

**TESTIMONY OF BRANDON FARRIS, VICE PRESIDENT, ENERGY AND RESOURCES POLICY,
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BEFORE THE U.S. HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

Hearing on

*“The Next Fifty Years of the Clean Water Act: Examining the Law and Infrastructure Project
Completion”*

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Good morning, Chairman Rouzer, Ranking Member Napolitano and distinguished members of the committee. Thank you for the opportunity to appear before you and for holding this important hearing today on how permitting reform can build a stronger economy.

A. Introduction

My name is Brandon Farris. I come from a manufacturing family. My grandparents worked their entire careers at the GE communications products department in Lynchburg, Virginia. In Lynchburg, GE made two-way FM radio and car-telephone systems for vehicles, portable two-way radios, industrial paging systems, and data transmission systems. My father worked in a printing press. Lynchburg is a manufacturing town, and I have seen firsthand, through my own experience, how manufacturing raises the quality of life for families and communities. Today, I serve as the vice president of energy and resources policy at the National Association of Manufacturers. The

NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector. At the NAM, we advocate policies that grow manufacturing in the United States and improve the lives of everyone, including the families of the 13 million men and women who make things in America.

For our industry to continue growing our economy, creating jobs and developing the best products in the world, the United States must update its permitting laws and procedures. Permitting delays and associated costs are making it much harder for manufacturers to compete and win in the global economy. Although these problems have persisted for decades, the pandemic and recent supply chain disruptions have exacerbated the situation and made it more apparent. Bipartisan cooperation has led to major policy achievements in recent years, notably with the CHIPS and Science Act, which provides important incentives to spur domestic manufacturing of vital inputs used industrywide, particularly semiconductors. The Infrastructure Investment and Jobs Act represented a historic commitment to revitalizing our country's crumbling infrastructure, modernizing it to improve the quality of life for all Americans and to further bolster our global competitiveness. Permitting reform should go hand-in-hand with these achievements, as it will help us more efficiently realize the promise of our national investments in domestic manufacturing and infrastructure.

The NAM supports this committee's work to modernize outdated and inefficient permitting processes. The manufacturing industry accounts for approximately 11% of our national gross domestic product, and it can grow even more if this red tape no longer stands in the way.

I would like to point out several areas where the current permitting processes are most disruptive—and how reform in these areas will bolster manufacturing in the U.S.

Transportation Infrastructure

Transportation infrastructure of all kinds is essential to manufacturers in the U.S. Obtaining permit approvals for these projects often takes years, and that timeline can be magnified if the review process is not streamlined, as is often the case. Many companies are unable to proceed with new domestic manufacturing projects because the permitting process has tied them up and slowed the project to a crawl.

I would like to share some examples. Our members have reported that National Historic Preservation Act Section 106 consultation processes have taken five years each for separate key rail infrastructure projects. One electric heavy-duty truck manufacturer reported that some customers have refused deliveries of battery-electric trucks due to the uncertainty surrounding the necessary utility infrastructure upgrades to power the chargers. And the Federal Highway Administration averages more than seven years and four months to get approvals for a road that connects manufacturing facilities with their customers or employees with their workplaces.

It is clear how these permitting delays are standing in the way of our industry's ability to create jobs, grow and make more products in the U.S.—as well as in the way of other national priorities. The Department of Energy's draft National Transmission Needs Study, released Feb. 24, points out that the national electric transmission system would need to grow 57% by 2035 to meet the infrastructure needed to reach the administration's clean energy goals as it relates to the growing light-, medium- and heavy-duty vehicle industries.¹ Removing inefficiencies and streamlining permitting for charging infrastructure projects is a high priority for manufacturers, especially those facing state medium-and-heavy-duty zero-emission-vehicle sales mandates like those in California, Washington and Massachusetts. And the passage of the bipartisan IIJA

¹ <https://www.energy.gov/gdo/national-transmission-needs-study>

in 2021, which the NAM strongly supported, could revitalize our nationwide infrastructure systems, with upgrades, updates and new projects—if we clear permitting backlogs and ease processing timelines.

Energy Infrastructure and Environmental Reviews

Permitting challenges are also slowing the development of many energy projects, including renewables. Manufacturers depend on access to reliable and affordable energy to expand, which is why we support reforms that would foster transparent, streamlined and timely federal regulatory processes for the siting, permitting and licensing of energy delivery infrastructure of all types. As NAM President and CEO Jay Timmons recently said in testimony before the Senate Committee on Environment and Public Works, manufacturers do not believe that expanded domestic energy production, strong environmental protections and a thriving economy are mutually exclusive goals. Permitting reform can help achieve these goals in tandem.

For example, the siting of and infrastructure for zero-emissions sources such as hydrogen power generation and transportation and for advanced, small modular and micro-nuclear reactors have progressed far too slowly. The Inflation Reduction Act included nearly \$400 billion for clean energy priorities, which might take years to be spent under our current permitting system. And the White House Council on Environmental Quality recently issued a report stating that, on average, environmental impact statements, which are mandated under the National Environmental Policy Act of 1969 to outline the potential impact of a proposed project on its surrounding environment, now take on average four and a half years.² More time is spent studying potential environmental impacts than it takes to construct and operate a clean hydrogen power generation facility. The Congressional Research Service also states that NEPA

² https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf

is the most frequently litigated federal environmental statute.³ Furthermore, a 2014 Government Accountability Office study on NEPA analysis found that “little information exists on the costs and benefits of completing NEPA analyses” and that “agencies do not routinely track the costs of completing NEPA analyses.”⁴ NEPA can clearly be amended to reduce the time its processes take and the associated compliance costs, with no real impact on its environmental protections.

We have a member that makes critical raw materials for semiconductors, clean hydrogen and lithium-ion batteries. In many cases, these products cannot be made without their chemicals, but because of the regulatory uncertainty in obtaining a National Pollutant Discharge Elimination System permit in a timely manner, that member recently announced that they will build a facility in the EU that manufactures materials necessary to produce clean hydrogen.

Another NAM member reported that they needed to obtain a construction permit, but before the permit could be granted, the company needed survey permission to review the landscape and natural resources in the area. It took more than six months to simply obtain permission to conduct the survey. The delay in obtaining survey permission cascaded into a more than 12-month delay in the permitting process itself. It is important to note that this was listed as a “priority project” in the “FAST-41” Federal Infrastructure Dashboard, which is supposed to increase permitting efficiency.

But delays in starting projects are not just caused by NEPA or the Clean Water Act. One NAM member company reported lengthy delays of up to an entire year for the issuance of permits by the U.S. Army Corps of Engineers due to the failure of the U.S. Fish and Wildlife Service to complete the informal consultation required for confirming no adverse project impacts under the Endangered Species Act. For an entire year, potential workers sat on the sidelines

³ <https://crsreports.congress.gov/product/pdf/IF/IF11932>

⁴ <https://www.gao.gov/assets/gao-14-369.pdf>

and a community lost out on economic opportunity waiting on informal paperwork that should not have taken longer than 90 days to complete.

Staffing shortages at agencies are also becoming a significant obstacle in the permitting process. In one case, a member company reported that a permit renewal was delayed by more than six months simply due to lack of staff. Another member reported that a Section 7 Endangered Species Act consultation was stalled for more than two years as the National Marine Fisheries Service waited on a biologist to be assigned to the project. Individually, each regulation is restrictive enough, but when added together, they place a significant economic and operational impact on manufacturers.

Resource Development

Our industry depends on access to our nation's plentiful natural resources, and we believe that all processes involving them should be done in an environmentally sound and responsible manner. However, some restrictions on the development of these resources are hindering our ability to strengthen domestic supply chains and making our industry more reliant on raw material imports. The inconsistent administration of critical mineral policies, for example, has limited our ability to use a wide range of resources that exist on and beneath federal lands—resources that are critical to producing everything from cars to medical devices.

Various permitting agencies are required to weigh in on every mining project in the U.S. For example, mining operations in the U.S. typically require two Clean Water Act permits.⁵ Section 404 requires mining operators to work with the Army Corps of Engineers to ensure that the discharge of material is done in an environmentally sound way that does not disrupt navigation to waters of the United States. Section 402 permits authorized discharges from

⁵ <https://nma.org/category/water/>

discrete conveyances – called point sources into waters subject to federal jurisdiction. These permits are just part of the mosaic of reviews that contribute to delays in mining projects across the U.S. The National Mining Association reports that Australia and Canada, two countries with environmental protections that are arguably equivalent to or even more stringent than those in the U.S., have mine permitting processes that last two to three years on average, whereas in the U.S. the permitting process averages seven to 10 years.⁶ Modernizing and streamlining resource permitting and leasing policies will help stabilize manufacturing supply chains, control costs for consumers, reduce our reliance on foreign countries and create jobs in the U.S.

Leaders in both parties have demonstrated a shared commitment to increasing semiconductor production in the United States so that our manufacturers—virtually all of which rely on chips for their products or processes—have strong, domestic supply chains for these critical inputs. With 88% of chips produced outside of the U.S.⁷ right now, this is a crucial goal for not only our economic security but also our national security. Yet, the raw materials for those chips, such as lithium and cobalt, are still mined largely outside of the U.S. as well.⁸ Our nation has reserves of both lithium and cobalt.⁹ To access them, though, as Congress clearly envisions we will, also requires congressional action to speed up permissions for developing those resources in a responsible way.

New Environmental Standards

Manufacturing in the U.S. is cleaner than our global competitors,¹⁰ owing largely to manufacturers' commitment to modernizing and improving processes constantly, so as to leave the planet better than we found it. Our industry also carefully upholds federal standards for

⁶ <https://nma.org/wp-content/uploads/2016/09/Fact-Sheet-Permitting-Delays-1.pdf>

⁷ www.semiconductors.org/wp-content/uploads/2021/09/2021-SIA-State-of-the-Industry-Report.pdf

⁸ https://www.gao.gov/products/gao-22-104824#summary_recommend

⁹ <https://pubs.er.usgs.gov/publication/pp1802>

¹⁰ https://documents.nam.org/COMM/NAM_Air_Quality_Standards_Analysis_Web_Version.pdf

environmental protection. Unfortunately, when federal agencies continually revise standards before current standards are met and before states have implemented prior mandates, those revised standards create unpredictability. As a result, the U.S. has ceded new projects and facilities to other countries.

The Environmental Protection Agency is taking an aggressive approach toward tightening regulations in several environmental statutes. Unfortunately, these proposed regulatory changes are not based on the best available science, often setting standards at or below limits of detection, making compliance technically infeasible. One such regulation is the EPA's proposed air quality regulations for particulate matter (PM_{2.5}). The regulation as proposed would mean that nearly 40% of the U.S. population lives in an area that is out of "attainment," which would make it extraordinarily difficult to create manufacturing jobs, protect existing manufacturing jobs and could prevent much needed infrastructure improvements in these areas. For instance, one manufacturer that is already in a current nonattainment area was forced to choose between spending \$400 million more to meet stringent emissions standards in a locality not in attainment or move their facility entirely. The company chose to move, and that added \$100 million to the project and caused a six-month delay. These are the kinds of costs and decisions that we would witness on a much greater scale if the new rule goes into effect.

Overly burdensome, shifting regulatory policies inherently affect permitting, licensing and siting applications because they move the goalposts of compliance with federal regulations. If instead we make the process more predictable and consolidate the many complex layers of review, the U.S. can continue to build on its strong record of environmental stewardship by boosting domestic manufacturing, which is environmentally cleaner than our international competitors.

Congressional Intent

The success of any legislative permitting reforms depends on proper implementation. Ensuring the administration follows congressional intent on recent and future statutory streamlining efforts such as One Federal Decision is key. Establishing strict permit review timelines and eliminating duplicative efforts across various federal agencies help in reducing unnecessary delays. Moreover, key permitting authorities are rife with ambiguity and inconsistent terminology and warrant congressional intervention.

Permitting affects every aspect of our lives—from our economic security to our national security. If we fail to modernize existing processes, the U.S. is at risk of falling behind international competitors that are taking every possible step to incentivize manufacturing development. For instance, the EU released a new plan known as the Net-Zero Industry Act, which looks to regain manufacturing from lower-cost manufacturing centers in Asia and elsewhere. If the United States does not act quickly, we could lose much needed manufacturing investment to the EU and elsewhere in the world. On the other hand, if we seize this opportunity to lead, there is no limit to what manufacturers in the United States can accomplish—for the good of our people and the good of the world.

As the NAM has emphasized consistently, permitting reform is not about cutting corners. It is about keeping up with the world around us. It is about ensuring that this country—a democracy rooted in free enterprise—is not outpaced or outflanked or overtaken by nations that do not share our values, that do not respect the environment or that do not recognize the dignity of human rights.

Thank you for inviting me to testify today. I look forward to continued engagement with members of this committee.