

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641
June 2, 2011

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton and Chairman Whitfield:

I am writing to share new information from the U.S. Environmental Protection Agency (EPA) which is relevant to the Committee's consideration of H.R. 2021.

If you are like me, when Shell Oil explained that it took five years for EPA to process a permit application under the Clean Air Act, you reacted by thinking that seems far too long. However, as the attached letter explains, the timeline surrounding Shell Oil's application for Clean Air Act permits in the Arctic shows that EPA has never taken five years to issue a permit to Shell. Nor, as some have suggested, did a permit get "ping ponged" back and forth with the Environmental Appeals Board for five years. In fact, it appears that the Committee may have a fundamental misunderstanding of the facts.

On May 13, 2010, EPA Assistant Administrator Gina McCarthy testified before the Subcommittee on Energy and Power about the Jobs and Energy Permitting Act. During that hearing, several members of the majority stated that Shell has been trying to obtain a Clean Air Act permit for its proposed Arctic drilling for five years. Congressman Sullivan stated that "EPA's regulatory roadblocks have delayed any activity for nearly five years" and later called

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the five year delay a “fiasco.” Congressman Gardner and Chairman Shimkus also cited this five year delay as a justification for the proposed legislation.¹

Assistant Administrator McCarthy disagreed with that assessment, noting in response to questions that “every time Shell has applied for a permit, a permit has been issued by the agency within 3 to 6 months of that permit application being complete.” She also noted that Shell “has consistently revised the request, changed the project, changed what sea they want to drill in.”²

Hearing that testimony, Ranking Member Rush and I wrote to Assistant Administrator McCarthy and asked her to document the timeline surrounding Shell’s application for a Clean Air Act permit in the Arctic. Her response, which is attached in full, demonstrates the following:

- *EPA has finalized Shell’s permits quickly.* The two Shell permits at issue—major source permits for the Discoverer drillship in the Chukchi and Beaufort Seas—were proposed and finalized within 3-4 months of receiving completed applications. Both went from submission of a completed application to a decision by the Environmental Appeals Board within approximately one year.
- *Shell pulled its application to drill with the Discoverer in the Beaufort Sea for two years.* Shell first proposed drilling with the Discoverer in the Beaufort Sea in December 2006 but decided to defer action on this application in late 2007. Shell did not file a new permit application to use this drillship in the Beaufort Sea until January 18, 2010. EPA finalized this permit shortly thereafter on April 9, 2010.
- *Shell delayed final agency action on a permit for the Discoverer in the Chukchi Sea by submitting insufficient permit applications.* Shell initially filed a permit application for the Discoverer in the Chukchi Sea in December 2008 but had to re-file the application in September 2009 when data showed that the operation would violate air quality standards for fine particles. This new permit application was both incomplete and requested substantial changes to the company’s operations. Shell did not provide all necessary information until the end of December 2009. EPA finalized the permit shortly thereafter on March 31, 2010.

For these and other reasons outlined in EPA’s response, it appears misleading to suggest that Shell submitted an application to drill in the Beaufort and Chukchi Seas five years ago and

¹ Committee on Energy and Commerce, Subcommittee on Energy and Power, *The American Energy Initiative: H.R. ____, the Jobs and Energy Permitting Act of 2011*, 112th Cong. (May 13, 2011).

² *Id.*

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has been waiting ever since. Rather, Shell has apparently pulled applications, modified its proposed operations, and changed its target drilling sites on numerous occasions in this time period. No one wants EPA to take a one-size-fits-all approach to permitting these major sources of pollution. Every time Shell changed its plans, EPA had to adjust its assessment of the potential impacts on air quality and public health.

I urge you to reconsider your views on H.R. 2021 in light of these new facts. While some adjustments to the Clean Air Act provisions regulating drilling on the Outer Continental Shelf may be warranted, the wholesale changes in H.R. 2021 are not justified by the facts.

Sincerely,



Henry A. Waxman
Ranking Member

cc: The Honorable Bobby L. Rush
Ranking Member
Subcommittee on Energy and Power