Oct 20, 2022

Much more than you ever wanted to know about NEPA

Eli Dourado
Chief Economist

Permitting reform has been in the news this fall, and an important element of permitting is the National Environmental Policy Act of 1969. NEPA, as it is called, is a beast. It's complicated and multifaceted, and its intricacies are hard to summarize.

While NEPA is critical to permitting, it is a mistake to consider it merely a permitting law. It imposes significant procedural requirements on our federal agencies that slow down all decision making, requiring agencies to take a "hard look" at the environmental consequences of any decision before making it.

Old-school environmentalists consider NEPA to be a foundational environmental law, even the "Magna Carta of environmental law." Yet the cumulative burden NEPA imposes on our agencies is intolerable. We must protect the environment, but we can't do it by paralyzing our federal agencies. And if we are going to reform NEPA, we must first understand it.

What is NEPA?

NEPA is a 5-page law enacted by Congress in late 1969 and signed into law by Richard Nixon on January 1, 1970. It was the first of a wave of environmental laws passed in the 1970s under Nixon. NEPA was enacted before the modern versions of the Clean Air Act (1970) or the Clean Water Act (1972), before the Endangered Species Act (1973), and before the creation of the Environmental Protection Agency (1970).

Unlike these subsequent environmental actions, NEPA does not provide substantive environmental protection. It does three things:

1. Declares a national environmental policy in lofty language
2. Directs federal agencies to follow the national policy and take environmental effects into account when making decisions
3. Establishes a Council on Environmental Quality (CEQ) within the White House

Very little of what is in the Act is objectionable. When people these days talk about NEPA, whether they want to praise it or complain about it, they are usually referring to a single operative subsection of the law, § 102(C). If you parse out what this subsection says with edits for relevance and clarity, it reads:

> The Congress authorizes and directs that, to the fullest extent possible: All agencies of the Federal Government shall include in every major Federal action significantly affecting the quality of the human environment a detailed statement by the responsible official on the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, etc.

This single sentence is what all the fuss is about. Note that the law does not say that agencies may not take actions that harm the quality of the human environment, only that before they do, they must include a detailed statement.

What is a detailed statement? How detailed does it have to be?

Congress never said how detailed the "detailed statement" had to be, just that it had to be detailed and also include comments from certain federal, state, and local agencies. According to one scholarly report, the earliest Environmental Impact Statements (EISs), as they later came to be called, were less than ten typewritten pages. "They were submitted to the Congress and went unchallenged." Since these early days, EISs have ballooned, mainly due to litigation.

Because NEPA was written in lofty and vague language, agencies initially didn't know how to approach it. In the first major case interpreting NEPA, *Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Commission* (1971), the DC Circuit overturned the AEC's nascent NEPA-implementing procedures as inadequate. To comply with the court order to fix their procedures, the AEC halted all nuclear power plant licensing for 18 months. The Calvert Cliffs Nuclear Power Plant that was at issue eventually reached operation in 1975 and continues to operate to this day, but the case demonstrated the approach that the judiciary would take in enforcing NEPA.

Incidentally, the first two sentences of the *Calvert Cliffs* opinion are striking for anyone concerned about the slowdown in technological progress since the early 1970s:

> These cases are only the beginning of what promises to become a flood of new litigation—litigation seeking judicial assistance in protecting our natural environment. Several recently enacted statutes attest to the commitment of the Government to control, at long last, the *destructive engine of material "progress"* (italics added).

While NEPA-implementing procedures for all agencies are now mature and rarely challenged in court, the environmental documents agencies produce are still challenged. While NEPA itself does not create any cause of action, plaintiffs sue under the Administrative Procedure Act, alleging that an environmental document is missing some particular impact or is otherwise insufficient in some respect.

Normally in administrative law, agencies are entitled to tremendous discretion. The standard of review typically applied when there is no question of statutory interpretation is whether the decision is "arbitrary, capricious, or an abuse of discretion," an extremely deferential standard. You can't usually haul a federal official into court and expect to win because you don't agree with a finding or an action.

But NEPA lawsuits change the balance of power. Because NEPA made the EIS a required part of administrative procedure, the arbitrary and capricious standard applies to the EIS itself, not just the federal action. A judge might find no fault at all in the agency's ultimate decision, but find that some element of the EIS is arbitrary. If you can persuade the court that an EIS is deficient in any way, the agency decision will usually be vacated and the agency ordered to fix the problem with the EIS.

As a result of this de facto reduction in deference, the incentive is for agencies and those seeking agency approval to go overboard in preparing the environmental document. Of the 136 EISs finalized in 2020, the mean preparation time was 1,763 days, over 4.8 years. For EISs finalized between 2013 and 2017, page count averaged 586 pages, and appendices for final EISs averaged 1,037 pages. There is nothing in the statute that requires an EIS to be this long and time-consuming, and no indication that Congress intended them to be.

What counts as a "major" action?

Every action is a major action. The word "major" has been read out of the law. In *Minnesota Public Interest Research Group v. Butz* (1974), plaintiffs asked the 8th Circuit court to stop the Forest Service from engaging in certain timber sales until they had done an EIS. The Forest Service argued in part that timber sales were not a "major" federal action. The court held that the notion of "minor" federal actions that significantly affected the human environment would undermine NEPA, and decided therefore that the word "major" did not impose any limits on NEPA's applicability.

Today, with rare exceptions, all federal actions must take NEPA requirements into account. The only reason, say, the Treasury Department does not have to undertake a lengthy NEPA review every time it pays its employees is that it has created a Categorical Exclusion associated with personnel actions. More about Categorical Exclusions later.

What counts as the "human" environment?

Essentially, the entire environment counts as the human environment. In the same case as above, the Forest Service argued that there was no evidence any human users of the area in question had ever even seen a timber sale. The court held that humans could nevertheless be significantly affected by the timber sale.

> We think NEPA is concerned with indirect effects as well as direct effects. There has been increasing recognition that man and all other life on this earth may be significantly affected by actions which on the surface appear insignificant…
>
> Apart from what may be referred to as "existence value," the evidence indicated that there are direct effects on the human environment from logging. Logging creates excess nutrient run-off which causes algal growth in the lakes and streams, affecting water purity. Logging roads may cause erosion and

> water pollution and remain visible for as long as 100 years; this affects the rustic, natural beauty of the [Boundary Waters Canoe Area], recognized as unique by the Forest Service itself. Logging destroys virgin forest, not only for recreational use, but for scientific and educational purposes as well. All these are significant impacts on the human environment.

Using this reasoning, it is difficult to see how the word "human" could ever impose any limitation to NEPA.

How does NEPA work when an action has no significant environmental impact? What is an environmental assessment?

An agency may avoid preparing an EIS if it issues a Finding of No Significant Impact (FONSI). Agencies make findings all the time, and generally, they are subject to an "arbitrary, capricious, or an abuse of discretion" standard in court, a highly deferential standard.

A FONSI, unlike most agency findings, must be based upon an Environmental Assessment (EA). This requirement was introduced by the Council on Environmental Quality's NEPA-implementing regulations, first promulgated in 1978. An EA is defined in those regulations as "a concise public document prepared by a Federal agency to aid an agency's compliance with the Act and support its determination of whether to prepare an environmental impact statement or a finding of no significant impact."

The Council on Environmental Quality apparently made up the EA requirement out of thin air without discussion in the 1978 notice of proposed rulemaking. The NEPA statute itself does not contemplate EAs, nor does the initial 1971 CEQ guidance for how agencies should comply with NEPA.

In the revised 1973 CEQ guidance, there is a reference to an assessment that would help agencies decide whether actions require an EIS, but it primarily refers to an assessment of *classes of actions* that normally do or do not have a significant impact. For actions that may or may not require an EIS, the 1973 guidance tells agencies to identify "on what bases environmental assessments and decisions to prepare impact statements will be made."

It also says that when CEQ affirmatively requests that an agency produce an EIS for an action and the agency decides that one is not necessary, it should send an assessment to CEQ. Throughout the guidance, CEQ uses "assessment" in the ordinary meaning of the word, even saying that an EIS should enable an assessment of the potential environmental impacts.

Under this earlier guidance, EAs were not formal documents that were prerequisites for the issuance of a FONSI, nor were they challengeable in court.

That changed under the 1978 regulations, when they were made to be a required element of issuing a FONSI. As with EISs, because EAs became an administrative prerequisite to issuing a FONSI, agencies experienced a de facto decrease in deference. In *Sierra Club v. Watkins* (1991), the DC District Court held that the Department of Energy's EA analyzing the transport of spent nuclear fuel was insufficient and issued an injunction until the department fixed the deficiency in the EA.

Based on that precedent, challenges to EAs became a new vehicle by which plaintiffs could pierce traditional deference to agency decisions. EAs, like EISs, have ballooned in length and importance as a means of preemptively defending against such challenges. They are now hundreds of pages long and often take up to two years to finalize.

In terms of the total amount of paperwork created, EAs are much more significant than EISs. The federal government finalizes around 100-300 EISs per year. No one closely tracks the number of EAs finalized per year, but one CEQ study from FY2012 to FY2015 found the annual number EAs ranged from 11,308 to 13,205.

If we suppose that EAs have about half the page count of EISs (and many are quite long), then the paperwork burden of EAs is about 30 times as high as that of EISs.

Is this not bizarre?

NEPA, a law that is concerned with federal actions that affect the environment and does not say anything about FONSIs or EAs, has created a paperwork burden that is cumulatively 30 times greater for federal actions that *do not* affect the environment than for actions that do.

What counts as a federal action?

So far, the discussion of federal actions and the idea of agencies preparing environmental documents may give the impression that NEPA applies mainly to federal projects, like the construction of an interstate highway.

This is not the case.

Federal actions include any agency decision, including the granting of a permit to a private party.

If you want to build a power plant on federal land, the Bureau of Land Management has to give permission—*that's a federal action*. If you want to test a supersonic airplane at Edwards Air Force Base or land a spacecraft at the Utah Test and Training Range, both the Air Force and the Federal Aviation Administration (FAA) have to give permission—*that's a federal action*. If New York City wants to implement congestion pricing in Manhattan on roads that are part of the National Highway System and have received public funds, it needs approval from the Federal Highway Administration—*that's a federal action*.

Furthermore, it is a misconception that NEPA is only a permitting law. NEPA applies to federal actions that are not really projects at all, such as the issuing of new regulations. For example, if the FAA were to remove the ban on supersonic flight over the United States (as I have long advocated), that action would have to undergo NEPA review, at least if it were done on the FAA's own initiative and not narrowly mandated by Congress. Actions that are mandated by Congress are not considered federal agency actions for purposes of NEPA because the agency does not have any discretion and is not making a decision.

The legal wording about agencies preparing environmental documents is also misleading. Whenever it is a private or non-federal government entity that is seeking agency action, agencies make that project sponsor pay for the environmental review. The agencies are responsible for defending the environmental document in court and must facilitate notice and comment on it, but they do not bear the burden of preparing it. It costs hundreds of thousands of dollars to hire an environmental consultant to produce an EA or EIS.

What is a categorical exclusion?

Considering that virtually every agency action is subject to NEPA, nothing at all would get done if there were not a lower level of review. Categorical exclusions are that lower level. As CEQ notes in its catex guidance, "categorical exclusions are not exemptions or waivers of NEPA review; they are simply one type of NEPA

review."

That said, in practice there is a spectrum of documentation required for agencies to use categorical exclusions, and some of the catexes really do function as exemptions. For example, most federal departments have a catex for "routine agency personnel actions." Agencies don't have to provide any justification or documentation for using this catex and others like it. At the other end of the spectrum, some catexes in practice require documentation and/or public engagement and disclosure. The decision to apply a categorical exclusion can be challenged in court under the Administrative Procedure Act, so documentation is especially important when a decision to apply a catex may foster opposition.

To make a new categorical exclusion, an agency must draft the proposed text based on its experience and analysis of actions that are not likely to have a significant impact, consult with CEQ, consult with other federal agencies, put it out for public notice and comment, consider public comments, and consult with CEQ on the public comments. Only then can it publish and use the final catex.

Even then the catex is no guarantee that the decision is exempt from higher levels of NEPA review. Agencies must consider whether any extraordinary circumstances exist that might create a possibility of significant environmental impacts. Borderline cases often end up requiring an EA because the agency does not want to end up in court, and the cost of the EA is borne by the project sponsor, not the agency.

Because it is tedious to create new catexes and can be risky to use them, agencies probably do not make use of them to the fullest extent sensible. A list of catexes compiled from across the federal government as of June 2020 is available here.

Statutory exclusions

Since NEPA is an act of Congress, Congress can at any time impose limits on where NEPA applies. For example, the Stafford Act, which governs FEMA and emergency response, carved out some areas that are completely exempt from NEPA. Excluded areas include general federal assistance, essential assistance, debris removal, and federal emergency assistance under the Act. Repair and reconstruction is excluded provided that the reconstruction does not change or improve the facility being restored. NEPA still applies if you want to build back better.

While it makes sense that emergency response should be exempt from NEPA, not all of the federal government's emergency powers are so exempt. For example, the now-popular Defense Production Act does not have a statutory exclusion from NEPA. Guidance from CEQ says that in emergencies not covered by the Stafford Act exclusion, NEPA still applies, yet agencies should "not delay immediate actions necessary to secure lives and safety of citizens or to protect valuable resources," and there is an option for alternative arrangements with CEQ that covers EISs but not EAs.

In addition to the wide-ranging exclusion present in the Stafford Act, there are a small number of legislative categorical exclusions throughout the federal code, including, as I've noted before, for oil and gas drilling on public lands. These legislative catexes are similar to administrative ones, differing in minor legal technicalities. For example, where a legislative catex establishes a rebuttable presumption of no significant impact similar to an administrative one, one court held that the "extraordinary circumstances" tests the agency uses need to go through notice and comment. In an administrative catex, this notice and comment happens at the time of catex creation, but in a legislative one, it would necessarily have to occur later and separately.

Programmatic documents

The NEPA-implementing regulations encourage agencies to "tier" their environmental documents whenever that would reduce paperwork. This usually arises when an agency must repeatedly analyze the environmental impacts of some decision in different locations. All of the general impacts of the decision can be combined into one "programmatic" document, and this programmatic document can be incorporated by reference into the site-specific analysis that is needed to move forward with a given instance of the decision.

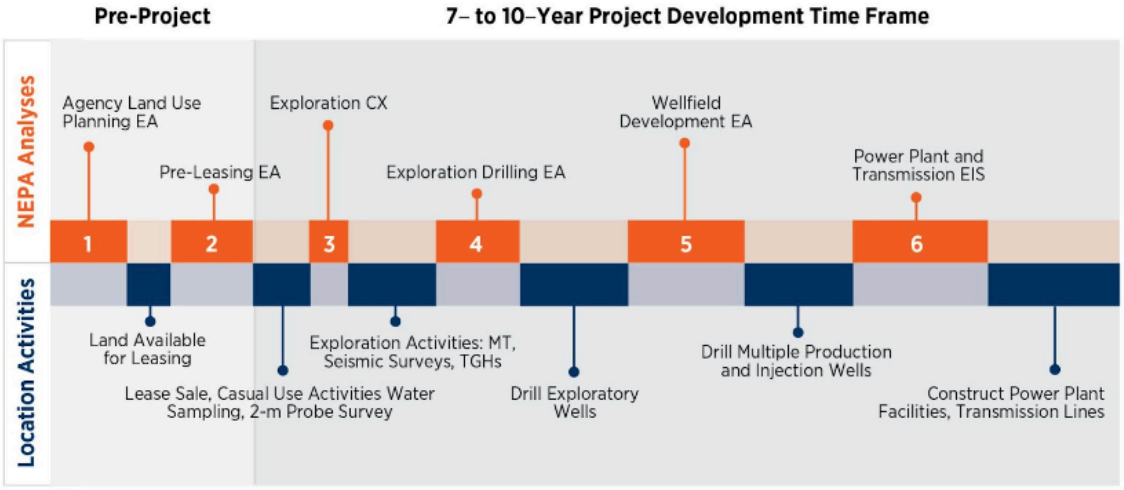
For example, suppose the Department of Transportation were building a high-speed rail network in the United States. Each individual line of the network would need its own analysis because there would be site-specific effects. But many of the environmental effects of constructing a high-speed rail line would be the same, no matter where they are. These general effects could be described in a single programmatic document, and then a site-specific EA or EIS could very briefly incorporate all those findings to move on with the analysis at that location.

In general, agencies probably do not invest enough in creating programmatic documents. They can simplify further NEPA analysis and save a bit of time. As with categorical exclusions, the reason for neglect is that it costs agency resources to develop these programmatic documents, but the cost of a full analysis is borne primarily by the permit applicant.

On the other hand, programmatic documents may not reduce litigation risk. The Nuclear Regulatory Commission has a Generic EIS for nuclear plant license renewal and one for decommissioning of nuclear facilities. It has an open docket on creating one for advanced nuclear reactors—the draft is 400 pages long. Yet decisions about nuclear power plants remain highly controversial, and sufficient material (or lack thereof) in the site-specific analysis can probably be used as ammunition for a NEPA lawsuit even when a generic EIS is present.

Other forms of tiering

Another form of tiering occurs when a project requires different sequential agency approvals. For example, as shown in the graphic below, geothermal development at a specific site on federal lands can take up to six separate NEPA reviews. The agency has to do an EA to make land available for leasing and then another one to actually lease it. Then the company can rely on a categorical exclusion to do minor exploration activities. Then an EA is done to allow exploratory wells, and if the resource is promising, there is another one to allow wellfield development. Finally, there is an EIS to allow construction and operation of the full plant and the associated transmission.



Example timeline of a geothermal project on federal lands, illustrating that a single location could trigger National Environmental Policy Act analysis six separate times

Source: Young et al. 2014

Figure Note: EA = Environmental Assessment, EIA = Environmental Impact Statement, CX = categorical exclusion, MT = magnetotelluric, and TGH = temperature-gradient hole.

In principle, a company could do a single EA to cover steps 4 and 5, or a single EIS to cover 4, 5, and 6. In practice, because the company doesn't know whether exploration is going to work out, it may be reluctant to expand the scope of the first EA, favoring a more narrow EA that might be able to be completed sooner. If that's the case, the later EAs and EIS can refer to analyses done in the earlier documents, to avoid repetition.

Mitigated FONSIs

Suppose that an EA is under development and the environmental impact is shaping up to be borderline, perhaps ever so slightly significant, at risk of necessitating an EIS. In that case, the project proponent might commit to certain mitigations that would make the impact less significant, back to the level where the agency might reasonably find no significant impact. For example, a construction project might agree that after the work is done, it will restore native landscaping to the area disturbed by construction. Without this commitment, the project would have to go beyond an EA and develop an EIS. With the commitment, the agency can do a mitigated FONSI, which brings the NEPA process to an end (assuming no litigation).

NEPA does not give agencies any new authorities, so in order for the agency to be able to agree to a mitigation, it must be something the agency already has authority to enforce. The whole premise of the mitigation, that it converts a significant impact to a non-significant one, vanishes if the project proponent doesn't follow through. Therefore, agencies must be prepared to enforce the mitigation, and they must have pre-existing authority to do so. The NEPA-implementing regulations go farther and require agencies to *state* what authority they have to enforce the mitigation.

As a recent example of a mitigated FONSI, in June, FAA required SpaceX to take over 75 actions to mitigate the effects of its orbital launch program at Boca Chica, TX. The mitigated FONSI spells out the details. Among the mitigations are transparent bribes to local interest groups. For example, SpaceX is required to "provide $5,000 annually to enhance the existing [Texas Parks and Wildlife Department] Tackle Loaner Program. This funding may be used to purchase fishing equipment (rods, reels, and tackle boxes with hooks, sinkers, and bobbers) for use at existing, heavily visited sites and/or allow the program to expand to new locations."

The FAA does not state what authority it has to enforce SpaceX donations to such a program, so in my judgment this is probably an illegal mitigation. Yet it is not in SpaceX's interest to challenge this mitigation as the company is probably glad to pay $5,000 per year to be done with this process. SpaceX may even have proposed the possibly-illegal mitigation itself.

How much public involvement is required?

The NEPA statute itself requires that when developing an EIS, a federal agency should consult with other federal agencies that have jurisdiction or expertise over the relevant environmental impacts. It further requires that all comments from these federal consultations, and any that are received from state and local agencies, be made available to the public alongside the final EIS. The NEPA statute was merely about informing the public.

But NEPA was implemented at a time when enthusiasm for public involvement in the machinery of government was at its highest. Within a couple of months after NEPA's enactment, President Nixon issued Executive Order 11514, which required agencies to provide public hearings on projects with environmental impacts whenever appropriate, among other actions required "to obtain the views of interested parties." This hearing requirement was reaffirmed in CEQ's early guidance and included in the 1978 NEPA-implementing regulations. In the latter, criteria for holding a hearing included whenever there was environmental controversy, whether or not the agency believes there is a significant environmental impact. These days hearings are part of the process for many EAs as well as EISs.

Early guidance and the 1978 NEPA-implementing regulations further codified the public involvement suggested by EO 11514. The regulations created an obligation for agencies to solicit public comment when creating an EIS (§ 1503.1). There is a section of the regulations entitled "public involvement" (§ 1506.6) that requires agencies to "solicit appropriate information from the public," which is a reason that draft EAs are also put out for notice and comment.

The 1978 regulations also invented a process called scoping (§ 1501.9). CEQ explained its rationale in its proposed rulemaking: "to assist agencies in deciding what the central issues are, how long the EIS shall be, and how the responsibility for the EIS will be allocated among the lead agency and cooperating agencies, a new 'scoping' procedure is established. Scoping meetings are to be held as early in the NEPA process as possible—in most cases, shortly after the decision to prepare an EIS—and shall be integrated with other planning." The scoping process requires inviting affected and interested parties to participate, "including those who might not be in accord with the action."

Although NEPA the statute was mainly concerned with *informing* the public, NEPA as implemented is concerned with *involving* the public.

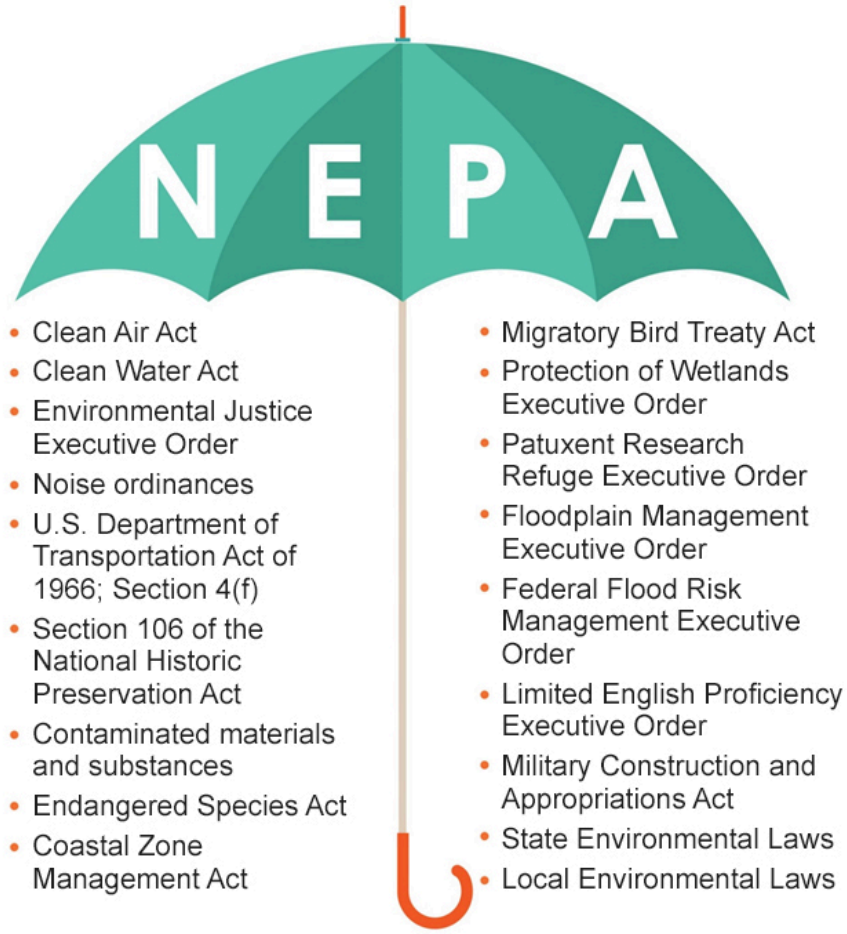
Environmental justice

In 1994, President Clinton issued Executive Order 12898, which directed federal agencies, "to the greatest extent practicable and permitted by law," to "make achieving environmental justice part of its mission." The order explicitly stated that it "shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order." Courts have abided by that restriction, generally rejecting challenges that contend that an agency is not doing enough to achieve environmental justice, which, by the way, is not defined in federal law.

However, one of the ways agencies have complied with the EO is by including environmental justice considerations in their NEPA documents. Federal courts have held that although EO 12898 does not create any new cause of action, discussing environmental justice in an EA or EIS opens the agency up to judicial review as if it were any other element of NEPA analysis. In some cases, plaintiffs have successfully challenged agency environmental justice analysis in NEPA documents for being cursory or arbitrary.

Is NEPA an umbrella law?

In discussions surrounding NEPA, one sometimes hears the claim that NEPA is an umbrella law, because agencies sometimes combine compliance with multiple other environmental and non-environmental laws, regulations, and orders under the NEPA process. As a result, the argument sometimes goes, reforming NEPA won't do much good, because all these other laws take time to comply with, and some parts of the NEPA process would have to be reconstituted in any case to ensure that all of them are followed.



Source: Baltimore-Washington Superconducting Maglev Project

I think this argument is wildly overstated. First, some items under the NEPA umbrella, such as the environmental justice EO, would not be enforceable in the first place if NEPA review were not required in a given instance. Second, there are many federal actions that skip serious NEPA review and where the substantive laws under the NEPA umbrella still apply. For example, statutorily excluded actions under the Stafford Act must still comply with applicable environmental laws. There are some federal actions that are categorically excluded (including those with no documentation) and yet these still must comply with substantive environmental laws. No one seems to have a problem with this.

Third, if for the most complex projects a checklist such as the ones agencies may use during the scoping process had to be borrowed from NEPA practice or otherwise re-invented, that would be fine for those projects. The strongest proponents of the NEPA umbrella argument are environmental professionals who work on the most complex projects, but the vast majority of federal actions are simpler and don't require the umbrella at all. Remember that NEPA covers all federal agency actions.

Past reform attempts

The area where there has been the greatest effort to streamline NEPA is in transportation policy. Under the Bush Administration, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act, which included provisions aiming to address the inefficiency of environmental review. In President Obama's first term, there was the Moving Ahead for Progress in the 21st Century Act, which attempted to expedite review for transportation projects.

In 2015, Congress passed the Fixing America's Surface Transportation Act, of which Title 41 was focused on improving federal permitting for covered projects. FAST-41, as this Title is called, is the most recent significant attempt by Congress to address permitting problems. Contrary to the name of the Act, covered projects can include much more than surface transportation, including renewable energy, electricity transmission, aviation, ports, and more. Covered projects must generally be large and complex. Under the Biden Administration, the majority of the portfolio of covered projects are offshore wind farms.

FAST-41 created a Federal Infrastructure Permitting Improvement Steering Council composed of Deputy Secretaries from federal agencies to propose improvements to the permitting process, especially to speed the permitting of covered projects, the timelines of which the Council must report on. Covered projects are supposed to have reviews by multiple agencies tightly coordinated and to reuse analysis done to comply with state environmental laws. It also narrows judicial review for covered projects, reducing the six-year limitation on claims against the federal government to two years, limiting standing to those who submitted detailed public comments, and requiring courts to take into account the economic benefits of the project before issuing an injunction.

Another set of reforms was made in 2020 by the Trump Administration, which updated CEQ's NEPA-implementing regulations for the first time since 1978. The 2020 changes eliminated the "purpose and need" element of EISs, prevented agency NEPA-implementing regulations from being more stringent than CEQ NEPA-implementing regulations, redefined "effects" to be more consistent with Supreme Court precedent, included presumptive time limits for EAs and EISs, amended the provision on incomplete or unavailable information, and several other changes, many of which simply modernized the style of writing. All things considered, these were fairly modest revisions.

President Biden's CEQ, upon entering office in 2021, immediately undid the first three of the Trump changes listed above. They have indicated that they will be making further revisions to the CEQ regulations at some point in the future.

Future reforms

Most serious NEPA reform discussions, such as Senator Manchin's recent proposals for energy projects, tinker around the edges of NEPA, but don't really change the game. NEPA is considered the "Magna Carta of environmental law." It has strong support from environmental organizations. It is very hard to change.

Meaningful change is likely only possible if the cause of NEPA reform becomes a movement. The YIMBY movement has had remarkable success in California, somehow elevating abstruse housing regulations into an inspiring cause that is now changing policy.

It's worth elaborating on what is at stake with NEPA reform: a competent and effective federal bureaucracy. Research has shown that state capacity is vital for long-term economic development and prosperity. In the United States, economic growth slowed down in the early 1970s, right as NEPA implementation began to take shape. Today, we face challenges like deployment of clean infrastructure that may never be met without a more effective federal government. Furthermore, we face a growing political nihilism that may be fueled in part by mistrust in government, a mistrust that is not altogether unfounded given that NEPA has made our government so incompetent in practice.

If we want federal agencies that can make decisions in weeks instead of years, we will need to take a hard look at how to fix the decline in state capacity wrought by NEPA.

CGO scholars and fellows frequently comment on a variety of topics for the popular press. The views expressed therein are those of the authors and do not necessarily reflect the views of the Center for Growth and Opportunity or the views of Utah State University.

Related Publications

- CGO Abundance Poll
- Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act
- Addressing the Maintenance Backlog on Federal Public Lands

Show More

Related Books

- Chapter 2: Self-Governance, Polycentricity, and Environmental Policy
- The Environmental Optimism of Elinor Ostrom

Related News

- Op-ed: Improving wildfire policy is good for more than just the environment
- Federal Testimony: Additional solutions to help decarbonize the American economy
- How do we solve climate change? America needs to use more electricity, not less.

Related Blogs

- A cleaner future for energy on federal lands
- 30 by 30
- The answer isn't degrowth. The answer is abundance.

Focuses

- Environmental Stewardship
- Regulation

Federal Agencies

- Bureau of Land Management
- Environmental Protection Agency

- Federal Aviation Administration

Show More

The Center for Growth and Opportunity at Utah State University

Contact

- 3525 Old Main Hill
  Logan, UT 84322-3525
- 200 Massachusetts Ave NW
  Washington, DC 20001

General: hello@thecgo.org
Press: media@thecgo.org

-
-
-
-

- News
- Donate
- Students
- Research
- Careers

© 2025 The Center for Growth and Opportunity. 501(c)(3). EIN: 45-3564310