

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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August 4, 2017

The Honorable Elaine Duke  
Acting Secretary  
U.S. Department of Homeland Security  
245 Murray Lane SW  
Arlington, VA 20598

Dear Acting Secretary Duke:

Earlier this week, the Department of Homeland Security announced an astonishingly broad waiver of environmental laws for projects relating to the construction of barriers and roads along the U.S.-Mexico Border near San Diego, California. This action has the potential to block more than 30 laws that currently protect the people of San Diego and the delicate environment in the surrounding area, including several laws within the jurisdiction of the House Committee on Energy and Commerce. As the Ranking Members of the full Committee and Environment Subcommittee, and the Committee member representing San Diego, we are concerned about the possible impacts of these waivers and the construction of the border wall.

Despite the serious public health risks posed by this action and the potential for permanent damage, it is not clear what analysis was done to establish that a waiver of numerous environmental laws is needed. The waiver authority granted to the Secretary of Homeland Security is predicated on the waivers being necessary to expedite border construction projects. However, most of the requirements of the waived statutes have no relationship to the timing or speed of such projects. We therefore ask for responses to the following questions:

1. Given the short period of time between the issuance of this waiver and former Secretary Kelly's departure from the Department, please provide all documents, including emails and other correspondence, pertaining to the timing of Secretary Kelly's departure and the issuance of this waiver.
2. Please explain why the Safe Drinking Water Act (SDWA) is being waived with respect to these projects.
  - a. What specific requirements of SDWA apply to these projects and would continue to apply but for this waiver?

- b. In what way would the requirements of this Act delay these projects?
  - c. Do you anticipate injecting fluids underground? If so, what fluids will be injected?
  - d. What safeguards will you implement for underground sources of drinking water?
  - e. What potential impacts do you anticipate from this activity on drinking water sources and systems in the San Diego sector and beyond?
  - f. How many people's access to safe drinking water may be affected?
3. Please explain why the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), is being waived with respect to these projects.
- a. What specific requirements of RCRA do you anticipate would apply to these projects but for this waiver?
  - b. In what way would the requirements of this Act delay these projects?
  - c. Do you anticipate open dumping of wastes from these projects?
  - d. Do you anticipate disposing of solid waste or hazardous waste without permits as part of these projects? If so, where will that solid waste and/or hazardous waste be dumped?
  - e. What are the anticipated health effects from this unpermitted disposal of solid waste and/or hazardous waste?
  - f. What communities will be affected?
4. Please explain why the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is being waived with respect to these projects.
- a. What specific requirements of CERCLA do you anticipate would apply to these projects but for this waiver?
  - b. In what way would these requirements delay these projects?
  - c. Do you anticipate releasing hazardous substances into the environment as part of these projects?
  - d. Do you expect that this waiver would absolve the Department of liability for cleanup of those hazardous substances? Do you believe you have the authority,

and do you intend, to waive liability under CERCLA for contractors engaged in these projects?

- e. Where do you anticipate such releases occurring? What are the anticipated health effects from these releases? What communities will be affected?
5. The Clean Air Act requires major new or expanding stationary sources of air pollution to obtain permits before they start construction, to ensure these facilities will not significantly increase air pollution above levels that are safe to breathe.
- a. Do you anticipate these projects would significantly increase air pollution in the San Diego area for lead, particulate matter (PM<sub>2.5</sub> or PM<sub>10</sub>), ozone, nitrogen dioxide (NO<sub>2</sub>), sulfur dioxide (SO<sub>2</sub>) and/or carbon monoxide?
  - b. What are the anticipated health effects of this pollution?
  - c. Where do you expect this pollution to be released? What communities will be affected?

We appreciate your immediate attention to this matter, and request a response by August 18, 2017. If you have any questions, please contact the Democratic Committee Staff at (202) 225-4407.

Sincerely,



Frank Pallone, Jr.  
Ranking Member



Paul D. Tonko  
Ranking Member  
Subcommittee on Environment



Scott H. Peters  
Member of Congress