



# Reboot NEPA

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OCTOBER 2025

# Executive Summary

The National Environmental Policy Act (NEPA) has become a litigation machine that delays critical projects, straying from its original purpose of informed planning and public engagement. After decades of regulatory buildup and inadequate reforms, the system is unstable and unpredictable. A true reboot is needed—one that ensures certainty for agencies and courts, amplifies public voice without creating a veto, and uses AI and modern IT tools to streamline reviews and improve accountability. Congress now has a rare bipartisan window to enact durable reform that restores NEPA's intent while enabling timely, environmentally responsible project delivery.

# Introduction

A near-critical mass of congressional Republicans and Democrats want to reform federal laws governing permitting and environmental review, starting with the National Environmental Policy Act (NEPA). But for the politics to align, and for the policies to achieve meaningful results, policymakers need to do much more than tinker with federal procedures at the margins.

Congress needs to reboot NEPA.

In the fifty-five years since President Nixon signed it, NEPA has driven costly litigation, administrative delay, and project-killing uncertainty. These dynamics arise from decades of bureaucratic and regulatory buildup. Judicial opinions, executive orders, agency rules, and norms have transformed the original five-page law into an impenetrable body of process and law.

Congress can't solve this problem with minor tweaks. The most recent NEPA [shifts](#) and [reforms](#) have either expanded NEPA's rules, introduced new uncertainty, or both. None have adequately addressed the root causes of NEPA's failures. Specifically, no reforms to date have tackled the perverse incentives that drive NEPA litigation. The threat of litigation forces agencies to draft NEPA reviews at exhaustive length to please plaintiffs and judges, not protect the environment. To date, the cycle of reforms, tweaks, and court opinions has only invited more regulatory uncertainty, likely bringing more litigation.

Rebooting NEPA means returning the law to its originally intended purpose: as a tool for environmentally-informed infrastructure planning, and for public engagement. Rebooting NEPA also enables some "software updates" to the antiquated bureaucratic procedures that have come to define the law's implementation. By incorporating artificial intelligence and other digital tools, agencies can improve processes and simplify communication among themselves and with the public.

NEPA's drafters did not set out to create a litigation machine. Scholars like Lynton Caldwell, NEPA's intellectual architect, emphasized planning and public disclosure—not project-stopping lawsuits—as NEPA's core purpose. The volume and intensity of modern NEPA litigation has outstripped anything the original NEPA legislative debates contemplated.

Yet rebooting NEPA should not gut it, but rather, bring the statute in line with its drafters' intent. Good environmental reviews are possible without neverending litigation.

The need for impactful legislation is urgent. The legal framework around NEPA is in tatters. The *Seven County* decision narrowed the scope of environmental reviews. The *Iowa v. CEQ* ruling invalidated the Biden Administration's Phase 2 NEPA regulations. In response, the Trump Administration **rescinded** all NEPA regulations, leaving agencies at sea with nonbinding guidance that the next White House could rewrite on Day One. This instability could take years to unwind through litigation. In the meantime, uncertainty will chill project development.

To push past a broken system, the Trump Administration is stretching NEPA, likely beyond legal limits. For instance, they have **exempted entire categories of federal actions** that historically required NEPA review. The next Administration's priorities could reverse course, creating still more uncertainty. In the interim, there are just two years of clean electricity tax credits whose effects are stifled without NEPA and related reforms.

That's why Congress must act now. The current composition of Congress and its committees of jurisdiction likely offers the best opportunity to enact durable, balanced NEPA reform for years to come. If a NEPA reboot fails now, there will likely be many more years of dysfunction.

Meaningful, durable NEPA legislation rests on three pillars:

1. Certainty in the judiciary and agencies
2. Voice, not veto
3. AI-driven modernization of NEPA procedure and documentation

But, fifty-plus years of regulatory buildup means the NEPA process and law are unwieldy. For this reason, some advocates would prefer to repeal NEPA and start again. Others would change the role of litigation so much that it would eliminate agency incentives to follow the law. These paths are politically unlikely and substantively ill-advised. Yet, adding new statutory text to a regulatory space with extensive and complex history is fraught with risk of unintended consequences. It may be asking too much for any suite of reforms to perfectly fix NEPA implementation going forward. But the perfect cannot be the enemy of the good. NEPA needs a reboot.

# Specific Reform Proposals

## 1. Codify early, meaningful public input that improves projects and mitigates impacts.

The Fiscal Responsibility Act of 2023 (FRA) updated NEPA to compel agencies to take public comment when they propose a project. But agencies still have no statutory requirement to acknowledge or respond to the content of those comments. Under the Trump Administration, agencies are attempting to keep public comment to [the statutory minimum](#), i.e., opening projects for written public comment at the proposal stage. Fulfilling this minimum requirement is out of step with NEPA's intent, court doctrine, and practices in [developed democracies](#). Moreover, that approach is insufficient to get the benefits that accrue to projects and the process that public involvement can deliver. Time and again, NEPA advocates observe that public comment improves projects and smoothes the path to successful implementation. Limiting public comment, by contrast, runs the substantial risk of pushing project opposition to venues outside the NEPA process, including to local or state venues, where the federal government has few tools for improving project deployment outcomes. Codifying early, effective, and empirically-supported public engagement practices, while limiting project-stopping remedies on the back end (discussed on page 6), are essential and complementary reforms.

The following options would constitute a sensible statutory floor for codifying robust public engagement:

- Agencies must open a 60-day public comment period when an agency publishes a Notice of Intent (NOI) to write an EIS.
  - The NOI would need sufficient information on the details of the project for members of the public to respond.
  - Agencies must solicit comments from the public, other affected federal agencies (including local subdivisions), the applicant, and local, state, and Tribal governments.

- Agencies must use multiple, flexible formats for engagement (online, in-person local meetings, visual aids). Materials must be in local languages with plain-language summaries.
- Agencies must make environmental reviews transparent, available, and accessible to non-specialists.
- Agencies must scope public engagement efforts, including mapping affected communities and trusted local organizations.
- Agencies must provide technical assistance to interested communities and host Q&A sessions with experts.
- Agencies must identify how the agency incorporated public comments, including any resulting mitigations, and explain why they did not adopt rejected suggestions.

As appropriate, agencies should create feedback loops with affected stakeholders to shape mitigations or manage key stakeholder relationships. To the extent practicable, project sponsors and agencies should engage stakeholders before the agency issues the NOI and scopes the EIS. Agencies should convene stakeholder working groups to solve problems, with facilitation or mediation where appropriate.

One could consider, as some draft legislation does, limiting court access to parties that participated in the public comment period. But doing so only yields a defensible result if the public engagement and comment process is fairly noticed and available to would-be plaintiffs.

## **2. Limit project-stopping relief to cases of substantial undisclosed adverse environmental effects likely to cause substantial harm to the plaintiff, or agency bad faith.**

Litigation and defensive EIS drafting are root causes of NEPA's dysfunction. Narrowing the availability of project-stopping relief—injunctions, vacatur, stays—can remove the incentive to litigate for obstructionist parties without cutting off court access for parties who face harm because agencies failed to adhere to NEPA's procedural requirements.

Many NEPA reform proposals get rid of vacatur and injunctive relief, or make them functionally unavailable. But doing so confers impunity on agencies and eliminates their incentives to produce adequate reviews. Retaining these remedies in some form is important to preserve agencies' incentives to uphold NEPA's purpose.

Getting this reform right will require deft legislative drafting that constrains court discretion and limits the risk courts will issue interpretations that undermine congressional intent.<sup>1</sup>

### **3. Use AI and modern software tools to evaluate project eligibility for categorical exclusions, check completeness of applications, draft documents, and integrate public comment more efficiently and defensibly.**

Expert consultations suggest AI could draft significant portions of an EIS with human oversight, saving time and the redundancy inherent to defensive and committee drafting. But AI's role is even more crucial for addressing hidden pain points. It can hasten the laborious summarization and incorporation of public comment. Doing so would reduce the legal and practical risk that crucial public feedback is missed. AI can help determine whether sponsor applications are complete, frequently a point of friction between sponsors and agencies. AI can also assess whether projects can be adapted to a categorical exclusion, entirely removing unnecessary reviews. AI tools are also a concession to turnover in the modern labor market, a significant and underdiscussed concern. Indeed, AI can fill gaps left by depleted institutional knowledge—an acute problem of late—or those who leave government before becoming independently competent.

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<sup>1</sup> Another option, which would require statutory restructuring, is worth considering. Because agency permitting decisions are currently nested within NEPA review, Congress could decouple the two by directing courts not to halt the permitting process over NEPA deficiencies. Instead, courts would remand NEPA issues to the agency, and the remand would proceed in parallel with permitting. Crucially, however, the statute would bar a project from entering into operation until the NEPA process—including any remands—was complete. This preserves accountability, since agencies still face pressure to conduct defensible reviews, as poor or incomplete work delays the point at which the project may actually come online. At the same time, by restricting court remedies to delaying operation rather than freezing the permitting pipeline, this approach could reduce some purely delay-driven litigation. However, it would not eliminate NEPA suits aimed at altering or stopping projects outright, and remands would still carry the potential for lengthy timelines.

#### 4. Mandate and fund an interagency NEPA IT platform and cross-agency data sharing.

For transparency, accountability, and simple functionality, agencies responsible for NEPA implementation need to operate on common platforms, information, and timelines. At present, agencies working together on NEPA reviews struggle to communicate on basic subjects. Agencies do not have easy access to the rest of the federal government's environmental review data—Geographic Information System data, field studies, or unpublished environmental assessments. Chief Information Officers have reasonable information security concerns that make changes difficult without statutory intervention. And policymakers and the public do not have comprehensive data on NEPA litigation, some of which takes place in opaque agency processes.

The Council on Environmental Quality's (CEQ) recent '[NEPA and Permitting Data and Technology Standard](#)' attempts to solve parts of the problem by introducing interagency standards for NEPA-related metadata. However, CEQ lacks direct enforcement authority over agencies and depends on interagency partnerships—particularly with the General Services Administration (GSA) and the Permitting Council—to implement and scale data infrastructure initiatives. The Pacific Northwest National Laboratory (PNNL) has likewise made significant progress through its path-breaking [PermitAI](#). But PNNL's queryable database, an impressive proof-of-concept, does not have most agencies' participation or archival data.

Representatives Scott Peters (D-CA) and Dusty Johnson (R-S.D.) deserve credit for introducing bipartisan [legislative language](#) to address all of these challenges. Perhaps no other reform would have a greater impact on the process of writing an EIS.

#### 5. Establish a centralized NEPA court or procedural review body.

NEPA jurisprudence suffers from unique structural pathologies: a huge diversity of agencies and litigation that can play out in front of more than 600 district judges with varying levels of NEPA expertise, adherence to precedent, and environmental sympathies. Given the incredible volume of NEPA litigation, a specialized court would be better able to consistently and fairly handle the caseload while providing for stability in the NEPA legal regime. Crucially, centralizing NEPA litigation raises



the chances of success for reforms that rely on interactions with the court system. There should be high standards for project-stopping remedies. A central litigation venue increases the likelihood of successful court uptake of reforms to such remedies and the ease with which Congress could take corrective action.

**6. Codify *Seven County's* limits on scope to prevent judicial innovation from distorting the statute's intent.**

This codification recognizes [Supreme Court precedent](#) and uses congressional power to limit mushrooming judicial innovations that could undermine certainty. This reform also seeks to end polarized political debates that have played out in NEPA regulations over [contested substantive additions](#) to the NEPA process, many of which entail impossible line-drawing exercises that guarantee legal disputes.

**7. Require agency follow-up on mitigation measures to close the NEPA accountability gap and ensure that promised environmental protections are actually implemented.**

Observers are often surprised to learn that NEPA has no mechanism to evaluate or enforce mitigation measures that agencies and sponsors commit to. This is low-hanging fruit to secure environmental outcomes without lengthening the NEPA pre-project review.

**8. Modernize EPA's Clean Air Act Section 309 review role to improve accountability and transparency.**

EPA's [Clean Air Act Section 309 program](#) plays an essential and unheralded role by reviewing and commenting on other agencies' NEPA documents. Through its review-and-comment process, the Section 309 program serves as a check to ensure that federal agencies address the public's environmental concerns even when affected members of the public lack resources to engage. Properly harnessed, this program can enhance NEPA governance even while reducing court involvement. The program should use AI tools to magnify its ability to review other agencies' work. And it should have enough staff to provide ongoing policy guidance and independent oversight. Enhancing the Section 309 program's ability to raise concerns

with NEPA reviews is a practical pairing with common sense public engagement improvements. Both changes can help surface and resolve environmental concerns that agencies can then address.

## 9. Eliminate ineffectual page and time limits while updating agency reporting obligations.

The FRA imposed time and page limits with structural loopholes that make them more cosmetic than corrective.

First, timelines are likely artificially shortened by conducting technical work before the statutory clock starts—so-called “pre-NEPA” work. Such work is not transparently disclosed. But practitioners say it happens regularly. In addition to eliminating the value of time limits, this pre-NEPA work lessens the benefits of public input. By the time the public is engaged, key decisions may have been taken.

Second, page limits mean agencies shift the bulk of review content to appendices, an [explicit tactic in new agency NEPA procedures](#) that keeps primary NEPA documents under the cap while expanding total documentation.

Third, the FRA’s time limits have obscured an unknown but potentially significant share of NEPA work. The FRA lets agencies extend deadlines with applicants, and CEQ told agencies they do not need to file a report on review timelines if they have no missed deadlines. As a result, CEQ’s [list of late NEPA reviews](#) likely excludes those with extensions. Given that agencies produced well over 100 EISs each year before the FRA, it is improbable that 1% or fewer of EISs [missed their deadlines](#). More likely, the CEQ report is incomplete, and many EISs are behind schedule. But these delays are hidden from view.

Eliminating these time and page limits while retaining and strengthening agency reporting can improve transparency and accountability.

## 10. Shorten the NEPA litigation window from 6 years to 180 days.

As the Breakthrough Institute has shown, plaintiffs file [about half of all NEPA cases within six months](#) of the final agency action under review. The current six-year timeline, which derives from the Administrative Procedure Act, is out of step with the statute of limitations under other major environmental statutes. The longer NEPA window provides an alternate path to late-stage litigation challenging outcomes under statutes whose litigation windows are closed. The six-year window invites litigants to strategically delay filing suits, which prolongs uncertainty for project sponsors, the public, and the government.

## 11. Merge CEQ and the Permitting Council into a strengthened, independent entity with authority over timelines and software.

There are two White House-aligned entities—CEQ and the Permitting Council—with weak authority over agency NEPA implementation. These bodies' functions could easily and seamlessly be merged, along with real carrots and sticks to ensure results. The newly-formed body, a Federal Environmental Review and Permitting Council, should have the authority to centralize and implement IT improvements, perhaps in partnership with the GSA. This body would also leverage a platform like an expanded [FAST-41 Dashboard](#) to ensure that all NEPA review timelines—not just select projects—are transparent to the public. Creating an independent agency would also help insulate it from the policy turnover that afflicted recent CEQs.

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