April 11, 2018

The Honorable John Barrasso  
Chairman, Committee on Environment and Public Works  
United States Senate  
410 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Thomas Carper  
Ranking Member, Committee on Environment and Public Works  
United States Senate  
456 Dirksen Senate Office Building  
Washington, DC 20510

Re: The “Utilizing Significant Emissions with Innovative Technologies Act” or the “USE IT Act”

Dear Chairman Barrasso and Ranking Member Carper:

Thank you for the opportunity to provide a written statement for the Committee’s April 11, 2018 hearing on S. 2602, the “Utilizing Significant Emissions with Innovative Technologies Act” or the “USE IT Act.” Please accept these comments for the hearing’s official record.

On behalf of the undersigned organizations and the millions of members and supporters we represent, we write to express our strong opposition to language in Title II of this bill which threatens to create confusion and to erode meaningful public input and sound environmental review in the permitting process. At the outset, we note that our comments are restricted to the USE IT Act’s impact on permitting and do not reflect a position on the use of Carbon Capture and Storage (CCS) technology and deployment generally. Our comments in this testimony are focused on Title II of the bill, which perpetuates a demonstrably false narrative that permitting under environmental laws is a primary source of delay in the development of infrastructure.

As an initial matter, Section 201 of the USE IT Act unnecessarily amends Title 41 of the FAST Act (FAST-41) to include carbon capture infrastructure projects among the list of “covered projects” that receives limited permitting review under that law. Under FAST-41, “covered projects” is broadly defined to include “any activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure for renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, or any other sector as determined by a majority vote of the [Federal Permitting Improvement Council (FPIC)] that... [is] likely to benefit from enhanced oversight and coordination.” Indeed, one CCS project, the Denbury Riley Ridge to Natrona Project, is already being considered under the minimized permitting process of FAST-41. In light of this fact, the discretion of FPIC, and the broad definition of “covered projects,” this language in USE IT is unnecessary and will likely sow confusion at best, and set a precedent for naming particular pet projects as more worthy than others going forward.
Even more troubling is Section 202 of the USE IT Act, which establishes no less than two task forces charged with identifying “permitting challenges that permitting authorities and project developers and operators face.” While the creation of task forces on their face may seem innocuous, the two created under this legislation are a part of a broader and deeply concerning ideological effort aimed at dismantling core protections provided by our environmental laws in order to prioritize the interests of developers and industry, not the interests of the public for whom these regulations are intended to benefit.

Already, legislative, administrative, and executive orders have shut out the public from decision-making on how public dollars, public resources, and public lands are managed. In just this Congress, there have been over sixty bills that would eviscerate meaningful public input, disclosure of impacts, and environmental review under the National Environmental Policy Act (NEPA).

Simultaneously, the Trump Administration, under a series of executive orders, has launched misguided efforts across all federal agencies that will rescind or revise regulations, policies, and guidance under bedrock environmental laws that will put the health, safety, and security of our communities at risk. The Department of Interior already is recommending and enacting broad regulatory and policy reversals that would fundamentally rework how public lands are managed and establish energy development as the “dominant” use of public lands. The Forest Service is considering major revisions to their NEPA regulations and the Department of Energy has established a Regulatory Reform Task Force tilted at “regulatory burdens” on domestic energy production and the agency’s NEPA regulations. The USE IT Act continues this disturbing trend of the federal government prioritizing private industries over public interest by only calling for a review of the challenges “developers” and “operators” face in permitting, rather than a review of how to improve protection for communities, climate, lands, and waters using the critical tools environmental laws and regulation provide.

Noticeably absent from the responsibilities of the Task Forces is any review of the benefits conferred, problems averted, taxpayer dollars saved, and communities protected by the permitting process under laws such as the National Environmental Policy Act (NEPA). Nor is there any assessment of how to strengthen public protections through better communication with community stakeholders and even more effective review. This narrow focus on eliminating permitting “challenges” for project developers and operators disturbingly ignores the permitting benefits regulations deliver to the public. The Natural Resources Defense Council has assembled over 80 examples in which project performance outcomes were improved due to environmental reviews under NEPA (https://www.nrdc.org/resources/never-eliminate-public-advice-nepa-success-stories).

Setting aside the alarming deregulatory ethos these task forces appear to reflect, there is also no indication of why any legitimate information sought by these task forces cannot be obtained under existing requirements of FAST-41, which the Senate passed and was signed into law as a part of the “Fixing America’s Surface Transportation Act” (FAST Act) of 2015. That bill created the FPIC, which includes senior officials from over a dozen Federal agencies as well as the Chairmen of the Council on Environmental Quality and the Office of Management and
Budget. The FPIC is charged with establishing permitting schedules as well as assessing and recommending best practices for permitting covered infrastructure projects. FAST-41 requires preparation of an annual report for ten years to Congress from FPIC assessing best practices in permitting. An additional report from the Comptroller General making the same assessments is due in December of this year.

These task forces required in this bill are at best duplicative. More likely, they are yet another disguised effort to rollback bedrock environmental laws and regulations under the demonstrably false premise that protections for public input, clean air, and clean water stand in the way of infrastructure development. Rather than focus on the supposed “burdens” of regulation, we urge Congress to tackle the issue of funding, which evidence shows is the key missing ingredient in project delivery. We also urge the Committee to account for and take seriously the benefits of environmental laws and regulations such as NEPA, the Endangered Species Act, the Clean Water Act, and the Clean Air Act. Environmental review and meaningful public input under these laws are critical to delivering infrastructure that is reliable, responsive to public health, local community needs, and resilient to a changing climate.

Thank you for this opportunity to submit comments and we look forward to working with the committee to resolve these issues.

Sincerely,

Center for Biological Diversity
Defenders of Wildlife
Earthjustice
Earthworks
Environmental Protection Information Center (EPIC)
Food & Water Watch
Klamath Forest Alliance
League of Conservation Voters
Natural Resources Defense Council
Oil Change International
San Juan Citizens Alliance
Save EPA
The Lands Council
Uranium Watch