-a-half left for testimony time.

17 MR. CARLSON: In February, the Department also
18 proposed a new GP-5A air permit that would apply to well
19 facilities and well sites that is required prior to
20 construction of any new wells. This 43-page permit with a
21 26-page application would replace the current conditional
22 exemption of oil and gas wells from air quality permitting.
23 And over the past two or three months, hopefully, you've
24 heard a lot from the industry about concerns over this
25 permit program, and while the concerns are many, the

1 greatest concern is that we won't be able to get the permit
2 in a timely manner and that it will effectively be a
3 moratorium on drilling in the State.

4 The Bureau of Air Quality has demonstrated with
5 the GP-5 permit that they're incapable of issuing permits
6 in a timely manner and loading up another new permit
7 program with hundreds of new permits a year would simply
8 swamp the Department and slow the process. The problem
9 with these permits is not that the Department has too few
10 people to review applications; it's that they are not
11 operating as real general permits. In other States,
12 general permits are issued by the regulatory agencies for
13 processes that are repeated over and over again hundreds of
14 thousands of times, and the permits specify conditions that
15 must be followed for those activities.

16 Applications are typically one to three pages,
17 and review times are one to three weeks, so that's what
18 Pennsylvania is competing with. And you can see on these
19 graphs that we're not competing very well.

20 MAJORITY CHAIRMAN METCALFE: Thank you,
21 Mr. Carlson. That's all the time we have for testimony.

22 MR. CARLSON: I'm done. Thank you.

23 MAJORITY CHAIRMAN METCALFE: So we'll move to
24 Q&A, Representative Saccone, for our first question.

25 REPRESENTATIVE SACCONI: So I hear a lot of

1 complaints about Pennsylvania's regulatory environment, and
2 could you just give us quickly -- because I also hear from
3 the industry that we're one of the toughest-regulated
4 industries in the country. We have, you know, strong
5 regulations in Pennsylvania. So could you please just
6 address that, that we're underregulated in the oil and gas
7 industry and we need to be stronger? Could you just
8 compare a couple States around us and give us an idea about
9 that?

10 MR. CARLSON: I think that Pennsylvania does have
11 robust regulations. We think a lot of the regulations are
12 not effective at protecting the environment, but that's --
13 the purpose of my comments today is really not the
14 regulations. It's the permitting time. That is the crisis
15 that we're facing, and that's driving billions of dollars
16 out of Pennsylvania this year.

17 So, you know, we do appreciate the Legislature's
18 effort to get additional control over the regulatory review
19 process for new regulations and reviewing existing
20 regulations. That's a lengthy process and hopefully will
21 involve a lot of stakeholders. Again, I don't think the
22 industry is looking for significant relief on the
23 regulatory front as much as we are to issue permits to
24 conduct our activity --

25 MS. HOFFMAN: Yes, I --

1 MR. CARLSON: -- in accordance with the law.

2 MS. HOFFMAN: And I'd agree with Mr. Carlson on
3 that. I've had the privilege to lead teams that have
4 worked in Ohio, West Virginia, Kentucky, Pennsylvania,
5 North Dakota, Wyoming, and Colorado, and Pennsylvania
6 definitely has the most complex regulatory environment of
7 any of those States. And I would agree with Mr. Carlson
8 that we're not looking necessarily for regulatory relief.
9 I firmly believe in the integrity and professionalism of
10 the Department. However, the permitting issues are
11 substantial, and they're directly related to the complexity
12 of the regulations and the general permits that the
13 Department has promulgated.

14 MAJORITY CHAIRMAN METCALFE: Thank you.

15 Thank you, Representative Saccone.

16 Representative Solomon.

17 REPRESENTATIVE SOLOMON: Thank you, Mr. Chairman.

18 What are the reasons the Department cites for
19 these delays?

20 MS. HOFFMAN: The Department cites a number of
21 things. One of course is the apparent lack of staff.
22 However, certainly, one thing I think that a lot of people
23 don't understand is that the oil and gas program is largely
24 funded by the industry through permit fees, through permit
25 applications, and through enforcement actions, as well as

1 some funds from Act 13. And so the Department staff has
2 been reduced from an all-time high of about 227 to 190 in
3 the oil and gas program. However, that's a significant
4 increase from whenever the Marcellus industry began to be
5 regulated in Pennsylvania.

6 They also note that there are inconsistencies
7 from consultants that are filling out permit applications,
8 and certainly that is something that we as an industry push
9 our consultants and ourselves to be better every day.

10 However, whenever you have a consultant that submits an ESC
11 GP, for example, to north central regional office and it
12 can be approved within an appropriate time frame but they
13 can't get a permit approved out of southwest regional
14 office in anything less than 200-plus days. I think that
15 that there's a disconnect there.

16 REPRESENTATIVE SOLOMON: Can --

17 MR. CARLSON: I'd like to add if I could that
18 drilling activity in Pennsylvania peaked in 2012 in the
19 Marcellus at about 2,000 wells, but last year, it was just
20 over 500 wells. So activity level has dropped
21 considerably, and therefore, permit activity -- both of the
22 graphs I distributed there show the actual number of
23 permits being issues, and you can see they're declining --

24 MS. HOFFMAN: With an increase in permitting
25 time.

1 MR. CARLSON: -- while the time is increasing
2 so --

3 REPRESENTATIVE SOLOMON: Can you pinpoint
4 exactly, with these delays that you cite, how many jobs
5 have been lost, let's say, in the last year, as well as the
6 money lost to the Commonwealth?

7 MR. CARLSON: That's a difficult question to
8 answer, but, you know, companies have budget processes that
9 generally follow the same path, so if a company plans to
10 spend \$1 billion in Pennsylvania this year is anticipating
11 that they're going to get drilling permits and E&S permits
12 to conduct that activity. As the year approaches and the
13 permits are not in hand, they can't spend that money. So
14 in recent years, the industry has spent \$10-15 billion a
15 year in the shale industry in PA, and I'm not going to
16 speculate on what fraction of that is being shut off this
17 year, but it's significant because there are no permits.

18 MAJORITY CHAIRMAN METCALFE: Thank you. Thank
19 you, Representative Solomon.

20 Representative Ryan for our final question.

21 REPRESENTATIVE RYAN: Mr. Chairman, thank you.
22 And I would merely ask -- some of the questions are going
23 to be very straightforward but might take a while to
24 answer, so I'd ask the prior speaker and yourselves if you
25 would prefer to get back to us with answers. That would be

1 very helpful.

2 I'm very sensitive to the prior speaker's
3 comments about legacy cost and sunk cost that have occurred
4 from prior activities that you didn't create but needs to
5 be remediated. If you think there's any potential way or
6 what way that should be funded to remediate the 300,000
7 wells as an example, that would be very helpful, but it
8 seems archaic to try to punish someone who didn't cause the
9 problem with someone to do it, so any comments you might
10 have on that would be very, very helpful.

11 MR. CARLSON: I've actually spent a good deal of
12 time looking at that issue, and if you look at -- the
13 Department has done a pretty good job at quantifying water
14 pollution related to mining issues, and I think they put
15 out a report every two years called a 303(d) assessment of
16 water quality in the State. They show about 5,500 miles of
17 streams impaired from mine drainage. For oil and gas
18 activity, that number is about 86 miles. The majority of
19 that is oil refineries and wells that are in areas of
20 coalmining where the mining activity has eaten away the
21 casings in the wells, so the problem of legacy oil and gas
22 wells is not similar to what it is for the coalmining
23 industry.

24 REPRESENTATIVE RYAN: Again, I would really
25 appreciate your thoughts coming back.

1 On the other issues, would you be in favor of a
2 regulatory process that billed for the permitting process
3 based upon the complexity of the application?

4 MR. CARLSON: As I mentioned, the general permit
5 concept in every other State that we compete with is that
6 the permit is a very -- it can be a complex permit and have
7 a lot of reporting requirements, but the application
8 process is very simple --

9 REPRESENTATIVE RYAN: Okay.

10 MR. CARLSON: -- and the review time is short, so
11 you get the list of rules you have to follow if you're
12 going to operate under that permit, and then, you know, you
13 are authorized to proceed quickly and report as you go.

14 REPRESENTATIVE RYAN: And, Mr. Chairman --

15 MR. CARLSON: In Pennsylvania, everything is up
16 front --

17 REPRESENTATIVE RYAN: In the interest of time,
18 Mr. Chairman, I'll waive off on my last question.

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

21 And we are out of time for this panel of
22 testifiers, but we did have also testimony submitted by Mr.
23 Moody, the VP of Government Affairs and General Counsel for
24 the Pennsylvania Independent Oil and Gas Association. Is
25 there a main point you'd like to leave us with, sir?

1 MR. MOODY: Yes. You know, we support, you know,
2 the goals of the legislation that was mentioned earlier
3 about, you know, looking at existing regulations and trying
4 to strengthen the regulatory review process, as my
5 testimony talks about, I focused on the proposed regulation
6 process, and I think that's where reform should be focused
7 because in my testimony I give the example of a DEP
8 regulation where, you know, we need a judicial component to
9 the Regulatory Review Act to be able to force agencies to
10 comply. IRRC does a good job, but they're hamstrung as
11 well because agencies can really ignore some of these
12 requirements really with impunity because there's no way to
13 force them to comply.

14 MAJORITY CHAIRMAN METCALFE: Thank you, sir.
15 Thank you. Thank you all for your testimony today. We
16 appreciate you being with us.

17 Our next testifier will be Mr. David Sumner, the
18 Executive Director for the Independent Regulatory Review
19 Commission, and also the Commissioner George Bedwick from
20 IRRC also. And both gentlemen have been with us in the
21 past, and I've appreciated your testimony and presentations
22 to the Committee in the past and look forward to your
23 testimony now. You can begin when you're both ready.
24 Thank you.

25 MR. BEDWICK: Thank you, Mr. Chairman. You all

1 have copies of the prepared testimony and whatever handouts
2 we had with that. It's not our intention obviously to go
3 through that at this point. Rather, I'll take a few
4 minutes just to highlight some matters. David will quickly
5 run through the regulatory review process so that the
6 Committee again is aware of what the current process is,
7 and then we will make ourselves available for questions
8 from the Committee.

9 By way of introduction, I am George Bedwick. I'm
10 Chairman of the Independent Regulatory Review Commission.
11 David Sumner is with me today, who is our Executive
12 Director, and in addition, our Chief Counsel, Leslie Lewis
13 Johnson, is here today.

14 Some of you probably know that I had worked here
15 as a staff person for the General Assembly for over 30
16 years. The downside of that is I'm getting old. The
17 upside of that is I believe I can provide some context to
18 the period when the original Regulatory Review Act was
19 passed. The 1970s and 1980s, as I viewed them, was a
20 period when the General Assembly began taking steps to
21 enhance their role as an independent and co-equal branch of
22 government. It began with what might be seen as simple
23 things, professional staffing in the Legislature, so that
24 you no longer had to rely on the Administration for
25 information, but you actually had your own sources of

1 information. The Regulatory Review Act obviously was part
2 of that.

3 We are a legislative commission. The five
4 members of the commission are appointed by the Legislature.
5 The General Assembly, when they passed this act, believed
6 that the regulatory process was going on unchecked, that
7 agencies were going beyond what authority was delegated to
8 them and were creating policy simply through regulation and
9 in fact in some instances were adopting regulations that
10 were contrary to legislative intent.

11 So, it was the belief of the Legislature at the
12 time to put something into place that would be dedicated to
13 reviewing regulations and provide a very explicit role for
14 the General Assembly in order block regulations that were
15 deemed not to comply with legislative intent or statutory
16 language.

17 Additionally at that time, then called the Sunset
18 Act, which no longer exists, was passed, which called for
19 agencies on a 10-year cycle to go out of existence unless
20 reauthorized by the General Assembly. There are a million
21 examples I can give, but it was a very dynamic period where
22 the Legislature moved forward to exercise its proper role
23 in terms of checks and balances within our system of
24 government.

25 The original act provided for what is called a

1 one-House veto where either the House or Senate could pass
2 a resolution which would block publication of a regulation.
3 The Casey Administration, through the Department of
4 Environment Resources at the time, challenged the
5 constitutionality of the act based on the one-House veto
6 and the lack of presentation of anything to the Governor.

7 Prior to final consideration of that case by
8 Commonwealth Court, the General Assembly amended the act
9 and provided for what you see today, which is a resolution
10 has to be passed by both chambers and that it has to be
11 presented to the Governor either for approval or veto.

12 Commonwealth Court decided the prior act was
13 unconstitutional. However, on appeal, the Supreme Court
14 said the case was moot because the act had been amended
15 prior to final consideration by Commonwealth Court, and as
16 a result, they vacated the decision. I have provided you
17 with a copy of it A) simply to give you some context as to
18 why the act was amended and for whatever purpose it might
19 serve as you analyze current bills and how they may fit
20 with that Court's rationale.

21 But through the years, provisions were added to
22 the act, which we think were significant, requiring
23 specific consideration of impact on small businesses, the
24 role that data plays in terms of a regulation and ensuring
25 it's acceptable data. Regulations can play an important

1 role. We're not here to tell you the environment is good
2 or bad; there are too many or too few. That's your role as
3 policymakers. What I can tell you is that IRRC is not a
4 rubber stamp in terms of regulations. In looking at
5 numbers over the past six years, fully 84 percent of
6 proposed regulations were changed before final as a result
7 of IRRC's review and comments on them. Since 2008, we have
8 initially disapproved approximately 7 percent of final
9 regulations submitted to us, which I tend to believe is a
10 fairly significant number. A breakdown is in our testimony
11 in terms of what occurred with those regulations.

12 The other thing that we see is fewer regulations
13 today. We've seen a steady decline since 2001. We had
14 received in 2001 91 final form regulations; 2016, that was
15 down to 43. I can tell you what our experience is, but I
16 can't tell you it won't be 100 next year, so I don't want
17 to mislead you that way but simply tell you what our
18 experience is.

19 Pennsylvania's process was recognized nationally
20 in a study done by professors at Rutgers University that
21 found Pennsylvania and North Carolina tied among 28 States
22 they reviewed for States that provided the most opportunity
23 for input, legislative and public, in the regulatory review
24 process.

25 MAJORITY CHAIRMAN METCALFE: Thank you, sir.

1 That's all the time we have for the testimony component.

2 MR. BEDWICK: Sorry.

3 MAJORITY CHAIRMAN METCALFE: I appreciate it,
4 appreciate the information you shared with us and
5 appreciate you emphasizing those court situations that
6 we've had from the history of the process also. I know you
7 brought that up in the past, and it was helpful to the
8 Committee at that time. We appreciate you bringing that up
9 for us today.

10 Our first question from Representative Dush.

11 If I could ask the Members to please ask only one
12 question and then, if we have time to come back to you for
13 a second, we will, but I'd like to limit everyone to one
14 question at this point. We're running out of time with
15 Members and testifier time.

16 So, Representative Dush.

17 REPRESENTATIVE DUSH: Thank you, Chairman.

18 I just have a question. Could you give me a
19 breakdown on the Commonwealth Court's actual decision on
20 the constitutionality?

21 MR. BEDWICK: Yes. I don't have it in front of
22 me, but it cited separation of powers, referred to some
23 Federal cases. I cannot sit here and tell you whether
24 those Federal cases still constitute good law or not, but
25 the belief was that the Legislature could act, but it had

1 to act as a whole is how I viewed that decision rather than
2 one part of the Legislature being -- you can always
3 overrule a regulation by passing a law, and that in fact is
4 what occurred partially with the oil and gas regulations.
5 And I believe the court viewed the process of barring
6 publication to have to be similar to the passage of a law.

7 REPRESENTATIVE DUSH: Thank you.

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

10 Representative DeLissio?

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

13 Mr. Bedwick, is there not currently a process
14 within the Independent Regulatory Review Commission whereby
15 almost anybody, any citizen in the Commonwealth could ask
16 IRRC to review something that's on the books and offer its
17 recommendation as to whether it meets regulatory intent, is
18 unduly burdensome, et cetera, et cetera? And could you
19 explain those parameters, please?

20 MR. BEDWICK: Sure. I'll give you one and then
21 I'll let David go further. The regulation has to be in
22 existence for a three-year period, and after three years,
23 what I refer to as a lookback provision then kicks in.
24 And, David, if you don't mind.

25 MR. SUMNER: Sure. And in addition to that,

1 Executive Order 1996-1 requires agencies on an ongoing
2 basis to conduct a review of the regulations that they
3 enforce to see if they're still relevant and if they make
4 Pennsylvania any less competitive. There's also a
5 provision in the Pennsylvania Code -- it's 1 PA Code 35.18
6 -- that allows anybody to petition an agency to amend,
7 waive, or repeal a regulation, and that's something that
8 people can do right now.

9 MAJORITY CHAIRMAN METCALFE: Thank you.

10 MR. BEDWICK: And during the lookback, we can on
11 our own decide to look at a prior regulation or we can
12 respond to a request to do that.

13 REPRESENTATIVE DELISSIO: Thank you, Chairman.

14 MAJORITY CHAIRMAN METCALFE: Thank you,
15 Representative DeLissio. Thank you, gentlemen.

16 Representative McCarter.

17 REPRESENTATIVE MCCARTER: Thank you,
18 Mr. Chairman.

19 Going back to the process here that IRRC already
20 has in place that, as we look forward to possible
21 legislation that's being proposed here, how do you see
22 something like House Bill 561 impacting the role that IRRC
23 currently plays in terms of making sure that not only the
24 public but obviously the Legislature as well has input into
25 all of the decisions taking place?

1 MR. BEDWICK: I'm trying to think how best to
2 answer it. We don't take positions on legislation. It's a
3 hard-and-fast rule --

4 REPRESENTATIVE MCCARTER: I'm not asking you to.
5 I'm just --

6 MR. BEDWICK: I understand, and I want to answer
7 it in an way that is clear that it's not a position on it.
8 The one concern that I had with it was whether it would end
9 up lengthening the process for review. There is some
10 legislation that talks in terms of calendar days rather
11 than session days, and that's of concern. I understand it
12 works better in terms of what I'll call legislative time.

13 We get criticized now for a long process, and it
14 just troubles me if it is longer, that IRRC will get blamed
15 for it to be quite honest with you. Five sixty-one itself,
16 I don't have much to say in terms of its impact on us. We
17 obviously will do whatever the Legislature asks us to do.
18 If there is an intent to have the Legislature adopt in
19 effect approved regulations, which involves certain dollar
20 amounts, that's a policy decision that we don't get
21 involved with.

22 REPRESENTATIVE MCCARTER: Thank you.

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

25 Thank you, gentlemen, for your testimony today.

1 MR. BEDWICK: Thank you.

2 MAJORITY CHAIRMAN METCALFE: We appreciate you
3 joining us.

4 I wanted to mention also that two of our
5 leadership team are here from the Republican Caucus.
6 Representative Benninghoff is here, Policy Chair; and our
7 Secretary, Representative Oberlander. And both of you are
8 welcome to join us up front on the seats if you'd like
9 instead of sitting in the audience. We'd certainly welcome
10 you to join us if you'd like to.

11 Our next testify is Mr. Paul Brahim, Chairman and
12 CEO of BPU Investment Management, Incorporated, and the
13 2017 President of the Financial Planning Association.
14 Thank you, sir, for joining us today.

15 MR. BRAHIM: Thank you, Chairman Metcalfe.

16 MAJORITY CHAIRMAN METCALFE: You can begin when
17 you're ready, sir.

18 MR. BRAHIM: All right. Let me just pull this
19 up. You have my written testimony. One moment, please.
20 Here we go.

21 MAJORITY CHAIRMAN METCALFE: In addition to the
22 gentleman's testimony, we do have other testimony that's
23 been received. We have written testimony from the
24 Pennsylvania Farm Bureau also in the packets for the
25 Members.

1 MR. BRAHIM: Fantastic. I open my testimony with
2 a quote from Superior Court of New York in 1869 *King v.*
3 *Talbot* from Justice Woodruff, "a duty to be faithful, to be
4 diligent, to be prudent in an administration entrusted to
5 the former, in confidence of his fidelity, diligence, and
6 prudence." Fidelity, diligence, and prudence, these are
7 the keys.

8 Chairman Metcalfe, Chairman Bradford, and Members
9 of the Pennsylvania House and State Government Committee,
10 thank you for the opportunity to testify today in this
11 hearing. It reminds me that every voice is important and
12 every voice is heard.

13 My name is Paul Brahim, and I'm the Chairman and
14 Chief Executive Officer and Chief Compliance Officer of BPU
15 Investment Management. We're a fully disclosed,
16 introducing, and government securities broker-dealer, a
17 member of FINRA and SIPC, and a Securities and Exchange
18 Commission federally registered investment advisor. I'm
19 also a certified financial planner-practitioner and an
20 accredited investment fiduciary analyst.

21 I've been in this industry since 1986 and a CFP
22 since 1974, and I've had the opportunity and privilege to
23 present expert testimony in both FINRA arbitrations and in
24 court cases on matters of investment suitability, failures
25 in supervision, and breach of fiduciary duty. I've

1 included my curriculum vitae in your packet for
2 information.

3 As was mentioned, I'm also the Pittsburgh
4 President of the Pittsburgh Chapter of the Financial
5 Planning Association. We have 300 members in our chapter
6 in Pittsburgh, over 900 members in the State of
7 Pennsylvania, and 23 members nationwide.

8 The FPA is the principal professional
9 organization for certified financial planners,
10 professionals, educators, financial service providers, and
11 students who seek advancement in our profession.

12 Why Justice Woodruff? He wrote his opinion in
13 1869. It long predates today's debate on the need for a
14 uniform fiduciary standard for investment professionals,
15 yet his opinion still defines in my view the heart of the
16 matter, those three simple words. Fidelity, diligence, and
17 prudence are all that we need to simplify the regulatory
18 morass that mires our industry today.

19 The regulatory regime of the financial services
20 industry is really fragmented. It's overlapping, it's
21 confusing, it's costly, and it's burdensome. There's a
22 joke in my industry when we get together for meetings.
23 People ask each other what's the fastest-growing part of
24 your business? And the person being asked then responds,
25 well, compliance of course.

1 History bears out the problems here. After 100
2 years, beginning with Charles Ponzi in 1920 and ending with
3 Bernie Madoff in 2008, we've experienced multiple and
4 substantial legislative reforms that impact the financial
5 services industry, and it seems to me obviously with little
6 or no effect. Table 1 in your packets outlines some of
7 that history.

8 These rules are often complex. The most recent,
9 the Department of Labor's conflict-of-interest rule is over
10 1,000 pages long. Over 900 of those pages are exemptions
11 to the actual rule.

12 What Table 1 does not reflect is the breadth and
13 complexity of the regulatory framework of the banking or
14 insurance industry, and it should be noted that virtually
15 all financial services can be delivered to consumers
16 through all three industry channels, securities, insurance,
17 and banking, and all have multiple and conflicting
18 standards of care.

19 To add to the consumer's confusion in this mess,
20 FINRA now recognizes 174 professional designations, most of
21 which have no accredited education providers or experience
22 requirements. In my view, they are mostly marketing ploys
23 and dare I say "fake" degrees. The fragmented system is
24 confusing to consumers, to providers, to arbitrators, and
25 triers of fact, and this is the key of my testimony I

1 believe.

2 Today, as a provider of financial services, I can
3 simultaneously sell someone insurance under a suitability
4 standard governed by the National Association of Securities
5 Commissioners. Simultaneously, I can make investment
6 recommendations in their brokerage account under a
7 suitability standard overseen by FINRA, yet another
8 organization. I can provide investment advice on their IRA
9 rollover under a best-interest standard consistent with the
10 Department of Labor's conflict-of-interest rule, unless of
11 course they waive that conflict-of-interest rule with a
12 best-interest contract exemption. And I can manage their
13 trust account under a sole interest standard governed by
14 the State, adjudicated by the Courts, and overseen by
15 either FINRA or the SEC.

16 So the question is which standard of care does
17 the consumer believe they're under in that mix? It is
18 somewhat confusing. In my experience in supporting
19 attorneys who represent claimants and plaintiffs I've
20 observed one very common thread. In each instance where
21 substantial loss in a client's account occurred, the
22 aggrieved parties all believe that their advisor and the
23 firm was acting in their best interests. After all, who
24 wouldn't want an advisor or a firm to act in their best
25 interest?

1 Unfortunately, the arbitrator or trier of fact
2 has to sort out these multiple standards of care and
3 overlapping regulations. They have to make judgments as to
4 which is most relevant based on facts and circumstances,
5 and they do this based only on their experience and
6 interpretation.

7 Just as a side note, FINRA, the self-regulatory
8 body for the securities industry, last year had 1,188 new
9 case filings, 1,200 cases closed, 4,904 cases remained open
10 in just 2016 alone. And what have we learned from this? I
11 would suggest to you not much. FINRA only publishes the
12 top 15 complaints filed, the decision in the amount awarded
13 if applicable. There are no opinions published by
14 arbitrators in FINRA arbitration, and so my opinion to a
15 reasonable degree of professional certainty, we've learned
16 nothing.

17 What emerges from this? More rules. The 2009
18 edition of the FINRA consolidated rulebook, when it was
19 last published in paper, was 184 pages long. Today, it's
20 only published online.

21 So what should occur? I believe we should move
22 from a rules-based system to a principles-based system.
23 Rules-based systems attempt to drive behavior through
24 disclosure, disclaimer, recordkeeping compliance, and
25 examination. Principles-based systems, however, drive

1 behavior through standardized accredited education,
2 experience requirements, ongoing continuing education, and
3 ethics training. Medicine, law, and accounting are
4 principles-based professions.

5 The financial services industry is rules-based.
6 Rules emerge retrospectively because of bad outcomes, much
7 like stop signs after a bad accident. Bad outcomes result
8 from bad or inconsistent process. Bad or inconsistent
9 processes exist because there are no clear standards of
10 care promulgated by a standardized accredited education
11 program, experience requirements, continuing education, or
12 ethics trainings for service providers.

13 The CFP Board of Standards has created such a
14 standardized education program delivered by accredited
15 institutions. You have to adhere to a best-interest
16 standard to be a CFP professional. You have to engage in
17 relevant ongoing continuing education and ethics training
18 that is approved by that board, and you must attest and re-
19 attest to a code of ethics. Again, in my opinion, with a
20 reasonable degree of professional certainty, just as
21 medicine, law, and accounting have laws that requirement
22 practitioners attain certain education and experience
23 requirements before they can practice, so too should
24 financial services professionals, especially when dealing
25 with retail clients.

1 This concept of fidelity, diligence, and
2 prudence, these are the three words that are only needed in
3 our rulebooks. We must inculcate a fiduciary standard into
4 the fabric of financial services through standardized
5 accredited education, experience requirements, continuing
6 education, and ethics training designed and implemented to
7 create a principles-based system. In my view, it is the
8 only answer to a runaway, reactive, overlapping, complex,
9 costly, and confusing rules-based system that consistently
10 fails consumers on a daily basis.

11 Thank you for your consideration and your time.
12 I'm happy to answer any questions that you might have or
13 provide additional commentary.

14 MAJORITY CHAIRMAN METCALFE: Thank you, sir.

15 And certainly a lot of what you referenced is
16 Federal --

17 MR. BRAHIM: It is.

18 MAJORITY CHAIRMAN METCALFE: -- the Federal
19 regulatory environment. And for our hearing today from the
20 State regulatory platform, what do you suggest that we do
21 to help you not have to answer that joke about compliance
22 related to what Pennsylvania's regulatory environment is
23 doing to the financial industry?

24 MR. BRAHIM: Sure. I appreciate your question,
25 and I believe it actually goes to the heart of the matter,

1 sir. I'm a continuing education provider for the
2 Pennsylvania Bar Association; I'm a continuing education
3 provider for Pennsylvania accountants, their CPEs; and I'm
4 a continuing education provider for certified financial
5 planners. Attorneys and accountants have national exams
6 that are administered and regulated at the State level.
7 There are State bars that you have to take. You have to
8 apply to the State Board of Accountancy.

9 When I bring these matters up, as I will tomorrow
10 in Washington, D.C., the Federal folks say this is a State
11 matter, not a Federal Government matter. Meanwhile,
12 there's a list of laws that goes on and on and on and on at
13 a Federal level. They believe that they regulation of the
14 delivery of advice should be administered through the State
15 system by having State boards, right, State certificates
16 for the delivery of advice to clients in the financial
17 services industry. And I believe that as well.

18 Continuing education requirements for law and for
19 accounting are delivered via State systems. They're
20 approved via State systems. And we have principles-based
21 regulations in those State systems. I believe that each of
22 the 50 States needs to take up this cause and move to a
23 system that is principles-based based on fidelity,
24 diligence, and prudence.

25 MAJORITY CHAIRMAN METCALFE: Thank you.

1 Representative Solomon?

2 REPRESENTATIVE SOLOMON: Thank you, Mr. Chairman.
3 I think it follows in your questions.

4 So, I was a securities and antitrust lawyer, and
5 we never brought State securities matters at all. So,
6 you've talked about a lot of financial issues, kind of
7 unduly burdensome regulations, but particularly at the
8 State level, whether it's the PA Securities Commission,
9 what are the regulations that you think are unduly
10 burdensome?

11 MR. BRAHIM: I want to speak to regulations that
12 don't exist that create --

13 REPRESENTATIVE SOLOMON: Well, that's creating
14 more.

15 MR. BRAHIM: Well, I want to connect the dot for
16 you if I can. So today, if I'm a real estate developer, as
17 long as I have fewer than 35 investors; if I'm a private
18 equity promoter, as long as I have under 35 investors, I'm
19 complete under the radar with respect to regulation. Where
20 do most of the problems occur from aggrieved investors in
21 these illiquid-type investments? In the under-35, not in
22 the programs that have hundreds of investors that are under
23 a regulatory series of requirements.

24 What then is the reaction of regulators when
25 there are problems in these folks that operate under the

1 radar private equity people that raise millions and
2 millions of dollars? The response is more regulation for
3 the people who fly in the radar. And this to me is really
4 the most burdensome part of the regulatory environment.
5 Regulations emerge and become more complex when people do
6 bad things, and the people who do bad things are generally
7 those who fly under the radar, so I would propose that
8 there be a registry for all real estate and private equity
9 offerings so that bad actors can be tracked, so that they
10 can be seen on a regular basis.

11 As a member of FINRA, if I'm going to engage in
12 the private equity business, I have to notice-file FINRA
13 and let them know even though it's unregulated. I have to
14 notice-file. That way they can keep track. Where'd the
15 bad people end up? I believe the State should do the same
16 thing with respect to private equity in real estate so that
17 more regulations don't emerge that affect those who are
18 doing a good job.

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

21 Representative McCarter.

22 REPRESENTATIVE MCCARTER: Thank you,
23 Mr. Chairman.

24 And again, thank you very much for your testimony
25 because it's very timely for a number of different reasons,

1 one of which again many of us are very concerned about.
2 The amount of money that is from this State is going to be
3 flowing into the private equity market --

4 MR. BRAHIM: Sure.

5 REPRESENTATIVE MCCARTER: -- as a result of
6 moving toward defined contribution systems. As a result of
7 that, obviously much of what you're talking about of the
8 unregulated 35 if you will in a sense is going to become a
9 grave concern, especially to our seniors in Pennsylvania as
10 well. So I appreciate your testimony very much in that
11 direction.

12 Again, however, I'm trying to judge in a sense
13 the idea and a sense of all of us should be good actors,
14 and the element of regulation that you're talking about I
15 think at the State level is something that we do need to
16 look at very, very carefully to make sure that we are all
17 good actors and that we do have the registration and
18 education that you're talking about I think that FINRA
19 would surely support as well in the process.

20 So I'm hoping that you can answer the basic
21 question of how do we move in that direction? What is the
22 best way that we should proceed to make sure that we can
23 guarantee the financial security of people who don't have
24 the expertise to be able to tell the good characters from
25 the bad characters?

1 MR. BRAHIM: Sure. It's an excellent question,
2 and it seems to be a timeless question in the United
3 States. I believe that this body, the Pennsylvania
4 Legislature, should work with the Board of Standards for
5 Certified Financial Planners and the Financial Planning
6 Association to come together on a method by which the State
7 can administer certificate exams and can oversee continuing
8 education. Both entities, the CFP Board and the Financial
9 Planning Association, are nonprofit corporations that
10 desire to transition into State systems like medicine and
11 law.

12 There are folks in both of those organizations
13 that are diligently working on this process, and I think it
14 would be helpful for this Committee and for Pennsylvania as
15 a whole to interface with them more directly about bringing
16 a fiduciary standard to all providers.

17 What I'm really suggesting, sir, is that we raise
18 the bar for admission into the profession. Today, the
19 rules-based system allows anybody who can pass a test where
20 you have to define what is a mutual fund, what's an
21 insurance policy, what's a stock, what's a bond, and
22 they're allowed to provide advice. It's frightening.
23 They're unqualified; they're not educated. My favorite ad
24 in the newspaper that I've ever seen in my life was
25 "financial advisors wanted, no experience necessary," all

1 right?

2 That has to change, and I believe that it changes
3 at the State level, and I believe that because advice is
4 local. It's in our neighborhoods, it's in our cities, it's
5 in our counties, and it's delivered by people who live
6 there. So we need to raise the bar just like we have with
7 accounting, medicine, and law. You wouldn't want me to
8 hang out a shingle and say I offer medical services without
9 having met some standard, right?

10 So, the State can work with organizations like
11 the CFP Board and the Financial Planning Association to
12 establish a better system for raising the bar for entrance
13 into this great profession.

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

16 MR. BRAHIM: Thank you for your time today.

17 MAJORITY CHAIRMAN METCALFE: Have a good day,
18 sir.

19 Our next testifier is Dr. James Broughel.

20 DR. BROUGHEL: Broughel.

21 MAJORITY CHAIRMAN METCALFE: Broughel from
22 Mercatus Center at George Mason University. He's a
23 Research Fellow there, and he had joined us for our
24 previous hearing and had a lot of good information. And I
25 know Members would have enjoyed having a chance to interact

1 with him a little bit more at that time, so we appreciate
2 you coming back to reengage with the Committee today, sir.

3 DR. BROUGHEL: Sure. Chairman Metcalfe, Members
4 of the State Government Committee, thank you for inviting
5 me to speak today about regulatory reform and oversight in
6 Pennsylvania.

7 I'm a Research Fellow at the Mercatus Center at
8 George Mason University, where I'm part of our State and
9 Local Policy Project. And my testimony today will address
10 how a cap on State regulation levels can strengthen and
11 improve legislative oversight in Pennsylvania.

12 And specifically, a cap on regulation levels can
13 achieve two objections. First, it can empower the
14 Pennsylvania General Assembly with more control over
15 regulation while preserving the role that agency expertise
16 plays in the crafting of regulatory policy. And second, a
17 cap can induce a culture change at regulatory agencies
18 aimed at achieving a reduction in what might be called
19 unnecessary red tape in Pennsylvania but also achieving
20 greater overall benefits and fewer costs to State residents
21 from justified regulations.

22 I want to emphasize that a regulatory cap should
23 not be viewed as controversial or partisan. The policy has
24 been applied successfully in other countries, most notably
25 in Canada and the United Kingdom, and the goal of the cap

1 is to achieve better regulation and less red tape, as
2 opposed to blanket deregulation.

3 Now, the Pennsylvania General Assembly is
4 devoting considerable attention towards strengthening
5 oversight of State regulatory agencies, and as examples,
6 several recent regulatory reform bills have focused on
7 requiring legislative consent before economic significant
8 regulations can be enacted. And the aim of such
9 legislation is to empower the Legislature, which over the
10 years has delegated considerable lawmaking powers to State
11 administrative agencies. And while this is a laudable
12 goal, having the Legislature vote on new regulations may
13 impose an obligation on the Legislature that legislators do
14 not want, or worse, are not capable of effectively managing
15 given their other responsibilities.

16 Legislators delegate lawmaking powers to
17 regulatory agencies in part because those agencies possess
18 expertise that lawmakers don't have time and resources to
19 develop. By contrast, a cap on regulation levels will
20 empower the Legislature while preserving the role that
21 expertise plays at regulatory agencies. And it looks a lot
22 like something legislators already know quite well, which
23 is the budget process. The Legislature would set the
24 initial level of the cap, for example, by limiting the
25 number of regulatory restrictions that agencies can enact.

1 The Pennsylvania Code currently has over 153,000 of such
2 regulatory restrictions on the books, and this could be set
3 as a limit.

4 Then, the cap can be allowed to rise, remain
5 constant, or fall over time and can even be set at
6 different levels for different agencies. In this way, a
7 cap on regulation can be thought of as embodying a kind of
8 regulatory budget. A budget brings rationality to
9 rulemaking. It reflects the sensible notion that cost
10 regulators impose on society should not be unlimited.

11 A regulatory cap can also induce a culture change
12 at agencies because it alters agencies' incentives. So,
13 typically, regulators have strong incentives to write new
14 rules. They're promoted or given pay raises for new rules,
15 for example. But they typically have very little incentive
16 to analyze the consequences of old rules. So in
17 Pennsylvania reviews of existing regulations are conducted
18 on an ad hoc basis but haven't been institutionalized in a
19 systematic manner into the regulatory process.

20 A cap on regulation levels forces more careful
21 consideration of both new and existing regulations, new
22 rules have to be deemed as important as old ones before
23 they can be enacted, and new regulations trigger the
24 reconsideration of old regulations. Old rules that are
25 deemed unnecessary might be called red tape and should be

1 eliminated. Meanwhile, justified regulations should be
2 tailored to both reduce costs and increase benefits for
3 citizens. And finding this combination of less red tape
4 and greater overall net benefits for citizens is what it
5 means to achieve better regulation.

6 A regulatory cap should not be a partisan issue
7 either, so similar policies have been introduced elsewhere
8 in the world and have avoided partisan rancor. In 2015,
9 Canada became the first country to pass a law requiring
10 that the administrative burdens of each new regulation be
11 offset by repealing at least one existing rule. The law
12 passed the Canadian Parliament overwhelmingly by a margin
13 of 245 "yes" votes to just one "no" vote, so it was near
14 unanimous.

15 A similar policy was instituted in the United
16 Kingdom. In 2005, the U.K. began a Better Regulation
17 Initiative and set a goal to reduce to regulatory burdens
18 by 25 percent, which they achieved. This eventually turned
19 into a one-in/one-out policy in 2011. It became one-
20 in/two-out in 2013, and they currently have a one-in/three-
21 out policy. The Better Regulation Initiative in the U.K.
22 has remained through the 10 years of Prime Ministers of
23 both the Labour and the Conservative Party, suggesting it
24 has broad bipartisan support. And a key reason these
25 reforms have not been controversial is undoubtedly that

1 they have focused on eliminating red tape as opposed to
2 blanket deregulation that also eliminates justified
3 regulations.

4 To conclude, a regulatory cap empowers the
5 Legislature in a way akin to the budget process while
6 leaving the fine-tuning of policymaking to the agencies
7 with the relevant expertise. At the same time, a cap can
8 induce a culture change at agencies by creating stronger
9 incentives to review old regulations.

10 In my written testimony, I've outlined some
11 initial steps that Pennsylvania can take to institute such
12 a cap using tools developed by the Mercatus Center. A more
13 institutionalized review process should help to reduce
14 unnecessary red tape in Pennsylvania, and just as
15 importantly, to improve and modernize justified
16 regulations. Achieving more benefits and lower costs for
17 State residents is what better regulation is all about, and
18 this should not be a partisan issue; it's just good
19 governance.

20 Thank you.

21 MAJORITY CHAIRMAN METCALFE: Thank you, sir. And
22 I appreciate the continuous improvement kind of philosophy
23 that this would drive into the agencies or departments,
24 something that I brought from the private sector with me,
25 that you shouldn't just be satisfied with where you are

1 today; you should be striving for how you can make things
2 better tomorrow. And I think forcing them to go and do a
3 lookback on previous regulations would force that
4 continuous improvement kind of philosophy to actually
5 flourish.

6 DR. BROUGHEL: Sure. I would say the idea is to
7 create an iterative process whereby rules are constantly
8 learned from and adapted from past experience in order to
9 create regulations that are more effective at solving
10 problems at a lower cost to society.

11 MAJORITY CHAIRMAN METCALFE: Thank you.

12 Representative DeLissio.

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

15 So the cap, just the concept of the cap improves
16 quality is the premise. And I may be oversimplifying it.

17 DR. BROUGHEL: It would improve quality --

18 REPRESENTATIVE DELISSIO: Or could improve
19 quality.

20 DR. BROUGHEL: -- by forcing a more systematic
21 lookback at old regulations on the part of regulators. So
22 it imposes a hard constraint on them that requires them to
23 constantly be looking back at old regulations in order to
24 find ways to improve, to streamline, to tailor them and
25 reduce burdens for society.

1 REPRESENTATIVE DELISSIO: You've mentioned other
2 countries who have implemented this or are considering it.
3 Is there any other State --

4 DR. BROUGHEL: So, Texas just recently passed a
5 law along these lines. There has been legislation proposed
6 in other places like Virginia so other States are
7 considering it.

8 REPRESENTATIVE DELISSIO: I'm fascinated
9 particularly because I'm aware Colorado limits the number
10 of bills its General Assembly can introduce in any one
11 legislative session, and it's like five. And I have --
12 Mr. Bradford's looking at me. I think that is an excellent
13 idea because it would force us to really look at what we're
14 introducing instead of the average of 3,800 per sessions
15 now.

16 So, I am intrigued to see if this comment is
17 similar because so few of our laws, 8 percent make it to
18 the Governor's desk, signed into law, so I am fascinated by
19 this concept applied here. Thank you.

20 DR. BROUGHEL: Sure. I would just add, sometimes
21 I like to compare this idea to capping the number of pieces
22 of clothing you have in your closet. At some point if you
23 keep adding pieces of clothing, the closet becomes
24 cluttered. Some of your items might get lost at the back
25 of the closet, but if you limit how much clothing you allow

1 yourself to own, you're constantly more careful about which
2 new pieces you select, and you're looking back at the old
3 ones to say do I really need to keep this or should it be
4 tailored to meet, you know, modern fashion or the latest
5 trends. So, I like to use that as a metaphor.

6 MAJORITY CHAIRMAN METCALFE: Thank you.

7 Any other Members?

8 Now, I've spoken with Representative Benninghoff,
9 our Chairman of the Policy Committee in the Republican
10 Caucus about this idea. Representative Benninghoff, would
11 you have any questions for the testifier on the issue? I
12 know you're sitting back in the audience there, but we have
13 additional time left for this testifier if you had any
14 follow-up questions.

15 REPRESENTATIVE BENNINGHOFF: [inaudible].

16 MAJORITY CHAIRMAN METCALFE: Thank you,
17 Representative Benninghoff. And we do have his written
18 testimony for the benefit of any Members that are
19 interested in reviewing that.

20 Thank you, sir, for joining us today. We
21 appreciate it.

22 DR. BROUGHEL: Thank you.

23 MAJORITY CHAIRMAN METCALFE: Our next and last
24 testifier for today's hearing is Mr. David Taylor,
25 President of Pennsylvania Manufacturers' Association, and

1 thank you for joining us, sir.

2 MR. TAYLOR: Absolutely.

3 MAJORITY CHAIRMAN METCALFE: You can begin when
4 you're ready, sir.

5 MR. TAYLOR: I will start now. Thank you,
6 Chairman Metcalfe, Representative McCarter, Members of the
7 Committee. Thanks for including me in this important
8 discussion today. And recognizing that I'm last and that
9 the mind can take in no more than this seat can endure, I
10 will move through my remarks here expeditiously.

11 I am David N. Taylor. I'm the President of the
12 Pennsylvania Manufacturers' Association, the century-old
13 nonprofit trade organization representing the people who
14 make things here in our Commonwealth.

15 Manufacturing is the engine that drives
16 Pennsylvania's economy, generating \$82 billion in value
17 every year, directly employing over a half-million
18 Pennsylvanians on the plant floor, and that core
19 manufacturing activity sustains millions of additional
20 Pennsylvania jobs in supply chains, distribution networks,
21 and through vendors of industrial services.

22 Because manufacturing is the sector that adds the
23 most value, has the strongest spinoff effect on job
24 creation, and is one of the largest contributors to gross
25 state product at about 12 or 13 percent, our leaders in

1 Harrisburg should carefully consider how the decisions made
2 in this capital affect this vital industry.

3 PMA's mission is competitiveness. We want it to
4 be the smart business decision to invest, hire, and expand
5 here rather than in one of our competitor's States. The
6 overall cost, complexity, and time burden of compliance
7 with State regulations, including permitting, is a key
8 factor that we consider to be co-equal with taxes or
9 lawsuit abuse, limiting State spending, and preparing the
10 skilled workforce.

11 And I would also add that I do not envy you
12 legislators the challenges you face here in the final weeks
13 before the end of the fiscal year. To break free from the
14 unwelcome choice between cutting government programs or
15 taking more money from the taxpayers, Pennsylvania needs to
16 spark the strong, sustained, broad-based economic growth
17 that will increase earnings from employers and employees
18 and yield higher tax revenues for the Commonwealth at
19 current rates.

20 Improving Pennsylvania's regulatory scheme and
21 reducing the burden of compliance is a pro-growth action
22 the General Assembly can take today without lowering
23 collections to the Treasury, which makes today's
24 discussions of these bills an especially timely one.

25 And let me also please clear the floor by

1 knocking down a few strawmen. Number one, no one is saying
2 that there should be no regulations. Obviously, our
3 manufacturing employers and their loved ones live in the
4 same 67 counties as every other Pennsylvanian. Public
5 health, public safety, and preventing environmental
6 disaster are indisputably good and necessary things.

7 Number two, no one is saying that complying with
8 necessary regulations should be without cost. Recognizing
9 that an appropriate level of regulation is needed,
10 Pennsylvania's manufacturing employers accept that there
11 will be a cost to doing business that will include
12 regulatory compliance costs. Our need is for those costs
13 to be optimized so as not to be a drag on competitiveness.

14 The most helpful way of thinking about the
15 regulatory burden is to consider it a hidden tax on growth
16 and that keeping the burden within reasonable limits will
17 require a deliberate, ongoing, conscious effort.

18 One of the ancient philosophers said that the
19 laws should be few and well-known. In America today, we
20 live in a world that is almost the opposite of that where
21 Federal and State regulations are so vast and pile up so
22 quickly that it is impossible to understand all the
23 responsibilities that we're expected to meet.

24 Because compliance itself is the public good that
25 results from regulation, the Commonwealth should be a

1 partner in compliance. When there are knowing, deliberate,
2 willful violations of important regulations, punishment is
3 appropriate, but when someone staples instead of using a
4 paper clip or vice versa, some degree of latitude is in
5 order. We need for State Government to end the "gotcha"
6 dynamic of fault-finding and imposing punitive fines and
7 penalties and instead make assistance with compliance the
8 primary goal.

9 Regulations should be based on sound science.
10 They should be proven effective. They should be subjected
11 to an independent cost-benefit analysis. Before imposing
12 additional burdens on the private sector, government should
13 be required to prove that the benefits to the general
14 public clearly outweigh the costs to the economy.

15 As was mentioned by the gentleman from the
16 Mercatus Center, existing regulations should undergo
17 systematic review to take outdated regulations off the
18 books. Placing sunset dates on new rules going forward
19 would help institute that expectation of review in our
20 State Government's operational culture.

21 Pennsylvania should institute a system of
22 regulatory budgeting to set maximum limits on the total
23 cost of compliance for the private sector. In the business
24 world, there's a saying: Show me what you measure, and
25 I'll show you what you value. Today, State Government

1 doesn't value the time, energy, effort, manpower, and money
2 spent by employers in complying with regulations because
3 the Commonwealth doesn't even bother to calculate what
4 those costs are, much less to put limits on annual
5 increases in those costs.

6 State Government also needs to show restraint by
7 recognizing the law of diminishing returns. Regulators
8 should resist the impulse to tighten limits just because
9 technologies have emerged to measure ever-smaller amounts
10 of substances. Chasing the last molecule of unwanted
11 emissions is ruinously expensive, has minuscule benefits if
12 any, and pits the mechanisms of regulatory enforcement
13 against background levels found in nature, which is of
14 course futile.

15 And finally, I would recommend that the General
16 Assembly reclaim powers that have been assumed by the
17 regulatory agencies of the executive branch by requiring
18 legislative approval of the costliest and most
19 consequential new regulations. If a new rule is necessary
20 and worthwhile, it would win approval, and if not, it would
21 go back to the agency to be reformed and resubmitted.

22 I want to thank the sponsors of the bills under
23 discussion today as they closely match up with the
24 priorities that I've described.

25 To compete against other industry States and our

1 international competitors, Pennsylvania's decision-makers
2 must undertake the rigors of regulatory review. I
3 understand that you are already very busy with the duties
4 of your offices, but the ever-growing regulatory burden can
5 no longer be ignored. If we're going to achieve the
6 economic growth, job creation, and higher wages that will
7 fill the public coffers to meet urgent public needs, then
8 the General Assembly must take ownership of measuring,
9 reviewing, and reducing the burden of regulatory compliance
10 on the private sector.

11 And before I open for questions, Mr. Chairman, I
12 regret that I was not able to be here at the opening of the
13 hearing when the gentleman from PennFuture spoke. I was at
14 another forum the other day with a member of his staff who
15 referred to my members as polluters, to which I take great
16 offense. To say that my companies that spend, you know,
17 massive amounts of time, energy, effort, manpower, and
18 money to be in compliance with the strictest DEP and EPA
19 standards, for us to be slandered as polluters just because
20 our emissions level is above zero, the only way to get zero
21 emissions is from zero industrial activity, and that has
22 consequences of its own, no jobs, no wages, no benefits, no
23 health care, no pensions, no tax revenue to the
24 Commonwealth. And again, that kind of benchmarking, that
25 kind of perspective I believe is necessary if we're going

1 to address this very serious concern.

2 MAJORITY CHAIRMAN METCALFE: Thank you, sir.

3 Our first question will be from Representative
4 Roae.

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

7 And thank you, sir, for your testimony.

8 First off, I just want to say that your
9 organization and your members are not polluters. You're
10 job-creators is what you are, so we appreciate all the jobs
11 that your members provide.

12 My question -- two questions. One, the Federal
13 Government is currently reviewing Federal regulations, and
14 they've been getting rid of a lot of them over the last
15 several months. Do you think we should do that at the
16 State level?

17 MR. TAYLOR: Well, I think so. And again, we
18 need to rationalize the burdens that are placed on
19 compliance so that we can be competitive again. No one is
20 staying that there shouldn't be rules. We're just saying
21 that the rules should make sense and that they should be
22 affordable. And actually, you know, part of, you know, the
23 process of systematic review and, you know, add one, remove
24 one, add one, remove two, and so on, that would I think be
25 healthy for the culture of State Government because for

1 those entities that are regulated, it would make it clearer
2 which rules are more important because, as it stands, you
3 know, all of them appear to be equally important, and you
4 know that that just can't be the case.

5 REPRESENTATIVE ROAE: And then my other question
6 is about the IRRC process here in Pennsylvania, if you
7 think all regulations should go through the IRRC process.
8 An example I have is the proposed GP-5A permit that DEP is
9 doing. DEP claims it is not regulation. It's over 40
10 pages long. The words "requirements," "must," and "shall
11 are listed frequently over 40 pages, but DEP is claiming
12 they're not regulations; therefore, they're not putting
13 that through the IRRC process. So do you think proposed
14 regulations should go through the IRRC process?

15 MR. TAYLOR: Well, I would say yes.

16 REPRESENTATIVE ROAE: And I would, too. I just
17 wanted to get your thoughts on that. Thank you, sir.

18 MAJORITY CHAIRMAN METCALFE: Thank you,
19 Representative Roae.

20 Representative McCarter?

21 REPRESENTATIVE MCCARTER: Thank you,
22 Mr. Chairman.

23 Just as a first comment, unfortunately,
24 Mr. Schweiger's comments this morning did not reference
25 anything as polluters, and I don't know what you were

1 referencing in terms of that outside of this, but I don't
2 know that's appropriate at the hearing here this morning --

3 MAJORITY CHAIRMAN METCALFE: Representative
4 McCarter, I appreciate it. You can give hm the chance to
5 answer your question about where that came from, but once
6 again, as I called down my Members earlier, this is not for
7 you to engage with the testifier in debate. This is for
8 you to ask a question. And I called down Republican
9 questioners earlier. You know that; you were sitting here.
10 Representative Bradford was not at the time but he is with
11 us now, so to be fair, I'm going to ask you as a Democrat
12 Member to comply with the same standard I set for my
13 Republican Members and don't engage in debate, but we will
14 let him answer the question as far as where that comment
15 came from.

16 REPRESENTATIVE MCCARTER: I haven't finished --

17 MAJORITY CHAIRMAN METCALFE: Representative
18 McCarter --

19 DEMOCRATIC CHAIRMAN BRADFORD: Chairman --

20 MAJORITY CHAIRMAN METCALFE: -- you can get to
21 the question.

22 DEMOCRATIC CHAIRMAN BRADFORD: Chairman --

23 MAJORITY CHAIRMAN METCALFE: I just --

24 DEMOCRATIC CHAIRMAN BRADFORD: Chairman,
25 Chairman --

1 MAJORITY CHAIRMAN METCALFE: You're out of
2 order -- Representative Bradford --

3 DEMOCRATIC CHAIRMAN BRADFORD: Respectfully --

4 MAJORITY CHAIRMAN METCALFE: Representative
5 Bradford, respectfully --

6 DEMOCRATIC CHAIRMAN BRADFORD: -- can we just not
7 go down the road --

8 MAJORITY CHAIRMAN METCALFE: -- you're out of
9 order.

10 DEMOCRATIC CHAIRMAN BRADFORD: -- of last week?
11 Chairman --

12 MAJORITY CHAIRMAN METCALFE: Representative
13 Bradford, you are out of order.

14 DEMOCRATIC CHAIRMAN BRADFORD: Chairman --

15 MAJORITY CHAIRMAN METCALFE: Come into order,
16 Representative Bradford. I will recognize you at an
17 appropriate time, but right now is not the time. You're
18 out of order.

19 DEMOCRATIC CHAIRMAN BRADFORD: Chairman --

20 MAJORITY CHAIRMAN METCALFE: Representative
21 Bradford, I will recognize you in the near future. Right
22 now, you're out of order.

23 DEMOCRATIC CHAIRMAN BRADFORD: Mr. Chairman --

24 MAJORITY CHAIRMAN METCALFE: Mr. Taylor, you
25 answer the question.

1 MR. TAYLOR: I'm glad to answer it.

2 DEMOCRATIC CHAIRMAN BRADFORD: Mr. Chairman --

3 MAJORITY CHAIRMAN METCALFE: Representative
4 McCarter --

5 REPRESENTATIVE MCCARTER: I haven't finished my
6 question.

7 MAJORITY CHAIRMAN METCALFE: Representative
8 McCarter, you had asked a question. I told you --

9 REPRESENTATIVE MCCARTER: No, I didn't. I said I
10 was making a comment.

11 MAJORITY CHAIRMAN METCALFE: Representative
12 McCarter, there was a question there where that came from,
13 and I want the gentleman to explain where that comment came
14 from, and then you can ask your question.

15 MR. TAYLOR: Yes, sir. I was testifying in front
16 of Representative Sturla's Committee in Representative
17 Dean's district in Abington, Montgomery County.

18 MAJORITY CHAIRMAN METCALFE: Thank you,
19 Mr. Taylor.

20 REPRESENTATIVE MCCARTER: Thank you. May I
21 finish now what I was --

22 MAJORITY CHAIRMAN METCALFE: Representative
23 McCarter, you may finish your question now. Thank you.

24 REPRESENTATIVE MCCARTER: Thank you. As part of
25 that, as we move forward, I think it's important for all of

1 us to keep our rhetoric in such a way that we are not
2 trying to be inflammatory toward any of us. We are facing
3 probably the greatest change period in all of our history,
4 and surely as manufacturers in Pennsylvania and as the head
5 of the association, I think that it's incumbent upon all of
6 us to make sure that, as we look forward to new changes
7 coming in regulations, then things that happen, since
8 industry is changing so dramatically, that we know that 30
9 percent of all jobs that exist today will not be with us
10 probably coming up in the next 15 years --

11 MAJORITY CHAIRMAN METCALFE: A question,
12 Representative McCarter? A question?

13 REPRESENTATIVE MCCARTER: As part of that, in a
14 sense how do you see us going forward so that we don't find
15 ourselves fighting over every single regulation that is
16 needed on new industries and new businesses that are coming
17 forward but at the same time making sure that we have the
18 opportunity to benefit all Pennsylvanians for those things
19 in the future?

20 MR. TAYLOR: That --

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

23 MR. TAYLOR: Thank you.

24 MAJORITY CHAIRMAN METCALFE: Mr. Taylor?

25 MR. TAYLOR: Thank you, Representative McCarter.

1 No. And that really is the -- that's one of the key
2 questions today. And I think that it goes back to that
3 matter of setting priorities and having a regulatory
4 system, regulatory agencies and the people who work for
5 those agencies to be attuned to changes, which is why we
6 need to have a culture of review, an expectation of review,
7 and that for those things that are not important, you know,
8 the clothes in the closet that no longer fit, that we get
9 them off the books and out of the way, clear away the
10 clutter so that we can focus on the things that are really
11 important.

12 MAJORITY CHAIRMAN METCALFE: Thank you,
13 Representative McCarter.

14 Representative Ward.

15 REPRESENTATIVE WARD: Thank you so much for being
16 here today.

17 I just have one quick question. I've had some
18 complaints from businesses in my district that the delayed
19 permit process has been an impediment to business in the
20 State. Could you comment on that, please?

21 MR. TAYLOR: Yes, very much so. And again, this
22 has got to be part of the balance, that there are
23 responsibilities on the part of, you know, the regulated
24 community but there are also responsibilities on the part
25 of the administrative agencies to move expeditiously

1 through their process so that the private sector can get
2 the permissions to do the work that we want to do. And,
3 you know, certainly one of the things that's mentioned --
4 it was in the context of that hearing in front of Chairman
5 Sturla's Committee -- was about energy. And again, you
6 know, I have peer relationships with the other State
7 leaders of manufacturing groups across the country, and,
8 you know, an energy permit that you can attain in one day
9 in Texas, you know, in Oklahoma takes three days, and that
10 that's viewed as being a real competitiveness differential.
11 In Pennsylvania, it will take you nine months to get that
12 permit out of DEP, and it's just not acceptable.

13 And so I bring that up as an example, you know,
14 not to castigate the agency, just to say that's the degree
15 of improvement that we need to make here in the
16 Commonwealth.

17 REPRESENTATIVE WARD: Thank you.

18 MAJORITY CHAIRMAN METCALFE: Thank you,
19 Representative Ward.

20 And from looking through the testimony, when
21 you're talking about the time frames -- and I don't have
22 the testimony in front of me, but I believe that a previous
23 law that was enacted in 2012 required permits to be issued
24 in 45 days I believe was the case. Are you familiar with
25 that or --

1 MR. TAYLOR: Passingly, yes. I'm not sure that
2 we're actually -- it's on the books; I'm not sure it's
3 being obeyed.

4 MAJORITY CHAIRMAN METCALFE: I know we have
5 testifiers. Am I correct on that, that was 45 days was the
6 time frame that the permit should be issued.

7 MALE SPEAKER: For a well permit, that's correct.

8 MAJORITY CHAIRMAN METCALFE: For a well permit,
9 45-day time frame and we're exceeding that several times
10 what the requirement is. The statutory requirement is not
11 being complied with. Thank you.

12 Our next question, Representative Dush.

13 REPRESENTATIVE DUSH: Thank you, Chairman.

14 Mr. Taylor, you referred about the "gotcha"
15 dynamic of fault-finding. My oil and gas guys, my coal
16 guys, they're experiencing it. I know on the manufacturing
17 side they're experiencing it as well. It's interesting.
18 Coming from coal and timber country, I'm very familiar with
19 what it was like when the snow was black an hour after it
20 was --

21 MR. TAYLOR: Yes.

22 REPRESENTATIVE DUSH: -- down years ago, and now
23 I can stand outside a coal-fired power plant and not smell
24 the smoke, like you said, going after that last molecule.
25 But now, it seems like the regulators have gone towards

1 trying to justify their jobs by increasing the regulations
2 and going after these gotcha-type moments. What are some
3 of the -- could you give a couple examples of what's going
4 on on the manufacturing side, some of the things that
5 you've experienced because --

6 MR. TAYLOR: Well, actually, one of the examples
7 that I'll cite that was many years ago now when I was a
8 young fellow that I was a staffer here for the other
9 chamber, and this was during the Casey Administration and
10 that a new technology had emerged that enabled to go down
11 to trace quantities of silver. And so because the
12 technology changed, the Administration wanted to move the
13 benchmarks for regulation. And again, you're talking here
14 about quantities that the human mechanism, you know, can't
15 even register. And, I mean, like the one example comes
16 from coal in talking about mercury. Yes, mercury in
17 concentrated doses is a deadly poison and a threat to
18 public health. At the same time, mercury is also a
19 naturally occurring element.

20 And so depending on where you have it on that
21 sliding scale of what is an acceptable level and how do you
22 measure it, if you try to chase the last molecule of
23 mercury, well, mercury is released by seismic activity, so
24 unless DEP is going to outlaw earthquakes and volcanoes,
25 you know, we have a problem. It's just all about, you

1 know, trying to establish what's reasonable and to say
2 that, yes, absolutely, public health, public safety,
3 preventing disaster, all those things have to be urgent
4 priorities.

5 But when we -- and this is also -- my friends at
6 U.S. Steel provided me with a chart, but air quality, and
7 again, talking about, you know, how well are we doing, how
8 much do we need to improve, how much better can we be? And
9 when you put the U.S. versus China and Korea, I mean,
10 what's happening there is nightmarish, but if you make it
11 too burdensome, you push U.S. producers, Pennsylvania
12 producers past the breaking point, then, well, where does
13 that activity go? That activity goes to these very
14 permissive jurisdictions that have low standards or no
15 standards at all and as a result there's a net increase in
16 emissions globally, so, you know, we need to fight for the
17 home team not just because we want the prosperity but also
18 because you're concerned about those kinds of emissions.
19 Turning the screws and putting U.S. producers to the
20 breaking point makes that global problem worse.

21 REPRESENTATIVE DUSH: I happen to agree. I think
22 if we be responsible the way we have been leading up to
23 where we are today, it allows us -- well, I mean, we're
24 going way beyond right now, but what got us to where we've
25 got a good environment quality now, we can remain

1 competitive and encourage those other countries to start
2 becoming competitive. But if we continue this path of
3 becoming overregulated, we're going to turn it in the other
4 direction just like you described.

5 Thank you.

6 MAJORITY CHAIRMAN METCALFE: Thank you,
7 Representative Dush.

8 Representative Bradford for a question?

9 DEMOCRATIC CHAIRMAN BRADFORD: Thank you,
10 Chairman. And I don't want to belabor the point that my
11 good friend, Representative McCarter, touched on, and I
12 guess I need to say this, too, as the Minority Chair. I
13 appreciate you need to control the hearing as you see fit
14 and obviously the numbers will dictate that, but we have to
15 have a level of decorum and respect for each other. And,
16 Chairman, now, please don't cut me off again because I let
17 you go.

18 MAJORITY CHAIRMAN METCALFE: Representative
19 Bradford --

20 DEMOCRATIC CHAIRMAN BRADFORD: We could not --

21 MAJORITY CHAIRMAN METCALFE: Representative
22 Bradford, you -- Representative Bradford --

23 DEMOCRATIC CHAIRMAN BRADFORD: Any democratic --

24 MAJORITY CHAIRMAN METCALFE: Representative
25 Bradford --

1 DEMOCRATIC CHAIRMAN BRADFORD: -- participation
2 in these hearings --

3 MAJORITY CHAIRMAN METCALFE: -- just for a
4 moment, just for a moment, Representative Bradford.

5 DEMOCRATIC CHAIRMAN BRADFORD: Well, let me
6 finish my sentence.

7 MAJORITY CHAIRMAN METCALFE: Just for a moment --

8 DEMOCRATIC CHAIRMAN BRADFORD: I realize that
9 that's hard --

10 MAJORITY CHAIRMAN METCALFE: -- Representative
11 Bradford.

12 DEMOCRATIC CHAIRMAN BRADFORD: -- sometimes.

13 MAJORITY CHAIRMAN METCALFE: Representative
14 Bradford, you didn't let me go. I'm the Chairman of this
15 Committee, and when I call you out of order, you will come
16 to order. So, Representative Bradford, you can ask the
17 question of the testifier if you'd like.

18 DEMOCRATIC CHAIRMAN BRADFORD: Yes.

19 MAJORITY CHAIRMAN METCALFE: It's not time for,
20 you know, at length pontification --

21 DEMOCRATIC CHAIRMAN BRADFORD: No, no --

22 MAJORITY CHAIRMAN METCALFE: -- but you are
23 recognized to ask a question.

24 DEMOCRATIC CHAIRMAN BRADFORD: No, and I
25 appreciate it's not, and that's why I was making the point

1 that if the gentleman has an issue with another person who
2 came to testify today, this may not be the right forum, and
3 that's all I was going to say on that. I understand you
4 have strong feelings. And, look, I totally understand.
5 You shouldn't be called a polluter. Under that logic,
6 we're all polluters. We all have some carbon footprint.
7 We all have a responsibility to be good stewards, and that
8 was the point I was trying to make, Chairman. And I think
9 the overheated rhetoric makes everybody step away.

10 I got to tell you, there's not a -- the gentleman
11 from Mercatus made a really good point. It's not a
12 partisan issue. I'm not aware of a political constituency,
13 a regional constituency, an ideological constituency for
14 bad regulation, so I think this -- you know, and you
15 rightfully talk about the strawman that you've got to knock
16 down. Well, I think the strawman is that there's someone
17 here who's arguing in favor of bad regulation, and I think,
18 you know, the Chairman in the way he addressed this a
19 little bit makes it seem like anybody has a different
20 opinion than that. I don't know of anybody who's for the
21 chasing the last molecule of pollution, though I would say
22 -- and I think you talked about strawmen -- you know, we're
23 not really at the point where we're chasing the last
24 molecule. I mean, I think we all have to be honest with --

25 MAJORITY CHAIRMAN METCALFE: Thank you,

1 Representative Bradford. Do you have a question there?
2 Because as I mentioned before you got here today, I
3 mentioned to the Members, we don't invite guests here to
4 debate with them.

5 DEMOCRATIC CHAIRMAN BRADFORD: I'm not debating
6 him.

7 MAJORITY CHAIRMAN METCALFE: We're asking
8 questions so --

9 DEMOCRATIC CHAIRMAN BRADFORD: I actually
10 complimented him.

11 MR. TAYLOR: Thank you, sir.

12 DEMOCRATIC CHAIRMAN BRADFORD: Mr. Chairman --

13 MAJORITY CHAIRMAN METCALFE: So there's no -- is
14 there a question?

15 DEMOCRATIC CHAIRMAN BRADFORD: Mr. Chairman --

16 MAJORITY CHAIRMAN METCALFE: Representative
17 Bradford, is there a question?

18 DEMOCRATIC CHAIRMAN BRADFORD: There is
19 absolutely a question.

20 MAJORITY CHAIRMAN METCALFE: Great. Thank you,
21 sir.

22 DEMOCRATIC CHAIRMAN BRADFORD: Rest assured that
23 there's a question. But the regulated industry, you'll
24 agree, is never going to like the regulations that are
25 promulgated. It's a rare instance where that happens?

1 MR. TAYLOR: I would agree with that completely
2 that it's, you know, much as, you know, the taxpayers will
3 never like paying taxes even though --

4 DEMOCRATIC CHAIRMAN BRADFORD: It's a necessary
5 evil.

6 MR. TAYLOR: It's a necessary thing. And, you
7 know, even if the rates are competitive and low that, yes,
8 it's something people will mind. And, Chairman Bradford,
9 I'm sorry. I saw Mr. McCarter in the captain's seat here.
10 I would have recognized you --

11 DEMOCRATIC CHAIRMAN BRADFORD: No, no.

12 MR. TAYLOR: -- but thank you very much.

13 DEMOCRATIC CHAIRMAN BRADFORD: He's the acting
14 Chairman.

15 MR. TAYLOR: Okay. Got you.

16 DEMOCRATIC CHAIRMAN BRADFORD: And the acting
17 captain as it were.

18 MR. TAYLOR: All right.

19 DEMOCRATIC CHAIRMAN BRADFORD: I'd also make the
20 point -- and I think the Chairman will be happy to know
21 that there's a question in this, too.

22 MAJORITY CHAIRMAN METCALFE: I appreciate it.

23 DEMOCRATIC CHAIRMAN BRADFORD: I know you do. If
24 we're going to talk about how to do regulation in a
25 meaningful way, we've got to rely on proven science. And

1 one of the things that I have often been concerned in this
2 Committee -- and we're the State Government Committee.
3 We're not the Environmental Committee. We don't have the
4 backup of science, and so it turns into more of an
5 ideological food fight, and I really have no time or desire
6 to show up at 9:00 in the morning and get gavelled at and
7 yelled at by the Chairman over the ideology. I'd much
8 rather talk about the substance of how we improve our
9 regulatory system. And so what I'm thinking we need to do
10 is take the poison out of this and the anger and deal with
11 proven science.

12 And I think your point about the strawman is
13 dead-on. We've got to, you know, deal with the fact that
14 the regulated community is never going to love the
15 regulations, and that's just the nature of it. But I think
16 we've got to be mindful that we're driven by proven
17 science, that we're actually doing sound public policy.
18 And how do you think we accomplish that?

19 MR. TAYLOR: Well, I think transparency is key,
20 and I think that having accountability go both ways because
21 as it stands now, the regulatory powers are somewhat
22 imperious, that it's, you know, difficult if not
23 impossible, you know, to appeal. You know, in some ways
24 the -- what's the old saying? The process is the
25 punishment. And so, you know, again, I'm not the Secretary

1 of DEP; that's not a job I want. But, I mean, the culture
2 change needs to start at the top, and hopefully having, you
3 know, these mechanisms in place where review is occurring,
4 where review is expected, that that will help to create the
5 culture, and that that culture will rely on, again,
6 provable science and, you know, an independent expertise
7 that people can say, yeah, okay, that's the ref, that's the
8 ump. Everybody knows that these are the parameters, you
9 know, of the process and that those authorizes can be
10 respected.

11 DEMOCRATIC CHAIRMAN BRADFORD: No -- and I
12 appreciate that. I guess one of the things that worries me
13 -- and this is much larger than this topic here is, you
14 know, they used to say everyone can have their own opinion
15 but you can't have your own facts.

16 MR. TAYLOR: Correct.

17 DEMOCRATIC CHAIRMAN BRADFORD: Well, now, thanks
18 to Google, everyone can find their own facts if they want,
19 and I think that undermines the ability to do good public
20 policy sometimes.

21 MR. TAYLOR: No, I agree. You know, when it
22 comes to -- you know, one of the big issues we're facing
23 right now is pipeline, and you know, certainly this is a,
24 you know, pipeline is engineering, engineering is science.
25 You're talking about metallurgy, you're talking about fluid

1 dynamics. All these things are sound science. There's
2 already, you know, 2,400,000 miles of pipeline in the
3 ground in the U.S., and yet there are people who
4 regrettably are panic-stricken over the concept that new
5 pipeline would be put in place.

6 DEMOCRATIC CHAIRMAN BRADFORD: And I will
7 actually alarmingly -- sometimes as a progressive and a
8 person who's proud to say I'm an environmentalist, I think
9 sometimes we have a difficult job going back home to say to
10 some of our groups, hey, look, you know, there is a cost to
11 moving forward. I would challenge some organizations like
12 yours to take that same kind of role on recognizing the
13 nature of climate science. We've had that issue where if
14 you're not willing to concede, it's a problem. I don't
15 know how you move forward, and I worry about that, again,
16 because if you turn it into an ideological thing, you miss
17 the point here. And I actually again -- I'm not opposed to
18 any of these ideas. I actually met with one of our
19 Democratic Members the other day about having a talk about
20 regulation and how to streamline it, but I don't think we
21 make it an either/or to your point.

22 And I think there's one more point that needs to
23 be made, and I'll ask you this question, too, because you
24 mentioned the issue of turnaround time at DEP. One of the
25 things that I would contend is if you continue to underfund

1 the regulator and then you expect the regulator to turn
2 around permits and such in a quicker time frame, that's
3 counterintuitive. In fact, it sounds like just bad public
4 policy again. And again, when you do ideology first and
5 you forget about good government and you'd rather scream at
6 each other rather than do the hard work of doing good
7 government, I think it's a mistake. I think the better
8 thing is to talk about, hey, look, if we need to turn
9 around permits in 45 days -- and I'm not going to call out
10 questions to the environmental groups because I don't think
11 the Chairman would appreciate it, but I could do the same
12 and say, hey, look, what do the cuts look like in DEP and
13 what's the effect when you make those type of cuts, you
14 know, on the regulator? Because, you know, I'm not here to
15 tell you the regulator's always the most sympathetic body.

16 But, you know, has your organization taken a
17 position on the past on cuts in terms of the regulator, in
18 terms of understanding the more we cut the regulator, the
19 harder it is to get timely turning around of permits?

20 MR. TAYLOR: It would certainly be -- you know,
21 the general point that you make is a valid one, that if the
22 agency doesn't have the resources to do the work, the work
23 doesn't get done, and --

24 DEMOCRATIC CHAIRMAN BRADFORD: Right.

25 MR. TAYLOR: -- you can hardly be upset about

1 that. I do know that the Secretary has great discretion,
2 and the concern has been on the part of the employer
3 community that, even as resources have been dedicated to
4 DEP that internally they have not been devoted to that
5 purpose. And so if there was a way to directly -- you
6 know, almost like a fee-for-service, that that will be --

7 DEMOCRATIC CHAIRMAN BRADFORD: But you realize
8 that could be problematic in the permitting phase --

9 MR. TAYLOR: Well --

10 DEMOCRATIC CHAIRMAN BRADFORD: -- if the
11 permittee is paying for the --

12 MR. TAYLOR: No, I mean -- and that's --

13 DEMOCRATIC CHAIRMAN BRADFORD: -- person
14 providing the permit --

15 MR. TAYLOR: And I probably --

16 DEMOCRATIC CHAIRMAN BRADFORD: -- it gets a
17 little --

18 MR. TAYLOR: I probably deployed the wrong
19 phrase, but in much the same way that the tax revenues that
20 are collected for the Motor Vehicle License Fund can only
21 be used for highway purposes. If the funding stream would
22 go directly to the Department that's responsible for doing
23 that work, then perhaps that would be a way forward.

24 DEMOCRATIC CHAIRMAN BRADFORD: No, and I --

25 MAJORITY CHAIRMAN METCALFE: Representative

1 Bradford, thank you.

2 DEMOCRATIC CHAIRMAN BRADFORD: Thank you.

3 MAJORITY CHAIRMAN METCALFE: Thank you for all of
4 your questions. I appreciate it.

5 DEMOCRATIC CHAIRMAN BRADFORD: No, no, and let me
6 just --

7 MAJORITY CHAIRMAN METCALFE: So --

8 DEMOCRATIC CHAIRMAN BRADFORD: -- if I can,
9 Chairman --

10 MAJORITY CHAIRMAN METCALFE: No, Representative
11 Bradford, we're out of time with this testifier. We're
12 going to move on and wrap this up, but I appreciate your
13 questions today.

14 DEMOCRATIC CHAIRMAN BRADFORD: I'm fired up this
15 morning, Chairman.

16 MAJORITY CHAIRMAN METCALFE: But the point that I
17 wanted to still make again after the series of questions
18 from Representative Bradford is I want to deal with the
19 facts, too, so the interjection of the climate change that
20 the Minority Chair wanted to interject isn't the facts that
21 we have before us. In fact, I would dispute that they're
22 facts at all from the perspective that he would argue them.

23 But what I would present is facts is that there
24 is a law on the books, the Pennsylvania Oil and Gas Act of
25 2012, Act 13, that says that the issuance of a permit, the

1 Department shall issue a permit within 45 days of
2 submission of a permit application, and that's not
3 occurring, taking several times longer than that. The fact
4 is the law is not being complied with, so that's a fact
5 that I leave the Committee with as I close out the hearings
6 today. And we will be considering legislation in the
7 future that I'll look forward to debate on at that time.
8 But I appreciate the Members keeping the debate amongst
9 themselves today and not trying to engage our testifiers
10 and allowing them to present their testimony.

11 So, thank you, Mr. Taylor, for presenting here
12 today.

13 MR. TAYLOR: Thank you very much.

14 MAJORITY CHAIRMAN METCALFE: We appreciate it.
15 Have a great day.

16 MR. TAYLOR: I appreciate it.

17 MAJORITY CHAIRMAN METCALFE: This meeting will be
18 adjourned. Members, listen for a meeting to be called from
19 the Floor today.

20 A motion by Representative Ward to adjourn this
21 meeting, seconded by Representative Hill, this meeting's
22 adjourned. Everyone have a great day.

23
24 (The hearing concluded at 10:56 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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