



Statement of Howard L. Ground
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Before the
House Small Business Subcommittee on
Economic Growth, Tax, and Capital Access
on
“How Regulations Stifle Small Business Growth”

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Distinguished members of the Subcommittee, I speak to you today representing The Petroleum Alliance of Oklahoma, which was recently created by the merger of the Oklahoma Independent Petroleum Association and Oklahoma Oil & Gas Association. The Alliance represents approximately 3,000 individuals from 1,300 companies, including oil and gas producers, operators, purchasers, pipelines, transporters, processors, refineries and service companies. The average member company has 12 employees or less. The Alliance represents all sectors of Oklahoma's oil and gas industry and is dedicated to the advancement and improvement of the industry within the State of Oklahoma and the United States. The Alliance advocates the development of an environment that enables the oil and natural gas industry and related businesses to grow and prosper through the responsible development of Oklahoma's natural resources.

I want to spend my short time with you today describing the tremendous burden small businesses have in tracking and complying with new and constantly changing regulations and agency policies. This regulatory burden leads to uncertainty in business planning, in capital markets and in expense planning.

Overall Regulatory Burden

There are 71 federal agencies that regulate large and small businesses, and each of them routinely change regulations and policies requiring businesses to constantly track and make changes to their operations or plans. The constant tracking of the changes and implementation of required changes within the business leads to uncertainty, hindering access to capital and resulting in missed opportunities. Small oil & natural gas companies must expend valuable manpower and other resources in order to remain compliance with the rules of myriad federal agencies, including the Environmental Protection Agency, the Department of Transportation, the Department of Interior, the Department of Labor and many others.

The Office of Information and Regulatory Affairs publishes their *Unified Agenda of Regulation and Deregulatory Actions* on a routine basis. The latest *Unified Agenda* published in Spring 2019 listed all 15 cabinet departments, 33 executive agencies and 23 independent regulatory agencies and the hundreds of regulation and policy changes. While this Office and report is much-needed and appreciated by business since it gives access to all of the regulatory activities going on within each of the agencies, it also details the massive regulatory burden that business, especially small businesses, face.

For example, the Environmental Protection Agency currently has 151 rules and policy changes in various stages of rulemaking. Many of the proposed rule changes directly impact the oil & natural gas industry and require tracking, commenting and implementation when final. The EPA also has 29 Long Term Actions listed that seem to never come to a conclusion but can change and require large capital investments and extensive changes to operations to remain compliant. A few other examples include the Department of Transportation, which has 214 rules and policy changes listed, the Department of the Interior, which has 236 rules and policy changes listed, and the Department of Labor which has 62 rules and policy changes listed. This constant barrage of changes to regulations and policies has a stifling effect on small business growth and viability.

Real World Examples

The Department of Interior “commingle rules” in PART 3170—ONSHORE OIL AND GAS PRODUCTION, 43 CFR § 3173.14, which outlines the conditions for commingling of minerals between federal, tribal and private leases, and allocation approval is extremely burdensome. They are burdensome to the companies involved as well as to the Bureau of Land Management (BLM), which manages the rules. It seems that each of the BLM area offices interprets the rules differently and has different requirements for approval. This approval of the comingling often delays the permitting of oil & natural gas activities, which is very expensive to business.

The Endangered Species Act (ESA) implemented by the U.S. Fish and Wildlife Service under Title 16 U.S.C. Chapter 35 requires an immense amount of resources and is constantly changing, requiring modifications to expansion timelines and project scopes. The main species in Oklahoma that oil & natural gas companies encounter are the American Burying Beetle, and the lesser prairie chicken. Both species require preplanning on when and where a company can expand, as well as a

great amount of monitoring and reporting. Both have gone through listing changes, requiring that even more resources be dedicated to the tracking, monitoring and compliance activities required.

The Environmental Protection Agency has proposed many changes to air regulations that will have major impacts to the oil and natural gas industry, especially small companies that operate low producing wells. One example is the New Source Performance Standards (NSPS) for the oil and natural gas sector emissions standards for new, reconstructed and modified sources, also known as OOOOa amendments. This regulation in Title 40, Part 60, subpart OOOOa was changed in 2016 and placed limitations on methane and volatile organic compound emissions as well as increased monitoring and changes to equipment in the field. This rule was proposed to be changed again in late 2018, in order to streamline implementation, reduce duplicative requirements and significantly decrease the unnecessary burdens on energy producers, again, especially the small producers. These changes show just one small area where a significant regulation change resulted in major capital expenditures and changes to operations only to be changed again 2 years later.

Not Every Change Involves a Regulation

While the regulatory process is open to public scrutiny and published in a manner that is easily found, there is another method of regulating businesses that is not so transparent and easy to navigate. Many agencies use internal policies that basically set standards and requirements on businesses rather than going through the required regulatory process. Some of these policies are dictated to state agencies that implement federal rules, are not apparent to the regulated community, and can be changed by the federal agencies at any time without notice.

One example is the “once in always in” EPA policy which was initially implemented in 1995 and changed early this year. The EPA issued a guidance memorandum in January withdrawing the “once in always in” policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act. This guidance deals with the classification of an air emission source. The policy now allows for a source previously classified as “major sources” to be reclassified as an “area” source when the facility limits its potential to emit below major source thresholds. This is good for business expansion and capital improvements but shows a major change that impacts business and requires planning, capital and changes to operations.

Another example involves setting water quality standards that are used in developing permit limits by the state agencies that implement water discharge permitting. The standards are set by the states under guidance of the EPA and require EPA approval. While establishing the standards, some areas require special treatment and site-specific water quality standards instead of a statewide value. The method to obtain a site-specific standard requires very specialized monitoring and testing by the business, and detailed plans by the state agency and EPA. A couple of years ago, without any hearing or comments from the public, the EPA changed their policy to require a new water model. This new model requires more than a year of additional testing by the company and unlike the previous model, does not lead to a standard that is specific to the site. The historically used and well known and understood model is the Water Effects Ratio (WER) Model, and EPA now requires the Biotic Ligand Model (BLM). The change in models was dictated to the state agency under the threat of non-approval of the water quality standard if not used.

A third example is the EPA guidance on interpreting “adjacent” in relation to air permitting. The EPA provided an opportunity for stakeholders to review and comment on draft guidance in September 2018 on the interpretation of “adjacent” in the context of Clean Air Act permitting. The issue is when facilities are not on a contiguous property and involves more than physical proximity. This can have significant implications to a business that has facilities in close proximity, multiple locations or linear facilities like pipelines.

Conclusion

The regulatory burden placed on small oil and natural gas businesses requires resources that most small companies have difficulty maintaining. Today I spoke mostly about regulations that directly impact the core functions of the oil & natural gas industry, but there are many other areas that I did not mention like changes in tax laws, health care, transportation, etc. The issue is actually multiplied many times greater than what I have outlined. Please keep in mind as you study How Regulations Stifle Small Business Growth, that small oil and natural gas businesses are constantly assaulted on multiple regulatory fronts. This constant barrage of regulation are strain on resources and to make matters even more egregious, not all of the regulatory drivers have been through the required regulatory process. The Petroleum Alliance of Oklahoma appreciates the opportunity to testify before this distinguished committee on behalf of our membership. Questions concerning this testimony can be directed to Howard Ground at 405-601-2318 or bud@okpetro.com.