

Should Pipelines Have Permits to Operate?

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Food for Thought

According to the State Department, the Keystone XL pipeline needed **over ninety** major permits, licenses, approvals, authorizations, and consultations by federal, state, and local agencies prior to implementation of the proposed project.

But not one from PHMSA?

What Is a Permit?

An **affirmative grant of permission** allowing an act that is otherwise prohibited through statute

That applies to specified regulated actions and actors,

Has a specified duration, and

Imposes enforceable conditions on the regulated entity.

Source: Eric Biber & J.B. Ruhl, *The Permit Power Revisited*, Duke Law Journal (November 2014).

Key Characteristics of Permitting

Authorized by statute

Administrative decision maker

Discretionary decision making

Public participation

Judicially reviewable

Types of Permits

Individual Permits

- Apply to a specific activity
- Decisions made after application

General Permits

- Apply to a general class of activities
- Decisions made initially

Hybrid Permits

- Apply to a general class of activities
- But requires notification and initial review of activity

Rationale for Permits

Tool to...

...gather information for the regulatory agency

...tailor regulation to the risks of the permitted activity

...include public in decisions

...improve enforcement

Specific permits better when there is a higher risk of harm

General permits better when there are high transaction costs

Arguments Against Permits

High transaction costs

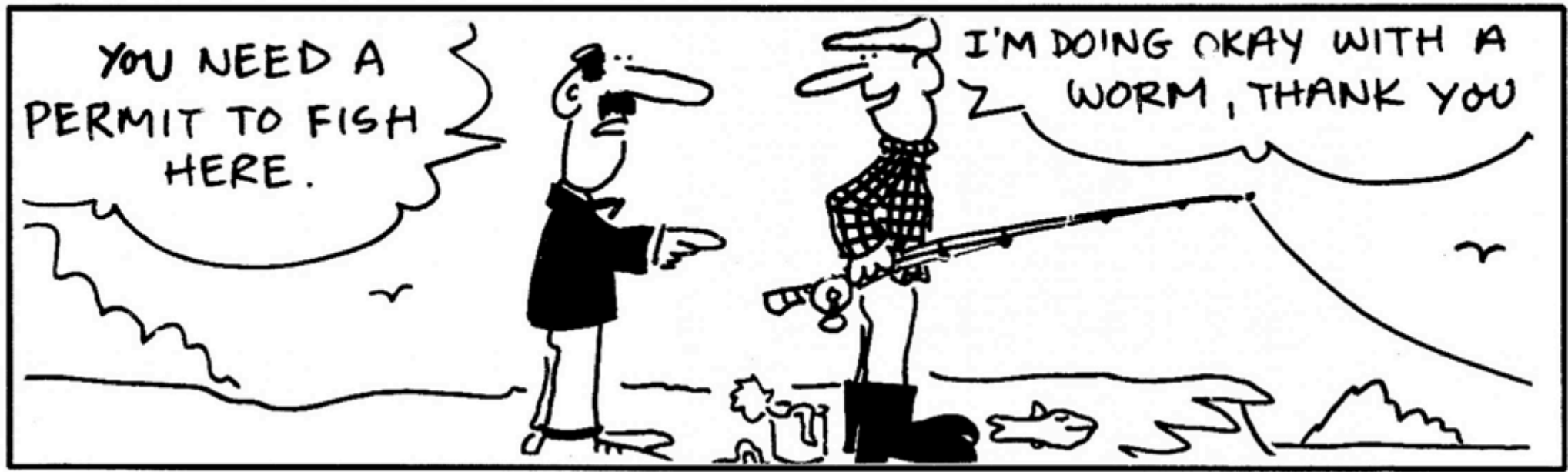
Can be a barrier to entry for smaller firms if costs are significant

Agency may abuse permitting power

Operational Permits for Pipelines

Would...

- Require a comprehensive review of pipeline risks prior to operation and at regular intervals
- Tailor regulation through permit conditions
- Include monitoring and reporting requirements
- Be revoked if permit terms are violated
- Combine specific & general permits or hybrid



Credit: Jantoo cartoons