



SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

## “Opportunities to Improve Project Reviews for a Cleaner and Stronger Economy”

April 26, 2023 – 10:00 AM

### OVERVIEW

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On Wednesday, April 26, the Senate Environment and Public Works Committee held a hearing entitled “Opportunities to Improve Project Reviews for a Cleaner and Stronger Economy.” During the hearing, senators and witnesses discussed: the National Environmental Policy Act (NEPA); community engagement; manufacturing and jobs; federal and state agencies; the energy transition; litigation and judicial review; permitting reform proposals; and transmission.

### OPENING STATEMENTS

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- [Chair Tom Carper \(D-DE\)](#)
- [Ranking Member Shelley Moore Capito \(R-WV\)](#)

### WITNESS PANEL

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- [Ms. Christy Goldfuss](#) – Chief Policy Impact Officer, National Resources Defense Council (NRDC)
- [Ms. Dana Johnson](#) – Senior Director of Strategy and Federal Policy, WE ACT for Environmental Justice
- [Ms. Christina Hayes](#) – Executive Director, Americans for a Clean Energy Grid
- [Mr. Jay Timmons](#) – President & CEO, National Association of Manufacturers (NAM)
- [Mr. Marty Durbin](#) – Senior Vice President of Policy, U.S. Chamber of Commerce

### QUESTION AND ANSWER SUMMARY

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#### National Environmental Policy Act (NEPA)

Sen. Ben Cardin (D-MD) suggested environmental assessments do not sufficiently consider global climate impacts. He asked Ms. Goldfuss to comment on the tradeoff between shorter environmental reviews and increased greenhouse gas emissions. Ms. Goldfuss stated NEPA allows applicants and regulators to predict the impacts of a project in the context of a changing climate. She argued that a rushed environmental review process would lead to consequences, like having to rebuild infrastructure after a short period of time because of insufficient resiliency to extreme climate events. She said the NEPA process limits environmental impact, engages the community, and reduces objections and delays on the back end.

Sen. Mark Kelly (D-AZ) asked how NEPA requirements on the construction of semiconductor facilities could impact project costs and timelines. Mr. Durbin asserted that while the federal government should ensure proper environmental reviews and community input, it must also ensure the permitting process is functional and allows

for critical facilities to be built quickly in the U.S. He agreed with Sen. Kelly that NEPA requirements for semiconductor plants would not produce an “environmentally sound” project and would ultimately cause delays and increased costs.

Sen. Kelly asked what Congress could do to prevent NEPA requirements from driving up project costs and increasing delays. Mr. Durbin highlighted several potential actions for Congress, including: creating a structured, time-bound permitting process; facilitating agency coordination; and setting a time limit for adjudication. He also stressed how these problems not only arise because of NEPA but also because of other underlying statutes. He said that without permitting reforms, the government would be hindering the opportunities provided by legislation like the Chips and Science Act ([P.L. 117-67](#)) to increase competitive advantage.

Sen. Kelly asked Ms. Goldfuss whether it would make sense to grant federal agencies the authority to issue programmatic environmental assessments or environmental impact statements for Chips and Science Act programs. Ms. Goldfuss stated the permitting issues could be addressed by obtaining the information necessary to build semiconductor facilities, assessing their impacts, and using the available engagement tools across the federal government.

Sen. Ed Markey (D-MA) asked Ms. Johnson how weakening NEPA could put disadvantaged communities at risk. Ms. Johnson emphasized how NEPA provides communities the chance to sit at the table and have a voice in the planning process. She stated communities do not “inherently” oppose projects and early engagement could help to ensure economic, public health, and environmental benefits.

### **Community Engagement**

Sen. John Fetterman (D-PA) asked how to incorporate proactive community engagement in programmatic reviews. Ms. Goldfuss explained how the programmatic review process allows developers to examine an area larger than the footprint of a single project to engage with communities and examine environmental conditions at a “broad level” early in the permitting process. She suggested developers could then “tear off” the larger programmatic review for specific projects.

Chair Tom Carper (D-DE) asked the witnesses to provide an example of how early community engagement helped to mitigate community concerns while also avoiding delays on the back end. Ms. Johnson highlighted the construction of an energy storage facility at the Port of Savannah in Georgia. She explained how the local government, industry, and community worked together early in the process to envision how the project could benefit the community through job creation. She said the early engagement with frontline groups allowed the project to be scoped out, planned, and permitted “easily” and in a way that communities embraced. Ms. Hayes discussed interactions between the Morongo tribe and Southern California Edison to upgrade a transmission line. The two parties created an equity financing agreement approved by the Federal Energy Regulatory Commission (FERC) that allowed the tribe to see community benefits from the infrastructure built on its land.

Sen. Cardin said the government must maintain a commitment to environmental justice when trying to streamline permitting. He used the example of the [Highway to Nowhere](#) in Baltimore to underscore the importance of engaging with impacted communities. He asked Ms. Johnson how Congress could reduce permitting delays without rushing the community engagement process. Ms. Johnson argued it would be impossible to have meaningful community engagement when prioritizing speed over quality. She suggested front-loading the permitting process with public engagement before completing an environmental impact statement or environmental assessment to ensure an “early and continued” connection to impacted communities. She emphasized how communities will sometimes push back, in which case the parties should come up with a mutually beneficial resolution.

### **Manufacturing and Jobs**

Ranking Member Shelley Moore Capito (R-WV) asked the witnesses to describe how permitting delays impact the American worker and consumer. Mr. Timmons stated 74 percent of National Association of Manufacturers (NAM) members say permitting reform would be helpful to their company. He emphasized how slow permitting processes delay the construction of necessary community infrastructure and the delivery of high-quality jobs. He highlighted some examples of permitting delays, like the experience of a NAM member company that had to

respond to over 600 requests for information and produce a 4000-page environmental impact statement. He recognized that the U.S. has seen record investments in manufacturing facilities, record job creation, and record wage growth over the past few years but emphasized that this would not last if permitting remains slow. Mr. Durbin agreed with Mr. Timmons and added that long permitting processes discourage investors from supporting projects in the first place.

Sen. Kevin Cramer (R-ND) asked about the role of energy costs and availability in the U.S. manufacturing “renaissance.” Mr. Timmons stated the cost of energy, in addition to other factors like labor, is a major input for manufacturers. He indicated NAM would like to see the development of all forms of energy to drive down the cost of doing business in the U.S. He stated the government must consider tax, regulation, and infrastructure in its efforts to increase U.S. manufacturing competitiveness.

Sen. Pete Ricketts (R-NE) inquired about the impact of permitting delays on job creation. Mr. Timmons said any kind of uncertainty in the process reduces the confidence of investors. To meet growing demand, he said, investments must be made to develop supply, and if investors are not confident in the domestic permitting process, they will move manufacturing overseas. He underscored how the U.S. would lose out on opportunities to create jobs, improve wages, and strengthen communities without permitting reform.

Sen. Cynthia Lummis (R-WY) asked Mr. Durbin how the current permitting process incentivizes manufacturing and energy production abroad. Mr. Durbin said without effective permitting reform, the U.S. would not accomplish three core objectives: economic competitiveness, energy security, and the transition to a cleaner economy. He stressed how domestic energy projects are cleaner than foreign projects because they must adhere to “robust” U.S. environmental statutes.

### **Federal and State Agencies**

Sen. Fetterman explained that Pennsylvania faces capacity issues and asked how the federal government should help states improve their permitting processes. Ms. Goldfuss pointed to ongoing partnerships in Nevada, where resources from the Inflation Reduction Act (IRA) ([P.L. 117-169](#)) and the Infrastructure Investment and Jobs Act (IIJA) ([P.L. 117-58](#)) have been used by the state to improve its permitting process. She stressed the importance of including environmental considerations and community engagement upfront.

Sen. Ricketts described how Nebraska’s Department of Environment and Energy used [Lean Six Sigma](#), a process improvement methodology, to reduce the time it took to complete air construction permits from 190 days to 65 days without changing “any sort of environmental requirement.” Ms. Goldfuss noted the creation of the [Federal Permitting Improvement Steering Council](#) (FPISC), which is designed to accomplish a similar goal by examining permitting bottlenecks. She said funding from the IRA would aid the pursuit of these efficiencies. Mr. Timmons agreed that strategies like Lean Six Sigma could help reduce permitting delays. Mr. Durbin indicated there are “huge opportunities” to use process improvement strategies in permitting reform.

Sen. Markey mentioned that fewer than 1 percent of federal actions require an environmental impact statement. He asked Ms. Goldfuss how the government could permit more efficiently without making “arbitrary” changes and sacrificing the quality of environmental reviews or community engagement. Ms. Goldfuss highlighted the impact of IRA and IIJA investments on the ability of federal agencies to properly staff their offices and update their systems. She argued we should wait and allow this funding to “take effect” in the agencies.

Sen. Markey asserted that FERC could improve permitting without any new legislation if it had a full slate of five commissioners. With all five commissioners, he said, FERC could finalize the regional transmission planning and cost allocation rule, finalize the interconnection rule, establish minimum transfer requirements between regions, promote the use of grid-enhancing technologies, and utilize federal backstop siting authority. He suggested the permitting reform movement aims to paralyze FERC to justify cutting environmental and community protections.

Sen. Jeff Merkley (D-OR) argued permitting delays are often caused by factors only tangentially related to NEPA, like inadequate agency budgets, staff turnover, delays in receiving information from permit applicants, and compliance with other laws. He asked Ms. Goldfuss whether she agreed Congress should focus on increasing agency capacity. Ms. Goldfuss agreed. Sen. Merkley underscored his belief that permitting issues are not due to NEPA and echoed Sen. Markey’s comments about FERC’s ability to improve the process without new legislation.

## Energy Transition

Ranking Member Capito asked Mr. Durbin whether the energy transition could happen without permitting reform. Mr. Durbin stressed how the Administration's ambitious energy transition goals could not be achieved without reforms to expedite projects necessary for the transition.

Ranking Member Capito highlighted federal initiatives to accelerate electric vehicle (EV) deployment. She emphasized that this growth would rely on the domestic production of semiconductors with [Made in America](#) requirements, necessitating domestic mining of critical minerals. She asked Ms. Goldfuss whether the National Resources Defense Council (NRDC) has ever supported the permitting of a mine for critical minerals. Ms. Goldfuss stated the NRDC's role is not to support mines, but rather to oppose them when they are being constructed in critical habitats where they would have negative environmental impacts.

Sen. Merkley asked how the movement for an "all-of-the-above" energy strategy in the U.S. weakens the country's international reputation as it advocates globally for reducing fossil fuel projects. Ms. Goldfuss said this contradiction to the message that the climate is a top U.S. priority "hurts our leadership abroad." She said increasing or maintaining the permitting rate for fossil fuel projects directly contradicts the progress made through the IRA's investments in the energy transition. She expressed hope that the permitting process could be addressed while maintaining commitments to environmental protection and commended the members of the Committee for their bipartisan approach to the issue.

Sen. Sheldon Whitehouse (D-RI) asked Mr. Timmons and Mr. Durbin whether their organizations support both clean energy and fossil fuel infrastructure and development. Mr. Durbin stated the Chamber "absolutely" supports permitting reform for both clean energy and traditional energy. He added that permitting reform must extend beyond the energy sector to roads, bridges, water technology, broadband, and semiconductor production. Mr. Timmons said NAM supports an all-of-the-above approach to reduce the overall cost of energy. He echoed Mr. Durbin's comments, stressing how permitting reform is required for projects funded through the IIJA, Chips and Science Act, and IRA.

## Litigation and Judicial Review

Sen. Lummis cited a Congressional Research Service [report](#) that found NEPA is the most frequently litigated federal environmental statute. Mr. Timmons said a time limit on litigation is "very much" a part of permitting reform. He noted there have been 175 suits from public interest groups, 95 from individuals and citizens organizations, 15 from property owners, and 48 from state and local governments. He stressed how business groups only account for 12 percent of the suits. He acknowledged the importance of businesses, local governments, and citizens working together early in the process to resolve conflicts and highlighted NAM's relationship with Matthew Tejada, the Deputy Assistant Administrator for Environmental Justice at the Environmental Protection Agency (EPA).

Ranking Member Capito argued the "unending delay" in the judicial system is set up to not just delay projects but discontinue them. She asked Ms. Goldfuss whether any judicial review should be included in permitting reform. Ms. Goldfuss stressed how NEPA is sued in only 0.22 percent of decisions. She reiterated how a "good process" early in the project development phase reduces the likelihood of judicial review and other challenges later in the permitting process.

Sen. Dan Sullivan (R-AK) discussed how litigation delays the construction of energy projects. He drew a "strong correlation" between the number of litigation-canceled pipelines and increases in the cost of natural gas. He asserted that high energy prices are directly connected to "out of control" and unrestricted litigation. Mr. Durbin agreed that the litigation is "harmful in many ways." He argued this litigation increases prices for manufacturers and consumers, reduces energy reliability, and incentivizes importing natural gas from adversaries like Russia. Mr. Timmons agreed with Mr. Durbin, stating the war in Ukraine has clearly demonstrated the importance of not only developing domestic natural gas resources but also exporting these resources to U.S. allies to reduce their dependence on Russia. He argued for a time limit on judicial review. Ms. Goldfuss reiterated how community agreements and engagement early in the process reduce legal challenges and expedite the process.

## Permitting Reform Proposals

Sen. Merkley said the permitting reforms suggested in the hearing would allow more fossil fuels to be delivered into manufacturing communities, increasing toxic chemical emissions. He asked Ms. Goldfuss why the NRDC opposed the Energy Independence and Security Act of 2022 ([S.\\_\\_\\_\\_\\_](#)) introduced by Sen. Joe Manchin (D-WV). Ms. Goldfuss said NRDC opposed the bill because of its timelines for judicial review, its inclusion of the Mountain Valley Pipeline, and a general opinion that the bill would not improve the permitting process in a way that was consistent with the NRDC's objectives.

Sen. Whitehouse asked Mr. Timmons and Mr. Durbin whether they would prefer the Environment and Public Works Committee's permitting reform proposal or the proposal included in the House Republicans' Lower Energy Costs Act ([H.R.1](#)). Mr. Timmons said NAM would not engage in "picking winners and losers" between House and Senate proposals and is interested in working on a bipartisan and bicameral solution. Mr. Durbin noted the Chamber supported H.R.1 because it would "move the ball forward." He stressed how the Chamber would like to engage all of Congress on permitting reform, noting the recent launch of its [Permit America to Build](#) initiative with 350 organizations from around the country.

Sen. Whitehouse asked whether Mr. Timmons and Mr. Durbin supported the repeal of IRA provisions included in the House Republicans' debt limit legislation, the Limit, Save, Grow Act ([H.R.2811](#)). Mr. Durbin said the Chamber supports the IRA and does not support the repeal of its provisions. Mr. Timmons said NAM has not engaged in the discussion. Both witnesses emphasized that default should not be an option. Sen. Whitehouse asked if the witnesses supported the repeal of the IRA's methane pollution fee. Both witnesses said they did not support it.

## Transmission

Chair Carper asked Ms. Hayes to discuss the primary sources of permitting delays for high-voltage transmission lines. Ms. Hayes said the obstacles fall into three categories: paying, planning, and permitting. She underscored the importance of establishing a clear threshold for federal jurisdiction for regionally significant transmission.

Sen. Cramer highlighted how the Lower Energy Costs Act did not include provisions specific to transmission development. He asked Ms. Hayes whether changes to NEPA or other federal laws would be necessary to accomplish federal transmission goals. Ms. Hayes stated any consolidation of jurisdiction over high-capacity lines at the federal level would need to be coupled with a streamlined permitting and siting process. She said larger transmission lines with more regional benefits should have a five-year cap on the permitting process. She emphasized how states' input is "very valuable," but stressed the importance of considering broader regional interests when building transmission lines. She commended states in the Midwest for their efforts to partner with their neighbors and effectively site regional transmission.

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Please click [here](#) for the archived hearing.