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AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.



February 15, 2017

Subcommittee on Environment
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Re: Hearing on “Modernizing Environmental Laws: Challenges and Opportunities for Expanding Infrastructure and Promoting Development and Manufacturing,” held on February 16, 2017

Dear Chairman Shimkus:

The Associated General Contractors of America (AGC) appreciates the opportunity to provide written testimony in consideration of the implementation of the Clean Air Act (CAA), the Brownfields Program, and other environmental laws in the jurisdiction of the Environment Subcommittee. AGC supports modernizing environmental laws to address current challenges and create opportunities for today’s businesses while continuing to safeguard our country’s natural resources. AGC hopes that the 115th Congress and the new administration will look to the construction industry as an “industry partner” as opposed to an “industry opponent” in the process – recognizing that construction plays a vital role in improving our soil, water and air pollution problems. The aforementioned hearing is an important step in this paradigm shift.

AGC represents more than 26,000 firms engaged in building, heavy, civil, industrial, utility and other construction for both public and private property owners and developers. AGC members construct commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, and multi-family housing units; and they prepare sites and install the utilities necessary for housing development. AGC and its nationwide network of 92 chapters have sought to improve and advance the interests of the construction industry for nearly a century.

AGC has reached out¹ to the Trump administration and Congress with recommendations that highlight the need for fewer and smarter regulations, greater industry assistance and involvement, and reduced barriers to approving and moving forward on important infrastructure projects. The 115th Congress plays an important and vital role in this process, and we applaud the subcommittee for holding hearings such as the one scheduled for February 16, 2017.

¹ <http://advocacy.agc.org/agc-shares-regulatory-plan-with-trump-transition-team/>

Regulatory Challenges to the Expansion of Infrastructure and Domestic Manufacturing

For every perceived problem, many federal agencies have sought regulatory “solutions.” Oftentimes, those solutions fail to adequately—let alone comprehensively—solve the alleged ills they seek to address. Instead, a new regulation is generally stacked on top of a host of existing regulatory requirements without sufficient consideration of its overall impact on the greater regulatory compliance and enforcement scheme. The result is a chaotic patchwork of federal mandates that often create considerable economic hardship on the construction industry—especially small businesses—amounting to fewer construction projects built and fewer construction jobs available.

AGC seeks to ensure that new requirements are neither cost-prohibitive nor overly and needlessly burdensome for the construction industry, which improves our nation’s infrastructure and quality of life.

Construction Industry Regulatory Burdens Falling under this Subcommittee’s Jurisdiction

Looking at environmental programs that are under the jurisdiction of this subcommittee: The day-to-day operations of individual construction firms typically are not directly regulated under CAA stationary source permitting programs and Brownfields redevelopment decisions often occur before a contractor is brought onto a project. However, AGC members undertake redevelopment, construction, and renovation activities of industrial facilities and properties that are heavily regulated under these programs. The construction industry is sensitive to the concerns of investors who make the business decisions to build (or not build) new structures or to expand and make improvements on existing facilities. Additionally, construction costs are closely tied to materials costs, which are often adversely impacted by increases in business expenses resulting from regulatory measures necessary to receive pre-construction or operation permits. It is also noteworthy that the CAA’s National Ambient Air Quality Standards - and each state’s ability to comply with those federal air limits and planning requirements – can jeopardize funding for highways and limit new construction in areas that desperately need to be revitalized and repaired.

There are numerous other environmental programs under the jurisdiction of this subcommittee that have a direct impact on the means-and-methods of the construction process. Construction firms face huge civil penalties under federal environmental statutes for violations of the Resource Conservation and Recovery Act (RCRA) hazardous waste storage, management, and disposal requirements (reaching \$71,264 per day, per violation); for Toxic Substances Control Act (TSCA) chemical (e.g., lead-based paint dust) management, reporting, and recordkeeping violations (\$38,114 per day, per violation); and for violations under the Spill Prevention Control and Countermeasure regulations (\$44,539 per day, per violation).

Over the last decade, the U.S. Environmental Protection Agency has either promulgated a myriad of rules to expand the scope and complexity of the above-referenced programs or initiated efforts to do so. Regulations related to hazardous and non-hazardous materials affect the use and

disposal of these and other construction materials. Ongoing regulatory efforts to expand the Lead Renovation Repair and Painting (LRRP) Program requirements could lead to onerous and redundant costs for commercial building renovations. Recent efforts to map out a brand new rule that will expand the SPCC Program beyond oil to address other hazardous substances could easily become unworkable on many jobsites without industry input. Across the board, permitting and mitigation requirements add costs and delays to new construction. The industry also is effected by a host of additional environmental regulations that are not the focus of discussion for the aforementioned hearing of the Subcommittee on Environment.

AGC Priorities for this Subcommittee's Consideration

AGC seeks legislative and regulatory solutions within many of these programs, including but not limited to –

- ***Air Quality Controls*** - *National Ambient Air Quality Standards Should be Scientifically Based, Attainable, and Economically Feasible. For example, AGC recommends legislation to: adjust the schedule for implementation of the 2015 ozone standard; long - term NAAQS reform to move the five-year review cycle to 10 years; expand "Exceptional Events" to cover ozone inversions; and provide more "tools" for states to implement compliant state implementation plans.*
- ***Diesel Emissions Reductions*** - *Oppose Diesel-Powered Construction Equipment Retrofit or Replacement Mandates that Put Unreasonable Financial Burdens on Contractors; Promote Full Funding of Voluntary Grant Programs that Provide Support to Interested Firms.*
- ***Hazardous Materials*** - *Ensure Spill Prevention, Control & Countermeasure (SPCC) Rules for Hazardous Substances Make Sense for the Construction Industry.*
- ***Lead Paint*** - *Oppose EPA Efforts to Expand Lead-Based Paint Regulation to Areas Beyond What is Currently Regulated.*
- ***Mitigation*** - *Ensure that as Many Environmental Mitigation Options as Possible are Available to the Contractor, and that Mitigation is Not a Barrier to Construction.*

In addition to reviewing and correcting the regulatory misadventures of the past, AGC seeks overall regulatory process reform that will help right the regulatory ship of the future. There are many reform efforts that require legislative action. AGC is supportive of reforms that enable greater congressional checks on rulemaking, increase public participation in the regulatory process, instruct agencies to choose the least costly regulatory options, require on-the-record hearings to help ensure sound scientific and economic data is put forth by agencies, and providing for more rigorous legal review of costly regulations, among other things.

Implementation Reform: Improved, Cooperative Relationship with Industry

To help the over-regulated construction industry hire more people to build infrastructure, federal agencies must reengage with the construction industry again to develop workable regulations and effective compliance tools. Over the past several years, many federal agencies engaged with the construction industry as opponents rather than partners seeking a sensible regulatory path forward. They have not always engaged the construction industry. Yet, they have regulated it immensely. Together, the 115th Congress and the Trump administration can quickly implement a paradigm shift within federal agencies that allows them to regulate the industry and enforce the law in a coherent and reasonable manner. Policies must additionally be put forth to recalibrate enforcement initiatives and focus more agency resources on compliance education and industry collaboration efforts.

Reduce Barriers to Infrastructure Investment through Permitting Reform

AGC and the construction industry challenge the 115th Congress and this administration to put America on a path towards truly “shovel-ready” construction projects. Although not specifically on the agenda for the aforementioned hearing, foremost on the list should be permitting reforms that establish a six month time limit for completing all federal National Environmental Policy Act reviews. If no decision has been made by the end of those six months, the project should automatically be allowed to move forward. In addition, the administration and Congress should establish a loser-pays provision requiring any plaintiff who files a legal challenge to block an infrastructure project to pay all related legal fees if their challenge is unsuccessful.

AGC does not recommend the new administration or this Congress stop there. Opportunities exist to reduce permitting and regulatory review delays within the operations of U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, and the Fish and Wildlife Service, among other agencies. Congress and the administration should work hand-in-hand on efforts to reduce the number of agencies involved in the various approval processes to allow construction projects to move forward. It’s difficult enough to have one agency make a decision. But, when dozens are involved—at a federal, state and local government level—it’s no wonder why we wait decades to undertake significant infrastructure improvements. Not only should the number of agencies needed to conduct the countless regulatory and permitting reviews be limited, one agency should be authorized to and held accountable for moving projects through the process.

AGC looks forward to working with the 115th Congress and the new administration on these initiatives and others to make review and permitting processes meet today’s infrastructure demands and needs.

Conclusion

In sum, AGC appreciates the opportunity to offer its insight on modernizing environmental laws to help build infrastructure, encourage job growth and cut red tape as well as fix the broken

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project review and permitting system. We hope the 115th Congress supports our efforts to change within federal agencies the paradigm of “construction industry opponent” to “construction industry partner.” We encourage Congress to help remove the roadblocks to investment in infrastructure, development, and manufacturing.

Thank you for your consideration.

Respectfully,

Jimmy Christianson

Jimmy Christianson
Regulatory Counsel
Associated General Contractors of America