112TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
112–108

JOBS AND ENERGY PERMITTING ACT OF 2011

JUNE 16, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2021]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2021) to amend the Clean Air Act regarding air pollution from Outer Continental Shelf activities, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 2021, the "Jobs and Energy Permitting Act of 2011," was introduced by Rep. Cory Gardner (together with Reps. Burgess, Green, Griffith, Kinzinger, McMorris Rogers, Olson, Pitts, Pompeo, Scalise, Shimkus, and Terry) on May 26, 2011. The legislation prevents lengthy and unnecessary air permitting delays of energy exploration in the Outer Continental Shelf (OCS). It achieves this by clarifying and modifying the relevant Clean Air Act (CAA) provisions as currently implemented by the Environmental Protection Agency (EPA). Key provisions of this bill:

- Clarify that the air permitting provisions were designed to focus on air quality impacts onshore, and not at an offshore site.
- Clarify when drilling equipment and vessels are to be regulated as stationary sources, and when they are regulated as mobile sources.
- Create a deadline for final agency action by the EPA and clarify judicial review.

BACKGROUND AND NEED FOR LEGISLATION

The nation faces high petroleum and motor fuels prices, continued instability and anti-American hostility among several oil exporting countries, unemployment in excess of nine percent, and a rapidly growing budget deficit. Increased domestic oil production could help address all of these concerns, but only if the federal government were to allow it. America's untapped oil potential—in the Gulf of Mexico, the Pacific, the Atlantic, and numerous onshore locations—is substantial. Access to some of this oil is restricted outright, but even energy not explicitly off-limits is frequently subjected to onerous regulatory provisions that effectively make it so. Nowhere is the potential to expand American oil production—and the cost of not doing so—any greater than in the waters off Alaska's North Slope.

Congress has enacted numerous statutes designed to ensure that energy exploration and production is conducted in a manner protective of public health and the environment. However, in many instances reasonable laws have been interpreted unreasonably by federal agencies or environmental extremists so as to block the expansion of domestic drilling. This is especially the case with regard to the EPA in its implementation of air permitting provisions under section 328 of the CAA as applied to the Alaska OCS.

EPA'S NARROWLY DEFINED ROLE IN THE OCS

Energy exploration in the OCS is extensively regulated by the Department of the Interior (DOI), other federal agencies, and impacted state and local governments. Congress added section 328 to the CAA for the specific purpose of ensuring that attainment and maintenance of National Ambient Air Quality Standards (NAAQS)—the key public health standards in the law—are not affected by these activities. The CAA was never intended to empower EPA or environmental extremists to impose a backdoor drilling ban by precluding energy exploration that had already been approved by DOI and other agencies.

EPA could do no better than to follow its own advice when it promulgated the regulations carrying out section 328. The agency stat-

ed that "[i]n implementing, enforcing, and revising this rule and in delegating authority hereunder, the Administrator will ensure that there is a rational relationship to the attainment and maintenance of Federal and State ambient air quality standards and that requirements of Part C of Title I (the PSD program), and that the rule is not used for the purpose of preventing exploration and development of the OCS."

AN AGENCY OFF-COURSE FROM STATUTORY INTENT

Unfortunately, EPA and environmental extremists have strayed from the narrow public health intent of the law. For example, in deciding whether to grant an air permit, the agency has chosen to focus on offshore emissions rather than the onshore impact. However, it is onshore where the public resides (any on-site occupational concerns are addressed by other agencies such as OSHA) and thus is where compliance with the NAAQS is measured. In addition, environmental extremists have attempted to apply the lengthier stationary source requirements to the ships that come and go from the drilling ship. From a public health standpoint, there is little to be gained in doing so, as these vessels are already regulated as mobile sources. In both of these instances, the process is being complicated, and for reasons divorced from the legitimate public health purpose embodied in section 328.

EPA has also increased permitting delays by creating additional layers of bureaucracy within the agency, namely through its Environmental Appeals Board (EAB). Although the EAB is part of EPA, the agency asserts that it is not responsible for EAB delays in granting usable permits that would allow exploration to proceed. Such intra-agency delays were never intended under section 328.

The fact that section 328 is now being used to prevent exploration is clearly seen in the years-long history of Shell's leases in the Alaska OCS. Unlike other parts of the OCS that are statutorily closed to leasing, DOI has issued leases to Shell Oil for the Beaufort and Chukchi Seas. Some of these leases date back to 2005, and Shell has complied with the many requirements imposed by DOI and others, including 35 permits. Yet, Shell has failed to obtain the necessary air permit from EPA, after five years of trying, and the project has been brought to a halt as a result.

EPA's heightened concern about Alaska's air quality is out of place. The state has some of the nation's most pristine air and is in attainment, by a wide margin, with all of the CAA's NAAQS. In the context of the vast onshore and offshore expanses in the northern part of the state, where there are very few inhabitants and sources of emissions, it is not plausible to argue that transient emissions from offshore drilling activities pose so serious a threat that the requirements of section 328 still cannot be met. It should be noted that Alaska's entire Congressional delegation, as well as its state government, testified in favor of granting the air permits and allowing Alaska OCS exploration to proceed.

THE BENEFITS OF EXPLORING THE ALASKA OCS

Alaska's OCS is estimated to contain 27 billion barrels of recoverable oil. According to testimony of Oliver Goldsmith of the University of Alaska Anchorage, pursuit of this energy could create an average of 35,000 permanent jobs in Alaska as well as 28,500 jobs

elsewhere. The potential royalty and tax revenues that would accrue to the federal government could reach well into the hundreds of billions of dollars. The state of Alaska's share could be $17 billion over 50 years.

HEARINGS

The Subcommittee on Energy and Power on April 13, 2011 held a legislative hearing on a discussion draft of the "Energy and Jobs Permitting Act of 2011" and received testimony from:

- The Honorable Lisa Murkowski, U.S. Senator, Ranking Member, Committee on Energy and Natural Resources
- The Honorable Mark Begich, U.S. Senator
- The Honorable Don Young, Member of Congress
- The Honorable Dan Sullivan, Commissioner, Alaska Department of Natural Resources
- Dr. Scott Goldsmith, Ph.D., Professor, Institute for Social and Economic Studies, University of Alaska Anchorage
- Mr. Richard Glenn, Executive Vice President, Arctic Slope Regional Corporation
- Mr. David Lawrence, Executive Vice President, Exploration and Commercial, Shell
- Mr. Robert Meyers, Senior Counsel, Crowell & Moring, LLP
- Ms. Rosemary Ahtuangaruak, Former Mayor, Nuiqsut, Alaska and
- Mr. Erik Grafe, Staff Attorney, Earthjustice

The Subcommittee on Energy and Power on May 13, 2011 held a second legislative hearing on the discussion draft of the "Energy and Jobs Permitting Act of 2011" and received testimony from:

- Ms. Gina McCarthy, Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency
- Mr. Lynn Westfall, Executive Vice President, Turner, Mason & Company
- Mr. Ali Mirzakhalili, Director, Division of Air Quality, Delaware Department of Natural Resources and Environmental Control
- Mr. Brian T. Turner, Assistant Executive Officer for Federal Climate Policy, California Air Resources Board, and
- Mr. Robert Meyers, Senior Counsel, Crowell & Moring, LLP.

COMMITTEE CONSIDERATION

On April 6, 2011, Representative Gardner released a discussion draft of the "Jobs and Energy Permitting Act of 2011" ("JEPA").

On May 24, 2011, the Subcommittee on Energy and Power reported JEPA and favorably recommended it to the full committee by a voice vote. During the markup, three amendments were offered, of which none were adopted.

On May 26, 2011, Mr. Gardner and Mr. Green, together with other members, introduced JEPA, with amendment, as H.R. 2021.

On June 1, 2011 and June 2, 2011, the Committee on Energy and Commerce met in open markup session. During the markup, five amendments were offered, of which none were adopted. On

June 2, 2011, the Committee ordered H.R. 2021 favorably reported to the House.

COMMITTEE VOTES

Clause 3(b) of rule XII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 2021 reported to the House, as amended, was agreed to by a record vote of 34 yeas and 14 nays. The following reflects the recorded votes taken during the Committee consideration, including the names of those Members voting for and against.

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 44

BILL: **H.R. 2021**, the "Jobs and Energy Permitting Act of 2011"

AMENDMENT: An amendment by Ms. Eshoo, No. 1, to strike a provision removing judicial review of Clean Air Act permit applications for the platform or drill ship exploration for an OCS source to the exclusive jurisdiction of the U.S. Court of Appeals for the District of Columbia.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 15 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone			
Mr. Pitts		X		Mr. Rush			
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green		X	
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky			
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson	X		
Mr. Latta		X		Mr. Butterfield			
Mrs. McMorris Rodgers		X		Mr. Barrow		X	
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen			
Mr. Cassidy	X						
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley							
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 45

BILL: H.R. 2021, the "Jobs and Energy Permitting Act of 2011"

AMENDMENT: An amendment by Mr. Waxman, No. 2, to (1) allow the permitting authority to provide an extension of no more than 180 days to take final agency action if the permitting authority determines that such time is necessary to allow for administrative review, (2) strike the clause removing the Environmental Appeals Board's authority to consider any matter regarding consideration, issuance, or denial of a permit, (3) allow any person who filed comments or participated in the public hearing on a draft of a permit issued by the permitting authority to petition the applicable review body to review the final permit decision, (4) strike the limitation to 6 months after the date of filing a completed application on an administrative stay of the effectiveness of Clean Air Act permits for platform or drill ship exploration for an OCS source, and (5) allow the permitting authority to extend an administrative stay of the effectiveness by 180 days.

DISPOSITION: NOT AGREED TO, by a roll call vote of 13 yeas to 33 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush			
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green		X	
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez		X	
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson		X	
Mr. Latta				Mr. Butterfield			
Mrs. McMorris Rodgers		X		Mr. Barrow		X	
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley							
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 46

BILL: **H.R. 2021**, the "Jobs and Energy Permitting Act of 2011"

AMENDMENT: An amendment by Mrs. Capps, No. 3, to allow a State authority to impose any standard to emissions of air pollutants from an OCS source if it is no less stringent than the standard established by the Administrator.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 13 yeas to 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey			
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone			
Mr. Pitts		X		Mr. Rush			
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green		X	
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson		X	
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Mr. Barrow		X	
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 47

BILL: **H.R. 2021**, the "Jobs and Energy Permitting Act of 2011"

AMENDMENT: An amendment by Ms. Matsui, No. 4, to (1) allow the Administrator to provide 30 day extensions if the Administrator determines it is necessary to meet the requirements of this section, provide adequate time for public participation, or ensure sufficient involvement of an affected State and (2) allow extensions of an administrative stay of the effectiveness of 30 days.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 16 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush			
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green		X	
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy				Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn				Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey				Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson		X	
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Mr. Barrow		X	
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 48

BILL: **H.R. 2021**, the "Jobs and Energy Permitting Act of 2011"

AMENDMENT: An amendment by Mr. Markey, No. 5, to provide an exemption from emission control requirements under subpart 1 of part C of title I of the Act to only vessels that meet the most stringent standards promulgated under title II for that class of vessel.

DISPOSITION: **NOT AGREED TO**, by a roll call vote of 13 yeas to 34 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush			
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green		X	
Mr. Rogers		X		Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez		X	
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Weiner			
Mr. Scalise		X		Mr. Matheson		X	
Mr. Latta		X		Mr. Butterfield			
Mrs. McMorris Rodgers				Mr. Barrow		X	
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

Current as of 03/14/2011

COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 49

BILL: **H.R. 2021**, the "Jobs and Energy Permitting Act of 2011"

AMENDMENT: A motion by Mr. Upton to order H.R. 2021 favorably reported to the House, without amendment. (Final Passage)

DISPOSITION: **AGREED TO**, by a roll call vote of 34 yeas to 14 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Dingell		X	
Mr. Stearns	X			Mr. Markey		X	
Mr. Whitfield	X			Mr. Towns		X	
Mr. Shimkus	X			Mr. Pallone		X	
Mr. Pitts	X			Mr. Rush			
Mrs. Bono Mack	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel			
Mr. Terry	X			Mr. Green	X		
Mr. Rogers	X			Ms. DeGette		X	
Mrs. Myrick				Mrs. Capps		X	
Mr. Sullivan	X			Mr. Doyle		X	
Mr. Murphy	X			Ms. Schakowsky		X	
Mr. Burgess	X			Mr. Gonzalez	X		
Mrs. Blackburn	X			Mr. Inslee		X	
Mr. Bilbray	X			Ms. Baldwin		X	
Mr. Bass	X			Mr. Ross	X		
Mr. Gingrey	X			Mr. Weiner		X	
Mr. Scalise	X			Mr. Matheson	X		
Mr. Latta	X			Mr. Butterfield			
Mrs. McMorris Rodgers				Mr. Barrow	X		
Mr. Harper	X			Ms. Matsui		X	
Mr. Lance	X			Ms. Christensen			
Mr. Cassidy	X						
Mr. Guthrie	X						
Mr. Olson	X						
Mr. McKinley	X						
Mr. Gardner	X						
Mr. Pompeo	X						
Mr. Kinzinger	X						
Mr. Griffith	X						

Current as of 03/14/2011

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 2021 amends the Clean Air Act regarding air pollution from Outer Continental Shelf activities.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2021, the Jobs and Energy Permitting Act of 2011, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 2021, the Jobs and Energy Permitting Act of 2011, contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

JUNE 8, 2011.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2021, the Jobs and Energy Permitting Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2021—Jobs and Energy Permitting Act of 2011

H.R. 2021 would make several amendments to the Clean Air Act related to air pollution stemming from oil exploration in the Outer Continental Shelf (OCS). Those amendments include specifying that air emission impacts are to be measured onshore and clari-

fying that any drilling vessel must be regulated as a stationary source once drilling starts. (A stationary source is a fixed-site producer of air pollution that is regulated by the Clean Air Act.) In addition, H.R. 2021 would clarify that the Environmental Appeals Board of the Environmental Protection Agency (EPA) does not have the authority to consider permits for OCS exploration; rather, under the bill EPA would be required to take final action related to granting or denying a permit within six months after a completed application is filed.

Based on information from EPA, CBO expects that implementing this legislation would have no significant impact on the federal budget. Pay-as-you-go procedures do not apply because the bill would not affect direct spending or revenues.

H.R. 2021 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1: Short title

Section 1 provides the short title for the legislation, the "Jobs and Energy Permitting Act of 2011."

Section 2: Air Quality Measurement

Section 2 amends section 328(a)(1) of the Clean Air Act ("CAA") to clarify that the air quality impacts of any Outer Continental Shelf source ("OCS Source") are to be measured solely with respect to the impacts in the corresponding onshore area.

Section 3: OCS Source

Section 3 amends section 328(a)(4)(C) of the CAA to clarify that while the emissions from any vessel servicing or associated with an OCS Source are to be considered direct emissions from such source, such vessels are not subject to emissions control requirements under the CAA's Prevention of Significant Deterioration of Air Quality Program. Also, section 3 makes clear that an OCS Source

is established at the time when drilling commences and ceases to exist when drilling activity ends.

Section 4: Permits

Section 4 amends section 328 of the CAA by adding a new subsection that requires final agency action be taken on platform or drill ship exploration OCS Source permits no later than 6 months after a completed application is filed, with no administrative stay of the permit after such time period. In addition, the new subsection states expressly that the Environmental Appeals Board of the Environmental Protection Agency does not have authority to consider platform or drill ship exploration OCS Source permits. Final agency action is to be considered nationally applicable under section 307(b) of the CAA without additional administrative review except for reconsideration filed by the applicant under section 307(d)(7)(B) of the CAA.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CLEAN AIR ACT

* * * * * * *

TITLE III—GENERAL

* * * * * * *

SEC. 328. AIR POLLUTION FROM OUTER CONTINENTAL SHELF ACTIVITIES.

(a)(1) APPLICABLE REQUIREMENTS FOR CERTAIN AREAS.—Not later than 12 months after the enactment of the Clean Air Act Amendments of 1990, following consultation with the Secretary of the Interior and the Commandant of the United States Coast Guard, the Administrator, by rule, shall establish requirements to control air pollution from Outer Continental Shelf sources located offshore of the States along the Pacific, Arctic and Atlantic Coasts, and along the United States Gulf Coast off the State of Florida eastward of longitude 87 degrees and 30 minutes ("OCS sources") to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I. For such sources located within 25 miles of the seaward boundary of such States, such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area, and shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting*, except that any air quality impact of any OCS source shall be measured or modeled, as appropriate, and determined solely with respect to the impacts in the corresponding onshore area*. New OCS sources shall comply with such requirements on the date of promulgation and existing OCS sources shall comply on the date 24 months thereafter. The Administrator shall update such requirements as necessary to

maintain consistency with onshore regulations. The authority of this subsection shall supersede section 5(a)(8) of the Outer Continental Shelf Lands Act but shall not repeal or modify any other Federal, State, or local authorities with respect to air quality. Each requirement established under this section shall be treated, for purposes of sections 113, 114, 116, 120, and 304, as a standard under section 111 and a violation of any such requirement shall be considered a violation of section 111(e).

* * * * * * *

(4) DEFINITIONS.—**[**For purposes of subsections (a) and (b)**]** *For purposes of subsections (a), (b), and (d)—*

(A) * * *

* * * * * * *

(C) OUTER CONTINENTAL SHELF SOURCE.—The terms "Outer Continental Shelf source" and "OCS source" include any equipment, activity, or facility which—

(i) * * *

* * * * * * *

Such activities include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation. For purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, **[**shall be considered direct emissions from the OCS source**]** *shall be considered direct emissions from the OCS source but shall not be subject to any emission control requirement applicable to the source under subpart 1 of part C of title I of this Act. For platform or drill ship exploration, an OCS source is established at the point in time when drilling commences at a location and ceases to exist when drilling activity ends at such location or is temporarily interrupted because the platform or drill ship relocates for weather or other reasons.*

* * * * * * *

(d) PERMIT APPLICATION.—In the case of a completed application for a permit under this Act for platform or drill ship exploration for an OCS source—

(1) final agency action (including any reconsideration of the issuance or denial of such permit) shall be taken not later than 6 months after the date of filing such completed application;

(2) the Environmental Appeals Board of the Environmental Protection Agency shall have no authority to consider any matter regarding the consideration, issuance, or denial of such permit;

(3) no administrative stay of the effectiveness of such permit may extend beyond the date that is 6 months after the date of filing such completed application;

(4) such final agency action shall be considered to be nationally applicable under section 307(b); and

(5) judicial review of such final agency action shall be available only in accordance with such section 307(b) without additional administrative review or adjudication.

* * * * * * *

DISSENTING VIEWS ON H.R. 2021

Under Section 328 of the Clean Air Act, companies that want to conduct new exploratory drilling operations in the U.S. Outer Continental Shelf (OCS) must obtain permits under the Clean Air Act prevention of significant deterioration (PSD) program if the operations will emit more than 250 tons of an air pollutant. The "Jobs and Energy Permitting Act of 2011," as reported by the Committee on Energy and Commerce, would make several changes to how EPA and state authorities operating delegated programs can issue PSD permits for offshore exploratory drilling operations and restrict how concerned stakeholders can challenge those permits.

This bill was drafted to facilitate the permitting process for Shell in the Arctic waters off the coast of Alaska. The bill, however, would affect the regulatory structure relating to more than 20 states and territories and could affect air quality in coastal states other than Alaska. Representatives of the states of California and Delaware testified to their concerns about the potential impact of this bill within their borders. Brian Turner from the California Air Resources Board testified that the bill "could have far-reaching unintended consequences on existing effective protections for public health in California."[1] Ali Mirzakhalili from the Delaware Department of Natural Resources and Environmental Control's Office of Air Quality stated that the "proposed constraints placed on states" rights and authorities will adversely affect our state's ability to protect public health and welfare from harmful effects of air pollution."[2]

I. PURPOSE OF H.R. 2021

This bill's supporters have stated that Shell has tried for five years to obtain the necessary air permits from EPA for its proposed Arctic drilling operation. Congressman Gardner, the bill's lead sponsor, and others have cited this five-year delay as a justification for the proposed legislation.[3]

However, on May 13, 2011, EPA Assistant Administrator Gina McCarthy testified before the Subcommittee on Energy and Power about the legislation. She noted in response to questions that "every time Shell has applied for a permit, a permit has been

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[1] Testimony of Brian Turner, California Air Resources Board, before the Subcommittee on Energy and Power, Committee on Energy and Commerce, *Hearing on the American Energy Initiative: Discussion Draft of H.R. ____, the Jobs and Energy Permitting Act of 2011,* 112th Cong. (May 13, 2011) (hereinafter "CARB Testimony").

[2] Testimony of Ali Mirzakhalili, Director, Office of Air Quality, Delaware Department of Natural Resources and Environmental Control, before the Subcommittee on Energy and Power, Committee on Energy and Commerce, *Hearing on the American Energy Initiative: Discussion Draft of H.R. ____, the Jobs and Energy Permitting Act of 2011,* 112th Cong. (May 13, 2011) (hereinafter "Delaware Testimony").

[3] *See,* e.g., 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).

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."[4]

Hearing that testimony, Ranking Member Waxman and Ranking Member Rush 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 demonstrates the following and casts doubt on the need for this legislation:[5]

• *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 is misleading to suggest that Shell submitted an application to drill in the Beaufort and Chukchi Seas five years ago and 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. Every time Shell changed its plans, EPA had to adjust its assessment of the potential impacts on air quality and public health.

These facts cast doubt on the stated purpose of and need for the proposed legislation.

II. SECTION-BY-SECTION ANALYSIS

A. SECTION 2: AIR QUALITY MEASUREMENT

Section 2 amends section 328(a)(1) of the Clean Air Act to clarify that the air quality impacts of any Outer Continental Shelf source

[4] Testimony of Regina McCarthy, Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency, before the Subcommittee on Energy and Power, Committee on Energy and Commerce, 112th Cong. (May 13, 2011) (hereinafter "McCarthy Testimony").

[5] Letter from Assistant Administrator Gina McCarthy, U.S. EPA, to Ranking Member Henry A. Waxman (June 1, 2011).

("OCS source") are to be measured solely with respect to the impacts in the corresponding onshore area.

This new language would allow a drillship, for example, to emit pollution at relatively high levels, while the need for pollution controls would be determined based only on the diluted quantity of pollution assumed to reach the shore. This language removes air quality protections for near-shore areas that have extensive human activity. For example, in Alaska, native populations spend significant time offshore engaging in subsistence whaling and fishing, and the Santa Barbara Channel is full of recreational boaters and fishermen. As the California Air Resources Board stated in testimony before the Subcommittee, this "procedural change does not remove any of the pollution from actually reaching California and the associated decrement to our ambient air quality, but it does remove the Districts' ability to protect recreational, fishing, and other ocean users from OCS emissions."[6] EPA also noted in testimony that "not requiring compliance with health-based air quality standards at any point off the shore line . . . could result in significant human exposure to air pollution from OCS sources, including nitrogen dioxide, particles, sulfur dioxide, and pollution that causes ozone."[7]

In his response to questions for the record, Ali Mirzakhalili of the Delaware Department of Natural Resources noted that measuring impacts at the "corresponding onshore area" could be particularly confusing along the Atlantic coast, where numerous states lay in close proximity. He stated that an OCS source off the coast of Delaware could have the greatest air quality impact in New Jersey or Maryland, but, as written, the bill could prevent these affected states from requiring emissions controls.[8]

Section 2 also has the effect of applying more lenient standards to offshore sources than onshore sources. In issuing its permits to Shell, EPA Region 10 required Shell to show compliance with ambient air quality standards at the rail of the drillship. This is consistent with how EPA permits onshore facilities, which have to demonstrate compliance at the fenceline. The California Air Resources Board testified that when "the rules for OCS sources are more lenient that those within the State, California's experience is that the tension between better-controlled onshore industry and stakeholders and the more lax federal OCS regulation will lead to increased disputes, project delays and expense, and permit denials."[9] Similarly, EPA noted that if OCS sources are not required to use pollution controls, "any resulting degradation of air quality could result in the need for more stringent controls for onshore sources."[10]

EPA disagrees that the statute, legislative history, and rulemaking record establish that OCS sources only have to comply with the NAAQS and PSD increments onshore. EPA stated the following

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[6] CARB Testimony.
[7] McCarthy Testimony.
[8] Ali Mirzakhalili, Director, Office of Air Quality, Delaware Department of Natural Resources and Environmental Control, responding to Ranking Member Henry Waxman's Questions for the Record (June 15, 2011).
[9] CARB Testimony.
[10] Testimony of Regina McCarthy, Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency, before the Subcommittee on Energy and Power, Committee on Energy and Commerce, 112th Cong. (May 13, 2011).

in response to an assertion that EPA erroneously required Shell to demonstrate the air quality impact of its operations at the rail of the drillship rather than solely onshore: [11]

> While EPA agrees that the legislative history evidences Congress' concern for protection of onshore air quality, the actual enacted statutory language never uses the term "onshore" but rather simply requires EPA to promulgate regulations to attain and maintain ambient standards and comply with the provisions of Part C of Title I of the CAA (the provisions for prevention of significant deterioration of air quality). Nothing in the statute precludes or limits EPA's discretion in how it structures the required regulations to comply with the statutory directive. EPA believes that it has the authority to adopt regulations, and has adopted regulations, that require compliance with the NAAQS and increments at all locations, both offshore and onshore.

B. SECTION 3: OCS SOURCE

Section 3 makes two significant changes to how Clean Air Act Section 328 applies to offshore drilling operations.

1. Definition of OCS Source

Under current law, an "OCS source" includes vessels that are "permanently or temporarily attached to the seabed and erected thereon and used for the purposes of exploring, developing or producing resources therefrom" or "physically attached to an OCS facility." [12]

Section 3 of the bill amends section 328 of the CAA to specify that an OCS source is established at the time when drilling commences and ceases to exist when drilling activity ends. The California Air Resources Board testified that changing the definition of OCS source could "artificially limit" the timeframe for considering emissions from a project and could "result in some entire projects falling beneath regulatory applicability thresholds, thus avoiding control requirements and significantly increasing air pollution." [13] The Delaware Department of Natural Resources and Environmental Control testified that it is a "misconception that sources that operate for a short duration of time do not significantly affect air quality," noting that "uncontrolled sources operating for a single day can cause or contribute to exceedances of health based air quality standards." [14]

2. Application of Emissions Controls to Support Vessels

In addition, the bill specifies that vessels servicing or associated with a drillship or drilling platform, such as ice breakers and the oil spill response vessels, would not be subject to best available control technology (BACT) emission reduction requirements or other requirements adopted under the PSD program. The applicant would have to factor in the emissions from the associated vessels

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[11] "U.S. EPA, Region 10, *Response to Comments for Outer Continental Shelf PSD Permit No. R10OCS/PSD–AK–09–01* (Mar. 31, 2010).
[12] 40 C.F.R. § 55.2.
[13] CARB Testimony.
[14] Delaware Testimony.

when determining whether the drilling operation is subject to the PSD program and if it meets state and national air quality standards. The permitting authority, however, could not require the applicant to apply BACT to reduce pollution from these vessels.

These associated vessels often comprise the bulk of a drilling operation's pollution. For example, Shell's proposed Arctic operations include two ice breakers, an oil spill response fleet of four or five vessels, and a supply ship. Shell estimated that its Chukchi operations would emit 1,188 tons per year of nitrogen oxides;[15] Shell's Beaufort operations would emit an estimated 1,371 tons per year of nitrogen oxides.[16] The associated vessels would contribute 96% of the total emissions from these drilling operations.[17]

The California Air Resources Board is concerned that this language could exempt many non-motive engines from emissions controls. For example, crane engines on marine vessels are regulated as stationary engines under Santa Barbara County Air Pollution Control District Rule 333 and the CARB Stationary Internal Combustion Engine Air Toxics Control Measure. Such engines are subject to permit requirements under PSD and are therefore subject to BACT if their potential to emit exceeds certain thresholds.[18] This bill could prevent states and localities from applying such emission control standards on vessels servicing a drilling operation. In his response to questions for the record, Ali Mirzakhalili of the Delaware Department of Natural Resources wrote that excluding these vessels from emissions controls "could force a state like Delaware to meet its air quality obligations by offsetting the vessel's emissions on the backs of its already tightly regulated stationary sources. This will have an adverse and unfair economic impact on Delaware and other coastal states."[19]

This language also could bar the application of other rules adopted under subpart 1 of part C of Title I of the Clean Air Act. For example, the California Air Resources Board has promulgated a harbor craft rule that is designed to help coastal areas come into attainment with the ozone and particulate matter air quality standards.[20] The bill could prevent California's air quality districts from incorporating CARB's statewide maritime rules, such as the commercial harbor craft and ocean-going vessel regulations, into PSD permits.[21]

The bill's supporters have stated that Title II is adequate to control emissions from these sources. During Subcommittee hearings on this bill, one of the witnesses, Robert Meyers, noted that vessels servicing the OCS source—such as supply ships and ice breakers—are regulated under Title II of the Clean Air Act and therefore require no additional emissions controls as part of the OCS source.

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[15] U.S. EPA Region 10, *Statement of Basis for Proposed Outer Continental Shelf Prevention of Significant Deterioration, Permit No. R10OCS/PSD–AK–09–01,* Appendix A (Jan. 8, 2010).

[16] U.S. EPA Region 10, *Statement of Basis for Proposed Outer Continental Shelf Prevention of Significant Deterioration, Permit No. R10OCS/PSD–AK–2010–01,* Appendix A (Feb. 17, 2010).

[17] *See supra* notes 15 and 16.

[18] CARB Testimony.

[19] Ali Mirzakhalili, Director, Office of Air Quality, Delaware Department of Natural Resources and Environmental Control, responding to Ranking Member Henry Waxman's Questions for the Record (June 15, 2011).

[20] California Air Resources Board, *Regulations to Reduce Emissions from Diesel Engines on Commercial Harbor Craft Operated Within California Waters and 24 Nautical Miles of the California Baseline* (Oct. 20, 2008) (online at www.arb.ca.gov/regact/2007/chc07/chc07.htm).

[21] CARB Testimony.

Ranking Member Waxman and Ranking Member Rush wrote to Assistant Administrator McCarthy and asked her to clarify how Title II applies to the permitting of OCS drilling activities. She stated the following in her written response: [22]

> While it is true that Title II regulations apply to certain vessels which may be used in OCS activities, it is not an accurate representation to say that, in the absence of the OCS permitting process, these vessels would still be regulated under the Clean Air Act. The OCS permitting process for Shell's operations has resulted in permit requirements for the support and service vessels that are, in some instances, more protective of public health than EPA can require under Title II of the Clean Air Act.
>
> Shell's operations include support and service vessels, such as icebreakers, that have not been regulated under Title II of the Clean Air Act. Many of the large vessels, such as icebreakers, are foreign-flagged vessels. Title II engine requirements/regulations do not apply to foreign-flagged vessels. Instead, as part of our comprehensive marine program, we have relied on similar MarPol Annex VI engine standards through the International Maritime Organization (IMO). Those standards, like our Title II CAA standards, apply primarily to new vessels. . . .
>
> Shell's actions in response to the [Environmental Appeals Board's] remand of the Discoverer permits are illustrative of the additional environmental protection provided by the OCS permit process compared to Title II. Since the remand, Shell has agreed to add controls to one icebreaker to reduce both NO_X and PM2.5 emissions. These additional controls will reduce NO_X emissions from the icebreaker by 96% and PM2.5 emissions by 82%. Additional restrictions requested by Shell for emissions from the Discoverer and other support vessels will further reduce all emissions from the project (for example, total NO_X emissions will be reduced by 72%).
>
> As a result of the OCS permitting process, Shell is using cleaner fuel than is required under Title II of the Clean Air Act or international law. When the Discoverer drill ship is an OCS source, the permit requires all of the engines on the Discoverer and all of the engines on the service and support vessels to use diesel fuel that contains no more than 15 ppm sulfur. Absent the OCS permit process, vessels in the Arctic using diesel fuel bought outside the United States legally could have fuel sulfur levels as high as 35,000 ppm until 2020 and 5,000 ppm thereafter under international law. Absent the OCS permit process, for vessels that buy diesel in the United States, the fuel could contain up to 500 ppm sulfur until 2014, at which time it can contain no more than 15 ppm.

Essentially, Title II alone may not be adequate to achieve necessary emissions reductions from the vessels servicing and associated with offshore drilling operations.

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[22] Letter from Assistant Administrator Gina McCarthy, U.S. EPA, to Ranking Member Henry A. Waxman (June 1, 2011).

C. SECTION 4: PERMITS

Section 4 of the bill would make significant changes to the process for reviewing and permitting offshore exploratory drilling operations.

1. Six Month Deadline for Final Agency Action

Section 4 requires final agency action be taken on platform or drill ship exploration OCS source permits no later than six months after a completed application is filed, with no administrative stay of the permit after such time period.

Responding to questions before the Subcommittee, Assistant Administrator Gina McCarthy stated that "it is not possible" for EPA to evaluate a permit application, set source-specific air pollution limits, allow for public comment, and provide for administrative review within a six-month timeframe.[23] Given these time constraints, Ms. McCarthy stated that the agency could issue a permit without adequate support, thereby reducing the permit's defensibility in court and increasing the likelihood that EPA and the applicant will have to "start again at square one."[24] This short timeline also would limit public participation. Currently, EPA generally provides 30 to 60 days for public comment on a proposed permit action, depending on the complexity of the issues and the degree of public interest. The timing required by the proposed legislation would effectively preclude providing any more than 30 days for public comments.

While this provision does not bar review of state permit decisions by state or local hearing boards, the six-month deadline may effectively limit or eliminate such administrative appeals at the state level as well. In Delaware, the state generally issues stationary source permits within six months of filing of a complete application, but review times vary based on the complexity of the pollution source. According to the Delaware Department of Natural Resources and Environmental Control, this six-month timeframe does not guarantee adequate time for permit drafting, review with sources, public participation, and administrative review.[25] Administrative appeals of California permits are brought to the local air pollution district's hearing board, which typically hears and resolves appeals within 30 days or a few months, depending on the district and complexity of the application.[26] In addition, for state authorities operating delegated programs, this timing may be too short to allow compliance with state mandates, such as the California Environmental Quality Act.

2. Administrative and Judicial Review

Since 1980, permit applicants and others have been allowed to appeal a permit decision administratively within EPA, prior to any judicial review. This promotes consistency across the national permitting program and provides a faster and more affordable alter-

[23] McCarthy Testimony.
[24] *Id.*
[25] Delaware Testimony.
[26] Briefing by the Santa Barbara County Air Pollution Control District and South Coast Air Quality Management District to Energy and Commerce Committee Democratic Staff (Apr. 11, 2011).

native to litigation. In 1992, President George H.W. Bush Administration's EPA established the Environmental Appeals Board (the Board) to hear all administrative appeals to EPA. This replaced the prior approach of making administrative appeals directly to the Administrator.[27]

Section 4 states expressly that the Environmental Appeals Board does not have authority to consider platform or drill ship exploration OCS source permits. This would prevent stakeholders with concerns about a Clean Air Act permit for an OCS source from raising those concerns before the Board, which has 20 years of experience in the highly technical area of PSD permitting. The Board also is more accessible to citizens than a court of law. Under current law, if a community of subsistence fisherman in Alaska wanted to appeal a permit decision before the Board, they could do so without hiring a lawyer, and they could attend oral arguments via video conference.

During her testimony before the Subcommittee, Assistant Administrator Gina McCarthy described other benefits of the Environmental Appeals Board. She stated that the Board's review process "expedites the process of obtaining a final, valid permit by facilitating a process that is faster and more certain for the applicant in the event of an appeal." [28] She clarified that rather than adding an extra step that prolongs the permit process, the Board "usually serves as a cheaper, faster, more expert substitute for judicial review." [29] On average, the Board decides PSD appeals in just over five months from the filing of the appeal, much faster than judicial cases are resolved.[30] Furthermore, according to Ms. McCarthy, in almost all cases, the "Board's decision resolves the disputes and concludes litigation, avoiding protracted federal court review." [31] Since 1992, only four of the Board's PSD permit decisions have been reviewed by a federal court, and no Board PSD decision has ever been overturned.[32]

Section 4 also specifies that final agency action is to be considered nationally applicable under section 307(b) of the Clean Air Act. This would direct all permit challenges directly to the DC Circuit Court of Appeals, rather than following long-standing rules and practice on judicial venue, which direct litigation to the appropriate regional court of appeals.

The shift of judicial venue from the appropriate regional court of appeals to the DC Circuit Court of Appeals would require stakeholders with concerns about the purely local air quality impacts of a permit decision to come to Washington, DC to raise those concerns. California state courts would no longer have jurisdiction over judicial appeals to air quality permits issued by local agencies. The California Air Resources Board testified that forcing "cash-strapped state and local governments to travel 3,000 miles to defend their federally-delegated permitting decisions is a serious unfunded federal imposition. It impairs the ability of these governments to con-

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[27] U.S. EPA, *Changes to Regulations to Reflect the Role of the New Environmental Appeals Board in Agency Adjudications: Final Rule,* 57 Fed. Reg. 5320 (Feb. 13, 1992).
[28] McCarthy Testimony.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*

duct the people's business, increases the burden on taxpayers, and takes precious resources from other pressing priorities."[33]

For the reasons stated above, we dissent from the views contained in the Committee's report.

HENRY A. WAXMAN,
Ranking Member.
JAN SCHAKOWSKY.
BOBBY L. RUSH.
EDWARD J. MARKEY.
TAMMY BALDWIN.
ANNA G. ESHOO.
JOHN D. DINGELL.
DIANA DEGETTE.
EDOLPHUS TOWNS.
LOIS CAPPS.
MIKE DOYLE.
DORIS O. MATSUI.
FRANK PALLONE, JR.

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[33] CARB Testimony.