Opening Statement

Chairman Blake Farenthold

"An Examination of Federal Permitting Processes"

Thursday, March 15, 2018

Today our Subcommittee on Interior, Energy, and Environment will examine federal permitting processes under the National Environmental Policy Act, known as NEPA, and the Clean Water Act. Numerous reports have documented how convoluted requirements and lengthy application periods for federal environmental permits negatively affect infrastructure and development projects. Today's hearing will explore the problems and inefficiencies within those permitting processes in order to highlight opportunities for reform.

NEPA was passed with good intentions nearly fifty years ago, but over time has evolved to become one of the most burdensome regulations facing any development project. NEPA review for complex projects that require an environmental impact statement can take years to complete and cost millions of dollars. The time for a full environmental review for a highway project has grown from approximately two years when NEPA was first implemented in the 1970s to over seven in 2013. Even that seems quick compared to the seventeen years it took one company to get a permit for mining in western Montana.

State and local governments are forced to navigate the bureaucracy of myriad federal agencies in order to get a project approved under NEPA. In addition to all the red tape, applicants face the constant threat of litigation brought by environmental groups and other opponents of development. Even the most minor oversight in the review process can prompt a lawsuit from activists, adding further delay on top of an already lengthy process.

The permitting program established in Section 404 of the Clean Water Act is similarly plagued by lengthy delays and high costs for applicants. One of the witnesses we will hear from today has been waiting nearly thirty years for a permit, and the project remains in limbo. Environmental Protection Agency and the Army Corps of Engineers share responsibility for administering this program and over the years have used their regulatory authority to expand the jurisdiction of the program and their own authority.

The requirements for Section 404 permits are vague, and reports indicate that enforcement varies from district to district. This makes it very difficult for applicants to know what is required for a successful application. There is also no time limit imposed on the review process, so permit applicants face significant uncertainty and have difficulty planning for when they can begin work.

Not only is navigating the permit process difficult, there is also no guarantee that a project will be allowed to proceed. In 2013, the Supreme Court held that the EPA has the authority to retroactively veto Section 404 permits issued by the Corps. In that case, the permit had been

issued four years prior to the EPA's decision to veto it, and the permit holder was in full compliance with the conditions of their permit. When a project can be arbitrarily vetoed midway through development, it is difficult, if not impossible to attract investors and creates an enormous disincentive to undertake any project requiring a 404 permit.

Some of our panelists have had particularly egregious experiences trying to get a permit, and I look forward to hearing their perspectives on the issue. I hope this provides a starting point for a productive discussion about ways to improve the federal permitting process and get American infrastructure and development back on track.