

ONE HUNDRED TWELFTH CONGRESS
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Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
“The American Energy Initiative: Discussion Draft of H.R. ____, the “Jobs and
Energy Permitting Act of 2011”
Subcommittee on Energy and Power
April 13, 2011

Mr. Chairman, today’s hearing examines legislation to amend the Clean Air Act provisions that protect air quality when offshore oil and gas are developed. I hope we can reach agreement on this legislation, but I cannot support it in its current form.

In particular, I have concerns that this legislation is being considered at the behest of a single company in response to two permit applications in Alaska, yet would apply broadly to the east and west coasts and part of the coast of Florida.

Where there are real issues, we should be able to work together to solve them. But to do so, both sides have to avoid the temptation to overreach.

Here, Shell has identified an area where the statute is ambiguous. As a result, permits are delayed while EPA, the stakeholders, and the Environmental Appeals Board work to resolve the issues. I believe it would be appropriate for this Committee to provide clarity on these matters. I hope we can work together to develop legislative language that would resolve those issues in an appropriate and targeted manner.

But as we provide clarity, we must also preserve air quality protections. These are large industrial facilities located off coasts where people live and in waters where people fish and whale. Shell’s Discoverer operation emits more pollution than a 1000 megawatt natural gas power plant and almost as much as a new oil refinery. Our goal should be to resolve this issue without sacrificing air quality.

Shell has also raised concerns about the length of time for the permitting process. This is also an area where it’s critical to strike the proper balance.

The Clean Air Act has always provided for extensive and open stakeholder input to EPA’s decision-making. This is a central principle of the law. It ensures that the government is responsive both to citizens, who want clean air, and to industry, which wants to conduct activities that emit air pollution.

While Shell has raised legitimate concerns about the permit process, the language before us goes too far. It eliminates the opportunity for any administrative review of EPA decisions, except for a narrow exception that would apply only to the permit applicant. It moves all judicial appeals from the regional circuit courts of appeals to the DC Circuit. And it requires EPA to issue final permits in six months, which will limit the time for public comment and may preclude EPA from developing the record necessary to support its final decisions in court.

One effect of these changes would be to make it much more difficult for local citizens who are directly affected by air pollution from a project to raise concerns. Requiring Alaskans to fly to Washington, DC, to challenge a permit decision is a real burden. Eliminating administrative reviews creates an additional hurdle for citizens. Administrative reviews are faster, less formal, don't impose fees, don't require a lawyer, and are often conducted by videoconferencing. They also do not allow participants to recover attorneys' fees.

I am also concerned about how this proposal will affect California and other states. In California, EPA has delegated the authority to issue permits for offshore oil and gas activities to local air pollution control agencies. The changes in this bill would override state and local interpretations, laws, and regulations that California has adopted to help meet its severe air pollution problems. It would also remove all appeals of California's permits from state hearing boards and state courts to the DC Circuit. This is a significant infringement of local control over local air pollution matters.

I want to close with a comment on process. I am disappointed that EPA is not present to testify today. If we are going to reach consensus, we are going to need the input of the expert agency, as well as witnesses from California and other affected areas. That's why ranking member Rush and I have requested an additional day of hearings on this legislation.

Chairman Whitfield has, to date, rejected our requests. His position is that it's reasonable to give the agency just a few days notice and expect EPA to be able to send a witness to the hearing today. That's not fair and it's not how we treated Administration witnesses in prior Congresses. For that reason, the Democrats on the Committee are invoking our rights under Rule 11 to request a minority day of hearings. I believe scheduling our requested hearing will help the Committee produce balanced legislation that achieves its stated goal and has a chance of enactment.

I look forward to this hearing and, I hope, to a hearing after the break with EPA and other witnesses.