



Statement of the U.S. Chamber of Commerce

FOR: HEARING ON “MODERNIZING THE BUSINESS OF ENVIRONMENTAL REGULATION AND PROTECTION”

TO: HOUSE COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

BY: WILLIAM L. KOVACS
SENIOR VICE PRESIDENT, ENVIRONMENT, TECHNOLOGY
& REGULATORY AFFAIRS

DATE: JULY 23, 2014

The Chamber’s mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

**BEFORE THE COMMITTEE ON ENERGY AND COMMERCE OF THE U.S. HOUSE
OF REPRESENTATIVES, SUBCOMMITTEE ON ENVIRONMENT AND THE
ECONOMY**

Hearing on “Modernizing the Business of Environmental Regulation and Protection”

**Testimony of William L. Kovacs
Senior Vice President, Environment, Technology & Regulatory Affairs
U.S. Chamber of Commerce**

July 23, 2014

On behalf of the U.S. Chamber of Commerce, thank you for the opportunity to testify on “Modernizing the Business of Environmental Regulation and Protection.” My name is William L. Kovacs and I am Senior Vice President for Environment, Technology and Regulatory Affairs at the U.S. Chamber of Commerce. The Subcommittee should be commended for examining the current relationship between states and the federal government as it looks for ways to modernize environmental programs. This is a fundamental issue for the Chamber because states implement approximately **96.5%** of the environmental laws that are delegated to them.¹ As a result, the success of the Environmental Protection Agency (EPA) depends on the states to which the Agency provided \$3.6 billion in 2013 for the administration of its programs.² That means that federal grants represent between 26% - 29 % of the environmental budgets of the states.³ The bottom line: states continue to do the lion’s share of the implementation of federal environmental programs with less and less money.

Against this background, the Chamber is pleased that the Environmental Council of the States (ECOS) is beginning its E-Enterprise initiative with EPA. The initiative aims to modernize environmental programs in order to reduce paperwork burdens, enhance services to the regulated community, and streamline operations. These are very worthy goals involving innovative and sensible ideas; however, we all need to remind ourselves that this is a difficult objective. Every administration and Congress since the Carter Administration has made similar attempts with limited success. In reality, the regulatory system has become much more costly and complex since the late 1970s. As a result, the states have assumed more responsibility for implementing these new regulations, and they have done so within shorter timeframes and generally with less funding from the federal government.

¹ See https://www.dropbox.com/s/jgdbu4rql29oexh/EEnterprise%20One%20Pager%205_21%20FINAL.docx.

² See EPA FY 2014 Budget in Brief, p. 87 (<http://www2.epa.gov/planandbudget/fy2014>).

³ See https://www.dropbox.com/s/jgdbu4rql29oexh/EEnterprise%20One%20Pager%205_21%20FINAL.docx.

When it comes to modernizing the environmental regulatory system, the Chamber recommends that the states and EPA focus on top-level challenges. The number one challenge the Chamber has identified is permit streamlining because it is the one opportunity that can help create jobs and growth, both of which are vital to environmental protection.

I. OVERVIEW

For several years now, the Chamber has promoted and endorsed efforts to improve the federal environmental review and permitting process. As the President himself has said on several occasions, including as recently as his January 28, 2014 State of the Union address, we need to “cut red tape” in order to get back in the business of building things and creating jobs. The principles behind ECOS’s E-Enterprise – innovation, modernization, and efficiency in the environmental review and permitting process – echo these same sentiments. The Chamber supports these principles and the efforts of ECOS to promote them because they address one of the most significant problems plaguing our current regulatory system – the maze of approvals and legal challenges that must be navigated before any kind of permitting decision is made on a development project.

According to ECOS, E-Enterprise is “a joint initiative of States and EPA to improve environmental outcomes and enhance service to the regulated community, stakeholders and the public by using advanced monitoring and information technologies, optimizing operations, reducing paperwork and regulatory reporting burdens, increasing productivity through mobile applications, and facilitating access to more accurate information.”⁴ In 2013, EPA and ECOS signed a Memorandum of Agreement to begin the E-Enterprise initiative. That MOA focuses on ten principles, including streamlining and modernizing programs before automating them, respecting existing delegations and operating agreements, and ensuring that systems will work smoothly together for staff, regulated entities, and the public. ECOS maintains that “E-Enterprise will improve environmental results and dramatically enhance the delivery of environmental services to the regulated community, stakeholders, and the public.”⁵

II. STATES IMPLEMENT MOST FEDERAL ENVIRONMENTAL REGULATIONS

As previously mentioned and as shown in the chart below, states implement approximately **96.5%** of federal environmental programs.⁶ This is a tremendous burden for states, particularly from a time, money and resource perspective. To add to the difficulties that states face, according to ECOS, states have seen a trend in declining funds from the federal government to implement these programs.⁷ Federal budget documents confirm that EPA’s State

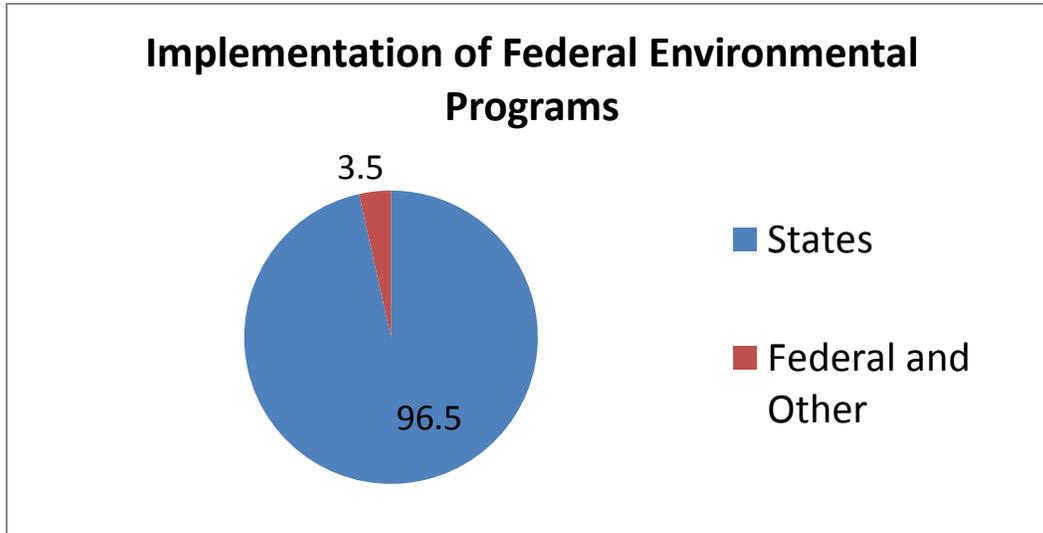
⁴ *Id.*

⁵ *Id.*

⁶ *Id.* The chart on page 4 (“Implementation of Federal Environmental Programs”) is based upon information from ECOS (https://www.dropbox.com/s/jgdbu4rq129oexh/EEnterprise%20One%20Pager%205_21%20FINAL.docx).

⁷ *Id.*

and Tribal Assistance Grants (STAG) budget has decreased significantly in recent years.⁸ While the largest funding source for state environmental agencies is permit fees, federal funding is the second largest source. ECOS reports that “[d]ecreasing funds from the federal government jeopardize states’ ability to implement federally delegated programs and policies.”⁹



We, the regulated community, recognize and appreciate the fact that states are carrying such a huge burden and doing so with shrinking resources. Indeed, that burden is only going to grow in the future as EPA issues many more complex and costly regulations. On the horizon for states are the implementation of federal carbon regulations for new and existing power plants, a new definition of “waters of the U.S.” under the Clean Water Act, and potentially lower National Ambient Air Quality Standards for ozone. All of this amounts to a sobering conclusion – states are being asked to do more and more with less and less when it comes to implementing federal environmental programs and policies.

Consequently, efforts to streamline the federal environmental review and permitting process are more critical than ever. The good news is that this streamlining can be achieved through some commonsense measures: establishing time frames for the review and permitting process, selecting a lead agency to oversee the review and permitting process for individual projects, and requiring coordination among agencies for that process. The Chamber looks forward to working with Congress and ECOS to find ways to implement these types of measures.

III. THE FEDERAL ENVIRONMENTAL REVIEW AND PERMITTING SYSTEM IS BROKEN

The principles behind ECOS’s E-Enterprise touch upon numerous issues involving the federal and state partnership that develops, promulgates and implements federal environmental

⁸ See EPA FY 2014 Budget in Brief, p. 87 (<http://www2.epa.gov/planandbudget/fy2014>).

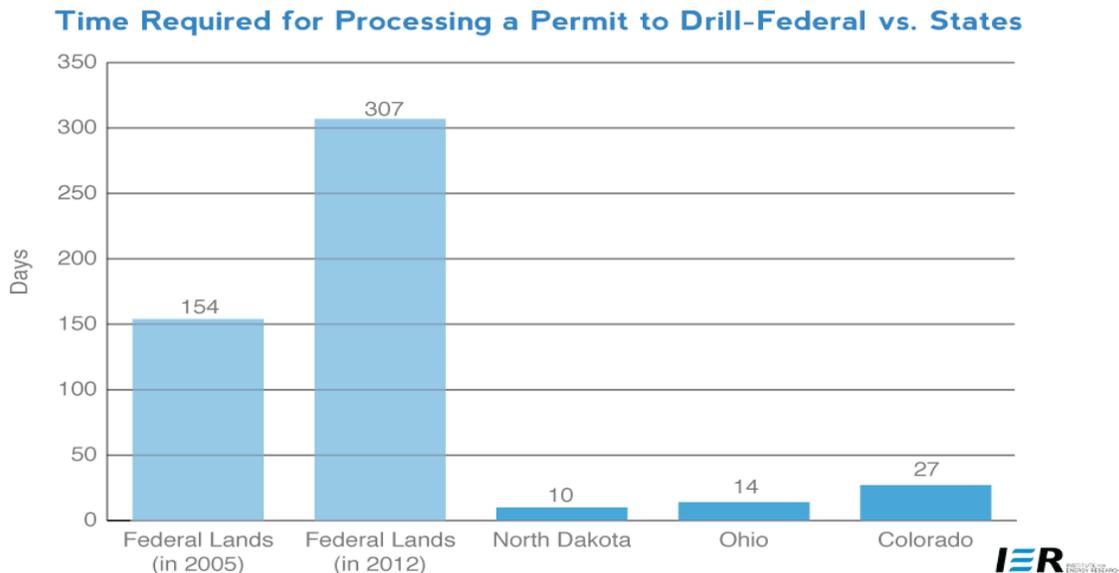
⁹ See https://www.dropbox.com/s/jgdbu4rq129oexh/EEnterprise%20One%20Pager%205_21%20FINAL.docx.

programs and policies. There is an immediate and dire need to modernize and streamline that process.

The Hoover Dam was built in five years. The Empire State Building took one year and 45 days. The Pentagon, one of the world’s largest office buildings, took less than a year and a half. The New Jersey Turnpike needed only four years from inception to completion. Fast forward to 2014, and the results are much different. Cape Wind needed over a decade to obtain the necessary permits to build an offshore wind farm. After obtaining federal leases in 2005, it took Shell Corporation seven years to obtain oil and gas exploration permits for the Beaufort Sea. And the Port of Savannah, Georgia, spent thirteen years reviewing a potential dredging project.

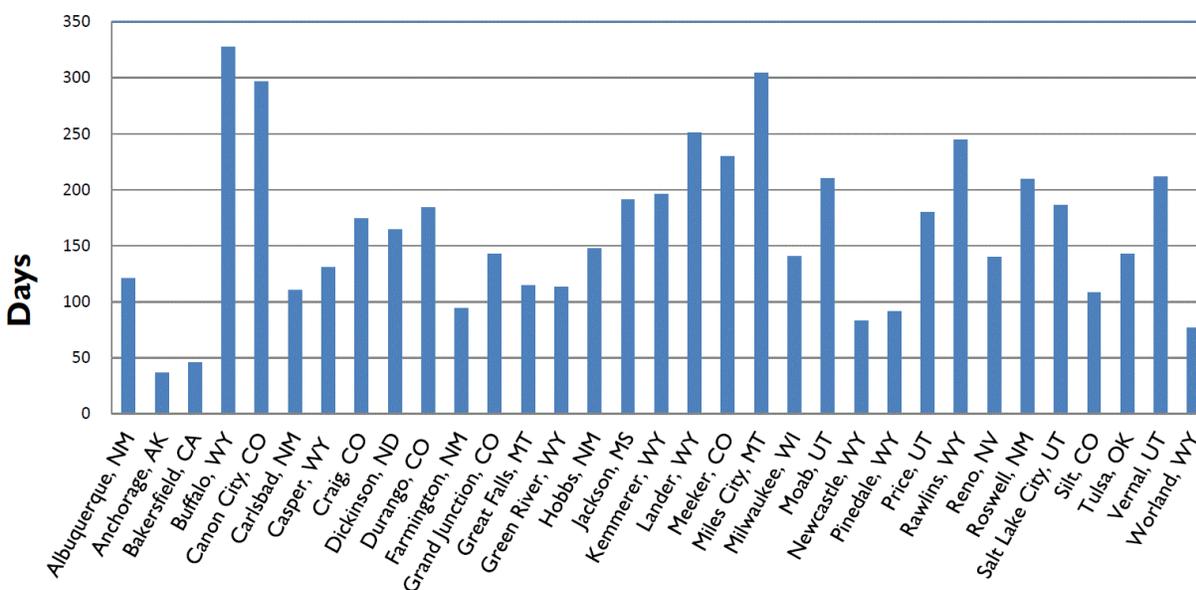
Significantly, these are not outlier projects – these projects represent the “rule” and not the “exceptions” when it comes to our federal environmental review and permitting process. According to an April 2014 report issued by the U.S. Government Accountability Office (GAO), when there is information available on review times under the National Environmental Policy Act (NEPA), the process is a slow one with the average preparation time for the environmental impact statements finalized in 2012 running **4.6 years**. This is the highest average since **1997**. When the costs associated with these reviews are tracked, they are, not surprisingly, high; for example, the Department of Energy’s average payment for an environmental impact statement between 2003 and 2012 was **\$6.6 million**.

At a February 5, 2013, hearing before the House Subcommittee on Energy and Power, the Institute for Energy Research (IER) testified that it currently takes more than **300 days** to process a permit to drill for oil and gas on federal lands onshore. This is in contrast to the time it takes to process a permit for the same drilling activities on private and state lands – **less than one month**.



In a June 2014 report, the Office of Inspector General of the U.S. Department of Interior reached similar conclusions to IER on the problems with the federal onshore oil and gas permitting process.¹⁰ The DOI’s IG concluded that “[i]n assessing the effectiveness and efficiency of the drilling permit process for oil and gas wells ... the Bureau of Land Management (BLM) approves thousands of permits each year, but review times are **very long**.”¹¹ According to the report findings, BLM reported an average of **228 calendar days**, or about **7.5 months**, to process an application for a permit to drill (APDs) during 2012. The graph below shows the average processing days for APDs in BLM’s 33 field offices.¹²

Appendix 2: APD Average Processing Days



Oil and gas production on federal and tribal lands has averaged \$3 billion in annual royalty revenues since 2011. Despite this significant revenue (and the potential for even more), the DOI’s IG identified the following problems plaguing the permitting process: (1) neither BLM nor the operators applying for the permits can predict when the permits will be approved; (2) “review(s) may continue indefinitely” because target dates for completing permit applications are neither set nor enforced; (3) “the process at most field offices does not have sufficient supervision to ensure timely completion; and (4) BLM does not have a “results-oriented performance goal” to tackle processing times.¹³

These delays and inefficiencies in our country’s federal environmental review and permitting process are systemic problems that are pervading our country across geographic and

¹⁰ Available at <http://www.doi.gov/oig/reports/upload/CR-EV-MOA-0003-2013Public.pdf>.

¹¹ *Id.* at 1.

¹² *Id.* at 19.

¹³ *Id.* at 1.

industry lines. In the World Bank and International Finance Corporation’s most recent “Ease of Doing Business” index, the United States ranks **34th in the world** in the category “Dealing with Construction Permits” (in other words, permitting and building projects). If this ranking and the problems with the permitting system persist, real dollars will be lost, along with good-paying jobs. The Associated General Contractors of America testified before this Subcommittee last week that in 2013, \$911 billion in public and private investment in the construction of residential and nonresidential structures occurred in the United States.¹⁴ The construction industry contributes significantly to employment and GDP – “[a]n extra \$1 billion in nonresidential construction spending adds about “3.4 billion to GDP, about \$1.1 billion to personal earnings and creates or sustains 28,500 jobs.”¹⁵

If our great nation is going to begin creating jobs at a faster rate, we must get back in the business of building things. But that is only going to happen if we figure out how to eliminate inefficiency, duplication and delays in our federal environmental review and permitting process. Otherwise, that process will continue to lead to stalled or even cancelled projects across the country.

IV. THE IMPACTS OF A DELAYED AND INEFFICIENT ENVIRONMENTAL REVIEW AND PERMITTING PROCESS

In 2009, the Chamber unveiled *Project No Project*, an initiative that catalogued the broad range of energy projects that were delayed or halted because of the inability to obtain permits and endless legal challenges by opponents of development. Results of the assessment are compiled onto the *Project No Project* Website (<http://www.projectnoproject.com>). The purpose of the initiative was to understand the impacts of serious project impediments on our nation. It remains the only attempt to catalogue the wide array of energy projects being challenged nationwide.

Through *Project No Project*, the Chamber identified usable information for 333 distinct projects. These included 22 nuclear projects, 1 nuclear disposal site, 21 transmission projects, 38 gas and platform projects, 111 coal projects and 140 renewable energy projects—notably 89 wind, 4 wave, 10 solar, 7 hydropower, 29 ethanol/biomass and 1 geothermal project. The multi-state electric transmission projects were apportioned among the states, resulting in 351 state-level projects attributed to forty-nine states.

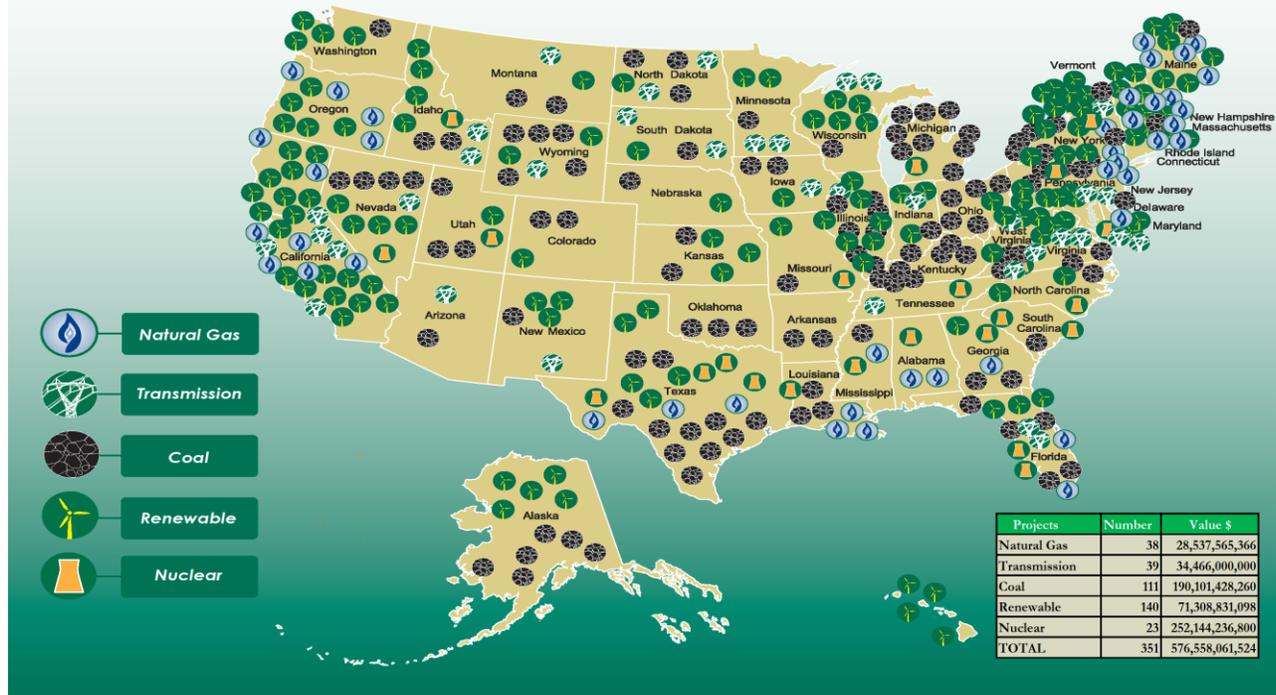
¹⁴ See <http://transportation.house.gov/uploadedfiles/2014-07-15-pilconis.pdf>.

¹⁵ *Id.* at 9.



Project ~~No Project~~

www.projectnoproject.com



It quickly became clear from our research that the nation’s complex, disorganized process for permitting new facilities and its frequent manipulation by opponents constitute a major impediment to economic development and job creation. This realization prompted the next question: what are the economic effects of this problem on the economy and job growth?

According to an economic study that we commissioned, the successful construction of the **351 projects** identified in the *Project No Project* inventory could have produced a **\$1.1 trillion** short-term boost to the economy and created **1.9 million jobs annually** during the projected seven years of construction.¹⁶ Moreover, if these facilities had been constructed, they would have continued to generate jobs because they would have operated for years or even decades. According to the study, in aggregate, each year of operation of these projects could have generated **\$145 billion** in economic benefits and involved **791,000 jobs**.

¹⁶ The Chamber-commissioned economic study is titled *Progress Denied: The Potential Economic Impact of Permitting Challenges Facing Proposed Energy Projects*, which was produced by Steve Pociask of TeleNomic Research, LLC and Joseph P. Fuhr, Jr., Ph.D, of Widener University. An electronic copy of the study can be accessed at <http://www.projectnoproject.com/progress-denied-a-study-on-the-potential-economic-impact-of-permitting-challenges-facing-proposed-energy-projects/>.

The impacts of this country's seriously flawed environmental review and permitting process sometimes go beyond facts and figures. And even more notably, those anecdotal impacts often are highlighted by as many Democrats as Republicans.

- In April 2013, Senator Barbara Boxer (CA) was quoted as saying, “[t]he **environmentalists don’t like to have any deadlines set so that they can stall projects forever**...I think it’s wrong, and I have many cases in California where absolutely necessary flood control projects have been held up for so long that people are suffering from the adverse impacts of flooding.”¹⁷ She also added that she did not think that environmentalists’ concerns about potentially rushed permit approvals were “legitimate.”¹⁸ The Senator made these comments in support of legislation that would impose deadlines for environmental reviews of water projects.
- The environmental review process for a project to deepen the harbor in Savannah, Georgia began in 1999. The review was still not completed in September 2013 when Vice President Biden visited the Savannah port. During his visit, the Vice President – recognizing that something must be done about these delayed projects – was quoted as saying, “What are we doing here? We’re arguing about whether or not to deepen this port? ... **It’s time we get moving. I’m sick of this. Folks, this isn’t a partisan issue. It’s an economic issue.**”¹⁹
- Democratic Governor Jerry Brown of California, in his January 24, 2013 State of the State, called upon lawmakers to “rethink and streamline our regulatory procedures” so that they are “based upon more consistent standards that **provide greater certainty and cut needless delays.**”
- Minnesota Governor Mark Dayton (Democratic-Farmer-Labor Party) increased his efforts to expedite the permitting process by announcing in January 2013 that he had directed the Minnesota Department of Natural Resources and the Minnesota Pollution Control Agency to issue or deny permits within 90 or 150 days (depending on the nature and complexity of the permit), rather than allowing applications to languish indefinitely.

As the Vice President so articulately phrased it – this issue is not a partisan one, but an economic one. Streamlining our permitting process, developing and building projects, and getting the American people back to work should be the priorities of everyone, from Democrats to Republicans, and state governments to the federal government. The improved process aspects called for in ECOS’s E-Enterprise initiative are exactly the type of efforts that will “cut red tape,” thereby creating jobs and generating economic revenue for the United States.

¹⁷ April 28, 2013 *Los Angeles Times* article by Richard Simon, “Sen. Boxer finds herself at odds with environmentalists.” (Available at <http://latimes.com/news/nationworld/nation/la-na-boxer-environmentalists-20130429,0,1134896.story>.)

¹⁸ *Id.*

¹⁹ <http://www.ajc.com/news/news/breaking-news/vice-president-vows-savannah-dredging-will-happen-/nZyTG/>

Greater efficiency in the permitting system results in more certainty for the business community, particularly for the purposes of project investment and planning. The streamlining efforts enacted in the American Recovery and Reinvestment Act, and both recent highway transportation bills (SAFETEA-LU and MAP-21) are proven successes when it comes to the federal environmental review and permitting system. According to CEQ data, of the 192,707 NEPA reviews required for Recovery Act projects, **184,733** of them were satisfied with the streamlining provisions, i.e. categorical exclusions.²⁰ Similarly, the Federal Highway Administration has reported that the process streamlining component of SAFETEA-LU has cut the time to complete a NEPA review in half, from **73 months down to 36.85 months**.²¹ The next step is bringing similar successes and positive statistics to the federal environmental review and permitting process as a whole, through initiatives like E-Enterprise and the permit streamlining legislation supported by the Chamber (H.R. 2641 and S. 1397).

V. MODERNIZING AND STREAMLINING THE PERMITTING PROCESS IS A PRIORITY FOR THE BUSINESS COMMUNITY

As previously mentioned, last year ECOS and EPA signed a MOA with ten organizing principles forming the basis for the E-Enterprise initiative. While the regulated community would prefer to have a seat at the table for such discussions and while the Chamber may not agree with every aspect of E-Enterprise, the foundational concepts of the initiative are important objectives for the business community as a whole. As the states and EPA proceed with their E-Enterprise initiative, the Chamber believes there are certain modifications to the initiative that could be easily achieved. The need for these modifications is prompted by the Chamber's experience with analogous reform proposals that have garnered significant agreement from differing political perspectives. These recommendations are as follows:

- **Increase Coordination among Federal & State Entities:** E-Enterprise aims overall to encourage more coordination among federal and state officials on environmental permitting for projects. However, the E-Enterprise initiative appears limited to reducing reporting burdens and establishing easier access to environmental data. If permit coordination is the focus, the Chamber urges support of S. 1397 (Federal Permitting Improvement Act) and H.R. 2641 (Responsibly And Professionally Invigorating Development [RAPID] Act). These bills not only would provide better access to information through the development of a regulatory dashboard – an Obama Administration initiative – but also would provide the broader structure for streamlining permits without changing substantive laws. This legislation would require coordination among multiple agencies involved in environmental reviews, provide for concurrent reviews by agencies rather than serial reviews, and allow state-level

²⁰ The Eleventh and Final Report on the National Environmental Policy Act Status and Progress for American Recovery and Reinvestment Act of 2009 Activities and Projects, *available at* http://ceq.hss.doe.gov/ceq_reports/reports_congress_nov2011.html.

²¹ Federal Highway Administration, *Integrating Freight into NEPA Analysis* (Sept. 2010), *available at* <http://ops.fhwa.dot.gov/publications/fhwahop10033/index.html>.

environmental reviews to be used where comparable thereby avoiding needless duplication of state work by federal reviewers.

- **Increase Transparency:** E-Enterprise seeks to increase stakeholders' access to information and data used and gathered during the environmental review and permitting process. Increased transparency in the regulatory process is a high priority for the Chamber and its members. From the regulated community's perspective, such transparency is important to understanding how regulations are formulated, justified and implemented. It should be noted, however, that the Information Quality Act and the Data Access Act have been law for years, but generally have been ignored by federal agencies. If the goal of the regulatory process is to work from the best information available, then agencies need to secure such information by being open to input from the public, but also release information to the public so it can better evaluate regulatory actions. Therefore, the transparency issue really rests in the hands of EPA. EPA must realize that the use of high quality data means the development of high quality policy.
- **Innovation and Modernization:** E-Enterprise also endeavors to innovate and modernize the environmental review and permitting process. For example, it calls for updating the technology and information systems behind the federal and state permitting processes, i.e. online permits. To the extent these types of updates would bring efficiency and streamlined processes to the environmental review and permitting system, the Chamber and its members are supportive. These efforts to innovate and modernize also would save states and the regulated community costs, time and other resources. Notably, we must keep in mind that as records are made electronic and public, the federal and state agencies have a fundamental duty to protect Confidential Business Information.
- **Increase Review Time for Standards:** EPA administers statutes that require periodic review of the standards established, such as the National Ambient Air Quality Standards. Generally, EPA makes the standard more stringent with each review and sometimes these changes occur before the state has completed the needed actions to comply with the prior review. In a sense, EPA creates a merry-go-round of regulations that place never ending responsibilities on the states. By forcing such activities, EPA fails to appreciate the limited resources of the states or the uncertainty that it imposes on the regulated community.²² EPA should consult the states on a regular basis to ensure implementation of these kinds of standards can be achieved in a reasonable manner.

²² Last month, Reps. Salmon (AZ) and Olson (TX) introduced H.R. 4947, the Ozone Regulatory Delay and Extension of Assessment Length Act of 2014, or "the ORDEAL Act." Senator Flake introduced a companion bill in the Senate, S. 2514. These bills would revise the EPA's existing timeline to review the NAAQS and air quality criteria from 5-year intervals to 10-year intervals. Additionally, they would prohibit the EPA from finalizing, implementing or enforcing a revised ozone NAAQS until 2018, putting it on a true 10-year cycle. The additional time between the requisite NAAQS reviews would mean a more efficient use of federal and state agency resources, less confusion in the review and implementation of NAAQS, and NAAQS reviews based upon more comprehensive data.

- **Improve Cost-Benefit Analysis:** When EPA undertakes a cost-benefit analysis, it should identify clearly the cost per ton reduction, as it has in the past, but which more recently it has abandoned. It also should state the primary pollutant sought to be reduced, how much of it will be reduced, and the benefits directly related to the targeted pollutant.
- **No Micromanagement of State Delegated Programs:** EPA should not micromanage state delegated and approved programs. Once EPA delegates a program to the state, it should not micromanage the program because of a specific issue over which there is disagreement. States undertake hundreds of thousands of regulatory actions in the course of administering a delegated program. When EPA disagrees with one state action, often it will “overfile” or take enforcement action. Unless EPA is willing to take back control of the delegated program, it should not micromanage the details of the program.
- **Update SAB Study on Reducing Risk:** EPA should update its Science Advisory Board study, “Reducing Risk: Setting Priorities and Strategies for Environmental Protection.” In 1990, EPA undertook this study to compare the seriousness of different risks so as to correlate the resources dedicated to different environmental problems and the relative risks posed by these problems. At this time, EPA and the states should jointly undertake this task so that in an age of limited resources they can prioritize those problems that pose the greatest risk and allocate resources accordingly.

VI. CONCLUSION

As even more of the implementation burden of an ever-growing number of federal environmental regulations has fallen on the states, the environmental review and permitting system has not kept up in terms of efficiency, modernization and innovation. The business community understands – and sympathizes with – the weight of the financial and resources burden that states must carry in this system. As a result, the Chamber and its members view permit streamlining efforts like ECOS’s E-Enterprise initiative as critical to improving the federal environmental review and permitting system and alleviating the burden placed on states.

If this nation is to create more jobs and generate more revenue, it has to begin building again. For this to occur, permit streamlining efforts are imperative. We commend the leadership and members of this Subcommittee, as well as ECOS, for bringing much needed attention to this problem and for setting forth practical and feasible solutions to the problem. Thank you for the opportunity to testify today. I look forward to answering any questions that you may have.