

## CLIENT ALERT

### Trump Administration Takes Action to Reduce Project Permit Delays

Sep.22.2017

In recent decades, environmental permitting delays have become a major obstacle to investment and development of natural resources in the United States, particularly in industries such as mining, oil and gas, and alternative energy. Permitting delays have also hindered investment in new domestic manufacturing operations. One of the major sources of permitting delays is the Environmental Impact Statement (EIS) process required under the National Environmental Policy Act of 1970 (NEPA).<sup>1</sup> This seemingly benign procedural requirement has been a major source of permitting delays ranging from four to 10 years, and typically adding multi-million dollar costs for associated data gathering and studies. The EIS process is also often the basis of protracted litigation seeking to enjoin new projects.

#### Recent Actions

To address permitting delays and foster increased domestic investment, the President, through Executive Order 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*,<sup>2</sup> issued on August 15, 2017, identified environmental reviews and permit decisions as an important cause of delayed investment and called on federal agencies to undertake reforms. On August 31, pursuant to Executive Order 13807, and the Administration's commitment to reducing federal environmental delays, U.S. Department of the Interior ("DOI") Deputy Secretary David Bernhardt signed Secretarial Order 3355, *Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807*.<sup>3</sup>

The Secretarial Order requires that all EISs for which an Interior Department bureau is the lead agency meet specific page and time limitations. Under the Order, EISs are not to be more than 150 pages, or 300 pages for unusually complex projects (excluding appendices). Additionally, the Order instructs that each Interior bureau, when it is the lead agency, target to complete each Final EIS within one year from the issuance of a Notice of Intent (NOI) to prepare an EIS. EIS timelines that exceed 15 months must be approved by the relevant Assistant Secretary. With regard to Environmental Assessments (EA), the Order requires that the various bureaus provide the Deputy Secretary with a proposal for page limits and time deadlines for the preparation of EAs.

The Order also identifies additional NEPA streamlining efforts including reviewing bureau NEPA regulations, policies, guidance, and processes to identify impediments, best practices and whether the Department should consider adding additional categorical exclusions, as well as reviewing requirements and process improvements under the FAST Act.<sup>4</sup>

Pursuant to Executive Order 13807 and following the actions taken by DOI, on September 14, the Council on Environmental Quality (CEQ) published an initial list of actions it will take "to enhance and modernize the Federal environmental review and

authorization process.”<sup>5</sup> According to CEQ it will:

- Develop with the Office of Management and Budget (OMB) and in consultation with the Federal Permitting Improvement Steering Council (Permitting Council), a framework providing for the implementation of One Federal Decision.
- Coordinate with the Permitting Council, Department of Transportation, and the Army Corps of Engineers, with regard to projects that may qualify as high-priority infrastructure pursuant to E.O. 13766 of January 24, 2017.
- Review existing CEQ regulations implementing the procedural provisions of NEPA to identify changes needed to update and clarify those regulations.
- Issue additional guidance as may be necessary, including through a NEPA practitioners’ handbook, to simplify and accelerate the NEPA process.
- Form and lead an interagency working group to review agency regulations and policies to identify impediments to the efficient and effective processing of environmental reviews and permitting decisions.

## Observations

The recent Executive Order and the subsequent actions by Interior and CEQ constitute one of the most comprehensive efforts by the Executive Branch to address the long-standing problem of federal environmental permitting delays. Reforming the federal environmental permit system is consistent with and complements the Administration’s focus and commitment to increase and retain capital investments in the U.S. For example, the National Research Council noted in a 1999 report in response to Congress on the adequacy of the regulatory framework for hardrock mining on federal lands that “[t]he Committee received testimony from senior officers of mining companies as well as other evidence that delays and uncertainties associated with the U.S. regulatory environment are causing mining companies to replace domestic operations with overseas projects, a trend that is already strong demonstrated in exploration.”<sup>6</sup> The reduction of delays and uncertainty has the real potential to attract increased investment, and streamlining the environmental permit process advances this goal.

Although the Administration’s objectives of streamlining the EIS process are laudable, they are not without significant challenges. Focusing specifically on the Interior page and time limitations for EIS, it will be a challenge to get the various bureaus to meet these deadlines and requirements. Furthermore, the more generalized streamlining efforts of the Interior and CEQ will face the challenge of navigating the complex bureaucracies and the inherent inertia of the status quo.

---

<sup>1</sup> 42 U.S.C. §4332.

<sup>2</sup> Exec. Order No. 13,807, 82 Fed. Reg. 40463 (Aug. 15, 2017).

<sup>3</sup> Secretarial Order 3355, *Streamlining National Environmental Policy Reviews and Implementation of Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”* (Aug. 31, 2017).

<sup>4</sup> 42 U.S.C. §4370m-1(c)(1)(D).

<sup>5</sup> Initial List of Actions To Enhance and Modernize the Federal Environmental Review and Authorization Process, 82 Fed. Reg. 43226 (Sept. 14, 2017).

<sup>6</sup> National Research Council, *Hardrock Mining on Federal Lands* 34 (1999).

---

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Connor Ahearn**

Associate – Washington, D.C.

Phone: +1 202.624.2724

Email: [cahearn@crowell.com](mailto:cahearn@crowell.com)