

Reform NEPA and End Permitting Lawfare

America needs common-sense, durable reforms to modernize the NEPA process for all forms of energy.

NEPA Then

Over 55 years ago, Congress enacted the National Environmental Policy Act (NEPA) as a purely procedural statute to assess the environmental impacts of major federal actions, a fact reinforced by the Supreme Court's unanimous decision in *Seven County*. Unlike later environmental laws, like the Clean Air Act and Clean Water Act, NEPA didn't create substantive environmental obligations. Its original intent was to inform transparent agency decision-making — not direct it.

NEPA Now

NEPA fuels inefficient, subjective reviews, and frivolous lawsuits, leaving it the most frequently litigated environmental law in the country. From 2013–2022, 423 federal-court rulings were issued for 210 energy projects. Challenged projects spent a median of three years between agency approval and final decision.¹ In about 70% of appeals, initial federal-agency approval was upheld.² Oil, natural gas, and renewable projects alike have been stalled by litigation — showing NEPA is less about environmental outcomes and more about obstruction.

Bottom Line

NEPA is ill-equipped to regulate a modern energy economy and has been abused by third-party litigants whose goal is to delay and ultimately kill critical projects. The statute has become broad and undefined, and agencies litigation-proof their reviews through wide-ranging, speculative, and duplicative analyses. Environmental review documents or the ability to use statutorily-created Categorical Exclusions have also been fraught with inefficiencies that compound project delays.

The result: burdensome red tape, unpredictable results, higher costs, delayed projects, deterred investment — all with little to no additional environmental benefit. NEPA reform can unleash America's energy potential, enable operators to build critical infrastructure projects, and maintain environmental safeguards and stakeholder engagement.

What's the Ask? Modernize NEPA and end permitting lawfare by tightening reviews, streamlining processes, and enacting judicial reforms.

Tighten the Review Process

- **Prohibit speculative and subjective reviews:** Limit “significant environmental impacts” to those reasonably foreseeable and directly caused by the project, while reducing requirements to analyze speculative cumulative impacts.
- **Narrow alternatives under consideration:** Clarify that only technically and economically feasible alternatives within the reviewing agency's jurisdiction and consistent with the project's purpose should be analyzed.
- **Redefine “major federal action”:** Narrow the definition so that projects without substantial federal control or responsibility should not face the same reviews as large-scale federal projects.

NEPA reform can unleash America's energy potential.

Streamline Agency Reviews

- **Expand programmatic and tiered reviews:** Reinforce that broad leasing- or planning-stage analyses should cover foreseeable impacts, with project-level reviews tiered to them.
- **Leverage functional equivalence:** Allow agencies to meet NEPA requirements by referencing other equivalent environmental reviews already completed by federal or state agencies.

Enact Judicial Reforms

- **Clarify standing:** Limit challenges to parties that can show concrete, direct, personal harm.
- **Establish a statute of limitations:** Require NEPA challenges to be filed within 150 days of final agency action.
- **Reinforce the scope of judicial review:** Limit review to whether the agency met its procedural obligation, preclude courts from substituting their judgement for the agency's expertise, and define remedy to cure the procedural defect.

¹ Breakthrough Institute, *The Procedural Hangover: How NEPA Litigation Obstructs Critical Projects* (2025).

² Breakthrough Institute, *Understanding NEPA Litigation: A Systematic Review of Recent NEPA-Related Appellate Court Cases* (2024).



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