Business Roundtable

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April 12, 2011

MAJOR REGULATIONS/ISSUES OF CONCERN

Accelerating Permitting and Job Creation

Oil and Natural Gas Offshore Leasing

Issue:
Production from the Outer Continental Shelf (OCS), primarily the Gulf of Mexico, currently provides the U.S. with nearly 27% of its oil and approximately 14% of its natural gas. The OCS has continued to grow in importance over the past several decades, particularly the deepwater areas of the Gulf of Mexico. The Department of the Interior's Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) estimates that the quantity of undiscovered technically recoverable resources on the OCS ranges from 66.6 to 115.3 billion barrels of oil and 326.4 to 565.0 trillion cubic feet of natural gas. The mean estimate is 85.9 billion barrels of oil and 419.9 trillion cubic feet of natural gas. This represents about 60 percent of the total oil and 40 percent of the total natural gas estimated to be contained in undiscovered fields in the United States. The Alaskan Outer Continental Shelf under the Beaufort and Chukchi Seas are believed to contain the largest undiscovered energy resources in the United States, some 27 billion barrels of oil and 122 trillion cubic feet for natural gas, more than current estimates for the Atlantic and Pacific OCS combined. For oil resources, BOEMRE has indicated that the vast majority of recent upward revisions in resource estimates have occurred in the deepwater areas of the Gulf of Mexico. On October 1, 2008, Presidential and Congressional moratoria were removed from a large portion of the OCS. In response to the Deepwater Horizon accident, however, the Department of the Interior withdrew from study significant resources in the eastern Gulf of Mexico and Atlantic Oceans (e.g., DOI announced in December that no lease sales will be held in the Mid and South Atlantic in the 2007-2012 program or in the 2012-2017 program). In addition, in December, 2010 DOI announced that there will be no further lease sales in the Arctic under the 2007-2012 program. The decision on whether to permit sales under the 2012-2017 program is still under review. Accordingly, significant delays in developing additional oil and natural gas resources will occur.

Impact:
In Louisiana, Texas, Alabama and Mississippi alone, the offshore oil and natural gas industry accounts for nearly 400,000 jobs that generate $70 billion in annual economic value. This does not include other jobs across the U.S. that provide equipment and services to the offshore industry. A recent Wood-Mackenzie study completed for API estimates that as compared to the base case, additional access to U.S. resources could lead to tens of thousands of additional direct jobs by 2020, with additional indirect jobs being created, if greater access to U.S. resources is provided. Uncertainty about future opportunities will only increase our reliance on imports and cost us valuable jobs at home.

Action Needed:
The comprehensive five-year leasing process mandated in the Outer Continental Shelf Lands Act should be continued. DOI should expedite development of the Supplemental

Environmental Impact Statement for the remaining Western Planning Area and Central Planning Area lease sales and should hold all Gulf lease sales scheduled in the 2007-2012 OCS program. In addition, DOI should proceed with a comprehensive five-year leasing process as mandated in the Outer Continental Shelf Lands Act that includes evaluation of the Beaufort and Chukchi planning areas. The process forward should consider carefully the significant safety improvements implemented over the last several months and not arbitrarily remove areas from consideration. All available areas of the OCS should be open to responsible and safe leasing and development of oil and natural gas.

Deepwater Offshore Drilling Permits (Gulf of Mexico and Alaska)

Issue:
DEEP WATER DRILLING
Since the April 20, 2010, Deepwater Horizon accident, new deepwater offshore oil and natural gas development in the Gulf of Mexico and offshore Alaska has been under a moratorium, either explicitly or implicitly. New regulations have been issued, governmental functions have been reorganized and a new industry spill response initiative has been made operational, but only a few new deepwater permits have been approved. While the Department of the Interior has approved a few deepwater drilling permits since the Deepwater Horizon accident on February 28, 2011, the offshore industry is far from back to business. Several drill ships have departed the Gulf of Mexico for work in other basins of the world and are unlikely to return for several years, if then.

The oil industry has moved aggressively to enhance offshore drilling safety. Working closely with the Administration, it has raised the standards for all companies working in the Gulf and developed new equipment and procedures to help prevent future problems. The final element was put in place this February, when the Marine Well Containment Company announced the availability of an initial well containment response system for use if needed. The system was developed in consultation with the Department of the Interior and meets the government's requirements.

ALASKA
Another particularly egregious case that illustrates how ill-managed and unpredictable the permitting process can be is Shell's multi-year effort to drill an exploratory well in the Beaufort Sea offshore Alaska. Offshore Alaska oil and gas resources are likely world-class and could contribute significantly to the nation's energy security, as well as the long-term viability of the Trans-Alaska Pipeline System (TAPS). TAPS is a critical national infrastructure that moves oil from the Arctic to U.S. markets and consumers in the lower 48 states. Without development of additional crude supplies in Alaska, TAPS throughput will continue to decline and eventually put the pipeline at risk. Developing Alaska's OCS resources offers the opportunity to reverse the decline in the TAPS pipeline. Alaska has provided the U.S. with a significant portion of its domestic production for decades. Today, the fields of Alaska's North Slope continue to supply the U.S. with 15% of U.S. crude oil production but are in decline.

After years of analysis, in 2005 the federal government held several OCS lease sales in the Arctic. At the invitation of the federal government, companies participated in the lease sales. The government received bonus payments in excess of $3 billion. Shell Oil Company, one of the successful bidders, has been pursuing development of its Arctic leases since 2005. To date, Shell's investment in Arctic leases and associated exploration costs is more than $3.75 billion. Shell has been blocked from drilling even a single exploration well in Alaska. Although some 30 federal and state permits are needed, the primary barrier is the inability to secure a final, useable air permit from the U.S. EPA. Shell's proposed exploration plan involves a program with a mobile drill rig that will operate for less than three months in a single year. EPA has

spent literally years working on the air permits for this temporary, mobile emissions source. The most recent air permits issued by EPA were rejected by the Environmental Appeals Board (EAB) on the grounds that more information is needed about when a drilling rig becomes a "source" and because more analysis is needed about the impact of NOx emissions from the exploration work on the health of residents onshore. Neither of these issues relate to air quality resulting from Shell's program, just how emissions are measured.

Impact:
The *de facto* moratorium on deepwater development in the Gulf of Mexico has cost the U.S. thousands of jobs, 200,000 barrels per day of production and has led the Energy Information Administration to reduce its estimates of OCS production by approximately 500,000 barrels per day by 2012. Further delays will only compound the current damage, thus resulting in fewer jobs, less government revenues from production and a greater reliance on imported oil, often from unstable or unfriendly regimes. The EAB decision regarding Shell's air permit in Alaska forced Shell to cancel its 2011 exploration program. The consequences are significant – Shell incurred hundreds of millions of dollars in costs; the residents of the North Slope lost the opportunity for jobs and revenues; and the American people were denied the opportunity to understand the oil and gas resources of the North Slope.

Further development of Alaska's resources would be an engine for job creation, economic growth and government revenue. According to a recent study by the Institute of Social and Economic Research at the University of Alaska, commercialization of Alaska's OCS oil and gas resources could generate **$193 billion** (in 2010$) in revenues to federal, state, and local governments over a 50 year period; and an annual average of **54,700 jobs nationwide**, with an estimated cumulative payroll amounting to $145 billion (2010$) over the next 50 years.

Action Needed:
Existing permits meeting the new regulations should be approved expeditiously, as current law requires. Uncertainty surrounding regulatory requirements must be eliminated.

Air permits for Shell's 2012 exploration program in Alaska should be delivered by September 2011. EPA should develop a workplan and a timeline that ensures delivery of permits by September 2011. The Administration should take responsibility for efficient processing of air permits for offshore Alaska exploration activity that, in fact, poses minimal air quality concerns. The Administration should also move to resolve another Alaska OCS issue, specifically the revised 2007-2012 OCS leasing plan and the issues raised by federal court concerning Lease Sale 193.

Keystone XL Pipeline Project

Issue:
The U.S. State Department is responsible for issuing "presidential permits" for cross-border pipelines. In the past, such as the case with Enbridge's Alberta Clipper pipeline, permits have been granted with little or no controversy. National oil sands opponents, however, are pressuring the State Department to oppose the proposed Keystone XL pipeline, and are leveraging local and regional residents along its intended route to oppose the project based on unrelated issues such as eminent domain and potential impact to aquifers.

Impact:
The Keystone XL pipeline would ensure a safe and reliable supply of Canadian crude to U.S. refineries in the Gulf region – critical for ensuring U.S. energy security. Currently, only refineries in the Midwest and Rocky Mountain regions rely heavily on Canadian crude. The United States should resist policies that arbitrarily limit any economic supply sources (particularly secure North American sources) to the detriment of our energy supply and security, and our global economic competitiveness. Measures restricting the use of oil sands products would not likely limit oil sands production (and corresponding emissions), but simply cause such output to be diverted to more distant markets, with potentially even greater overall emissions.

Action Needed:
The U.S. State Department should expeditiously approve the presidential permit to allow the Keystone XL pipeline project to move forward.

Reducing Economic Burdens and Lost Jobs

Ozone National Ambient Air Quality Standards (NAAQS)

Issue:
On January 6, 2010, EPA proposed to revise the national ambient air quality standards (NAAQS) for ozone. The proposed rule would strengthen the primary eight-hour ozone standard to a level within the range of 0.060-0.070 ppm. EPA also proposed to establish a distinct cumulative, seasonal secondary standard. The proposed secondary standard is designed to protect against the adverse effects of ozone during the three months when daytime ozone concentrations are the highest. When it issued the proposed standards, EPA anticipated the issuance of final standards by August 3, 2010, with a timeline for implementation of final standards by December 2013. In response to the proposed rule, EPA received over 5,000 comments and heard testimony from over 200 stakeholders at various regional meetings. EPA has now gone back to the science advisory committee for advice. At the current time, EPA still intends to issue a final rule in 2011.

Impact:
Compliance with the proposed NAAQS for ozone is expected to pose considerable challenges and be extremely expensive. According to EPA, as of December 17, 2010, 249 of the 675 counties in the U.S. with ozone monitoring equipment have not yet achieved compliance with the NAAQS for ozone issued in 1997. One half of the counties will be nonattainment areas under the standard of 0.075 ppm issued in 2008 and over 90 percent of the counties are likely to be nonattainment areas under the standard proposed by EPA. EPA has estimated that compliance with a standard of 0.060 ppm could cost up to $90 billion per year by 2020. Private estimates are considerably higher. (Estimate assumes development of technologies that don't exist.) Moreover, permitting new sources of ozone pollution in nonattainment areas is virtually impossible unless offsets or other reductions can be found and the "lowest achievable emissions rate" is achieved at the facility.

Action Needed:
The Bush Administration promulgated revisions to the ozone standard in 2008. EPA is not required to do this rulemaking at this time. It should abandon this proposed rule until review of the NAAQS for ozone is required (every 5 years, or 2013) and propose a rule at that time based on the best available scientific information available.

Industrial Boiler MACT standards

Issue:
In two separate rulemaking proceedings, EPA proposed rules in April 2010 that would: 1) reduce hazardous air pollutant emissions (HAPS) from existing and new industrial, commercial and institutional boilers and process heaters located at major sources; and 2) reduce HAPS emissions from existing and new industrial, commercial and institutional boilers located at area sources. These rules would apply to boilers at major source facilities that burn coal, fuel oil, biomass, or natural or refinery gas; process heaters that heat raw or intermediate material during and industrial process; and boilers at area source facilities that burn coal, oil, biomass or non-waste materials. Under section 112 of the Clean Air Act, existing sources have three years after rules are finalized to come into compliance with the new rules or shut down. After its proposed rules were issued, EPA received over 4,000 comments. Pursuant to a court-ordered deadline, EPA issued final rules on February 23rd and simultaneously announced that it would reconsider certain aspects of the final rules because of the material changes that were made in response to comments.

Impact:
According to EPA, there are approximately 13,555 boilers and process heaters at major sources in the U.S. In addition, there are approximately 183,000 boilers at 92,000 facilities classified as area sources. Many of these area source boilers are located at commercial and institutional facilities and, in general, are owned and operated by small entities. In response to comments, EPA significantly reduced the potential cost of these rules by relying on work practices where possible and by exempting smaller boilers from having to install new control technology. EPA now estimates that the total cost of complying with these regulations is approximately $1.8 billion per year. Given the length and complexity of the final rules and EPA's intention immediately to begin reconsideration of certain aspects of the final rules, it is unclear whether these rules will be workable for certain types of boilers, particularly solid and liquid fuel boilers. We are encouraged that EPA has carefully reviewed the thousands of comments that it received and appears to be working to tailor rules that accomplish health objectives in a manner that reduces burdens on industry.

Action Needed:
EPA should continue to improve these regulations, utilizing the best available data. EPA also should ensure that its final, reconsidered rules do not require any changes in top performing units, and should allow work practice standards where feasible in order to encourage energy efficiency, as it has shown a willingness to do. In particular, EPA should modify its regulations relating to solid and liquid fuel boilers to adopt flexible, reasonable and cost effective work practices instead of emissions limits for pollutants (such as dioxin) emitted in very low levels and that are difficult and expensive to measure. Finally, EPA has the authority, on a case-by-case basis, to grant waivers for up to one year in order to give affected units time to install necessary equipment. The President may grant further two-year waivers, industry wide, if technology is not available and the exemptions are in the interest of national security. These authorities should be generously exercised.

Utility Boiler MACT Standards

Issue:
On March 16, 2011, EPA issued proposed rules that would apply maximum achievable control technology (MACT)-based national emissions standards for hazardous air pollutants (NESHAPS) from coal and oil fired power plants. Under section 112 of the Clean Air Act, MACT standards apply to both new and existing facilities. For new facilities, the standards must be equivalent to the best performing existing unit. For existing facilities, the standard is to be equivalent to the performance achieved by the best 12% of existing units. Existing units have 3 years to comply with the standards.

Impact:
Any final NESHAPS rule likely will require the installation of costly new control equipment at many existing coal-fired power plants and lead to parasitic (capacity) loss at virtually every plant. This will have the effect of increasing GHG emissions by reducing plant efficiency. If EPA does not use its authority to sub-categorize or tailor its regulations depending on plant, coal and boiler types, it is not clear if technology is available to meet the anticipated standards for all hazardous gases. Lignite and sub-bituminous coal-fired power plants could be especially hard hit as the form of mercury emitted by these plants is not captured by traditional scrubbers and selective catalytic reduction control technology. Substantial electric generation capacity is expected to shut down as a result of this rule. While EPA has estimated that the annual cost of its proposed rules will be $10.9 billion by 2016, it is likely that costs will be much greater. EPA has estimated that there are approximately 1,350 units affected by this action.

Action Needed:
EPA should sub-categorize or tailor its regulations depending on plant, coal and boiler types, as the law allows, in order to mitigate the impact of this rule. EPA may grant, on a case-by-case basis, a one-year delay in order to give affected units time to install necessary equipment. The President may grant further two-year waivers, industry-wide, if technology is not available and the exemptions are in the interest of national security. Given the potential effect this rule could have on electric reliability and electricity prices, EPA and the President should generously exercise this waiver authority.

Greenhouse Gas Emissions Regulations

Issue:
EPA has promulgated regulations under the Clean Air Act requiring certain new or modified major sources of greenhouse gas emissions (GHGs) to obtain PSD and operating permits. These regulations require affected sources to install the best available control technology (BACT), as determined on a case-by-case basis. In addition, on December 23rd, 2010, EPA announced a settlement agreement with a number of environmental groups which committed the agency to promulgate New Source Performance Standards for electric generating units and petroleum refineries. When promulgated, these New Source Performance Standards would establish a "floor" on BACT determinations. EPA has also indicated that it intends to conduct another rulemaking, to conclude by July 1, 2012, that will determine whether certain smaller sources can be permanently excluded from GHG permitting requirements. EPA has indicated that it will not require permits for smaller sources until at least April 30, 2016.

Impact:
EPA's current regulations require potentially lengthy BACT case-by-case reviews for new facilities or major modifications of existing facilities, thus potentially requiring costly retrofits or other actions at existing powerplants and factories and further complicating and delaying investment in new or upgraded facilities. This discourages investment in the U.S and hampers job creation. In addition, EPA's announced future rulemakings on this issue create additional uncertainty surrounding future regulatory requirements.

Action Needed:
Business Roundtable believes that the Clean Air Act is not well-designed for regulating stationary sources of GHGs. We long have maintained that Congressional legislation and international cooperation is essential in order to address adequately the issue of climate change. Because the Clean Air Act is ill-suited to regulate stationary sources of GHGs, the Administration should agree to delay enforcement of its GHG regulations for two years in order to give Congress additional time to address this issue. EPA should either abandon its second round of rulemakings on the GHG issue regarding the potential extension of GHG regulations to smaller sources or make it clear that it does not intend to extend GHG controls to additional sources. In addition, EPA should clarify that it intends to take a "light handed" approach to reviewing state BACT determinations and will defer to state decisions in this area. Finally, while EPA has now committed itself to promulgate new source performance standards this year, these standards should be performance standards based on efficiency or operations and not technology mandates.

Air Transport Rule

Issue:
The Clean Air Act requires states to reach "attainment" of EPA established National Ambient Air Quality Standards (NAAQS) for criteria pollutants and to maintain compliance with those standards. In addition, the Clean Air Act requires each State Implementation Plan (SIP) to prohibit any source of emissions within the state from emitting any air pollutant in amounts which will contribute significantly to nonattainment, or interfere with the efforts of any other state to maintain its compliance with respect to any NAAQS. As an enforcement mechanism, section 126 of the Clean Air Act allows a state to sue another state for emissions reductions if upwind emissions are contributing to nonattainment in the downwind state. The Bush Administration promulgated the Clean Air Interstate Rule (CAIR) to respond to concerns raised by a number of states (primarily in the Northeast) about the effects that powerplant emissions in the Midwest and South were having on the formation of fine particulates and ground-level ozone in downwind states. SO2 and NOx emissions are contributors to the formation of fine particulates and ground-level ozone and both pollutants can travel hundreds of miles. CAIR was challenged by numerous parties and ultimately the rule was remanded to the EPA, but not vacated. A number of states have already modified their SIPS to address some of the issues addressed by CAIR. On July 6, 2010, EPA proposed the Clean Air Transport Rule as a replacement for CAIR. The Transport Rule would require 31 states and the District of Columbia to reduce power plant emissions that contribute to ozone and fine particulate pollution in other states. A final rule is expected by July 2011.

Impact:
EPA has estimated the direct cost to the power sector of complying with this rule will be $2.8 billion annually. This rule, coupled with the Utility MACT rule, could require installation of new scrubbing and other technology at generating utilities in the Midwest, South and East. Units that currently are not "scrubbed," may be at high risk for closure, depending on how this Transport Rule, the Utility MACT rule and other pending EPA regulations are finalized. The universe of capacity at risk could be in the range of 30,000- 45,000 MW, according to numerous analysts, or approximately 13 percent of the existing coal capacity in the U.S. The cumulative impact of this and other regulations anticipated to be finalized within the same general time period could threaten more than 20 percent of coal capacity, according to a study for EEI that was conducted by ICF International. This will drive up electricity prices and result in tighter reserve margins.

Action Needed:
One of the options proposed by EPA would allow credit trading in order to reduce the cost of compliance. EPA should permit interstate trading of credits under the final rule. In addition, EPA should, carefully time, implementation of the rule in order to mitigate potential "rate shock" for utility customers.

Cooling Water Intake Structures Rule

Issue:
The withdrawal of cooling water from rivers, lakes or oceans by electric power plants or manufacturing facilities may result in adverse environmental impacts on aquatic life. These impacts are more pronounced at facilities with open-loop, or once-through, cooling water systems, which withdraw water from a source, use it to cool and then discharge it back into the source. Other facilities use closed-loop cooling water systems, in which cooling water is itself cooled in cooling towers and then recycled for further cooling purposes. Approximately 43 percent of electric power plants in the U.S. with cooling water systems use an open-loop system. Since 2001, all major new electric generators and industrial facilities have been required to use closed-loop cooling systems. However, no such rules currently apply to existing facilities. Pursuant to a settlement agreement EPA issued proposed rules applicable to existing facilities on March 28, 2011 and has committed to issuing final rules by July 27, 2012.

Impact:
If final rules require electric power plants and manufacturing facilities with open-loop or once-through cooling systems to install closed-loop cooling systems, then the potential retrofit costs could be substantial. In December of 2010, the Electric Power Research Institute (EPRI) observed that "retrofitting towers would be very expensive for all nuclear facilities and most fossil facilities. Many facilities … would be unable to bear the costs of retrofitting and would likely be shutdown." The North American Electric Reliability Corporation (NERC) recently estimated that the cost of rules could cause 32,500-36,000 MW of capacity to be vulnerable to retirement if EPA requires the conversion of open-loop cooling water systems to closed-loop systems. Finally, some power plants and industrial facilities simply may not have the space required for the installation of cooling towers and other associated equipment. Even where it is feasible to install cooling towers, operating the fans on these towers consumes electricity, which reduces the efficiency of a generating plant per unit of energy input. Correspondingly, this increases GHG emissions.

Action Needed:
Costs are permitted to be considered under this section of the Clean Water Act. EPA should carefully consider the costs of any final rule, as well as the potential unintended consequences on air quality of requiring cooling towers. EPA also should be extremely flexible, both in terms of technology as well as timing, as Administrator Jackson indicated she would be in response to letters of Congressional concern regarding this rule. While we are still reviewing the proposed rule issued on March 28, we are encouraged that EPA seems to be receptive to case-by-case technology determinations that take into consideration a variety of factors including costs, feasibility, and availability of technologies.

Particulate Matter (PM) National Ambient Air Quality Standards

Issue:
Under Section 109 of the Clean Air Act (CAA), EPA is required to issue national ambient air quality standards (NAAQS) for six air pollutants: ozone, NOx, CO, sulfur dioxide, lead, and particulate matter. EPA is required to issue both primary (health-based) and secondary (welfare-based) standards. EPA must review existing NAAQS and issue revised or new primary and secondary standards (as appropriate) every five years.

In October 2006, EPA published a final rule to revise the primary and secondary NAAQS for particulate matter (PM). In July 2007, it initiated the current review cycle for those NAAQS. A notice of proposed rulemaking to revise (as appropriate) the NAAQS for PM is expected in November 2011, and a final rule is expected in July 2012.

The 2006 NAAQS for PM address fine particles (PM2.5), which are 2.5 micrometers in diameter or less, and inhalable course particles (PM10), which are less than 10 micrometers in diameter. A micrometer is 1/1000th of a millimeter; there are 25,400 micrometers in an inch. The standards include an annual standard and a 24-hour standard (although the 2006 standards revoked the primary and secondary annual PM10 standards) and are expressed in terms of micrograms per cubic meter (µg/m3). Last June, in a draft assessment, the staff of the EPA recommended revisions to the NAAQS for PM.

Impact:
Direct and indirect sources of fine particles include power plants, high-temperature industrial processes, e.g., steel mills, and gasoline and diesel engines. Power plants, for example, emit SO2 and NOX, which contribute to the formation of fine particles. Revisions to existing NAAQS for PM may require more stringent controls on emissions from power plants (which may incur considerable compliance costs under the Clean Air Transport Rule and a final rule on NESHAPS for power plants) and industrial facilities. Under the CAA, however, EPA may not take compliance costs into consideration when it issues NAAQS.

Action Needed:
EPA should carefully consider the timing of the myriad of new regulatory requirements facing power plants and industrial facilities and the impact that this timing will have on overall compliance costs. While EPA may not take compliance costs into consideration when establishing NAAQS, EPA does have some flexibility in finalizing its regulations and in determining how new regulatory requirements will interact. EPA should utilize maximum flexibility in ensuring that the host of new regulatory requirements will not create impossible compliance deadlines and unnecessary burdens on industry.

New Source Review

Issue:
Under the Clean Air Act, "new" sources are subject to more stringent emissions limitation requirements than existing sources. Under the New Source Review (NSR) permitting program, both new and, in some cases, modified stationary sources of air pollutants, e.g., power plants and factories must obtain NSR permits that limit the source's air pollutant emissions. NSR permits also include specifications with respect to the construction and operation of the new or modified facilities.

"Major modifications" to major stationary sources trigger a requirement for New Source Review. Under EPA regulations, a major modification includes any physical change to or change in the method of operation of a major stationary source that would result in a significant net emissions increase of a regulated pollutant. While "major modification" excludes routine maintenance, repair and replacement, these terms are not clearly defined and have been interpreted differently by EPA over time. Substantial litigation has surrounded this program, with companies now deterred from upgrading existing equipment, even when the upgraded plant would be more efficient or reliable. This is because a plant that operates more reliably and productively may produce both more output and more emissions, which could trigger NSR review, *even though the emissions per unit of output go down.*

Impact:
Because major modifications to major stationary sources trigger a requirement for NSR, with the potential for new emissions limits and construction and operational requirements, there is a disincentive to modernize or otherwise improve the efficiency and competitiveness of power plants and industrial facilities. Because modernization could improve the environmental performance of those plants and facilities, the NSR Program can undermine the goals of the Clean Air Act. Moreover, because power plant, refinery and other facility owners have been subjected to EPA (and state) enforcement actions on account of what these owners thought was routine maintenance, repair or replacement activities, the NSR Program has become a disincentive to some best maintenance practices, with facility operations and reliability suffering as a result.

Action Needed:
NSR permit programs must be replaced or reformed by legislation or by regulation to eliminate the disincentive to modernize power plants and industrial facilities and to allow routine maintenance without the threat of NSR enforcement action.

Preliminary Remediation Goals for Dioxin

Issue:
In May 2009, EPA Administrator Jackson announced a reassessment of the human health risk from exposure to dioxin. As part of this reassessment, EPA plans to issue revised interim preliminary remediation goals (PRGs) for dioxin in soil, which are significantly more stringent than the existing PRGs. EPA already has authority to ensure protective cleanups without revising its PRGs but is moving forward to promulgate these preliminary goals despite contrary recommendations of the NAS and EPA's own SAB; without conducting an analysis of the relative costs and benefits of its proposal and alternatives to it, or addressing the strong warnings of U.S. mayors regarding the deleterious impact on the revitalization of American cities through redevelopment of brownfields; and without accounting for new best science now available to EPA. Finally, EPA has termed its proposal "guidance" rather than a rule.

Impact:
Cleaning up former industrial facilities so that they may be re-used for new purposes is a key component of job retention and creation, as well as an enhanced tax base, in many cities. EPA's proposed PRGs introduce yet another element of uncertainty into cleaning up former industrial sites. As proposed, they will increase clean up expenses and will delay or prevent the re-positioning of these facilities for new use, without providing additional health protection.

Action Needed:
The proposed PRGs should be deferred at least until EPA completes its final dioxin reassessment consistent with the peer review recommendations of the NAS and SAB, which is underway, and evaluates the costs and benefits of its proposal compared to those of other alternatives, as required by the Administration's regulatory review requirements.

Coal Combustion Product Regulation

Issue:
Coal combustion residual products are currently managed as non-hazardous waste under state regulatory authority. Approximately 45 percent of these products are beneficially used in cement, wallboard, agricultural and other applications. The rest is disposed of through other means, including impoundment in waste ponds. In December 2008, over one billion gallons of ash were released from an ash disposal facility at TVA's Kingston Power Plant when an impoundment wall failed. In June 2010, EPA proposed two regulatory options for coal combustion product (CCP) disposed of in landfills or surface impoundments. The first option would be to regulate CCP as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The second option would be to regulate CCP as non-hazardous waste under Subtitle D of RCRA.

Impact:
Both regulatory options under consideration by EPA likely would lead to the closure of CCP surface impoundments but regulation under the hazardous waste provisions of RCRA (Subtitle C) would significantly increase the cost of handling and disposing of CCP. In addition, while EPA has proposed to exclude CCP that is used for beneficial uses from the definition of hazardous waste, it is unlikely that consumers would be persuaded that the same product is hazardous for some purposes but not others. This market stigma and the threat of possible litigation likely would result in substantial reductions in beneficial uses of CCP, which currently is a $9 billion a year market. According to EEI, compliance costs associated with regulation of CCPs as hazardous waste could range from $55-$74 billion over a 20-year period. Regulation of CCP as a non-hazardous waste would result in additional groundwater monitoring, facility design and closure and post-closure requirements. This would add significant costs but would be substantially less costly than the hazardous waste regulatory option.

Action Needed:
EPA is not required to change its existing regulatory approach with respect to CCP, i.e., it is not required to regulate CCP under RCRA. With a few exceptions, state regulation has been successful and EPA should work with the states to improve the existing regulatory framework rather than finalize rules that would have the effect of supplanting it.

Hydraulic Fracturing

Issue:
EPA released a draft study plan for the Congressionally directed study on the relationship between hydraulic fracturing (HF) and drinking water resources. The plan has been submitted to and reviewed by EPA's Science Advisory Board's HF Peer Review Panel and will be open for public comments, but few changes are expected. As proposed, the study will examine the full life-cycle of water used in HF operations, including water acquisition, use and fate of additives, injection (fracturing) operations, management of flowback and produced water, and treatment and disposal of flowback and produced water. The draft plan contains numerous statements which indicate bias against industry and pre-determined outcomes. It appears to be establishing a research plan to search for potential problems in theory, not an assessment of risks relative to regulatory requirements and industry practices. EPA plans to issue an interim report in late 2012 and a follow-up report in 2014. The Science Advisory Board Peer Review Panel met to discuss the draft plan on March 7-8, and it's recommendations to EPA are to be completed within 4-6 weeks. Industry is very concerned with the obvious lack of understanding about hydraulic fracturing operations held by most panel members and the reluctance, if not refusal, of offers by industry to conduct site visits to provide basic information to the panel members.

Additionally, at a Nov. 30, 2010, Department of Interior (DOI) Forum, Secretary Salazar and other DOI officials discussed new DOI regulations on hydraulic fracturing. Secretary Salazar focused on the issue of fracturing fluid disclosure but other officials spoke in much broader terms. To date no proposed regulations have been released as a result of these announcements, and the breadth of the DOI effort is unknown.

Impact:
A biased study design suggesting pre-determined beliefs of some EPA staff and a lack of basic understanding by the Peer Review Panel undermines the integrity of the final results. Studying low probability possibilities without reference to existing industry practices draws resources away from areas where research may be needed. Both events can lead to poor policy recommendations and outcomes.

Overly broad or misdirected regulations will threaten the development of the Nation's abundant unconventional natural gas resources on Federal lands. Natural gas offers significant environmental and other benefits relative to competing energy sources. In addition, unconventional gas development has been a tremendous engine of job creation, economic growth, and provision of state and local government revenues in areas undergoing development, even throughout the economic downturn.

Action Needed:
The EPA has limited resources to conduct its study, and should focus on understanding areas of potential risk relative to existing industry practices and state regulatory frameworks in their proper context, so as to give practical guidance to policy makers and state regulators.

The DOI should consider existing initiatives like the Groundwater Protection Council Disclosure Registry and, absent a demonstrated need, should not proceed with new regulations but allow exploration and production activities to move forward.

Health Care Reform

Issue:
Regulations implementing "The Affordable Care Act" ("ACA") (P.L. 111-148) related to specific benefit and insurance requirements[1].

Impact:
These regulations, whether implemented or soon to be proposed, all relate to requirements on employer-sponsored health plans and the health insurance marketplace generally. Business Roundtable has raised and will continue to raise concerns with these regulations if we determine that they add unnecessary costs or impact employers' ability to continue offering health benefits to their employees, limit employers' ability to innovate in providing health benefit coverage to their employees, or inhibit innovation. In addition, the implementation of the Exchanges will be important to ensure there is competition and choice in the marketplace for health insurance coverage for individuals and small employers in the early years and for larger employers after 2017.

Action Needed:
As the ACA is implemented, the Agencies should not propose or adopt regulations that impose unnecessary costs on employer-sponsored health coverage or the health insurance market generally. Recognition of employers' good faith efforts and ability to meet new requirements through existing plan designs must be part of the Agency analysis. Employers need flexibility to meet the challenges expected of them under the ACA. Business Roundtable will continue to make specific recommendations to the Administration on ways to develop these rules so that there are no unnecessary costs, unintended consequences or failure to acknowledge current employer efforts and actions. Specifically:

- The Medical Loss Ratio IFR has the potential to substantially reduce incentives for insurers to control costs and drive innovation in the health care system by penalizing insurers for certain categories of administrative costs. The Administration should expand the categories of administrative costs that count towards "quality" expenses in order to allow for innovation and not penalize activities that control costs in the system.
- Regulations on insurance exchanges must not be overly-restrictive and allow for truly competitive insurance markets. Also, the regulations on "essential health benefits" for the exchanges must prioritize affordability and flexibility over desires to create mandated rich benefit packages. Regulations related to payment reform, such as the ACO regulation, must encourage efficient delivery of care without inhibiting private sector innovation or facilitating provider consolidation that would increase prices.

For a further description see page 19 and 20.

[1] ACA Final and Interim Final Rules and NPRs, BRT Chart Dated 2/22/11.

TOPIC OF REGULATION	ACA SECTION(S) IMPLEMENTED (PHS ACT SECTION AMENDED) OR OTHER RELATED STATUTE	REGULATION TYPE OR ACTION	FED. REG. PUBLICATION DATE, VOLUME, PAGE	COMMENT DUE DATE	EFFECTIVE DATE OF REGULATION	AGENCY
Preexisting Conditions Exclusions *Lifetime & Annual Limits* *Rescission* *Patient Protections*	*§ 1001 (2704)* *§ 1001 (2711)* *§ 1001 (2712)* *§ 1001 (2719A)*	*Interim Final Rule & Request for Comments*	*June 28, 2010* *75 Fed. Reg. 123, 37188*	*Aug. 27, 2010*	*Aug. 27, 2010*	*IRS* *EBSA* *HHS*
Preventive Services	*§ 1001 (2713)*	*Interim Final Rule & Request for Comments*	*July 19, 2010* *75 Fed. Reg. 137, 41726*	*Sept. 17, 2010*	*Sept. 17, 2010*	*IRS* *EBSA* *HHS*
Dependent Coverage of Children to Age 26	*§ 1001 (2714)*	*Interim Final Rule & Request for Comments*	*May 13, 2010* *75 Fed. Reg. 92, 27122*	*Aug. 11, 2010*	*July 12, 2010*	*IRS* *EBSA* *HHS*
Internal Claims & Appeals & External Review	*§ 1001 (2719)*	*Interim Final Rules & Request for Comment*	*July 23, 2010* *75 Fed. Reg. 141, 43330*	*Sept. 23, 2010*	*Sept. 23, 2010*	*IRS* *EBSA* *HHS*
Pre-Existing Condition Insurance Plan Program	*§ 1101*	*Interim Final Rule*	*July 30, 2010* *75 Fed. Reg. 146, 45014*	*Sept. 28, 2010*	*July 30, 2010*	*HHS*
Early Retiree Reinsurance Program	*§ 1102*	*Interim Final Rule with Comment Period*	*May 5, 2010* *75 Fed. Reg. 86, 24450*	*June 4, 2010.*	*June 1, 2010*	*OCIIO*

Health Care Reform Insurance Web Portal Requirements	*§ 1103*	*Interim Final Rule with Comment Period*	*May 5, 2010* *75 Fed. Reg. 86, 24470*	*June 4, 2010*	*May 10, 2010*	*HHS*
Grandfathered Plans *(Retiree Plans)* *(Collectively Bargained Plans)* *(Good Faith Compliance)*	*§ 1251*	*Interim Final Rule & Proposed Rule*	*June 17, 2010* *75 Fed. Reg. 116, 34538*	*Aug. 16, 2010*	*June 14, 2010* *Except that certain amendments are effective July 12, 2010*	*IRS* *EBSA* *HHS*
Medical Loss Ratio	*§ 2718*	*Interim Final Rule with Request for Comments*	*Dec. 1, 2010* *75 Fed. Reg. 230, 74864*	*Jan. 31, 2011*	*Jan. 1, 2011*	*HHS*
Eligibility for a Medicare Prescription Drug Subsidy - Amendments to Regulations	*§ 3304*	*Interim Final Rules with Request for Comments*	*Dec. 29, 2010* *75 Fed. Reg. 249, 81843*	*Feb. 28, 2011*	*Jan. 1. 2011*	*SSA*
Regulations Regarding Income-Related Monthly Adjustment Amounts to *Medicare Beneficiaries' Prescription Drug Coverage Premiums*	*§ 3308*	*Interim Final Rule with Request for Comments*	*Dec. 7, 2010 75 Fed. Reg. 234, 75884*	*Feb. 7, 2011*	*Dec. 7, 2010*	*SSA*
Rate Increase Disclosure and Review	*§ 1003*	*Notice of Proposed Rulemaking*	*Dec. 23, 2010* *75 Fed. Reg. 246, 81004*			*OCIIO*
Grandfathered Plans - Group Health Plans and Health Insurance Coverage Rules Relating to Status as a Grandfathered Health Plan *Under the Patient Protection and Affordable Care Act*	*§ 1251*	*Notice of Proposed Rulemaking*	*Nov. 17, 2010 75 Fed. Reg. 221, 70159*	*Dec. 17, 2010*		*IRS*

Modernization of Communications Law and Regulations to Accelerate Increased Investment

Issue:
Information and communications technologies form the foundation for how business is conducted in today's economy. Advanced networks with global reach form the trade and knowledge highways for the 21st century. The Internet's technologies are at the core of these networks. However, outdated laws and regulations fail to recognize new challenges and circumstances and without modernization will inhibit innovation, competition and economic growth. Reforms are required to ensure that the Internet remains a driver of economic, cultural, and societal growth.

Action Needed:
The existing telecommunications regulatory framework does not fit today's communications marketplace. What is required is a far more rigorous and comprehensive effort to ensure that the governing regulatory framework is appropriately tailored to today's broadband marketplace, and that outdated and needlessly burdensome rules do not stand in the way of continued investment and innovation. Federal government agencies acting in this area should repeal outdated and unnecessary regulations and burdensome reporting requirements. They should also reorient their regulatory approach with the following focus:

- Rely on policy models that allow the market and the Internet's existing structures to work and focus on addressing actions or developments that harm competition or consumers.
- Resist predictive judgments about technology and consumer preferences to allow innovation to flourish.
- Adopt a data-driven and fact-oriented approach to regulatory policy.
- Where rules exist, conduct periodic reviews to eliminate duplicative outdated rules based on changes in technology and market place developments since the rule was enacted.
- Embrace a renewed respect for the limits of agency authority.
- Eliminate duplication of oversight at the federal level and in line with the national and global reach of the Internet, limit state or local regulation of these technologies.

Eliminating Unnecessary Regulatory Burdens

NEPA Review/Guidance Regarding Greenhouse Gas Emissions

Issue:
In February 2010, the White House Council on Environmental Quality (CEQ) issued for public comment Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions (draft guidance). The draft guidance explains how federal agencies should analyze the environmental impacts of greenhouse gas (GHG) emissions and climate change when they assess the environmental impacts of proposed actions under the National Environmental Policy Act (NEPA).

Under NEPA, many federal actions require a review of their environmental impacts. This review takes the form of an Environmental Assessment. Many Environmental Assessments include a Finding of No Significant Impact of the federal action on the environment. Some federal actions, however, require a more detailed review, which takes the form of an Environmental Impact Statement.

Under the draft guidance, if a proposed federal action, e.g., a rule, policy, license, or program, is expected to cause direct emissions of 25,000 metric tons or more of CO2-equivalent GHG emissions per year, then the federal agency that proposes the action should deem those emissions an indication that a quantitative and qualitative environmental assessment of those emissions may make a meaningful contribution to the decision-making process. The draft guidance, moreover, would urge federal agencies, in their environmental reviews, to consider opportunities to reduce GHG emissions.

Impact:
The draft guidance would not regulate GHG emissions. If finalized, however, it would recommend that federal agencies assess the environmental impact of GHG emissions (if those emissions would exceed the specified threshold) and consider opportunities to reduce those emissions. Thus the draft guidance could result in *de facto* regulation of GHG emissions. The reach of the draft guidance, if finalized, would be extremely broad, and businesses and industries not subject to regulation and emissions controls under the Clean Air Act would be implicated. The draft guidance states that "there are more sources and actions emitting GHGs . . . than are typically encountered when evaluating the emissions of other pollutants."

Action Needed:
Finalization of the draft guidance should be delayed in order to give Congress time to address GHG emissions and climate change.

EPA Chemical Action Plans

Issue:
EPA has published "Chemical Action Plans" (CAPs) for a number of chemicals used around the world in commerce. Additional CAPs are also being developed by the Agency. These plans outline the regulatory actions that EPA intends to pursue, up to and including elimination of the materials from the market place. These plans are being developed without sufficient scientific peer review, and appear to discount data that would not support additional regulatory actions. It is EPA's intent to list chemicals that they find "present or may present an unreasonable risk to injury to human health or the environment." EPA will propose to list the chemicals under Section 5(b)(4) of the Toxics Substances Control Act (TSCA). This marks the first time EPA has proposed to use this section of TSCA, raising new legal, policy and risk-science issues. Furthermore, EPA intends to propose listing of chemicals without a criteria for listing or analysis of whether viable and sufficient substitutes are available to serve the market place, and whether substitutes are at least as safe as the chemical being listed.

Impact:
Some of the proposed CAPs will result in additional compliance costs for the manufacturers and the users of these materials. More importantly, the inappropriate listing of chemicals under TSCA Section 5(b)(4) will likely result in market disruptions due to "blacklisting". The costs to manufacturers and users will likely increase due to formulation changes and new equipment costs, and the potential substitution of alternatives that may not be "safer."

Action Needed:
Before listing chemicals under TSCA Section 5(b)(4), EPA should propose listing criteria for public comment and then evaluate each chemical relative to the criteria. Furthermore, before a proposed listing, EPA should perform a market analysis to determine where viable chemical substitutes are available in the market place and that those substitutes are as safe or safer than the chemical proposed for listing.

OTC Derivatives End-User Exemption

Issue:
Regulations implementing the "Dodd-Frank Wall Street Reform and Consumer Protection Act" (Dodd-Frank Act) with respect to end users of derivatives need to be carefully tailored to ensure that Congressional intent to exempt most end users is followed. The Business Roundtable and the Coalition for Derivatives End-Users believe there should be an unambiguous exemption for end-users from clearing, trade execution, margin and capital requirements in order to allow end users to be able to prudently manage risks. Managing and hedging risk is essential for many businesses, particularly with respect to increasingly volatile commodity prices, currencies and interest rates. Moreover, there is no evidence that end user use of derivates contributed to the recent financial crisis and in fact, many businesses were able to mitigate their risks during this period through the use of derivatives.

Impact:
Overly broad derivatives regulation will result in economic harm. An April 2010 Business Roundtable survey found that a 3 percent margin requirement could result in a one-time loss of 100,000 – 120,000 jobs and a one-time average reduction in available capital of $269 million per large cap nonfinancial company that uses derivatives. A February 2011 survey conducted by the Coalition for Derivatives End users confirmed these findings. By unnecessarily tying up capital, money needed for additional jobs creating investments will be reduced. In addition, uniform clearing requirements will have the effect of eliminating tailor made hedging products that better suit the needs of end users, thus reducing their ability effectively to hedge risk.

Action Needed:
Although House/Senate conferees stated their support and intent for a clear end-user exemption, regulators have noted ambiguity with respect to the final conference report language. Accordingly, a technical corrections provision underscoring and clearly codifying Congressional intent regarding an end-user exemption may be needed. In the meantime, however, regulators (CFTC, SEC, Federal Reserve and Treasury) should implement regulations which do not impose unnecessary burdens on end-users in full compliance with direction given during the House/Senate conference on the Dodd-Frank legislation.

Conflict Minerals Disclosure Rule

Issue:
The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directs the SEC to promulgate disclosure and reporting regulations regarding the use of conflict minerals from the Democratic Republic of Congo (DRC) and adjoining countries.

Impact:
If the SEC does not promulgate the implementing rules in a cost effective manner, the companies covered by the legislation and their estimated cost of compliance will far exceed the SEC's estimate of $25,000 average cost of obtaining a private sector audit. In fact, if the rules were to be implemented as currently proposed (with no phase-in period), multinational companies would have to spend millions of dollars to generate reports that will not provide any meaningful information due to the lack of an infrastructure to trace and audit global supply chains.

Action Needed:
The SEC is urged to implement the Conflict Minerals Provision in a manner consistent with the ability of American companies to create jobs and compete on a worldwide scale. Disclosure requirements must be phased-in to reflect the lack of infrastructure necessary to trace and audit supply chains; the rules must include a *de minimis* threshold and exclude trade amounts; there should be a practical approach to supplier representations to address country of origin questions; finally, audits and disclosures should be tailored in scope and should not be part of the SEC's periodic reporting system.

Consumer Product Safety Improvement Act Complaint Database

Issue:
The Consumer Product Safety Commission (CPSC) has adopted a final rule implementing the complaint database requirement of the Consumer Product Safety Improvement Act (CPSIA). While the online database is required by the CPSIA, the CPSC final rule has substantially broadened beyond the Congressional mandate the individuals authorized to submit data (beyond injured consumers, state and local officials, caregivers, etc.) to plaintiff's attorneys and others with less direct information. Thus, the database has the potential to become less useful to consumers and more harmful to the reputations of legitimate businesses.

Impact:
While litigation over the administrative procedure used to approve the rule and the substance of the rule is certain, in the meantime, consumers will have a database full of potentially inaccurate or misleading information regarding the safety of consumer products. Unfortunately, legitimate companies will be required to spend scarce resources in defending themselves from this inaccurate and misleading information.

Action Needed:
The CPSC needs to revise its regulations to comply with the clear Congressional intent regarding those authorized to submit information to the database.

SEC Public Disclosure Regulations

Issue:
The SEC is drafting regulations to implement provisions of the Dodd-Frank financial regulatory reform law that mandate public disclosure of detailed information of the payments made to foreign governments by oil, gas and mining companies, subject to SEC reporting requirements (U.S. government payments would be covered too). The oil and natural gas industry has long been active in efforts, such as the Extractive Industries Transparency Initiative (EITI), to find a workable multi-stakeholder approach to issues surrounding resource revenue transparency – one that does not jeopardize the global competitiveness of U.S.-based companies. Over 30 countries are participating in the EITI collaborative process that involves governments, extractive companies and civil society, and becoming an EITI compliant country requires a comprehensive process for engaging multiple stakeholders, including civil society. EITI provides a level playing field by covering all companies operating within EITI implementing countries, as well as an avenue for disclosure of industry payments while protecting from disclosure confidential company data. Industry aggregate payment data provides civil society with the total amount of revenue coming in from oil, gas and mining development so that the focus can then be turned to how those revenues are being spent by the governments in those countries.

Impact:
Unilateral U.S. measures to mandate revenue transparency are harmful to U.S. competitiveness, counter-productive in furthering revenue transparency in developing countries, and incompatible with EITI. SEC implementation that requires detailed reporting will undermine the position of U.S. companies competing for global access to resources, because the law does not cover national oil companies (NOCs) who control almost 80% of worldwide reserves. Moreover, foreign competitors not subject to SEC reporting, including Russian and Chinese companies, will gain access to sensitive U.S. company information and could use that to create an unfair advantage against U.S.-listed companies in contract negotiations and in bidding for resource licenses. In addition, mandated revenue disclosure will eliminate the need for a collaborative, multi-stakeholder process, which improves the chances of improving governance around the world.

Ill-considered implementation by the SEC could also place billions of dollars of capital invested by U.S. firms at risk, for example in countries where such disclosure would violate the law (making the costs of requiring such detailed reporting exceed the incremental benefits by a wide margin). Finally, these unilateral measures will not capture all government sources of resource revenues since they apply only to a subset (U.S. listed) of companies operating in a country. The API and several companies have submitted comments to the SEC noting how its implementation discretion can be used to minimize the most harmful potential effects of this Dodd-Frank provision.

Action Needed:
The SEC is urged to implement Section 1504 in a manner that is consistent with the EITI and that protects the ability of U.S. firms to compete globally for resources. For example,

consistent with other SEC requirements "materiality" should be a consideration in determining the threshold for any amounts reported; the definition of what constitutes a "project" must be carefully constructed to minimize the harm to companies and their shareholders from the disclosure of commercially sensitive information, violation of local laws, and breach of contracts with foreign governments; and the types of payments subject to disclosure should be limited to "upstream" operations. If not addressed in the regulations, we believe a targeted statutory revision may ultimately be necessary to alleviate the most prominent anti-competitive and conflict of laws effects.

Genetic Information Nondiscrimination Act of 2008 (GINA)

Issue:
The EEOC issued its final regulations implementing Title II of the Genetic Information Nondiscrimination Act of 2008 ("GINA"). As the EEOC noted in the preamble to the final regulations, Congress enacted GINA to address concerns of the general public about whether they may be at risk of losing access to health coverage or employment if insurers or employers have their genetic information. Toward this end, GINA limits the ability of employers to request, require or purchase genetic information, which include family medical history. At the same time, many employers have developed innovative benefits and programs that promote wellness, prevent disease and manage chronic conditions. The restrictive treatment of employer-provided wellness programs in the GINA final rule may undermine an employer's ability to effectively offer these programs. Specifically, the EEOC's definition of a "voluntary" wellness program for purposes of an exception to the prohibition in the acquisition of genetic information is inconsistent with the Health Insurance Portability and Accountability Act (HIPAA) nondiscrimination requirement that permits certain limited inducements to voluntary wellness programs and Section 2705 of the Affordable Care Act.

Impact:
The final EEOC GINA regulation provides that a wellness program will be considered voluntary if the employer "neither requires the individual to provide genetic information nor penalizes those who choose not to provide it." Accordingly, employers may be limited in offering an incentive to employees to participate in employer-provided wellness programs. This is contrary to the Affordable Care Act and existing HIPAA regulations.

Action Needed:
The Administration should ensure there is consistency in these regulations, especially the GINA regulation, to ensure employers can offer innovative wellness and prevention programs consistent with the provisions of the Affordable Care Act.

Reforming the Regulatory Process

Accelerate Permitting Decisions and Extend Permit Durations

Issue:
The review and approval processes for building and operating permits are frequently confusing, unpredictable and can take an exceptionally long time. This often sets up major barriers to new industries or causes a business or industry to miss a key window of market opportunity. Given our country's current economic environment, we can no longer afford to allow inefficient processes stifle economic growth.

Impact:
It often takes much longer for businesses in the U.S. to receive the approvals necessary to build, modify and operate facilities than it does in other parts of the world. Delay often adds to the cost of a project and multiple permits add uncertainty to investment decisions. Additional permitting costs and uncertainty ultimately negatively impacts jobs creation and retention.

Action Needed:
The permitting process needs to be streamlined and transformed to be fast, efficient, clear, affordable and predictable. The government needs to rewrite regulations in a way that will accelerate the permitting decisions process and encourage investment in the US. Each government agency issuing permits should be examined for opportunities to improve consistent with global best practices. It can also reduce the amount of delay by reducing the number of times a business must apply and reapply for a permit. Extending the duration of permits is, obviously, the easiest and quickest way to accomplish that.