September 6, 2022

The Honorable Nancy Pelosi

Speaker

U.S. House of Representatives

Washington, DC 20515

The Honorable Steny Hoyer

Majority Leader

U.S. House of Representatives

Washington, DC 20515

The Honorable Chuck Schumer

Majority Leader

U.S. Senate

Washington, DC 20510

Dear Speaker Pelosi, Leader Hoyer and Leader Schumer,

On behalf of 122 organizations, we write to express our strenuous opposition to the passage of legislation that would limit review, public input, and government accountability in the permitting review process. In recent weeks, draft legislative language surfaced that is apparently the base of a permit reform proposal now being advanced by Senator Manchin as an additional piece of potentially damaging compromise in exchange for his already provided vote on the IRA. Stamped with the watermark of the American Petroleum Institute (API), the proposed text advantages the fossil fuel industry at the expense of the health and voices of local communities around the country. Rather than prioritize the interests and profits of polluting industries, we urge you to prioritize advancing the Environmental Justice for All Act, which will promote the efficient and equitable development of critical infrastructure and a clean energy economy.

The API-labeled bill prioritizes dirty fossil fuel build out, privileges project sponsors over communities, and will entrench environmental racism into decisionmaking by sidelining the voices of impacted stakeholders.  The ways in which this API-labeled bill codifies bias, in favor of private profit over the public interest, warrant particular attention. The entire permitting scheme is premised on quickly approving industry preferred outcomes by allowing agencies to give greater consideration to industry’s preferred alternatives in the review process, making it harder to extend public comment periods, and discouraging agencies from even asking project sponsors for legitimately needed information for a decision. Worse yet, when the government fails to adequately consider impacts on communities or meaningfully engage impacted stakeholders, the bill reduces the statute of limitations from six years to 150 days. Severe limitations on judicial review are clearly aimed at limiting frontline communities from holding industry and the government accountable for illegal projects and will have the unintended consequence of significantly increasing the amount of litigation over projects as plaintiffs rush to court to preserve their claims. Worse still, the draft bill sets a dangerous precedent by altering how courts assign cases -- the fossil fuel industry shouldn't be allowed to buy itself a different panel of judges when it loses cases, because that's not how justice works in a democracy.

In addition, it has been reported that this bill, developed behind closed doors and at the behest of one of API's allies in Congress, may be attached to some must-pass piece of legislation such as a Continuing Resolution to fund the government. Forcing members of Congress to appease the interests of the fossil fuel industry or risk the continuing operation of the federal government or other essential functions of Congress is contrary to the public interest, political considerations, and fair process—it would be reprehensible and an astonishing abdication of congressional responsibility. Process matters, and this bill has had no input from communities affected by fossil fuel infrastructure projects or outside environmental experts, no relevant hearings or markups, and still has not been shared publicly. It deserves to be fully aired and vetted and should not move on an expedited track.

In addition to the API bill, we have seen a one-page outline of a second version of the proposed bill that would approve the Mountain Valley Pipeline (MVP).  MVP was originally issued permits under the Trump administration, construction began, and the pipeline is now approximately 56% complete. During construction, inspectors documented more than 1,500 instances of alleged violations of water quality regulations. The permits issued under the Trump administration were eventually overturned in federal court because they violated our federal environmental laws and threatened clean water, the ecosystem of a National Forest, and endangered species. Local communities and farms have been harmed, yet there has never been any demonstrated need for the gas that would be transported. To complete MVP would entail additional construction of more than 400 crossings of water bodies such as streams, rivers and wetlands.

We encourage Congress to instead pass the Environmental Justice for All Act, which was built from the ground up by the communities impacted the most by the climate crisis and rapid infrastructure development. The Environmental Justice for All Act is the result of a meaningful public process that prioritizes the voices of the communities, disproportionately communities of color, most impacted by environmental degradation. In process, it is in stark contrast to the closed door, backroom dealings surrounding the API-labeled bill. It represents a bold and necessary shift in the way we create federal permitting policy— it is the result of a serious and years‐long effort to genuinely listen to the expertise and concerns of the very people experiencing the worst of pollution and in most need of a clean energy economy. Chairman Grijalva and Representative McEachin carefully and transparently crafted legislation that reflected those experiences and expertise while creating concrete and significant improvements to our permitting process. And, they have steered the provisions successfully through numerous hearings and a successful bill markup, and have even passed some provisions through the House.

The Environmental Justice for All Act rightly recognizes that National Environmental Policy Act (NEPA) and other permitting laws are critical tools needed to assess the health, economic, and environmental impacts of federal decisions and instrumental to ensuring that we build infrastructure that addresses climate change by reducing emissions and is climate resilient. The bill creates certainty for project sponsors and stakeholder by clarifying exactly how agencies should consider and address the cumulative, and often disproportionate, impacts that may result from rapid project development. This type of certainty ensures permitting and project development proceed not just efficiently, but equitably.

We strongly oppose any efforts to move a fossil fuel industry wish-list that undermines environmental review and public input through Congress, particularly on must-pass legislation and without any public scrutiny or deliberative process. Many of our organizations also opposed similar fossil fuel industry-instigated policies undercutting environmental review, input from potentially impacted community members, and judicial review contained in the Infrastructure Investment and Jobs Act. These enacted provisions will already assure a process tilted in favor of energy and extraction companies over affected communities for the biggest, most potentially harmful projects.

It is well known that the climate crisis is the direct result of a fossil fuel industry built out over a century on the backs of frontline communities, at the expense of their health and their livelihood. Swift and bold action is necessary to both efficiently and equitably build out a clean energy future. Congress took meaningful steps towards ensuring efficient and meaningful reviews by allocating over $1 billion to support the agencies with the hiring and training of personnel and improve public engagement in the environmental review process but that investment would be meaningless if the underpinning law requiring environmental review and community engagement were to be gutted by the API-labeled bill.

Congress should stand by its investment in NEPA by voting on the Environmental Justice for All Act so that the communities most impacted by fossil fuel development and first to benefit from the build out of a clean energy economy, are the first consulted in the review process. At the same time, Congress should reject any attempt to pass the API-labeled bill, especially as part of a must-pass, unrelated, or far-reaching bill like a government funding bill. The API-labeled bill seeks to continue to sacrifice frontline communities of color and communities of low income for the sake of fossil fuel industry’s profits.

Sincerely,

Earthjustice

100% Campaign

198 methods

7 Directions of Service

Alabama Rivers Alliance

Alliance of Nurses for Healthy Environments

Alternatives for Community & Environment (ACE)

American Friends Service Committee

American Rivers

AMMD Pine Grove Project

Animal Law Society

Appalachian Voices

Atlantic Climate Justice Alliance

AU WCL Native American Law Students Association

Berks Gas Truth

Better Path Coalition

Black Women for Wellness

Bold Alliance

CEEJH

Center for Environmental Health

Center for Popular Democracy

Center for Urban Environmental Reform

Chispa LCV

Citizen's for Arsenal Accountability

Citizens Alliance for Fairness and Progress

Citizens Coalition for a Safe Community

Clean Air Coalition of WNY

Clean+Healthy

CleanAirNow

Climate Hawks Vote

Climate Justice Alliance

Climate Reality Finger Lakes Greater Region NY Chapter

Climate Reality Project Long Island Chapter

Coalition for Outreach, Policy & Education

Coming Clean

Concerned Citizens of Wagon Mound & Mora County

Conservation Voters New Mexico

Dayenu Rockland Westchester: A Jewish Call to Climate Action

Dayenu: A Jewish Call to Climate Action

Defenders of Wildlife

Delaware Concerned Residents for Environmental Justice

Delaware Riverkeeper Network

East Yard Communities for Environmental Justice

EJ Action Hub & Union Hill, VA Freedmen Family Research Group

Endangered Habitats League

Endangered Species Coalition

Environmental Justice Community Action Network

Environmental Justice Health Alliance for Chemical Policy Reform

Environmental Law & Policy Center

Environmental Protection Information Center - EPIC

Farmworker Association of Florida

Flint Rising

Friends of the Earth

GASP

Global Center for Climate Justice

Grassroots Environmental Education

Green America

Green Environmental Coalition / Greene County, Ohio

Green New Deal Network

GreenLatinos

Harambee House, Inc. / Citizens for Environmental Justice

Healthy Gulf

Hollis Environmental Consulting Services, LLC

Iowa Environmental Council

Kentucky Heartwood

L C Taylor & Associates

Lawyers for Good Government (L4GG)

Los Jardines Institute

Lower Susquehanna Riverkeeper Association

Midwest Environmental Advocates, Inc.

Missouri Confluence Waterkeeper

Moms for a Nontoxic New York

NAACP Pittsylvania County Branch

Nassau Hiking & Outdoor Club

National Family Farm Coalition

Native Movement

NC Conservation Network

New Mexico Environmental

Ocean Conservancy

Ocean Conservation Research

Ocean Defense Initiative

Oceana

Pennsylvania Council of Churches

People's Action

Pittsylvania County Democratic Committee

PODER

Potomac Riverkeeper Network

Preserve Montgomery County VA

Project Eleven Hundred

Renewal of Life Trust

Richmond Interfaith Climate Justice League

River Network

Rivers & Mountains GreenFaith Circle

Sciencecorps

Seattle Aquarium

Sierra Club

South Shore Audubon Society

Southern Environmental Law Center

Start:Empowerment

Stop the Algonquin Pipeline Expansion (SAPE)

Surfrider Foundation

Sustainable Finger Lakes

Texas Campaign for the Environment

Th!rd Act Virginia

The Black Hive @M4BL

The Wilderness Society

Third Act Virginia

Tishman Environment & Design Center

Union of Concerned Scientists

Virginia Citizens Consumer Council

Virginia Community Rights Network

Virginia State Conference NAACP

Voices for Progress

Waterkeeper Alliance

Waterkeepers Chesapeake

Waterway Advocates, Inc.

WE ACT for Environmental Justice

West End Revitalization Association (WERA)

Wild Virginia

Winter Wildlands Alliance

Women's Voices for the Earth

Yogaville Environmental Solutions