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Hearing to Examine the Federal Environmental Review and Permitting Processes, Part II

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Chair Capito, Ranking Member Whitehouse, and members of the Committee, I submit this testimony on behalf of the American Petroleum Institute (API), where I am the Senior Vice President of Policy, Economics and Regulatory Affairs. API is the national trade association representing all segments of America's oil and natural gas industry. From large integrated companies to small independent operators, our industry supports nearly 11 million American jobs across all 50 states and provides the energy that powers every district in the country.[1] API also sets the standards for the industry, establishing more than 800 standards and best practices that enhance operational safety and environmental protection in the U.S. and in 140 countries around the world. API's combined focus on sound domestic energy policy and industry safety is essential to maintaining American energy leadership for generations to come.

API greatly appreciates the Committee's sustained bipartisan efforts on comprehensive permitting reform. The need for meaningful reform becomes more urgent and obvious by the day. Whether the focus is on affordability, jobs and economic growth, national security, reliability, or emissions reductions, the conclusion is the same: to meet the demands of the future, we must be able to build big things but cannot do so because our permitting process is fundamentally broken. That is why comprehensive permitting reform is our industry's top legislative priority, and we are eager to work with both parties across this Committee, the rest of the Senate, the House of Representatives, and the Administration to get it done.

A Broken System Leads to Higher Costs for Consumers

The cost of living remains a primary concern for Americans across every region of the country. Meaningful permitting reforms are essential to reversing course. When infrastructure projects are delayed or constrained, costs go up and the system loses its ability to respond to market needs. Put simply, our current permitting system obstructs necessary infrastructure projects, and consumers pay the price.

[1] PwC for API, "*Impacts of the Oil and Natural Gas Industry on the US Economy in 2021," available at*: https://www.api.org/-/media/Files/Policy/American-Energy/PwC/2023/API-PWC-Economic-Impact-Report-2023.pdf

It was not always this way. The United States has a long history of building ambitious projects. The Hoover Dam, one of the most complex engineering feats of its era, was built in five years. The Empire State Building was completed in just over a year. These and so many others were built with urgency, clarity of responsibility, and a shared understanding that infrastructure was essential to national progress.

Today, similar projects would face years of sequential reviews, overlapping agency processes, cost escalation, uncertain litigation exposure, and the risk that permits could be revoked long after approval. The process has swung from disciplined decision-making to procedural paralysis. As a result, the infrastructure needed for the future goes unbuilt.

Energy Demand is Rising, and Permitting Reform is Vital to Meeting it.

Our broken permitting process negatively impacts every industry and every sector of the economy, but nowhere are the ramifications more apparent than energy. The essential nature of energy means it affects the costs of nearly everything else. From groceries to housing, from transportation to manufactured goods, energy is woven into every part of the economy.

The United States benefits enormously from being a global energy superpower. After decades of dependence on foreign suppliers, the U.S. now controls its own energy destiny, and we must maintain this position of strength for generations to come. Oil and natural gas infrastructure is essential to doing so, as it is the foundation of the U.S. energy system. Natural gas is by far the largest source of electricity generation and underpins grid reliability. Refineries and liquid fuels are essential to every form of transportation. Pipelines and storage facilities help ensure the safe and efficient delivery of energy.

Energy demand is rising rapidly, driven by fundamental changes in the economy. Manufacturing is being re-shored and expanded. Electricity demand is increasing rapidly due to data centers, artificial intelligence, and electrification. At the same time, U.S. energy exports are playing a growing role in supporting allies and global energy security.

Bolstering U.S. energy leadership requires investment, and investment requires certainty. Permitting reform must reflect these realities. Meeting today and tomorrow's energy demand requires new energy infrastructure across all fuels and technologies, including pipelines, storage facilities, refinery expansions, liquefied natural gas (LNG) terminals, processing plants, transmission, and emerging technologies such as carbon capture and low-carbon fuels. All require significant planning, capital, and long lead times, and all need a predictable permitting process.

Unfortunately, the last few decades have seen numerous examples of permitting statutes and processes being weaponized against oil and gas infrastructure—cancelled pipelines, a pause on LNG permits, delayed lease sales, blocked projects at the state level, just to

name a few. Even projects with minimal environmental impacts and strong local support can remain in regulatory limbo for years due to duplicative reviews, unclear agency roles, shifting interpretations of statutory authority, and endless litigation after permits are issued. These obstacles block billions of dollars of industry investments, but it ultimately penalizes American workers and consumers by reducing jobs and raising costs.

Further, these obstacles do nothing to enhance environmental outcomes. Instead, they reflect a misguided opposition to any infrastructure being built at all or assume that restricting energy supply will somehow eliminate demand. History has shown the opposite. When American energy production and infrastructure are blocked, demand does not disappear—the obstacles merely result in higher prices, more volatility, and less reliability.

Families want confidence that the energy system can support economic growth without disruption or increase in cost. Businesses want to know that infrastructure investments will not be stranded by regulatory uncertainty. Workers want projects that create jobs to move forward rather than remain stalled indefinitely. For all these reasons, comprehensive permitting reform is essential.

Permitting Obstacles Hold Back all Industries and Technologies

A central reality of the current permitting debate is that these challenges transcend industries and technologies. Our industry is far from the only one impacted. Electric utilities, transmission builders, manufacturers, labor organizations, mining companies, roads and bridges, and energy developers of all types face a gauntlet of federal approvals governed under a maze of outdated laws and regulations.

As a result, support for permitting reform spans an incredibly broad coalition—a coalition API is proud to be a part of. The common thread is experience: projects that should take years increasingly take decades, not because environmental impacts are unresolved, but because process complexity, coordination failures, and litigation risk compound over time. All have emphasized that infrastructure delays—not resource scarcity—are increasingly the binding constraint on the nation's ability to meet the demands of the future.

API strongly believes that permitting reform should cover all industries and be technology neutral. Done correctly, it will provide a necessary correction to a system that no longer functions as intended for anyone seeking to build any type of infrastructure in the United States.

API's Permitting Priorities

API has advocated for permitting reform for many years and has clearly established priorities that will modernize the permitting process while maintaining strong environmental protections. The latter point is essential. API's proposed reforms do not alter underlying environmental standards or negatively impact environmental outcomes. Instead, they focus on process improvements, clarity, scope of review refinements, coordination, and timelines that allow agencies to complete reviews efficiently and issue legally durable decisions.

Further, policymakers should recognize that the industry's compliance obligations go far beyond the initial permitting process. These obligations, required under multiple statutes, exist for the entirety of any given project's lifespan—including construction, operations, and decommissioning. API's policy recommendations for permitting reform would not impact those significant obligations.

Congress should start by reforming the parts of the permitting system that are most often weaponized against our industry: the National Environmental Policy Act (NEPA), the Clean Water Act, and the manner in which projects get needlessly tied up in court. These laws are well-intentioned, but their current interpretation too often means delay without delivering better outcomes. Modernizing them — with clearer rules, firm timelines, and reasonable limits on litigation — would help provide projects the certainty and predictability needed to move forward.

A more detailed overview of these reforms is included below. Beyond these, additional common-sense reforms to other statutes, like the Endangered Species Act and the National Historic Preservation Act among others, would help address persistent challenges to building critical infrastructure.

NEPA Reform: Restoring Focus and Predictability

NEPA was enacted over fifty years ago as a procedural statute to ensure informed federal decision-making. However, over time NEPA reviews have expanded far beyond the federal action at issue, forcing agencies to analyze effects that are not only impossibly speculative or attenuated, but also outside their regulatory authority.

This expansion has not improved environmental outcomes. Instead, it has encouraged agencies to generate excessively long documents (often thousands of pages) and engage in duplicative analysis and "litigation-proofing" that significantly delays the process. Agencies often spend years defending the adequacy of analysis rather than focusing on substantive environmental issues.

The SPEED Act which passed the House of Representatives late last year reflects a bipartisan effort to restore NEPA's original intent by clarifying what qualifies as a major federal action, reinforcing reasonable limits on scope of reviews, and encouraging the use

of existing studies and prior analyses. These reforms properly recognize NEPA as a procedural statute and that agencies are entitled to deference when exercising technical judgment within their statutory authority.

The Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County* reaffirmed that NEPA does not require analysis of upstream or downstream effects that are separate in time or place from the proposed action and beyond the agency's control. Congress needs to codify these principles to ensure NEPA reviews remain focused, consistent, and durable across administrations.

Importantly, these reforms do not weaken environmental review or stymie public comment and participation. They ensure that agencies can complete thorough reviews on predictable timelines and make decisions based on the environmental record, rather than fear of litigation.

Clean Water Act Reform: Section 401

Section 401 of the Clean Water Act was intended to ensure that discharges into waters of the United States comply with applicable state water quality standards. It is a core component of cooperative federalism.

Unfortunately, Section 401 has increasingly been weaponized against the oil and gas industry in complete disregard for its original statutory intent. It is now often used as a tool to evaluate—and typically block—entire projects rather than discrete water discharges, impose conditions unrelated to water quality, and extend decision timelines indefinitely.

As API indicated in its support for the House-passed PERMIT Act, these practices undermine the intent of the statute by allowing individual states to inappropriately delay or veto infrastructure projects on grounds completely unrelated to water quality. Multiple major interstate natural gas pipelines—representing billions of dollars of investment—have been blocked by this disingenuous tactic, and it is the primary reason key regions of the country (e.g., New England) do not have sufficient access to natural gas.

It is well past time to reaffirm congressional intent by limiting Section 401 reviews to direct water quality impacts from actual discharges, enforcing the statutory one-year deadline, and preventing politicized procedural gamesmanship such as withdraw-and-resubmit tactics. These reforms preserve state authority to protect water quality while ensuring that Section 401 functions as a focused, predictable component of the federal permitting framework—not a state-based veto against politically disfavored projects.

Similarly, API supports designating the Federal Energy Regulatory Commission as the lead agency for coordinating environmental reviews for natural gas projects, reflecting decades of experience and technical expertise. Because states have weaponized the CWA Section

401 process to block necessary natural gas projects, provisions in House-passed legislation eliminate the need for separate state 401 water quality certifications for natural gas projects and instead direct FERC to coordinate water quality review in its process. To the extent that judicial reforms are proposed for any environmental statutes, such reforms should apply to FERC-related projects so that FERC can manage its reviews without being hampered by frivolous litigation.

Clean Water Act Reform: Section 404 and Nationwide Permits

Nationwide permits under Section 404 of the CWA allow projects with minimal environmental impacts to proceed efficiently. Nationwide Permit 12, which applies to linear infrastructure such as pipelines, is particularly critical for the safe and reliable delivery of energy.

The Nationwide Permit program is common-sense and used by industries across every sector of the economy. However, the current five-year reauthorization cycle for nationwide permits is not long enough to provide regulatory certainty. Project developers must plan around the risk that permits could lapse or be rescinded despite unchanged environmental conditions.

For that reason, API strongly supports House legislation that extends the reauthorization period from five to ten years, codifies Nationwide Permit 12, clarifies that one linear project requires only one permit, and modernizes consultation requirements. These reforms maintain environmental safeguards while providing the predictability needed by multiple industries for infrastructure planning and capital deployment.

Judicial Review and the Need for Proportionate Remedies

Judicial review plays a vital role in ensuring agency accountability and API has long supported the ability of affected parties to challenge agency actions. At the same time, prolonged litigation has become one of the most significant sources of delay in infrastructure development. Even when agencies ultimately prevail (which they usually do, indicative of the weak merits often presented in these challenges), lawsuits can delay projects for years, increasing costs and creating uncertainty that discourages future investment and planning. Further, as mentioned above, the inevitability of legal challenges forces agencies down a never-ending quest to 'litigation-proof' their actions, which wastes agency resources and results in chronic delays.

API and a broad coalition support judicial reform provisions that preserve judicial review while ensuring that litigation does not become a de facto permitting system. These reforms should include reasonable time limits for filing challenges, but on its own that does little to fix the problem of endless litigation. Thus, meaningful judicial reform must also include

limiting standing requirements to focus only on directly impacted parties, common-sense narrowing of organizational standing, and ensuring remedies that are proportionate.

Making remand—rather than vacatur—the default remedy allows agencies to correct narrow deficiencies without unnecessarily halting construction. The goal is efficient and targeted review, and the Senate has an opportunity to apply this concept not just to NEPA, but expand it to other relevant permitting statutes, as well. This provides a degree of permit certainty for projects of all types.

Permit Certainty and Decision Durability

Finally, meaningful permitting reform must address what happens after approvals are issued by establishing greater permit certainty. Even after a fully completed environmental review process, our industry and others have experienced arbitrary suspensions or revocations driven by political or policy shifts rather than new facts or violations. Several of the policy recommendations above foster greater permit durability, but reform should clarify that projects that have completed all required environmental reviews and remain in compliance should not be subject to these unpredictable outcomes.

In addition to the policy priorities detailed above, API joins a broad coalition in supporting permit certainty provisions that reinforce reliance on lawful approvals while preserving agency authority to enforce compliance, respond to new information, and act in response to emergencies. This balance is essential for long-term infrastructure planning and deployment. Without clear durability for agency decisions, even an improved permitting process will fail to deliver infrastructure on timelines needed to meet rising energy demand.

This is the Moment for Bold, Meaningful Reform

Congress has not ignored these challenges. In recent years, lawmakers have taken important initial steps to begin modernizing the permitting framework. Provisions included in the Fiscal Responsibility Act and subsequent legislation reflect bipartisan recognition that environmental reviews need clearer timelines, appropriate scopes of review, better coordination, and judicial durability.

These efforts—often bipartisan—were meaningful first steps and reflect growing momentum and greater recognition of the urgency of the problem. Agencies have begun to implement those changes, and early progress has been made—but those steps were necessarily incremental. They addressed pieces of the problem without fully resolving the underlying structural issues that continue to drive delay and uncertainty. Experience since enactment has shown that while incremental reforms help, they are not sufficient on their own to deliver the scale and speed of infrastructure deployment that today's economy demands.

This Congress now has an opportunity to build on that foundation. Permitting reform has been discussed for years because the problem has been persistent. What makes this moment different is the convergence of rising energy demand, global competition, supply chain realignment, and growing public concern about affordability and reliability.

The United States is competing with nations that are moving aggressively to build infrastructure, modernize energy systems, and attract investment. Our broken permitting system does not occur in a vacuum; it affects competitiveness, job creation, and the nation's ability to lead globally.

Bold, meaningful, and durable permitting reform can help unlock economic prosperity for the next generation of Americans. It can help support job creation across sectors, enable infrastructure investment, strengthen energy security, and reinforce alliances abroad by helping to ensure that the United States remains a reliable energy partner.

The need for permitting reform is not theoretical, and it is not limited to any one industry, technology, or region. API's recommended reforms are not about cutting corners. They are about restoring focus, discipline, and accountability to a system that has become overly complex and unpredictable. They reflect respect for environmental protection, for the rule of law, and for the need to make decisions that endure. Proper reform will not return to the past; instead, it will enable us to build the infrastructure of the future.

Conclusion

We are grateful that this Committee and its leadership continue to advance thoughtful, bipartisan discussions on permitting reform. A comprehensive approach that preserves environmental protection while restoring focus, predictability, and durability to the permitting process is essential if the United States is going to build the infrastructure our economy and communities require.

API is eager to work closely with members of the Committee as proposals move forward. Thank you for the opportunity to submit this testimony.