



Statement of the U.S. Chamber of Commerce

**ON: THE OBAMA ADMINISTRATION'S REGULATORY
WAR ON JOBS, THE ECONOMY, AND AMERICA'S
GLOBAL COMPETITIVENESS**

**TO: HOUSE COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON REGULATORY REFORM,
COMMERCIAL AND ANTITRUST LAW**

**BY: WILLIAM L. KOVACS,
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TECHNOLOGY & REGULATORY AFFAIRS**

DATE: FEBRUARY 28, 2013

The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

**BEFORE THE COMMITTEE ON THE JUDICIARY OF THE U.S. HOUSE OF
REPRESENTATIVES, SUBCOMMITTEE ON REGULATORY REFORM,
COMMERCIAL AND ANTITRUST LAW**

**“The Obama Administration’s Regulatory War on Jobs, the Economy, and
America’s Global Competitiveness”**

**Testimony of William L. Kovacs
Senior Vice President, Environment, Technology & Regulatory Affairs
U.S. Chamber of Commerce**

February 28, 2013

Chairman Bachus, Ranking Member Cohen and distinguished Members of the Subcommittee, my name is William L. Kovacs and I am senior vice president for Environment, Technology and Regulatory Affairs at the U.S. Chamber of Commerce. This statement describes the Chamber’s perspective on the question of how regulation can affect people’s ability to get and keep jobs, and the resulting impact on the quality of their lives. I want to emphasize at the outset that the Chamber recognizes that regulations are an essential part of a complex society such as ours. Over the decades, well-designed regulations have clearly made Americans and American workers healthier and safer. Yet the scope and pace of federal rulemakings have increased dramatically in the past few years. Hastily-written regulations issued in the health care, environmental, and financial arenas have been written with little or no apparent regard for the dramatic effect they have on employers and employees and on the ability of businesses to grow and to hire more employees.

According to a study conducted for the Small Business Administration’s Office of Advocacy, the total annual cost to comply with federal regulations was an estimated **\$1.82 trillion** in 2011.¹ Regulations finalized since 2011 further increase these compliance costs. Moreover, since 2011, the number of new rules each year that impose compliance costs of a billion dollars or more has increased.² The combined effect of the

¹ Crain, Nicole V. and Crain, W. Mark, *The Impact of Regulatory Costs to Small Firms*, Office of Advocacy, U.S. Small Business Administration (Sept. 2010) available at <http://archive.sba.gov/advo/research/rs371tot.pdf>. The 2011 estimate is benchmarked from the 2008 estimate of \$1.75 trillion in the 2010 study. While the Crain and Crain study does not examine the detailed costs and benefits of each individual regulation, it remains the only comprehensive estimate of the cost impact of federal rules on the U.S. economy.

² In 2011 alone, federal agencies developed seven rules that would each impose over a billion dollars in new compliance costs. *See* Letter from President Barack Obama to Speaker John Boehner, August 30, 2011.

already-large existing regulatory footprint and the quickening pace of additional major rulemakings hobbles our economy and inhibits growth and job creation.

Regulations impact jobs in three ways: (1) they impose significant compliance costs that consume resources that would otherwise be used for other needs, such as hiring, (2) they can cripple or even destroy industries that are facing competitive pressures, and (3) they create additional complexity and uncertainty that discourages business expansion and job creation. To bring healthy growth back to this country, we must understand the impacts of excessive regulation. The environmental regulatory experience offers a good example. As far back as the late 1960s, Congress recognized that environmental regulations necessarily impose substantial costs and can make U.S. industries uncompetitive, but that America needed to address its environmental problems. Because of the significant regulatory impacts on industries and the communities who depend on them, Congress required the agencies charged with cleaning up the environment, the U.S. Environmental Protection Agency (EPA) in particular, to conduct continuing evaluations of the potential losses and shifts in employment resulting from regulations. The agencies subsequently charged forward with over 45,000 pages of regulations, but to this day EPA has ignored the requirement to keep Congress informed of the potential job losses or shifts in employment due to environmental regulation. Congress needs to compel EPA to conduct the employment analyses mandated by no less than **six** separate environmental statutes. It is only reasonable to better understand the price people and communities are actually paying for the environmental progress promised by regulation.

A. Regulations Impact Job Creation

1. Regulations Impose Significant Compliance Costs, Diverting Resources Away From Other Needs.

When resources are expended to comply with new regulatory requirements, those resources often have to be diverted from other competing needs. Even larger companies often must secure financing to pay for technology and equipment that is required by regulations. The cost of regulatory compliance can have a dramatic impact on a company's bottom line—and its ability to grow and hire.

For example, the Clean Air Act Maximum Achievable Control Technology (MACT) rule³ for cement plants, as issued in final form by EPA in 2010, imposed very

³ National Emissions Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry, 75 Fed. Reg. 54,970 (September 9, 2010) (Final Rule). The final 2010 Portland Cement MACT

stringent new standards for air emissions from U.S. cement plants. The 2010 Cement MACT rule was expected to cost more than **\$3 billion** to implement and to result in the closure of at least 20% of the existing cement plants across the U.S.⁴ As a result, domestic cement production was anticipated to fall and the price of cement to rise. This rule, along with at least four other EPA rules proposed in 2010, would add **\$20 to \$36** to the cost of every ton of cement used by small Ready-Mix companies to make concrete.⁵ This would translate to a **33 percent price increase** for cement, which is the most critical ingredient these small concrete companies must purchase to make their product. Given that a difference of as little as **\$1 per ton** of concrete can determine whether a company wins or loses its bid for a particular project, a cost increase of this magnitude could easily wipe out a concrete company, particularly a small business.

Companies hit with these kinds of costs will have to struggle harder simply to survive, and will not be in a position to hire new employees or upgrade their equipment. At a minimum, virtually all new regulations directly impose some degree of new costs on regulated businesses, as well as indirect costs on supply chains and customers. For many businesses, confronting a new regulatory cost usually means choosing what competing need or project will not be funded so that the regulatory cost can be paid.

2. Regulations Can Cripple—or Even Destroy—Entire Industries.

In some cases, entire industries have been harmed—and even destroyed—by an overreaching regulation or combination of regulations. This has been particularly true of American industries that face intense competition from foreign companies that operate in a less heavily-regulated marketplace.

Forestry in Washington and Oregon. In the wake of the 1994 Northwest Forest Plan, which was designed to preserve spotted owl habitat, logging activities in the federal timberlands of Oregon and Washington came to a virtual halt. The regulatory requirements of the Plan made it nearly impossible to harvest timber from the formerly highly-productive federally-owned lands in the western portions of those states. As a result, employment in the forestry sector, traditionally a major driver of the regional economy, plummeted in the Pacific Northwest from 1995 onward. The number of forestry and logging jobs in Oregon and Washington fell from 27,656 in 1990 to 16,298 in 2009, a **41 percent decline** (compared to a 14.6 percent decline in the rest of the

rule was challenged in court, and EPA and the cement industry ultimately agreed to a revised MACT standard with more achievable requirements. EPA also agreed to allow additional time for cement plants to comply. *See* 78 Fed. Reg. 10,006 (February 12, 2013).

⁴ Portland Cement Association, 2011 estimate.

⁵ Portland Cement Association, 2011 estimate.

U.S.).⁶ Together with other impacted industries in the region (e.g., fishing), the downturn in the forestry industry caused Oregon and Washington to lead the nation in unemployment by 2002. Ironically, the spotted owl has continued to have difficulties, not because of lost habitat but because of a rival owl species that competes more successfully.

Forest Products. The fate of the Pacific Northwest forestry industry has been shared by other industries in recent years. The forest products industry has been heavily impacted nationwide by high regulatory costs that have impacted its ability to operate pulp and paper plants, sawmills, and manufactured wood products facilities. A variety of requirements affecting the operation of boilers, the use of solvents and adhesives in building products, and the availability of fuels resulted in the loss of over 100,000 jobs in the industry in 2010 alone.⁷

Furniture Manufacturers. Furniture manufacturers in many states have been hit very hard by increasing regulatory costs, at the same time they must contend with intense foreign competition and rising labor costs. Recent regulations such as Boiler MACT, the Non-Hazardous Solid Waste definition rule, new restrictions on formaldehyde use, and Lacey Act limitations on wood sourcing have caused American furniture makers to scale back their operations or shut down. According to the Bureau of Labor Statistics, total employment in the U.S. furniture industry declined from over 600,000 workers in 2002 to just 350,000 in 2011.⁸ North Carolina alone lost 1/3 of its workers in the industry from 1996 to 2006, and more have been lost in recent years.

Coal. All segments of the coal industry have recently been hit with crippling new regulations: a combination of final and proposed rules affect coal mining methods, the combustion of coal in industrial and utility boilers, the disposal of coal ash, and potentially, the shipment of coal overseas. Clean Air Act rules such as the Utility MACT rule and the proposed New Source Performance Standards for greenhouse gases from utility boilers would make future coal-fired power plants infeasible, if not impossible. According to the U.S. Energy Information Administration, the percentage of coal providing electricity to the U.S. has fallen over the past six years from nearly 50 percent of all fuels to less than 40 percent. The federal effort to curtail coal use has taken a toll on jobs in the coal mining industry, as well as on jobs that depend on coal combustion. In West Virginia, for example, about 2,000 coal mining jobs were lost just in May-June 2012.⁹

⁶ U.S. Department of Commerce, Bureau of Economic Analysis, “Annual State Personal Income and Employment.”

⁷ Estimate from the American Forest & Paper Association (2011).

⁸ Bureau of Labor Statistics, http://data.bls.gov/timeseries/CES3133700001?data_tool=XGtable.

⁹ West Virginia Coal Association estimate (June 2012).

Many other industries have not been wiped out by regulation, but they have been hurt and forced to scale back. These industries include the makers of medical devices, who have to send their products outside of the U.S. to be cleaned and sterilized because of EPA restrictions on the use of critical halogenated solvents. Other significantly affected industries include heavy manufacturers such as electroplaters, smelters, foundries, iron and steel manufacturing, shipbuilders, brick manufacturing, paint and coatings makers, dry cleaners, and miners of all types. In total, these industries—and others—have lost hundreds of thousands of workers over the past 15 years, in part because of wave after wave of new federal regulations.

3. Regulations Impose Complexity and Uncertainty That Discourages Business Expansion.

A 2010 study by the Swedish Agency for Growth Policy Analysis evaluated regulatory burdens across nations and the effects of regulations on economic growth and vitality. The study found that higher regulatory burdens (1) raise the costs of business operations, (2) make capital financing more expensive and harder to obtain, and (3) act as a barrier to entry for new firms, resulting in less competition and less ability to innovate and adapt to new economic conditions or new technologies. Countries having a heavier regulatory environment were found to be less entrepreneurial and to experience significantly slower growth of per capita income. In sum, excessive regulation results in a stagnant, ossified economy and an overall lower standard of living than is found in countries with similar resources but less burdensome regulations.¹⁰

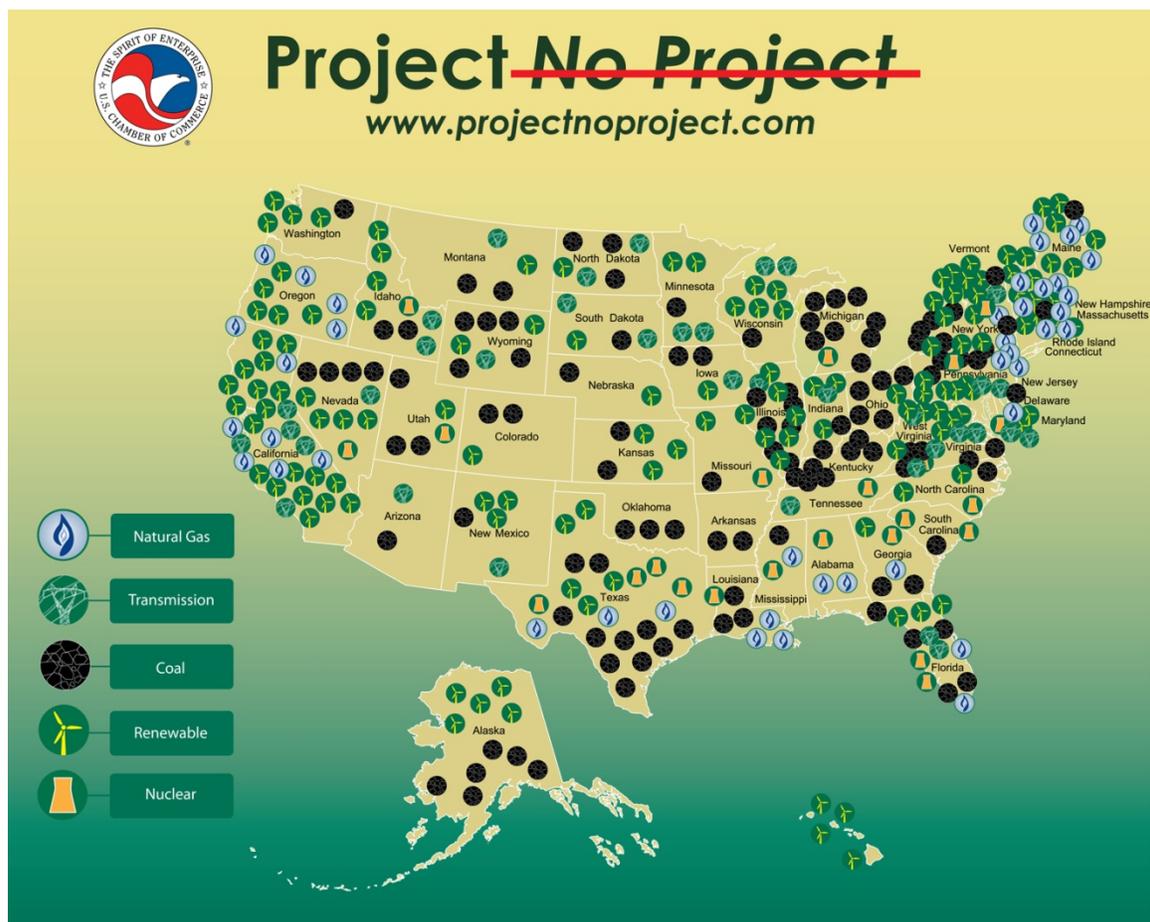
Besides raising costs and harming individual industries, regulations also increase the complexity and uncertainty of the business environment, which can discourage investment and business expansion. These factors often arise in the context of obtaining necessary permits or authorizations to undertake expansion or new projects. The large cumulative number of regulatory requirements can make it much more difficult to obtain project approvals in a timely manner, and project sponsors often walk away after years of costly delays. In 2011, the Chamber unveiled *Project No-Project*, an initiative that assesses the broad range of energy projects that are being stalled, stopped, or outright killed nationwide due to a broken permitting process and a system that allows nearly limitless opportunities for opponents of development to raise challenge after challenge.¹¹

¹⁰ Swedish Agency for Growth Policy Analysis, “The Economic Effects of the Regulatory Burden.” Report 2010:14. www.growthanalysis.se.

¹¹ U.S. Chamber of Commerce, *Project No Project, Progress Denied: A Study on the Potential Economic Impact of Permitting Challenges Facing Proposed Energy Projects* (March 2011); results of the study are compiled onto the *Project No-Project* website <http://www.projectnoproject.com>.

The purpose of the *Project No-Project* study was to understand potential impacts of serious project impediments on our nation’s economic development prospects, and it was the first-ever attempt to catalogue the wide array of energy projects being delayed nationwide.

Through *Project No-Project*, the Chamber found consistent and usable information for 333 distinct projects. These included 22 nuclear projects, 1 nuclear disposal site, 21 transmission projects, 38 gas and platform projects, 111 coal projects and 140 renewable energy projects—notably 89 wind, 4 wave, 10 solar, 7 hydropower, 29 ethanol/biomass and 1 geothermal project. Since some of the electric transmission projects were multi-state investments and, as such, necessitate approval from more than one state, these investments were apportioned among the states, resulting in 351 state-level projects attributed to 49 states.



In total, the 351 projects identified in the *Project No-Project* inventory could have produced a \$1.1 trillion boost to the economy and created 1.9 million jobs *annually* during the projected seven years of construction. Moreover, these facilities, once constructed, would have continued to generate jobs, because they would have operated

for years or even decades. The Chamber recognizes that moving forward on all the projects is highly unlikely. There simply would not be enough materials or skilled labor to construct all 351 projects at the same time, and to do so in a cost-effective manner. However, even a subset of the projects would yield major value. For example, the construction of only the largest energy project in each state would generate \$449 billion in economic value and 572,000 annual jobs.

Regulatory barriers to obtaining permits for economic activity are a serious challenge for maintaining American competitiveness with other countries. In mining, for example, a recent report found that the U.S. is tied for last place (with Papua New Guinea) among twenty-five countries in the amount of time it takes to permit a new mine – **seven to ten years** on average.¹²

B. Congress Mandated Continuing Evaluation of Potential Loss or Shifts in Employment to Determine Impacts of Regulations

For decades, Congress has mandated that the employment effects of regulations must be evaluated by agencies so that Congress can monitor the impact of regulations on industry. The Congressional intent behind these mandates is clear: Congress knew that regulations, such as the Clean Air Act, would cause economic hardship and lead to the closing of facilities. In order to monitor those adverse impacts and, where needed, ameliorate them, Congress crafted and enacted statutory provisions that would require ongoing analysis of regulations on employment, including job losses and shifts in employment. EPA's failure and, at times, defiance in conducting these Congressionally-mandated employment effects evaluations must be addressed.

The earliest direct discussion of these employment effects evaluations is found in the 90th Congress (1967 – 1968) during debate over the Air Quality Act. As part of the debate, Congress mandated that the Secretary of Health, Education and Welfare undertake a comprehensive study of the economic impacts of air quality standards on the nation's industries and communities. Several studies on this topic were released by Senator Jennings Randolph in 1969.¹³

Similarly, in the debates over the Clean Air Act Amendments of 1977, Congress even more directly confronted the issue of the impact of regulations on jobs when it enacted a provision requiring that the Secretary of Labor, in consultation with the EPA Administrator, conduct a study of potential dislocation of employees due to

¹² *2012 Ranking of Countries for Mining Investment*, Behre Dolbear Group at 8. See www.dolbear.com.

¹³ Senate Resolution 267, October 16, 1969 and Senate Resolution 369, April 27, 1970.

implementation of the laws administered by the Administrator and that the Secretary submit to Congress the results of the study not more than one year after August 7, 1977.¹⁴ This provision was codified as section 321(a) of the Clean Air Act and now reads:

(a) Continuous evaluation of potential loss of shifts of employment

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this chapter and applicable implementation plans, including where appropriate, investigating threatened plant closures, or reductions in employment allegedly resulting from such administration or enforcement.”¹⁵

In the 95th Congress, the debate over the employment impacts of regulation was clear, direct and extensive. The Committee noted:

Among the issues which have arisen frequently since the enactment of the 1970 Amendments is the extent to which the Clean Air Act or other factors are responsible for plant shutdowns, decisions not to build new plants, and consequent losses of employment opportunities.

* * *

In any particular case in which a substantial job loss is threatened, in which a plant closing is blamed on Clean Air Act requirements, or possible new construction is alleged to have been postponed or prevented by such requirements, the committee recognized the need to determine the truth of these allegations. For this reason, the committee agreed to section 304 of the bill, which establishes a mechanism for determining the accuracy of any such allegation.¹⁶

The Committee went on to state:

Section 304 of the committee bill is based on a nearly identical provision in the Federal Water Pollution Control Act. The bill establishes a new section 319 of the Act. Under this provision, the Administrator is mandated to undertake an ongoing evaluation of job losses and employment shifts due to requirements of the act.

¹⁴ Section 403(e) of Public Law 95–95; West, Federal Environmental Laws 2012, Historical and Statutory Notes, p. 1404.

¹⁵ Section 321(A) of the Clean Air Act; 42 U.S.C. § 7621; this section became law as part of the 1977 Amendments to the Clean Air Act.

¹⁶ 95 Cong. House Report 294; CAA77 Leg. Hist. 26 at 227.

This evaluation is to include investigations of threatened plant closures or reductions in employment allegedly due to requirements of the act or any actual closures or reductions which are alleged to have occurred because of such requirements.¹⁷

In conference, the Senate concurred with the House employment effects provision, which required the EPA Administrator to evaluate and investigate the loss of employment and plant closures.¹⁸ This common understanding of the importance of employment impacts assessments reflects Congress's acknowledgement that in exchange for allowing environmental standards like National Ambient Air Quality Standards to be set without regard to the cost impacts, the agency must repeatedly evaluate the overall impact of the growing body of environmental requirements on employment and job shifts. That way, Congress would be informed of the ongoing economic impacts of environmental regulation and take that information into account in agency oversight and in consideration of potential new environmental requirements.

With the specific language of provisions like section 321(a), Congress unmistakably intended to track and monitor the effects that the Clean Air Act and similar environmental regulations would have on employment. The legislative history of these environmental regulations, as well as the United States Supreme Court, confirm this intent. In *EPA v. National Crushed Stone Ass'n*, the Supreme Court analyzed an employment effects provision in the Clean Water Act, which served as the model for section 321(a) in the Clean Air Act. In the 1980 decision, Justice White opined:

[A]n employee protection provision was added, giving EPA authority to investigate any plant's claim that it must cut back production or close down because of pollution control regulations. § 507(e), 86 Stat. 890, 33 U.S.C. § 1367(e). This provision has two purposes: to allow EPA constantly to monitor the economic effect on industry of pollution control rules and to undercut economic threats by industry that would create pressure to relax effluent limitation rules.... As we see it, Congress anticipated that the 1977 regulations would cause economic hardship and plant closings: "[T]he question ... is not what a court thinks is generally appropriate to the regulatory process; it is what Congress intended for these regulations."¹⁹

In the legislative history of the Clean Water Act's employment effects provision, Representative Abzug states that: "[t]his amendment will allow the Congress to get a

¹⁷ *Id.*

¹⁸ 95 Cong. Conf. Bill H.R. 6161; CAA77 Leg. Hist. 24.

¹⁹ *Environmental Protection Agency v. National Crushed Stone Ass'n, et al.*, 449 U.S. 64, 82-83 (1980) (footnote omitted) (emphasis added).

close look at the effects on employment of legislation such as this, and will place us in a position to consider such remedial legislation as may be necessary to ameliorate those effects.”²⁰

In *Whitman v. American Trucking Ass’ns*, Justice Scalia, writing for a near unanimous court, echoed the 1980 opinion of Justice White.²¹ Analyzing the Clean Air Act, Justice Scalia wrote in *American Trucking*:

In particular, the economic cost of implementing a very stringent standard might produce health losses sufficient to offset the health gains achieved in cleaning the air – for example, by closing down whole industries and thereby impoverishing the workers and consumers dependent upon those industries. That is unquestionably true, and Congress was unquestionably aware of it. Thus, Congress had commissioned in the Air Quality Act of 1967 (1967 Act) ‘a detailed estimate of the cost of carrying out the provisions of this Act; a comprehensive study of the economic impact of air quality standards on the Nation’s industries, communities and other contributing sources of pollution.’ § 2, 81 Stat. 505. The 1970 Congress, armed with the results of this study, see *The Cost of Clean Air*, S. Doc. No. 91 – 40 (1969) not only anticipated compliance costs could injure the public health, but provided for that precise exigency.²²

The *American Trucking* opinion only reinforced the view that Congress knew very well that environmental requirements negatively impact the economy and American jobs. Armed with that knowledge, Congress required EPA to gather and evaluate data on the employment effects of environmental mandates.

Despite the clear congressional directive, EPA has refused to conduct the employment studies required by section 321(a). For example, in 2009 when a large number of regulations were being issued by EPA, six U.S. Senators wrote to EPA requesting the results of its continuing Section 321(a) evaluation of potential loss or shifts of employment which may result from the suite of regulations EPA had proposed or finalized.²³ On October 26, 2009, EPA responded to the six Senators stating “EPA has not interpreted CAA section 321 to require EPA to conduct employment investigations in taking regulatory actions.”²⁴

²⁰ *Id.* at n. 24 (citing Leg.Hist. 654-659).

²¹ *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001).

²² *Id.* at 466.

²³ Letter from Senators Vitter, Risch, Johanns, Inhofe, Ensign and Hatch to EPA Administrator Lisa Jackson (October 13, 2009).

²⁴ Letter from EPA Assistant Administrator Gina McCarthy to Senator Inhofe (October 26, 2009) at 2

Moreover, on September 12, 2012, the U.S. Chamber filed a Freedom of Information (FOIA) request with EPA asking the agency to provide “[a]ll draft, interim, and final reports and/or evaluations prepared by EPA or its contractor(s) pursuant to section 321 of the Clean Air Act.” EPA acknowledged receipt of the FOIA request and requested an extension of time to respond until December 1, 2012. Subsequently, on January 22, 2013, EPA informed the Chamber that the agency’s records indicated that our FOIA request had been responded to and that the request had been removed from the agency’s FOIA log.²⁵ As of the date of this hearing, EPA has not provided any document responding to the Chamber’s FOIA request or denied that request.

Therefore, a debate that started 45 years ago when Congress directly mandated a study of the employment effects of regulations so as to determine the truth of conflicting allegations about whether regulations adversely impact jobs is still unresolved because EPA has refused to conduct the continuous evaluation. As the next section will illustrate, job loss caused by regulations, no matter how beneficial they may be, still can be very harmful to the industry, community and person impacted. Avoiding knowledge of the harmful effects is not an appropriate way in which to conduct public policy.

Job Losses: Looking At the Problem A Different Way

The negative economic impacts of overly-broad, poorly-designed regulations on economic growth, productive investment and labor productivity are clear. The 2008-09 financial crisis, recession and ensuing slow recovery focused new attention on the importance of considering the employment impacts of all government policy decisions. Likewise, President Obama’s 2011 Executive Order 13563²⁶ for the first time explicitly directed agencies to include consideration of the regulatory impacts on jobs in their assessments of the costs and benefits of regulations. Prior to Executive Order 13563, agencies infrequently addressed specific employment impact concerns. Agencies typically assumed that the economy would normally operate at full employment and that any disruptions caused by regulations would be relatively brief and quickly corrected by the re-employment of displaced workers in other jobs within a growing economy. EPA, for example, discussed specific employment impacts of proposed air quality regulations in only 11 of the 48 rulemakings over the 1995 to 2010 period. By contrast, following the issuance of Executive Order 13563 in 2011, EPA included employment impact estimates in 7 of 12 rulemakings (*See* Figure 1).

²⁵ Electronic mail message from Sounjay Gairola, Air Enforcement Branch, U.S. EPA to William Kovacs, Senior Vice-President, U.S. Chamber of Commerce (January 25, 2013)(“I am so sorry for the confusion. I am in the process of tracking down this problem and issue regarding your FOIA no longer appearing on the FOIA list.”).

²⁶ Executive Order 13,563 (January 18, 2011).

Agencies are required to conduct a Regulatory Impact Analysis (RIA) to accompany every proposed “major rule.”²⁷ An RIA typically contains an estimate of the economic impacts of that specific proposed rule on regulated industries, along with the general impact of the rule on consumer prices, energy prices, and production levels. In some cases, the RIA may estimate the direct employment impacts of the proposed rule on the regulated industry itself. The RIA does not consider the overall employment effects of multiple rules that apply to an industry or the general economy. As such, an RIA is fundamentally different from the jobs and displacement analysis required by section 321 of the Clean Air Act. Section 321 – and its counterparts in five other statutes²⁸ – requires a broader assessment of employment effects throughout the U.S. economy as a consequence of all of the rules issued under the statute in question. This type of analysis considers the cumulative effect of clean air or clean water, or hazardous waste requirements on jobs in the economy. As such, it is a valuable tool to understand how these regulations actually transform our economy and affect the opportunities for employment.

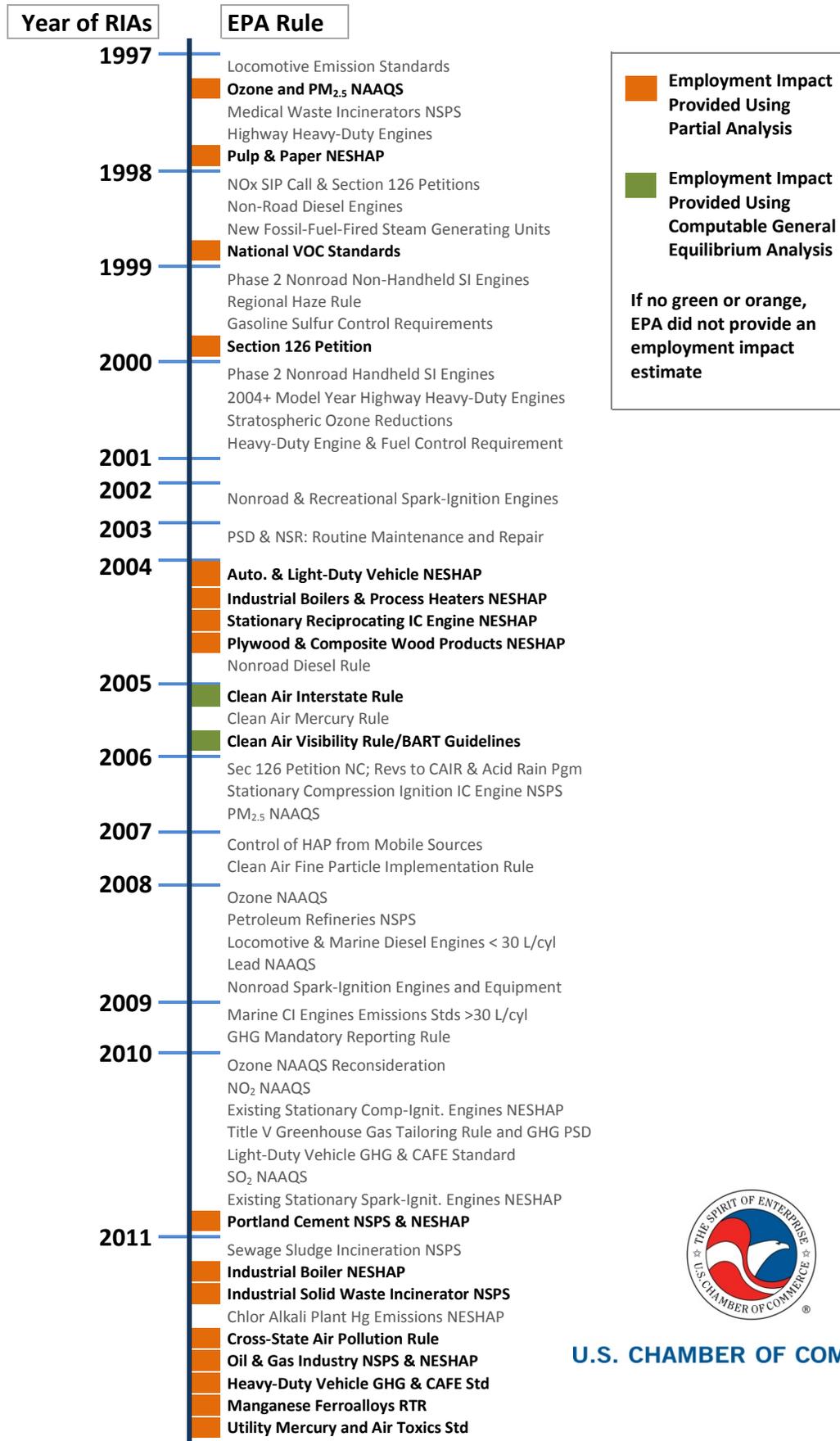
The reason for the renewed interest in the job impacts of regulations could not be clearer. Today over 12 million Americans are looking for work and millions more who would like to work have simply given up looking. Long-term unemployment is at record high levels. Many people also cannot find full-time work and are getting by with part-time jobs. Unemployment and underemployment have devastating impacts on workers, their families, and their communities. In addition to loss of income while jobless, many workers who lose long-held jobs never return to full-time work, and those who do often continue to earn below their previous wage levels long after re-employment.

While Executive Order 13,563 has compelled EPA to consider job impacts in the Regulatory Impacts Analyses that must be prepared for each new rulemaking, Congress has still been left without the required continuing evaluation of job loss and shifts in employments due to regulations as a whole.

²⁷ Regulatory Impacts Analyses are required for major rules (typically, rules that are expected to have a \$100 million or more impact on the economy each year) by Executive Order 12,866, *Regulatory Planning and Review* (September 30, 1993). See also Office of Management and Budget, Circular A-4, *Regulatory Analysis* (September 17, 2003).

²⁸ Clean Air Act (42 U.S.C. § 7621(a), Clean Water Act (33 U.S.C. § 1367), Solid Waste Disposal Act (42 U.S.C. § 6971, Toxic Substances Control Act (15 U.S.C. § 2623), Powerplant and Industrial Fuel Use Act (42 U.S.C. § 8453), and the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9610).

Figure 1: Timeline of Air Regulatory Impact Analyses Found to Contain Employment Impact Estimates



U.S. CHAMBER OF COMMERCE

EPA's recent estimates of the employment impacts of its regulations have been consistently upbeat. The agency has claimed that its latest air regulations will actually **create** jobs on balance – based on construction and maintenance of new equipment for existing plants or for new power plants that must replace coal-fired plants shuttered by regulations. For example, EPA claimed that its Utility Mercury Air Toxics Standard (MATS) would have a net effect of creating 54,000 new jobs in the utility industry.

As industries have announced job layoffs due to newly issued regulations, the inconsistency with EPA's continuing claims of regulatory job creation has become apparent. To resolve this conflict, the Chamber undertook a study to understand how EPA reached its jobs impacts conclusions and to investigate the soundness of EPA's claims that its regulations actually create jobs. The Chamber in 2012 commissioned NERA Economic Consulting (NERA) to undertake a study to review and assess EPA's methods for estimating employment impacts related to air quality regulations.

NERA's study reveals striking omissions and inconsistencies in EPA analyses.²⁹ While the study found that a number of recent EPA regulatory analyses claimed job-creating net benefits for their air quality rules; NERA found that the approach on which EPA based such optimistic forecasts was flawed in several ways:

- EPA's analyses used data and a jobs impact formula that relies on *aggregated* data from four individual industries that do not mirror the industries targeted by recent EPA rules, and which was derived from 1980s data no longer relevant for assessing current impacts.
- The methods used by EPA considered only part of the potential employment impacts.
- EPA's partial analysis methods ignored the effects of regulatory compliance costs on prices.

NERA concluded that the more complete approach for assessment of the overall economic and employment impacts of rules is to model the impact of regulation compliance cost through a "whole-economy" model that takes into account the cascading effects of a regulatory change across interconnected industries and markets nation-wide.³⁰ NERA also found that EPA possessed the capability to perform such "whole-economy"

²⁹ NERA Economic Consulting, "Estimating Employment Impacts of Regulations – A Review of EPA's Methods for its Air Rules (October 2012).

³⁰ The NERA study used EPA's published Regulatory Impact Analysis estimates of the direct compliance costs for facility operation, construction, equipment acquisition and maintenance associated with each proposed rule. These direct costs were incorporated as inputs to the NERA whole-economy model to derive impacts on operation, construction or closure, price impacts, and other economy-wide effects.

modeling and had actually done so in connection with two rulemakings in 2005.³¹ EPA's failure to use the more comprehensive economic analysis tool in its recent rulemakings results in misleadingly optimistic assessments of employment impacts attached by EPA to its air quality rulemakings.

NERA further applied the whole-economy approach to estimate the impact of EPA's MATS standard. EPA's partial-economy analysis showed the regulation would create 46,000 temporary construction jobs and 8,000 net new permanent jobs. By contrast, NERA's analysis found that the rule would have a negative impact on worker incomes equivalent to 180,000 to 215,000 lost jobs in 2015, and the negative worker income impacts would persist at the level of 50,000 to 85,000 such job-equivalents annually thereafter. NERA also analyzed three other EPA rules using the whole-economy model and found similar results of widespread adverse employment effects:

- EPA's Cross State Air Pollution Rule (CSAPR) would have an impact on worker incomes equivalent to the annual loss of 34,000 jobs from 2013 through 2037, compared to EPA's claim of 700 jobs per year gained.
- EPA's Boiler MACT rule would have a negative impact on worker's incomes equivalent to 28,000 jobs per year on average from 2013 through 2037, compared to EPA's claim of 2,200 jobs per year gained; and
- EPA's planned Ozone National Ambient Air Quality Standard (NAAQS) would reduce worker incomes by the equivalent of 609,000 jobs annually on average from 2013 through 2037. EPA has not yet published an employment impact for the Ozone NAAQS.

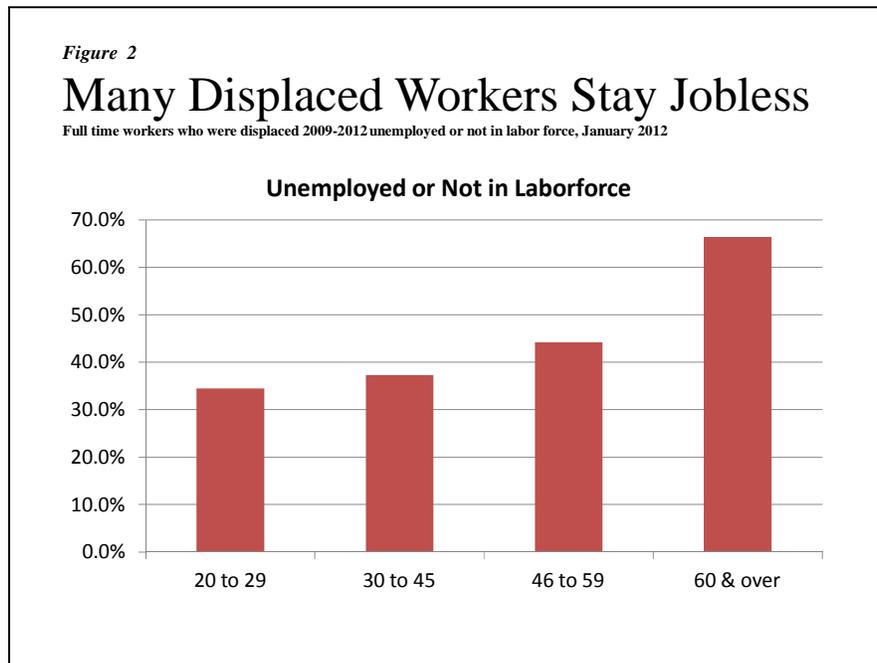
Job Losses: The Human Dimension

Regulators too optimistically assume that workers who are displaced from long-held jobs by regulations will quickly find new, comparable work. In reality, many workers never return to full-time work, and those who do often earn below their previous wage levels long after re-employment. The Bureau of Labor Statistics' Displaced Worker Survey in January 2012 found that among the 6.1 million workers who lost long-tenured jobs between 2009 and 2011, 44% were still unemployed up to three years later.

³¹ EPA used "whole-economy" modeling for the Clean Air Interstate Rule (CAIR) and the CAVR/BART rule. When using the more comprehensive model, EPA found that both rules would result in a decrease in wages, and evidence that the CAIR rule would lead to a decline in employment. EPA reported inconsistent and sometimes conflicting results after using multiple models, but failed to provide discussion or commentary to put the results into a meaningful context.

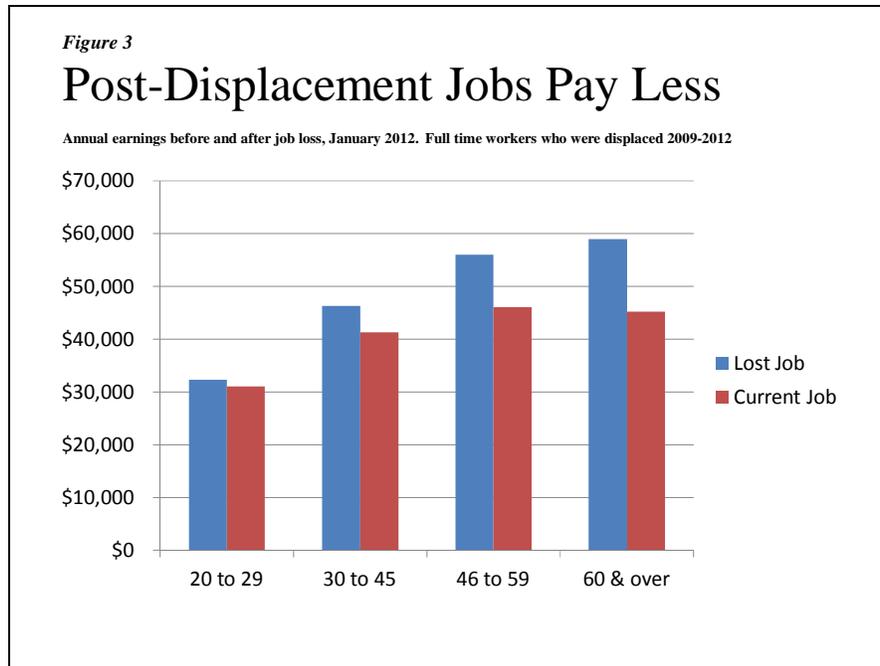
Workers age 60 or older are the most likely to be unemployed or not in labor force),³² and more than half of those without jobs drop completely out of the labor force, and simply give up looking for work (*see* Figure 2). For workers age 65 and older who are displaced, 75% remain jobless up to three years later. Further, BLS data shows that even for workers in their 20s, more than 30 percent remain jobless up to **three years** after losing a job that they had held for a significant time.

Similarly, regulators usually assume that workers who lose jobs because of their regulatory decisions will find new jobs that pay as well as lost jobs. The reality is that even when displaced workers find new jobs, those jobs pay less than their lost jobs. The earnings loss is greater for older displaced workers, and the earnings loss is not just temporary. Studies of payroll records show that the negative impacts last for decades. Twenty years after losing a long-tenured job, workers earn 15% to 20% less than comparable workers who experienced no job loss (*see* Figure 3).³³



³² U.S. Chamber analysis of micro-data (independent respondent records) files of the Displaced Worker Survey supplement to the Current Population Survey published by the Bureau of Labor Statistics/Census Bureau at <http://thedataweb.rm/TheDataWeb/launchDFA.html>.

³³ *Id.*



Over the past 40 years, many American industries that have declined or disappeared were once the economic bulwarks of communities and the nation. While a variety of factors have played a part in each of these changes in the industry structure of the economy, a common thread running through all of them has been the role of regulatory mandates and costs. Even when regulations are not the primary cause of change, regulations can provide the tipping point that leads to plant closures and adverse economic impacts that otherwise might have been avoided or cushioned over time.

The workers who lose their jobs today because regulation forces the plants where they have invested their working lives to shut down typically do not have the skills needed to take the new jobs that EPA promises will materialize, and typically new jobs when they materialize are in different places than the jobs destroyed. For example, the basic idea that a job lost today at a power plant in Ohio that shuts down will be replaced within a year or two by a new job at an electric vehicle plant in California is little comfort for workers who need to feed their families and to make their mortgage payments in Ohio today.

Consider the potential economic losses faced by just the 2,000 Appalachian coal miners who lost their jobs in May and June 2012. Based on average experience reported in the most recent BLS survey of displaced workers, 860 of those 2,000 workers can expect to still be jobless (either looking for work or given up looking) three years from now. Based on the average hourly pay of production workers in the coal mining

industry,³⁴ those 860 workers and their families can expect each to lose over \$151,000 in income from three years of joblessness. That amounts to a total economic loss of \$126 million for those 840 families over three years and more losses as more years of joblessness accumulate. What of the other workers, the ones who are lucky enough to find new jobs within three years? Based on the averages from current average duration of unemployment published by BLS, even they will face 39 weeks of unemployment and an income loss of \$38,313 each during their job search (totaling \$36.7 million for those 1,140 workers and their families.) The displaced worker survey data also suggests that 615 of them will have to take a significant cut in pay when they do find new work, adding further to the burden that they carry from their job displacement.

The table below shows the employment decline in a few of the industries significantly affected by EPA rulemaking since 1990.³⁵ Furniture, steel, sawmills/wood preserving and underground coal mining have been particularly hard-hit, each losing over 40 percent of the jobs that existed in 1990. The six industries shown accounted for over one million jobs in 1990 and, by 2011, job losses totaled 472,300.

Table A		
Employment Losses Selected Industries 1990 to 2011		
	Employment (thousands)	Percent Change
Bituminous coal and lignite surface mining	17.1	30.6%
Bituminous coal underground mining and anthracite mining	32.8	40.8%
Sawmills and wood preservation	64.0	43.2%
Lime, gypsum, and other nonmetallic mineral products	16.3	16.7%
Iron and steel mills and ferroalloy production	93.2	49.9%

³⁴ The average hourly pay is \$24.31 per hour, according to Bureau of Labor Statistics Occupational Employment and Earnings Survey data for May 2011. Weekly and annual earnings do are based on 40 hours per week and do not include overtime pay that many miners receive.

³⁵ The change in employment by industry was calculated by a U.S. Chamber analysis of annual average employment by industry data published by BLS for 1990 and for 2011. In each case, the published 2011 average annual employment level was subtracted from the 1990 level to obtain the differences indicated in the chart (in each case the difference is a loss, because 2011 total employment for each industry was less than the 1990 level. The percentage change was calculated as the job loss total divided by the 1990 employment level.

Furniture and related products	248.9	41.4%
Total	472.3	40.4%
Source: Bureau of Labor Statistics, Current Employment Statistics series		

Even if job growth was spurred in other industries, the reality is that 472,000 workers and their families were burdened with the economic costs of job loss and the necessity to search for and retrain for replacement jobs. In many cases they have faced many months of unemployment before finding new jobs. In today's economy, according to Bureau of Labor Statistics data, the average job seeker has been looking for work for 39 weeks – over nine months.

This is not an exhaustive list. It is merely a list of a few selected industries that have been affected by EPA regulations. While these job losses were not necessarily solely the result of environmental regulations, even in cases where industries were also declining for other reasons, it is reasonable to argue that regulatory burdens made matters worse. The important point is that EPA has not done the work that Congress repeatedly called for it to do with respect to investigating and tracking industries impacted by its regulations (past and proposed) to determine the extent to which worker displacement is the result of environmental regulations and to consider what steps could be taken by the government to ameliorate the burdens of job displacement that government policy decisions impose on working families.

Recent studies highlight the startling human dimension of unemployment. For example, one study of mid-career workers who lose long-held jobs found:³⁶

A worker displaced in mid-career can expect to live about one and half years less than a non-displaced counterpart. The reduction in life expectancy is smaller for older workers who experience lower lifetime earnings losses and are exposed to increased mortality for a shorter period of time. Our results do not speak to the role of non-economic factors such as stress, self-worth, and happiness.³⁷

Moreover, the rate of suicides for unemployed workers also increased by up to ten percent.³⁸ These are real people, and not EPA's computer modeled people.

³⁶ Daniel Sullivan and Till von Wachter, "Job Displacement and Mortality: An Analysis Using Administrative Data," *Quarterly Journal of Economics*, Vol. 124 (2009), number 3 (Aug), pp. 1265-1306 at <http://qje.oxfordjournals.org/content/124/3/1265.short>.

³⁷ Sullivan and von Wachter at 1290.

³⁸ *Id.* at note 49. See also Annie Lowery, "Death and Joblessness," *Washington Independent*, August 17, 2010 at <http://washingtonindependent.com/94925/death-and-joblessness>.

EPA needs to consider more than the supposed net impacts of a new regulation, viewed in isolation. While EPA's regulations have both benefits and costs, the reality is that the winners and the losers are usually not the same people and usually do not even live in the same communities. EPA's regulatory decisions create massive shifts in the structure of the economy, benefiting some workers, some communities and some industries and imposing costs or devastation on others. Even if EPA's redistributive mandates yield a net benefit for society as a whole over time, the rapidity of change that EPA mandates and the nationwide scope of change is a tremendous shock to the economic system. EPA needs to consider how it can lessen the burdens it is placing on the workers, families and communities that it targets for losses.

EPA could reduce the economic shocks of its rules by adopting more gradual approaches that phase in new standards over longer periods of time and that apply new standards only to new facilities, thereby cushioning the impacts on existing facilities and the communities they are located in. New technologies yield net benefits to society, but efficiency gains come with costs as jobs and industries dependent on older technologies are replaced. But in the case of technological change, the typical experience is gradual adjustment that cushions the shocks of economic change. EPA should endeavor to make its program of environmental change resemble more closely the successful experience of adoption of technological change. In addition to gradual schedules for adoption of new standards, EPA might also feature greater reliance on voluntary compliance, demonstrations, and incentive programs. A more gradual approach to regulation implementation would yield the added benefit of facilitating empirical study of effects to ensure that policies really are effective and on the right track.

Conclusion

Congress recognized for more than four decades there are huge benefits to a cleaner environment, but many times these benefits come at a significant cost to industry, communities and people. Moreover, many of these human costs are imposed on those least able to bear them. Congress has unequivocally mandated that agencies study and report back on these costs, but the agencies do not comply. Agencies, as required by law, need to start providing accurate accounting for the shifts in employment and related economic costs imposed on citizens by existing and proposed regulations so that Congress has the needed information to make sound public policy decisions.

For its part, Congress needs to require the EPA to actually conduct the employment analyses that Congress mandated in no less than **six** separate environmental

statutes.³⁹ It is only reasonable to better understand the price people and communities are actually paying for the environmental progress promised by regulation.

Thank you for the opportunity to submit this testimony. I look forward to answering any questions you may have.

³⁹ Clean Air Act (42 U.S.C. § 7621(a), Clean Water Act (33 U.S.C. § 1367), Solid Waste Disposal Act (42 U.S.C. § 6971, Toxic Substances Control Act (15 U.S.C. § 2623), Powerplant and Industrial Fuel Use Act (42 U.S.C. § 8453), and the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9610).