

THE CASE FOR ENDING THE NATIONAL ENVIRONMENTAL POLICY ACT

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Congress passed the National Environmental Policy Act (NEPA) in 1969 to ensure that government agencies consider the environmental effects of large-scale projects authorized by the federal government. NEPA is a procedural law—it does not require particular results, but it does create a process for considering environmental impacts. In the 56 years since its passage, the NEPA process has expanded significantly beyond its original scope. Today, NEPA holds back valuable projects that would provide the energy, electricity, and infrastructure Americans need to power their lives.

NEPA entails three levels of review, depending on the expected level of environmental impact a project will have:

1. For projects that are not expected to have a significant impact on the environment, agencies may issue a categorical exclusion (CATEX). A CATEX exempts projects from further NEPA review.
2. For projects expected to have a significant impact on the environment, agencies must perform an environmental assessment (EA). If an EA finds no significant impact, the agency may issue a Finding of No Significant Impact (FONSI). A FONSI ends the NEPA review and allows the project to proceed.
3. For projects in which the EA finds significant impact, agencies must prepare an Environmental Impact Statement (EIS), the most extensive and costly form of NEPA review.¹

NEPA HAS BEEN WEAPONIZED TO HOLD BACK PRODUCTIVE PROJECTS

Over time, aggressive litigants, the courts, and federal agencies have transformed NEPA from a procedural statute into a weapon that impedes productive projects. This has resulted in delays, financial costs, and uncertainty for investors. Many valuable projects never make it through the NEPA process, resulting in lost value for Americans.

- *Delays.* The Council on Environmental Quality finds that from 2010 to 2018, the average time to complete an EIS was 4.5 years.²
- *Costs.* From 2003 to 2012, the median cost of an EIS through the US Department of Energy was \$1.4 million.³
- *Litigation.* NEPA litigation adds an average of one year and seven months to project timelines. Energy and wildfire projects are delayed even longer.⁴

THE SUPREME COURT HAS NARROWED THE SCOPE OF NEPA REVIEW

The Supreme Court recently limited NEPA's reach in *Seven County Infrastructure Coalition v. Eagle County*. The coalition sought approval from the Surface Transportation Board to build an 88-mile rail line connecting Utah's Uinta Basin to the national rail network for transporting crude oil. When the agency published its EIS, allowing the coalition to begin construction, Eagle County challenged the decision for failure to consider upstream and downstream environmental effects. The DC Circuit agreed, but the Supreme Court reversed in a unanimous decision.⁵ The Court clarified the following:

- An agency's NEPA decision is entitled to deference, meaning agencies (not courts) have primary responsibility for evaluating environmental impact.⁶
- Agencies need to consider the environmental effects of only the project at issue, not future or geographically separated projects that might result from the project.⁷
- Agencies need to consider only the environmental effects over which they have regulatory authority.⁸

Legislative reform is needed to codify the Court's conclusion that increasingly expansive NEPA requirements—and their use to delay or block projects—are no longer acceptable.

REPEALING NEPA WOULD HAVE LARGE NET BENEFITS

NEPA was passed before major environmental laws such as the Endangered Species Act, the Clean Water Act, and the Clean Air Act, all of which provide substantive environmental safeguards. NEPA's requirements are redundant to these later laws. Repealing NEPA would remove delays, reduce costs, and allow productive projects to proceed without diminishing the comprehensive environmental protections afforded by other statutes.

Short of repeal, reforms should curb frivolous lawsuits, shorten timelines, and narrow the number of projects requiring review. The SPEED Act, introduced in July 2025 by Rep. Bruce Westerman (R-AR) and Rep. Jared Golden (D-ME), would codify the *Seven County* decision by reaffirming NEPA's procedural nature. It narrows the definition of major federal actions, limits legal challenges to those who submitted comments, requires courts to find an abuse of "substantial discretion" before overturning decisions, and shortens NEPA's statute of limitations from six years to 150 days.⁹

The passage of time and subsequent environmental laws have rendered NEPA unnecessary. Repealing it would reduce costs, eliminate delays, and support greater prosperity for Americans.

NOTES

1. "National Environmental Policy Act Review Process," Environmental Protection Agency, accessed August 28, 2025, <https://www.epa.gov/nepa/national-environmental-policy-act-review-process>.
2. Council on Environmental Quality, Executive Office of the President, *Environmental Impact Statement Timelines (2010–2018)*, June 12, 2020.
3. Government Accountability Office, "National Environmental Policy Act: Little Information Exists on NEPA Analyses" (report no. GAO-14-369, Government Accountability Office, Washington, DC, April 2014).
4. Alex Trembath et al., *The Procedural Hangover: How NEPA Litigation Obstructs Critical Projects* (Berkeley, CA: Breakthrough Institute, July 24, 2025).
5. *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168 (2025).
6. *Seven County*, 605 U.S. 168, 180.
7. *Seven County*, 605 U.S. 168, 187.
8. *Seven County*, 605 U.S. 168, 188.
9. Marcel Akhame, Daniel Elizalde, and Xan Fishman, *What's in the SPEED Act?* (Washington, DC: Bipartisan Policy Center, November 19, 2025).



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