The Honorable Patrick Fuchs
Chairman
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Permitting Reform—Environmental Review Process
Comprehensive Permitting Reform to Streamline its Processes and Lower Infrastructure Costs
Docket No. EP 779

The American Consumer Institute (ACI) is a nonprofit 501(c)(3) education and research organization. Its mission is to identify, analyze, and protect the interests of consumers in legislative and rulemaking proceedings. ACI supports market-driven solutions that maximize economic growth and improve consumer welfare. ACI promotes policies that protect consumers from unnecessary government overreach that limits choice and innovation, and raises costs.

ACI supports the Surface Transportation Board's (STB) proposal of a comprehensive rule to modernize and reform its permitting process that aims to accelerate rail infrastructure projects, eliminate needless burdens, and lower costs.

The permitting apparatus is currently fractured across all sectors, in need of a re-examination and overhaul. The rail industry in particular faces crumbling and outdated infrastructure as well as incredible projected growth in the coming years. Updates to practices and procedures for project approvals are paramount to rail's future stability and reliability.

As several permitting modifications and edicts through court cases, legislation, and administrative decree have occurred over the last few years, the proposed rule would align the agency's process with current law and practices. Such revisions are as pressing as they are essential.

Background: The Importance of Rail Amid Current Permitting Obstacles

Rail is a critical component of transporting goods throughout the country.

According to the latest Bureau of Transportation Statistics report, the U.S. freight transportation system handled approximately 20.0 billion tons of goods valued at $25.0 trillion in 2024.[1] Rail in particular transported 1.5 billion tons of goods, valued at $750 billion.

The rail industry is indispensable in vast supply-chain networks, shipping goods throughout the country, making it vital to U.S. economic stability and prosperity. The Federal Highway Administration forecasts that total U.S. freight movements will rise about 30 percent by 2040,[2] thereby increasing rail's importance in the transportation sector.

The influx in growth coupled with an aging infrastructure necessitates an updated permitting system that facilitates planning for and completing essential projects to handle encroaching demands. Unfortunately, the U.S. permitting structure is outdated, convoluted, and arduous. Permitting issues are obstructing essential infrastructure projects, making them slower, costlier, riskier, and even impossible to build.[3]

What began as well-intentioned legislation to foster environmental protections and accountability has evolved into an elaborate and complicated process. The National Environmental Policy Act (NEPA) was created to "lay a framework" to ensure Americans could enjoy environmentally safe and secure surroundings.[4]

NEPA requires federal agencies to assess the environmental impact of proposed projects before approval. The law's vagueness, however, is often blamed for NEPA's growth and expansion which have merely "promoted an elaboration of details by the courts."[5] Considered the most litigated environmental statute by many environmental scholars, NEPA has been the source of thousands of lawsuits.[6]

---

[1] Rolf Schmitt, et al, "Transportation Statistics Annual Report," The Bureau of Transportation Statistics, December 2025, https://www.bts.gov/sites/bts.dot.gov/files/2025-12/BTS_TSAR-2025_Annual-Report_123125.pdf.

[2] "Freight Rail Facts and Figures," Association of American Railroads, March 2, 2026, https://www.aar.org/wp-content/uploads/2023/04/AAR-Facts-Figures-Fact-Sheet.pdf??ref=mbi-deepdives.com.

[3] Kristen Walker, "Permitting: Plagued with Problems," American Consumer Institute, April 2025, https://www.theamericanconsumer.org/2025/05/policy-primer-how-nepa-has-become-cluttered-and-what-to-do-about-it/.

[4] U.S. Department of Transportation Federal Highway Administration, *Addressing the Quiet Crisis: Origins of the National Environmental Policy Act of 1969*, last updated 6/27/17, https://www.fhwa.dot.gov/highwayhistory/nepa/03.cfm#:~:text=We%20see%20increasing%20evidence%20of,many%20other%20environmental%20quality%20problems.

[5] 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.

[6] 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, https://regproject.org/wpcontent/uploads/RTP-Energy-Environment-Working-Group-Paper-National-EnvironmentalPolicy-Act.pdf.

Compelled to ensure their NEPA documents are bullet-proof, federal agencies expanded the scope of the required Environmental Assessments (EA) and Environmental Impact Statements (EIS) contained plenty of "unnecessary analysis" to cover their bases.[7] The result has been lengthy and time-consuming assessments, a complex system, lack of clarity, and stretched funds. This intricate process inevitably led to project bottlenecks, delays, and cancelations.

Without modernizing NEPA and related permitting systems, the U.S. will struggle to expand and maintain the rail infrastructure needed to meet rising freight volumes, protect supply chain reliability, and support long term economic growth.

Monumental Consequences of a Problematic Permitting System

Delayed projects have real consequences. They lead to increased capital costs: Labor, materials, and financing costs all increase due to inflation and/or heightened risk of project viability. Private investors pull out because of uncertainty. Industries move overseas to more definitive environments. Economic growth stalls. And sometimes an entire project gets canceled or abandoned.

One of the biggest project obstructions in modern history involves the Uinta Basin Railway and an 88-mile line intended to move crude oil from Utah's Uinta Basin through Colorado to the national rail network, a major economic growth opportunity.[8] The STB approved the project after a 3,600-page EIS, only to have it vacated a few years later by the D.C. Circuit Court. In late spring 2025, the Supreme Court unanimously overturned the lower court's decision, reinstating the STB's approval. But now the project needs $2.4 billion in private funding to proceed ($500 million more than it sought in 2023).

On the other side of the country the Pipeline and Hazardous Safety Administration yanked a permit allowing two daily 100-car trains to transport liquefied natural gas (LNG) through Pennsylvania and New Jersey.[9] Designed to move up to 3 million gallons of LNG per day, the project's cancelation wiped out capital investment in the liquefaction plant, export revenue from LNG shipments abroad, and associated upstream gas production in Pennsylvania. It also signals to investors that small inland LNG export chains are high risk.

Permitting issues in rail also lead to blocked or delayed core infrastructure upgrades essential for greater efficiency and supply chain reliability. Rail must constantly build new rail lines, modernizing existing networks, and adding capacity (sidings, double-tracking, yard upgrades). Bridges must be maintained or replaced. New terminals and intermodal facilities are needed. Safety upgrades and maintenance must be carried out. These necessary improvements cannot be accomplished when constantly derailed.

---

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

[8] "The Uinta Basin Railway Project in Utah: Update and Timeline," *Construction Review*, June 18, 2025, https://constructionreviewonline.com/the-uinta-basin-railway-project-in-utah-update-and-timeline/?utm_source=copilot.com.

[9] Chris Mele, "Gibbstown LNG project hit with yet another setback," *Delaware Currents*, April 26, 2023, https://delawarecurrents.org/2023/04/26/gibbstown-lng-by-rai/?utm_source=copilot.com.

All of these complications lead to reduced network fluidity, a competitive disadvantage with trucking, and missed opportunities for mode shift. Ultimately, consumers generally end up paying higher prices on goods and services.

The national economic costs of a lengthy permitting process across all sectors are staggering. McKinsey & Company calculated that the four-to-five-year timeline incurred by most projects means that the unrealized returns amount to $100 billion to $140 billion (such as jobs, revenue and capital returns) annually.[10] Construction costs can increase 24 to 30 percent over project timelines, spurred mainly by material and labor cost inflation and added overhead costs. McKinsey & Company found $1.7 trillion to $2.4 trillion in induced GDP effects: unrealized household spending by workers and suppliers paid to execute projects.

Delays in major infrastructure projects carry steep economic and logistical costs. Until the U.S. can build critical infrastructure on predictable timelines, the nation will continue to forfeit investment, efficiency, competitiveness, and the economic benefits these projects are designed to deliver.

The STB's Streamlining Efforts Will Improve the Process

The recent permitting adjustments and changes taking place in courtrooms, legislative actions, and White House directives are a positive step forward, and the STB should align itself where possible. The STB's proposed rule to modernize and reform its permitting process is relevant and will carry enormous benefit.

Perhaps the most significant development is the unanimous Supreme Court decision in *Seven County Infrastructure Coalition v Eagle County* (Seven Counties) last May which established that agencies only consider environmental effects that are directly and proximately caused by a project.[11] It limited the scope of NEPA reviews, preventing courts from micromanaging agency decisions.

The SPEED Act—introduced in July, passed the House in December, and sitting in the Senate—seeks to codify many of the provisions secured in Seven Counties.[12] Regardless of the future of the SPEED Act, the decision in Seven Counties will set the tone for future permitting. The finding bolsters the legal footing for those reforms by affirming a narrower, more traditional view of NEPA.

Streamlining that occurred in the Fiscal Responsibility Act (FRA) of 2023 introduced significant, legally binding reforms to the federal permitting process.[13] And the Council on Environmental Quality (CEQ) has moved to significantly accelerate federal permitting.[14]

---

[10] Bob Sternfels and Adi Kumar, "Unlocking US Federal Permitting: A sustainable Growth Imperative," McKinsey & Company, July 28, 2025, https://www.mckinsey.com/industries/public-sector/our-insights/unlocking-us-federal-permitting-a-sustainable-growth-imperative.

[11] *Seven County Infrastructure Coalition v. Eagle County, Colorado*, U.S. 23-975 (2025).

[12] U.S. Congress. 2025. SPEED Act. HR 4776. 119th Cong., 1st sess. Introduced in House February 12, 2025. Congress.gov.

[13] Federal Responsibility Act, Pub. L. No. 118-10, 137 Stat. 50 (2023).

[14] White House, "CEQ Releases Guidance to Streamline NEPA Reviews," Press Release, September 29, 2025, https://www.whitehouse.gov/releases/2025/09/ceq-releases-guidance-to-streamline-nepa-reviews/?utm_source=copilot.com.

All these measures produced outcomes that will better orchestrate permitting. The STB is wise to incorporate within the agency's permitting process current law and practice set forth by these actions.

The elimination of chain-reaction NEPA reviews that demand analysis of unrelated oil production, refining, or other industrial activity will no longer impede rail projects. This change will facilitate shorter and more predictable EIS timelines since agencies can focus on the rail project itself and not upstream and downstream environmental effects outside their jurisdiction.

Expanding categorical exclusions is vital because so much rail maintenance and capacity expansion involves routine, low-impact, and within right-of-way work. Allowing these standard projects to proceed in a matter of weeks (rather than years) will provide more track capacity, lower costs, predictable timelines, and more protection against lawsuits.

Establishing mandatory timelines and page limits are powerful ways to make rail permitting faster, cheaper, and more predictable. Such stipulations will ensure reviews conclude while the project is still financially and operationally relevant, reduce litigation leverage, keep reviews focused and concise, and bring essential rail extensions online quicker. All these benefits lead to lower total project costs and improve network fluidity and reliability.

Interagency coordination will force agencies to work in parallel rather than sequentially, provide a single timeline for all to follow, establish clearly defined roles for each agency, and avoid duplicative analysis. These streamlining efforts will cut years off reviews, reduce litigation, lower costs, and accelerate project completion.

Taken together, these updates signal a clear shift toward faster, more focused, and more predictable permitting. By aligning its own processes with this modernized framework, the STB can reduce delays, lower costs, and ensure its reviews remain legally durable and operationally relevant. The result is a permitting process that is clearer, quicker, less litigious, and better suited to delivering needed capacity improvements.

Conclusion

The STB's proposed permitting reforms arrive at a pivotal moment for the nation's rail network. Outdated and overly expansive NEPA processes have delayed essential projects, inflated costs, and undermined the reliability and competitiveness of U.S. freight rail. Recent developments—including the Supreme Court's Seven County decision, congressional efforts like the SPEED Act, statutory streamlining in the Fiscal Responsibility Act, and CEQ's updated guidance—have collectively reset the legal and policy landscape. These actions narrow NEPA's scope, eliminate chain-reaction analyses, expand categorical exclusions, impose clearer timelines and page limits, and modernize interagency coordination.

The Board's proposed rule is a timely and appropriate step toward a permitting system that supports needed rail investment while staying firmly grounded in current law and practice. By aligning its permitting procedures with this modern framework, the STB can deliver a process that is faster, more focused, and more legally durable. The result will be a permitting system that reduces delays, lowers costs, improves network fluidity, and supports the rail capacity investments essential for future freight demand. Modernized permitting is foundational to ensuring that rail can continue to serve as a reliable, efficient backbone of the U.S. economy.

Thank you for the opportunity to submit these comments.

Kristen Walker
Senior Policy Analyst and Manager for Energy and Transportation
American Consumer Institute