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# Permitting Is Plagued with Problems: How NEPA Has Become Cluttered and What to Do About It

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# Executive Summary

The permitting process for infrastructure projects has become overly complex, significantly delaying progress and increasing costs. Originally designed to balance development with environmental protection, the process—centered on the National Environmental Policy Act (NEPA)—has expanded beyond its original intent due to vague statutory language, lengthy reviews, and litigation risks.

NEPA's permitting process must return to its intended purpose of fostering responsible development while protecting the environment. Streamlined reforms will spur investment, reduce delays, and ensure infrastructure projects benefit the economy and society.

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# Introduction

Obtaining necessary permit(s) is one of the biggest obstacles facing infrastructure projects. This process has become very complicated and the target of legislative reforms for years. Legislation passed over 50 years ago started out as well-intentioned measures to improve how things are built and to better serve the environment, but loose interpretations have evolved into a congested and overcomplicated process that delays much-needed infrastructure. The policies themselves have largely remained unchanged, only seeing a handful of executive orders, amendments, new rules, and adjustments in order to simplify the overall process. It is mainly the implementation of the policies that has shifted and broadened.

Riddled with mountains of paperwork and potential litigious adversaries, timelines for completion are stretched out for years and sometimes decades. Such hurdles significantly add to project costs and negatively impact economic growth. In the worst cases, projects are terminated. One scholar asserted that the U.S. “has the world’s most costly, time-consuming, and unpredictable system,” which “puts America at a grave competitive disadvantage compared with other major economies.”[1]

Energy infrastructure delays in particular are creating backlogs that prevent much-needed energy from reaching more homes, businesses, and communities across the nation. Low-income households are hit the hardest and spend more of their discretionary funds on increasing energy prices.

Amid very recent court rulings and executive orders, reform is forthcoming. Lawmakers should pull from the decades of permitting experience to improve the process.

This report touches on some of the background behind permitting policy, problems surrounding the process, past and present legislation, and suggestions for restoring permitting to what it is intended to do: “Encourage productive and enjoyable harmony between man and his environment.”[2]

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[1] Mario Loyola, “Unleashing America’s Energy Abundance; Permitting Reform is Vital for Affordable Clean Energy,” Competitive Enterprise Institute, September 9, 2022, <https://cei.org/studies/unleashing-americas-energy-abundance/>.

[2] National Environmental Policy Act of 1969, S. 1075, 91st Congress, 1st Sess., Public Law 91-190.

# Environmental Permitting Background

Environmental awareness came to the forefront in the 1960s. People were beginning to look more closely at pollution, soil erosion, deforestation, decreased open space, haphazard building and construction, and wildlife extinctions. A California offshore oil spill made headlines[3] and an image of the Cuyahoga River fire, from the previous decade, was making the rounds.[4] Americans wanted to see more responsibility and protection for the world around them.

Many natural resource and pollution laws were already on the books. But more was needed.

Senator Henry “Scoop” Jackson of Washington state shared the same concerns. In February of 1969 he introduced the National Environmental Protection Act (NEPA) with the following goal:

“The purpose of this legislation is to lay the framework for a continuing program of research and study which will insure that present and future generations of Americans will be able to live in and enjoy an environment free of hazards to mental and physical well-being.”[5]

Signed into law on New Year’s Day in 1970, the act requires federal agencies to assess the environmental impact of proposed projects before approval. The process is triggered when major federal projects—which are subject to federal control or responsibility—are being considered. Multiple agencies are often involved and must coordinate with each other. For instance, when building a highway, the Federal Highway Administration takes the lead while other parties like the Environmental Protection Agency and state and local governments are also included.

NEPA created the Council on Environmental Quality (CEQ) within the Executive Office of the President with the purpose of coordinating efforts to improve, preserve, and protect America’s public health and environment. The CEQ oversees and guides NEPA implementation across the federal government.[6]

The CEQ established the Environmental Assessment (EA) and Environmental Impact Statement (EIS) which evaluate the potential impacts of proposed actions on the environment as well as the consideration of alternative ways to accomplish their mission. Only an EA is conducted when it is not initially clear if a project’s impact will be significant. If at any time during that process an agency determines that a project’s impact will be significant, an EIS must also be prepared.

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[3] Teresa Spezio, “The Santa Barbara Oil Spill and Its Effect on United States Environmental Policy,” *Sustainability*, August 3, 2018, <https://www.mdpi.com/2071-1050/10/8/2750>.

[4] Douglas S. Cram, et al, “An Introduction to NEPA: The National Environmental Policy Act of 1969,” New Mexico University, March 2017, [https://pubs.nmsu.edu/\\_ritf/RITF85/index.html](https://pubs.nmsu.edu/_ritf/RITF85/index.html).

[5] U.S. Department of Transportation Federal Highway Administration, “Addressing the Quiet Crisis: Origins of the National Environmental Policy Act of 1969,” <https://www.fhwa.dot.gov/highwayhistory/nepa/03.cfm#:~:text=We%20see%20increasing%20evidence%20of,many%20other%20environmental%20quality%20problems.>

[6] NEPA.gov, accessed 3/11/25, <https://ceq.doe.gov/>.



NEPA was designed to be a planning and decision-making process that considers biological, physical, economic, and social effects on the environment. It includes opportunities for citizens to participate in the decision-making process by allowing input and public comment on environmental impact assessments. Agencies are not actually mandated to implement the findings of a NEPA review nor have “specific statutory obligations” to protect the environment. Instead, it requires federal agencies to merely consider the environmental impacts of their proposed actions before making decisions.[7]

A short six-page law, the language in NEPA is rather broad and general, which some say is on purpose.[8] The lack of specificity caused one federal judge to refer to it as “almost constitutional” and another to call it “so broad, yet opaque.” The vagueness of the act is often blamed for NEPA’s growth and expansion which have merely “promoted an elaboration of details by the courts.”[9]

## The Problems: Timeframes, Page Lengths, Litigation, and Expense

It did not take long for environmental activists to inundate the system with lawsuits, delaying or halting a host of federal projects. Such arguments are generally centered around an EIS being flawed or nonexistent. Within a few years of the law’s passage, at least 400 lawsuits had been filed;[10] 40 years later, that number had swelled to more than 4,000.[11] Many environmental scholars consider NEPA the most litigated environmental statute. Compelled to ensure their NEPA documents are bullet-proof, federal agencies expanded the scope of their assessments with “unnecessary analysis” to cover their bases.[12]

The risk of litigation is the main source of cost, delay, and uncertainty in the NEPA permitting process. [13] One expert contends that disagreements regarding the decision to prepare an EA, rather than the more burdensome EIS, are the most common source of conflict and litigation under NEPA.

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[7] Douglas S Cram, 2017.

[8] Jim Kershner, “NEPA, the National Environmental Policy Act,” HistoryLink, August 27, 2011, <https://www.historylink.org/File/9903>.

[9] Herbert Stevens, “The Council on Environmental Quality’s Guidelines and Their Influence on the National Environment Policy Act,” *Catholic University Law Review*, Spring 1974, p. 4 <https://scholarship.law.edu/cgi/viewcontent.cgi?article=2587&context=lawreview>.

[10] Ibid, p. 4.

[11] Mark C. Rutzick, “A Long and Winding Road: How the National Environmental Policy Act Has Become the Most Expensive and Least Effective Environmental Law in the History of the United States, and How to Fix It”, released by the Regulatory Transparency Project of the Federalist Society, October 16, 2018, p. 11, <https://regproject.org/wpcontent/uploads/RTP-Energy-Environment-Working-Group-Paper-National-EnvironmentalPolicy-Act.pdf>.

[12] American Petroleum Institute, “American Petroleum Institute Joint Trades Comments, NEPA Phase 2,” September 29, 2023, p. 9, <https://www.api.org/-/media/files/news/2023/09/29/api-joint-trades-comments-nepa-phase-2.pdf>.

[13] Mario Loyola, 2022.



This expanded scope has lengthened project review timelines as well as fostered confusion among all those involved including project sponsors, regulators, and stakeholders. This has resulted in stalled projects, especially those critical to energy investment. A 2017 study found that “\$157 billion in energy investment is waiting in the NEPA pipeline.”[14]

Consequently, adhering to NEPA has grown more tedious, complex, and costly.

The CEQ in 1981 anticipated that federal agencies should be able to complete most EISs in 12 months or less.[15] By 2006, the average government-wide preparation time for an EIS grew to 3.4 years.[16] By 2010 the average was 4.2,[17] and by 2016 it had grown to 5.1.[18]

The number of pages per EIS has grown as well. At the Department of Energy (DOE), for instance, the median page length in the mid-1990s was 650 pages, but by 2016, it had grown to 1,600.[19] One particular DOE EIS around that time was well over 11,000 pages in length.[20]

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[14] Curtis Arndt, “Regulatory Burdens and the Supply of Infrastructure Projects,” American Action Forum, February 23, 2017, <https://www.americanactionforum.org/research/infrastructure-regulatory-burdens/>.

[15] “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations,” p. 26, March 23, 1981, <https://www.energy.gov/nepa/articles/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act>.

[16] Piet deWitt and Carole A. deWitt, “How Long Does It Take to Prepare an Environmental Impact Statement?” *Environmental Practice* 10:164–174 (2008), <https://www.cambridge.org/core/journals/environmental-practice/article/abs/research-article-how-long-does-it-take-to-prepare-an-environmental-impact-statement/C1B14ECB03EBB159A2CE6B3A43CB5FAB>.

[17] Piet deWitt and Carole A. deWitt, “Preparation Times for Final Environmental Impact Statements Made Available from 2007 through 2010,” *Environmental Practice* 15:123–132 (2013), <https://www.cambridge.org/core/journals/environmental-practice/article/abs/research-article-preparation-times-for-final-environmental-impact-statements-made-available-from-2007-through-2010/3C20ABFF0B22AF91881546C1DA13F481>.

[18] National Association of Environmental Professionals, 2016 Annual NEPA Report, June 2017, [https://naep.memberclicks.net/assets/annual-report/2016/nepa\\_annual\\_report\\_2016.pdf](https://naep.memberclicks.net/assets/annual-report/2016/nepa_annual_report_2016.pdf).

[19] U.S. Dept. of Energy, “NEPA Lessons Learned Quarterly Report,” September 2017, Issue 92, p. 9, <https://www.energy.gov/nepa/articles/lessons-learned-quarterly-report-september-2017>.

[20] *Ibid*, p. 9.

With the growth of time frames and page numbers for EISs comes a rise in costs. While federal agencies are not required to track or disclose their NEPA costs, some data has been collected. Because of its extensive land management activities, the Forest Service is always the largest annual EIS writer and spends approximately 40 percent of a \$250 million total budget on environmental planning and assessments.[21] In a four-year period, DOE spent \$135 million on 13 EISs, one of which alone was \$85 million.[22] Estimates conclude that roughly 225 EISs are prepared annually among the federal agencies, and one analyst calculates that total costs for EIS preparation could exceed \$1 billion.[23]

Even total costs for EAs, which typically consume less time and paper but are conducted at a significantly higher rate than an EIS, could easily cost the government \$2.5 billion annually.[24]

The colossal apparatus that NEPA has become and the harm it has inflicted led the U.S. Chamber of Commerce to opine in a 2012 testimony before Congress:

"It is safe to assume that if the Congress that passed NEPA in 1969 saw how long it takes to perform an EIS today, it may not have voted as overwhelmingly in favor of passage...Within ten years several key developments ensured that the courts would become the arbiters of NEPA, and that environmental reviews would become costly, complex and time-consuming undertakings." [25]

The entire permitting process has become convoluted, cumbersome, and expensive. Activists obtain injunctions against proposed projects until the federal agency responsible has prepared a satisfactory EIS, which ultimately has the effect of delaying projects. The consistent interference led the Associated General Contractors of America to declare before Congress this past February that "citizen suits under NEPA are increasingly used as obstruction tactics rather than tools for environmental protection." [26]

This obstruction delays or halts infrastructure projects that would benefit everyday Americans with faster commutes, reduced vehicle maintenance from upgraded roadways, more efficient delivery of goods and services, and abundant supplies of energy. These benefits would save consumers time and money, while making them more productive and effective.

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[21] Lisa Gaines and Sue Lurie, "NEPA for the 21st Century: A Comparative Analysis of Other Organizations' Environmental Review Structures," Institute for Natural Resources Oregon State University, May 16, 2007, <https://studylib.net/doc/10780051/nepa-for-the-21-century--a-comparative-analysis-of-other-...>

[22] Mark Rutzick, 2018, p. 14.

[23] Ibid.

[24] Ibid.

[25] U.S. Congress, House, Committee on the Judiciary, *Responsibly And Professionally Invigorating Development (RAPID) Act*, April 25, 2012, <https://www.uschamber.com/assets/archived/images/documents/files/120425-re-TESTIMONY-HouseJudiciaryCommitteepermitstreamliningtestimony.pdf>.

[26] U.S. Congress, Senate, Committee on Environment and Public Works, Improving the Federal Environmental Review and Permitting Processes, February 19, 2025, [https://www.epw.senate.gov/public/\\_cache/files/8/b/8bc73a96-74a9-4bf1-b7cf-c7e72ced67d7/26C31358154CFAEF82328B6C757490B951DDE413FE9A7503F5DA17D5465B9834.02-19-2025-pilconis-testimony.pdf](https://www.epw.senate.gov/public/_cache/files/8/b/8bc73a96-74a9-4bf1-b7cf-c7e72ced67d7/26C31358154CFAEF82328B6C757490B951DDE413FE9A7503F5DA17D5465B9834.02-19-2025-pilconis-testimony.pdf).



Americans for Prosperity released a study in September 2023 documenting more than 30 energy infrastructure projects (transmission lines, pipelines, mines, wind and solar farms, power plants) that have experienced severe setbacks, issues, and legal challenges.[27] The delays have resulted in lost jobs, increased costs, forfeited economic growth and tax revenue, and the hindrance of energy distribution. Roughly 20 percent of the projects in the report have been canceled. Another 20 percent began the process at least 10 years ago. Only nine total projects have been in the system for under five years. The report is a reflection of how permitting has lost its way and is in need of an overhaul.

Even though legislators have talked for years about making changes to the permitting process—and have made many attempts—not much has shifted. Lengthy reports, extended timeframes, excessive litigation, and bloated expenses continue to plague the NEPA review process.

## Legislative Attempts at Restructuring NEPA

Only a few changes have been made to NEPA in its five-decade existence. A handful were accomplished in its first decade; most have been within the last few years.

President Carter’s 1977 executive order directing CEQ to “issue regulations to Federal agencies” and to “comply with regulations issued by the Council”[28] brought forth the 1978 CEQ regulations, which established the EIS and EA, along with a third type of review known as a Categorical Exclusion (CE).[29] Requirements for public notice and comments were set forth, and each agency adopted its own NEPA regulations. Ironically, Carter’s executive order instructed “impact statements to be concise, clear, and to the point.”

In 1981 CEQ issued a memorandum titled “The Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations” in an effort to provide further guidance.[30] It offers direction on the scope and time frames for EAs and EISs to adequately satisfy NEPA requirements. While one question was withdrawn in 1986, this document has essentially served as the basis for NEPA review for roughly 40 years.

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[27] Americans for Prosperity, “The Impact of Federal Permitting Delays,” September 8, 2023, <https://americansforprosperity.org/press-release/new-study-reveals-how-overregulation-drag-down-economy-and-puts-affordable-energy-out-of-reach/>.

[28] Executive Order, “Environmental Impact Statements, Executive Order 11991” *Federal Register* 42, no. 101 (May 24, 1977): 26947, <https://www.presidency.ucsb.edu/documents/executive-order-11991-environmental-impact-statements>.

[29] Final Rule, “National Environmental Policy Act—Regulations,” *Federal Register* 43, no. 230 (November 29, 1978): 55978, <https://ceq.doe.gov/docs/laws-regulations/FR-1978-11-29-43-FR-55978-CEQ-NEPA-Regulations-NOFR.pdf>.

[30] Forty Most Asked Questions, 1981.

In 2017 President Trump issued an executive order which directed CEQ to establish and lead an interagency working group to identify and propose changes to the NEPA regulations.[31] The amendments adopted in 2020 streamlined the NEPA process by modifying the definitions of “direct,” “indirect,” and “cumulative” impacts as well as imposing time and page limits for the EA and EIS.[32]

President Biden in April 2022 made some changes—referred to as Phase 1—including a reversion back to the prior definitions of “direct,” “indirect,” and “cumulative” impacts.[33] Congress then amended NEPA statutory language through the Fiscal Responsibility Act of 2023 (FRA), which incorporated the time and page limits from the 2020 amendments.[34] Phase 2 was finalized in May of 2024 and restored more provisions from the 1978 regulations, removed additional changes made in 2020, and for the first time, specifically required consideration of effects relevant to environmental justice and climate change.[35]

Permitting bills have been floating around both chambers of Congress. In 2023, for example, about six different bills introduced by either Republicans or Democrats were in play, each with specific goals in mind and ranged from project timelines to transmission lines to renewable energy grid connectivity.[36] It is incredibly difficult to reach agreements between parties, and most fizzle out before gaining sufficient traction. Last year saw a few as well, with the Manchin–Barasso bill in the Senate receiving the most momentum. By the end of the year, however, it failed to muster enough support.

Essentially, the past 40+ years only saw a handful of NEPA adjustments. The most consequential were executive orders which established the types of reviews (EA, EIS, CE) to be conducted for environmental analysis, and guidelines on how to navigate them. The biggest Congressional contribution utilized the FRA to include statutory changes to streamline NEPA.

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[31] Executive Order, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, Executive Order 13807 of August 15, 2017,” *Federal Register* 82, no. 163 (August 24, 2017): 40463, <https://www.govinfo.gov/content/pkg/FR-2017-08-24/pdf/2017-18134.pdf>.

[32] Final Rule, “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Final Rule,” *Federal Register* 85, no. 137 (July 16, 2020): 43304, <https://www.govinfo.gov/content/pkg/FR-2020-07-16/pdf/2020-15179.pdf>.

[33] Final Rule, “National Environmental Policy Act Implementing Regulations Revisions,” Final Rule, *Federal Register* 87, no. 76 (April 20, 2022): 23453, <https://www.govinfo.gov/content/pkg/FR-2022-04-20/pdf/2022-08288.pdf>.

[34] NEPA.gov “Fiscal Responsibility Act of 2023 (FRA)” <https://ceq.doe.gov/laws-regulations/fra.html>.

[35] Final Rule, “National Environmental Policy Act Implementing Regulations Revisions Phase 2, Final Rule,” *Federal Register* 89, no. 85 (May 1, 2024): 35442, <https://www.govinfo.gov/content/pkg/FR-2024-05-01/pdf/2024-08792.pdf>.

[36] Robinson Meyer, “What is Permitting Reform? Here’s a Cheat Sheet,” House of Representatives Sustainable Energy & Environment Coalition, May 24, 2023, <https://seec.house.gov/media/in-the-news/what-permitting-reform-heres-cheat-sheet>.

# Current Proceedings that Could Change the Landscape

Several recent actions have turned NEPA on its head. Two court cases, *Marin Audubon Society v Federal Aviation Administration* in November 2024 and *Iowa v CEQ* in early February this year, came to the same conclusion: CEQ lacks authority to issue binding regulations. The court in the latter case asserted that “for the past forty years all three branches of government operated under the erroneous assumption that CEQ had authority.”[37]

Upon taking office January 20, 2025, President Trump issued Executive Order 14154 (Unleashing American Energy) which revokes President Carter’s 1978 Executive Order—that originally authorized the CEQ’s NEPA regulations—and directed CEQ to issue new guidance.[38] To comply with Trump’s EO, on February 19th CEQ issued an interim final rule that revokes all CEQ’s NEPA regulations.[39] Coinciding with the interim final rule, CEQ also issued a memorandum to the heads of all federal departments directing them to revise their own agency NEPA regulations within 12 months.[40]

A working group is being established to assist and coordinate with federal agencies in revising their individual NEPA rules. Agencies will still be responsible for conducting environmental reviews, and NEPA remains the law of the land, but enforceability will shift from CEQ’s overarching rules to these agency-specific regulations.

As this report was in its final stages for publication, the Trump administration issued a memorandum directing agencies to “make maximum use of technology” to streamline environmental review and permitting processes.[41] The Department of the Interior also announced plans to use emergency permitting procedures to “accelerate the development of domestic energy resources and critical minerals.”[42] Both measures aim to drastically expedite the process and get more projects on-line as soon as possible.

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[37] “The CEQ has No Clothes: The End of CEQ’s NEPA Regulations and the Future of NEPA Practice,” Allen Matkins Leck Gamble Mallory & Natsis LLP, February 21, 2025, <https://www.allenmatkins.com/real-ideas/the-ceq-has-no-clothes-the-end-of-ceqs-nepa-regulations-and-the-future-of-nepa-practice.html>.

[38] Executive Order, “Unleashing American Energy, 2025, Executive Order 14154 of January 20, 2025,” *Federal Register* 90, no. 18 (January 29, 2025): 8353, <https://www.govinfo.gov/content/pkg/FR-2025-01-29/pdf/2025-01956.pdf>.

[39] Interim Final Rule, “Removal of National Environmental Policy Act Implementing Regulations,” *Federal Register* 90, no. 36 (February 25, 2025): 10610, <https://www.energy.gov/sites/default/files/2025-02/ceq-reg-2025-02-25-interim-final-rule.pdf>.

[40] Executive Office of the President Memorandum, “Implementation of the National Environmental Policy Act,” February 19, 2025, <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf>.

[41] Executive Office of the President Memorandum, “Updating Permitting Technology for the 21st Century,” April 15, 2025, <https://www.whitehouse.gov/presidential-actions/2025/04/updated-permitting-technology-for-the-21st-century/>.

[42] U.S. Dept. of the Interior, “Department of the Interior Implements Emergency Permitting Procedures to Strengthen Domestic Energy Supply,” April 23, 2025, <https://www.doi.gov/pressreleases/departments-interior-implements-emergency-permitting-procedures-strengthen-domestic>.



# Moving Forward: What's Next?

President Trump's executive order creates an opportunity for CEQ to interpret NEPA's requirements more narrowly, and to work with agencies to simplify the environmental review process. A major focus should be on shortening approval timeframes for projects so they can proceed with construction. NEPA needs to run more efficiently. Indeed, the NEPA Guidance reiterates that agencies are to prioritize "efficiency and certainty over any other policy objectives that could add delays and ambiguity to the permitting process." [43]

Listed below are several items that should be considered.

- Streamline litigation. Since the legal process and the fear of being taken to court are the biggest barriers to permitting, this area should receive significant attention.
  - Limit who can file a lawsuit. Only those who might be personally affected by a project's implementation should have standing. For instance, an individual from California visiting the beaches of New Jersey should not have the ability to sue the offshore wind company Ørsted. That person is far removed from the situation. However, those who live or work nearby, or who might be directly affected by such actions have more standing. Interested parties should also be required to participate in the initial public comment period.
  - Limit the timeframe. Establish a reasonable statute of limitations and time limits for litigation. Parties should not be given a free pass to file suits at any time, thus prolonging the project's completion.
  - The Bipartisan Policy Center suggests establishing a technical court with jurisdiction over permitting. [44] This would allow for specific expertise related to NEPA projects and reviews, prevent "court shopping," and "provide certainty to project developers." If this route is pursued, however, judicial appointments should be carefully chosen to avoid politicization or bias. It would not be reasonable to send all NEPA cases to one court that favored certain projects over others.

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[43] Memorandum, February 19, 2025.

[44] Xan Fishman, et al, "Finding the Goldilocks Zone of Permitting Reform," Bipartisan Policy Center, January 2024, [https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2024/01/BPC\\_Report\\_Goldilocks-Zone-Permitting-Reform.pdf](https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2024/01/BPC_Report_Goldilocks-Zone-Permitting-Reform.pdf).



- Redefine “major federal action.” This terminology has been broadly interpreted by CEQ to essentially mean any action, and is one of the major reasons NEPA has evolved into the gargantuan apparatus it is today. NEPA’s original text did not define “major federal action,” and CEQ later interpreted it as “actions... which are potentially subject to federal control and responsibility.”[45] The FRA defines “major federal action” as one “subject to substantial federal control and responsibility.”[46] This term should therefore more clearly and concisely be defined, specifically to mean actions that are in fact significant (such as a certain percentage of federal land involved or a minimum cost), rather than anything that falls under federal purview.
- Increase the size and scope of Categorical Exclusions. By definition, these projects do not have a significant impact on the environment. One analysis asserts that 98 percent of substantive NEPA reviews apply to projects that do not have a significant environmental impact; in most cases nonimpact is known in advance, but agencies still go through the review process simply because it is required by the regulations.[47] Conducting a thorough EA or EIS just for the sake of conducting one is as pointless as it is wasteful.
- Included in each EA and EIS—where applicable—should be the environmental consequences, economic impacts, and/or ramifications of NOT implementing the specific project. Two specific examples come to mind:
  - Public land management projects, the most frequently litigated environmental reviews brought through NEPA and adding up to 3.7 more years to a project’s timeline, are necessary to clear out dead or overgrown shrubbery and can decrease a wildfire’s severity by as much as 72 percent. [48] Failure to conduct these procedures puts lives, homes, and the environment at risk; wildfires often inflict more damage than what mitigation detractors insist would be unleashed through mechanical thinning or prescribed burning. Additionally, California’s wildfires, for instance, each year emit almost as much carbon as 2 million cars.[49]
  - The American Trucking Associations notes that the trucking industry loses \$74.5 billion every year to traffic congestion, which equates to 425,000 truck drivers sitting idle for an entire year—emitting a staggering 67 million tons of CO<sub>2</sub>. [50] Highway construction projects can take on average seven years to obtain the necessary permits. Accelerating this process for our nation’s roads and highways would not only increase transportation and supply chain efficiency but would reduce global emissions.

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[45] National Archives, Code of Federal Regulations, 1/1/19, <https://www.ecfr.gov/on/2019-01-01/title-40/chapter-V/part-1508/section-1508.18>.

[46] U.S. Congress, House, *Fiscal Responsibility Act of 2023*, HR 3746, 118th Congress, 1st session, Introduced in House on 5/29/23, <https://www.congress.gov/bill/118th-congress/house-bill/3746/text>.

[47] Eli Dourado, “Bringing NEPA Back to Basics,” Center for Growth and Opportunity at Utah State University, March 2023, <https://www.thecgo.org/wp-content/uploads/2023/03/Bringing-NEPA-Back-to-Basics-v1.pdf>.

[48] Holly Fretwell and Jonathan Wood, “Fix America’s Forests,” PERC Public Lands Report, April 2021, <https://www.perc.org/wp-content/uploads/2021/04/fix-americas-forests-restore-national-forests-tackle-wildfire-crisis.pdf>.

[49] Alejandro Lazo, “California’s Wildfire Smoke and Climate Change: 4 Things to Know,” Cal Matters, September 5, 2023, <https://calmatters.org/environment/2023/09/california-wildfire-smoke-climate-change/>.

[50] American Trucking Associations Press Release, “Trucking Praises Reform to NEPA Permitting Process,” American Trucking Associations, July 15, 2020, <https://www.trucking.org/news-insights/trucking-praises-reform-nepa-permitting-process>.



Incorporating the consequences of the failure to execute a given project will hopefully emphasize the urgency of getting approvals processed and passed in a timely fashion, and that its potential termination should not be an option. Not following through on a course of action could actually be more detrimental than what is being proposed.

- Set deadlines and page limits. Each agency should set limits for EAs and EISs that work for that particular agency. After more than four decades and thousands of environmental reviews conducted, each agency should be able to decipher appropriate requirements to sufficiently satisfy the needs of a quality analysis. No project should be producing reports with pages numbering in the tens of thousands, or even thousands. If litigation is also streamlined, the chances of potential lawsuits—and the reasons for them—should decrease, which should keep reports concise and relevant to the main issues at hand.
- Provide the necessary resources. One study noted that “inadequate staffing, a lack of experienced staff, unpredictable staff availability, temporary reassignments, and inadequate or unstable funding” were often identified as sources of delay.[51] Certainly, the current administration’s federal employee trimming will impact staffing numbers at all agencies. But proper training and staff consistency could improve overall efficiency. If environmental reviews are curtailed through length requirements, deadlines, categorical exclusions expansion, and litigation reforms, allotted resources should be more centralized to where they are needed most.

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[51] John Ruple, et al, “Evidence-Based Recommendations for Improving National Environmental Policy Act Implementation,” Columbia Journal of Environmental Law, Vol 46(S), p. 340, April 2022, file:///C:/Users/krisw/Downloads/Evidence-Based\_Recommendations\_for\_Improving\_Natio.pdf.



# Conclusion

INEPA has been weaponized and abused for too long, stalling or preventing the advancement of projects needed for a growing and evolving population. It was not intended to prevent or block economic activities or the buildout of communities. NEPA is meant to safeguard our surroundings, ensuring good stewardship over our land, air, and water while we expand and grow.

Well-designed permitting reform will spur investment, create good-paying jobs, grow the economy, and strengthen our national security. Balance can be found between pursuing infrastructure projects while protecting the environment.

As agencies work to improve this process, pulling from the 50+ years of NEPA's existence and the many experts on the ground, we should be able to establish relevant changes that simplify and hasten permitting. Once some of the dust settles, Congress should codify some of the key components to provide regulatory stability and consistency for years to come.



