

President Trump and Lawmakers Seek to Streamline Energy Infrastructure Development

April 18, 2019 | **CLIENT ALERTS**

President Trump and Republicans in Congress are seeking to boost the fossil fuel energy sectors with two new Executive Orders (EO) and recently introduced Senate and House Bills. On Wednesday, April 10, 2019, President Trump signed Executive Order 13868 (Promoting Energy Infrastructure and Economic Growth) and Executive Order 13867 (Issuance of Permits with Respect to Facilities and Land Transportation Crossings at the International Boundaries of the United States), both of which are intended to facilitate and streamline energy infrastructure development. In addition, on April 9, 2019, Senator John Barrasso (R-WY) introduced S. 1087, the Water Quality Certification Improvement Act, and on April 10, 2019 Representative David McKinley (R-WV) introduced an identical companion bill (H.R. 2205) in the House.

Both the Congressional legislation and Executive Order 13868 (Promoting Energy Infrastructure and Economic Growth) focus on limiting States' abilities to utilize Section 401 of the Clean Water Act (CWA) to delay and stop oil and gas pipeline projects. Section 401 of the CWA provides states and authorized tribes with the ability to evaluate and determine whether the impacts of proposed federally licensed and permitted projects meet state water quality criteria through issuance of Water Quality Certifications (WQC). In recent years, however, states such as New York have sought to use this CWA authority to hinder development of pipelines through repeatedly finding WQC applications to be incomplete, delaying WQC determinations, and denying WQCs based upon non-water quality related criteria. Executive Order 13867 (Issuance of Permits with Respect to Facilities and Land Transportation Crossings at the International Boundaries of the United States) focuses on easing the development of cross-border infrastructure projects, including oil pipelines.

EO 13868: Promoting Energy Infrastructure and Economic Growth (April 10, 2019)

Executive Order 13868 emphasizes the need for energy infrastructure reform to allow the United States to maximize responsible production, transportation, and use of its abundant energy resources. The Executive Order finds that the current CWA regulations and guidance governing WQCs are "outdated," "caus[e] confusion and uncertainty," and "hinder[] the development of energy infrastructure." (EO at Sec. 3). To address this, President Trump has ordered the Administrator of the Environmental Protection Agency (EPA) to consult with states, tribes and relevant executive departments and agencies to review their regulations and guidance to determine whether any provisions should be clarified to, among other things, streamline energy permitting and increase regulatory certainty. (EO at Sec. 3(a)). EPA and other agencies will then update agency regulations and guidance to reflect the policies of the Executive Order, which include promoting timely Federal-State cooperation and collaboration, and ensuring reasonable review times for various types of certification requests.

The Executive Order also:

- Directs the Pipeline and Hazardous Materials Safety Administration to modernize its Part 193 regulations to include modern technologies and best industry practices.
- Directs the Secretary of Transportation to issue a rule in relation to liquefied natural gas (LNG) exports to ensure pipeline safety and to authorize movement of LNG by rail.

- Requires reports on energy exports from the West Coast (coal, oil, natural gas and other domestic energy sources) and the shortage of natural gas in New England due to insufficient pipelines.
- Requires the development of a master agreement for energy infrastructure rights-of-way renewals or re-authorizations, and initiation of renewals or re-authorizations for all expired energy rights-of-way.
- Addresses barriers to financing for new energy infrastructure.

Click [here](#) to view text of EO 13868.

EO 13867: Issuance of Permits with Respect to Facilities and Land Transportation Crossings at the International Boundaries of the United States (April 10, 2019)

Executive Order 13867 addresses concerns that reviewing and making permitting decisions on cross-border infrastructure projects has "unnecessarily complicated the Presidential permitting process," hindered economic development, and undermined efforts for "mutually productive economic exchanges with its neighboring countries." This EO transfers authority from the Secretary of State to the President to issue, deny or amend Presidential permits for pipelines and certain other international border crossing facilities. (EO at Sec. 1). Under the Executive Order, while the Secretary of State is still to receive all Presidential Permit Applications, the Secretary must complete its review and provide its opinion on the issuance of a permit to the President within 60 days of receipt of the application. (EO at Sec. 2).

Click [here](#) to view text of EO 13867.

Water Quality Certification Improvement Act (S. 1087/H.R. 2205)

Senator John Barrasso of Wyoming, Chairman of the Senate Committee on Environment and Public Works, recently introduced S. 1087, *the Water Quality Certification Improvement Act*, which seeks to limit the ability of states to delay or block energy infrastructure projects. Representative David McKinley, of West Virginia, has introduced H.R. 2205, an identical companion bill, in the House of Representatives.

If enacted into law, the Water Quality Certification Improvement Act of 2019 would:

- Clarify that the scope of a WQC review is limited to water quality impacts only.
- Clarify that states, when evaluating water quality, can only consider discharges that would result from the federally permitted or licensed activity itself, not from other sources.
- Require states to publish clear requirements for WQC requests.
- Require states to make final decisions on whether to grant or deny a request in writing based only on water quality grounds, and within one year from receipt of a WQC request.
- Require states to inform a project applicant within 90 days whether the states have all the materials needed to process a certification request.

Read the *Water Quality Certification Improvement Act of 2019* [here](#).

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