

CHFC Permitting Reform Principles

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Federal permitting reforms are needed to eliminate significant barriers for the efficient and responsible deployment of hydrogen and low-carbon intensity hydrogen (LCH) infrastructure projects at the site of production, in the distribution and transport, and in the storage and use of hydrogen. Reforms should be designed to ensure the efficient and streamlined permitting of projects necessary to attract private sector investments.

CHFC recommends that the following principles are evaluated by Congress and reflected in legislation to improve the federal permitting process that will enable expansion of infrastructure necessary to support the scale up of a domestic LCH industry.

1. Streamline National Environmental Policy Act (NEPA) reviews.

Before an agency can act on a federal permit for a project, the National Environmental Policy Act (NEPA) requires the agency to analyze the potential environmental impact of the project. Major infrastructure projects often trigger a federal agency NEPA review to receive a federal permit – which can take longer to receive than building the project. Streamlining federal review processes and periods, limiting scope of reviews and allowing agencies to adopt lead agency decisions are all actions that can reduce the time and burden of the NEPA review process without compromising impact on the environment.

CHFC believes that the bipartisan SPEED Act, H.R.4776, introduced by Chairman Bruce Westerman (R-AK) and Jared Golden (D-ME) goes a long way to addressing the issues with NEPA. This bill passed in the House by a 221-196 vote, and we encourage the Senate to consider this bill as permitting discussions continue.

2. Encourage agencies to responsibly use programmatic reviews and categorical exclusions for certain hydrogen infrastructure projects.

Programmatic Reviews

While many NEPA documents focus on site-specific projects, federal agencies can also prepare programmatic NEPA documents to assess potential impacts of infrastructure projects. Such programmatic documents are inherently broader in scope, as they typically could affect a larger geographic area, compared with project-specific NEPA reviews.

While a programmatic review can take time on the front end, it can significantly reduce review time for each project reviewed afterwards, enabling the ability to “tier” any project-specific review on top of the programmatic review.

An advantage of using programmatic NEPA reviews for repetitive agency activities is that they provide a broad view of environmental impacts. These can be used as a starting point for analyzing environmental impacts. Subsequent NEPA reviews would use this analysis to focus on narrower, site, or project specific issues. This prevents repeating the same reviews of information that have already been considered at the programmatic level and in effect reduces the time of the reviews.

For these reasons, CHFC encourages the use of programmatic reviews to supplement and accelerate project-specific reviews for hydrogen pipelines.

Categorical Exclusions

A categorical exclusion is an agency determination that a project does not significantly affect the environment, exempting it from more detailed and timely environmental assessments or environmental impact statements. Categorical exclusions can significantly save time and resources. Many elements of hydrogen pipeline projects could be eligible for categorical exclusions. One example of a categorical exclusion for hydrogen related infrastructure would be for repurposing existing pipeline infrastructure without or with minimal ground disturbance.

Congress can expand the responsible use of categorical exclusions by requiring federal agencies to examine existing categorical exclusions and consider proposing additional categorical exclusions for LCH projects where appropriate.

3. Recognize that siting and permitting of hydrogen and CO₂ pipeline infrastructure will be necessary for a low carbon hydrogen industry to scale.

Scaling a LCH industry will require siting and construction of interstate hydrogen pipelines to cost-effectively move LCH from supply to demand centers as well as timely permitting and approvals. Before building a pipeline, an operator must receive a permit for the location and construction of the pipeline. Currently, interstate hydrogen and CO₂ pipelines are permitted on a state-by-state basis unlike interstate natural gas pipelines which have federal siting authority under the Natural Gas Act. Siting and construction of both interstate and intrastate hydrogen and CO₂ pipelines are largely regulated at the local and state levels, creating a patchwork of regulatory approaches and standards across the country.

Given some trends challenging pipeline siting and construction, a mechanism that allows for the application of federal eminent domain authority to enable construction of interstate hydrogen and CO₂ pipelines would help to overcome regulatory bottlenecks.

Should Congress engage in permitting discussions regarding interstate pipelines, legislation should ensure there is a pathway for federal siting authority for interstate hydrogen and CO₂ pipelines. It is important that federal siting authority be paired with an appropriate level of stakeholder and community engagement.