

Fact-checking the Trump administration’s claims on environmental reviews and permitting reform

Scores of opponents in Congress, backed by industry donations, have launched a series of attacks on the National Environmental Policy Act (NEPA) in order to roll back public input and make it easier to rubberstamp permits for corporate polluters.

This “death by a thousand cuts” strategy is in full force. Using deceptive buzzwords like “streamlining” and “permitting reform,” more than 125 pieces of legislation were introduced in the 115th Congress alone seeking to undermine, weaken, or waive NEPA.

FACT: The NEPA permitting process is not overly costly and does not take anywhere close to 10 years to complete. Over 95 percent of federal projects undergo minimal environmental review.

- According to the Council on Environmental Quality (CEQ), the federal government undertakes more than 50,000 actions subject to NEPA each year. Approximately 95 percent of all federal projects receive a Categorical Exclusion (CE) and are exempt from detailed environmental review. Less than one percent of projects require the preparation of a detailed Environmental Impact Statement (EIS) – a total of 500 draft EISs are prepared annually. Even among this one percent of federal projects requiring an EIS, the average time to complete these reviews is four and a half years.
- In 2003, a NEPA task force report “estimated that an EIS typically cost[s] from \$250,000 to \$2 million,” whereas “an EA typically costs from \$5,000 to \$200,000.”¹

MYTH: The permitting process for roads, bridges, and other infrastructure projects is extremely costly and takes 10 years to complete.

— President Donald Trump, June 7, 2017

- “[T]he President has also made it very clear that he would like to reduce the infrastructure regulatory process from ten years to two years.”

— GOP Platform, “A Better Way: Our Vision for a Confident America” (2016)

- “House Republicans will focus on reforming NEPA to eliminate delays, unnecessary duplication and frivolous litigation and give worthy projects a timely green light.”

FACT: A lack of adequate funding is by far the largest barrier to project completion.

— The Treasury Department, December 2016

- “A lack of funds is by far the most common challenge to completing” major infrastructure projects in December of 2016.² The report listed three additional challenges to large-scale infrastructure projects in order of their impact on the project development process.³ The second largest challenge was lack of consensus when multiple public and

¹ “National Environmental Policy Act: Little Information Exists on NEPA Analyses.” U.S. Government Accountability Office (April 2014). Available at: <https://www.gao.gov/products/GAO-14-370>

² Toni Horst, et al., 40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance. AECOM, (2016). Available at:

<https://www.treasury.gov/connect/blog/Documents/final-infrastructure-report.pdf>

³ Ibid.

private entities and jurisdictions are involved. The third largest challenge was capital costs increasing at a greater rate than inflation.

— Congressional Research Service, February 29, 2009

- “[T]here is little data available to demonstrate that NEPA currently plays a significant role in delaying federal actions.”⁴

— Congressional Research Service, December 15, 2011.

- “The Army Corps of Engineers has \$97 billion in projects that have cleared all environmental reviews but remain stuck because of a lack of funding.”⁵ Currently, the Corps’ budget is \$5 billion a year.

MYTH: Environmental regulations and permitting are the biggest impediments to infrastructure projects.

— Secretary Elaine Chao, March 29, 2017

- “[T]he problem is not money. It’s the delays caused by government permitting processes that hold up projects for years, even decades, making them risky investments. That’s why a critical part of the President’s infrastructure plan will include common-sense regulatory, administrative, organizational, and policy changes that will encourage investment and speed project delivery.”

— Treasury Secretary Steve Mnuchin, March 24, 2017

- “The biggest problem on infrastructure right now is not the money, it’s the regulatory issues. Things are just stuck in either a state system or a federal system.”

FACT: The number of federal court cases challenging agency compliance with NEPA is extremely low and citizen’s access to the courts a critical tool of democracy and government accountability enshrined in the US Constitution.

— White House Council on Environmental Quality (CEQ)

- “Since 2001, fewer than 175 NEPA cases were filed each year - with less than 100 filed in 2007, 2009, 2010, and 2011.”
- A survey of legal challenges filed under NEPA between the years 2001 and 2013 found that litigation only encompassed 0.2 percent of all cases.⁶ On average, 100 cases are filed in district court annually, about half of which involve challenges to EISs.⁷

MYTH: frivolous NEPA litigation is extremely common and places an enormous burden on federal agencies

— Diane Katz, The Heritage Foundation, March 14, 2018

- “Activists for years have used judicial review to challenge (and delay) development. Consequently, agencies seek to prepare litigation-proof analyses in hopes of staking a defensible position (and avoiding public embarrassment).”

⁴ “The National Environmental Policy Act: Background and Implementation.” Congressional Research Service, February 29, 2008. Available at: <http://www.cnie.org/NLE/CRSreports/08Mar/RL33152.pdf>

⁵ “Army Corps Fiscal Challenges: Frequently Asked Questions.” Congressional Research Service, December 15, 2011. Available at: <https://fas.org/sgp/crs/natsec/R41961.pdf>

⁶ For example, the Forest Service recently disclosed that less than 4% of its land management decisions are challenged in court, and that the agency wins about 70% of such lawsuits. See generally: <https://vimeo.com/237902205>.

⁷ See “NEPA Litigation: CEQ Reports.” White House Council on Environmental Quality. Available at: <https://ceq.doe.gov/ceq-reports/litigation.html>