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Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
Discussion Draft of H.R. ____, the “Jobs and Energy Permitting Act of 2011”
Subcommittee on Energy and Power
May 13, 2011

Mr. Chairman, I want to begin by thanking you for holding today’s hearing. We held a hearing last month on how air quality permits are issued for oil and gas activities on the Outer Continental Shelf (OCS). Today’s hearing will let us hear from EPA and state officials – the people who administer the current air quality protections – about this issue.

These are the air quality experts who carry out the Clean Air Act and would have to implement any changes we make. Their views are critical to informed decision-making, and I hope we listen closely to their advice.

At our first hearing, we heard testimony from Shell Oil about problems it encountered obtaining an air permit in Alaska. I agree with our Chairman that the permitting process in Alaska has taken too long and that appropriate clarifications in the Clean Air Act could be helpful.

It is important to recognize, however, that Shell’s experience in Alaska doesn’t reflect the vast majority of OCS permitting experience. California has been successfully carrying out its program for almost 20 years, and the California process is not broken.

My concern is that while the draft bill that the Subcommittee is considering may help fix some problems in Alaska, it is not an appropriate solution for California, and some provisions would have harmful effects on the whole program. According to the testimony we will hear today, the current draft bill would undermine California’s air quality protections, actually make it harder for California to issue defensible permits, and impose substantial cost burdens on the state.

That makes no sense. I refuse to believe that we can’t address some of the specific problems Shell points to without creating much bigger problems elsewhere.

That’s why I have offered to work with the majority on this legislation to come up with a proposal that would address specific problems, without breaking what is working well. I cannot

support this bill in its current form. But I do think that we could reach agreement on something that would address the concerns Shell has raised.

As the Committee considers this legislation, there are a few key areas that are particularly troubling.

First, I don't think that encouraging more litigation makes any sense. But that's what the bill does by largely eliminating administrative appeals and forcing almost everyone to go straight to court.

The current administrative review process at EPA's Environmental Appeals Board (EAB) is faster, simpler, and far less costly than going to court. You don't need to hire a lawyer. The board can skip oral argument, and if it allows for oral argument it is done through videoconferencing. The EAB's permit decisions are rarely challenged and almost always upheld by the appellate courts. In fact, this process works so well that the legislation preserves administrative appeals – but only for the permit applicant.

If an administrative process is good enough that Shell wants to keep it for its appeals, it is only fair that we keep it for everyone. Equal access to justice is a fundamental principle of our system. I'm surprised the majority would even consider abrogating that.

It also makes no sense to force all of these local permitting cases to be heard in Washington, DC. A long-standing system and extensive case law governs how judicial venue is to be determined. The Clean Air Act judicial review provisions are consistent with these principles, sending local and regional matters to the Court of Appeals for the appropriate circuit. But this proposal would carve out a special exception for a narrow class of cases.

Finally, the Committee should distinguish between changes necessary to clarify and streamline the process and changes that are really aimed at weakening air quality protections. Shell told us they don't want to weaken the law; they just want to know what they have to do. If that's the case, we could certainly provide clarifications and speed up the process without weakening air quality protections. But many of the changes in the law proposed to be made by the current draft have the effect of weakening protections. If the goal here is really to let Shell and other oil companies get out of Clean Air Act requirements, that's something I would strongly oppose.

I look forward to exploring these issues in today's hearing and, once again, thank the Chairman for proceeding with today's hearing.