

The Trump Administration made a major regulation change to make the government more efficient and assist landowners and industry

Conner G. Nicklas¹
Falen Law Offices, LLC

On July 15 the Trump Administration and the Council on Environmental Quality announced major regulation reforms that will hopefully streamline landowner and industry projects across the country and also deweaponize a major tool environmentalists use to delay or derail projects. The intention behind these regulation changes is that important projects across the country will no longer be delayed or canceled because of red tape and technicalities. Ultimately, these reforms will hopefully help every American, from the rancher seeking the renewal of a grazing lease to the pipeline company proposing a new interstate pipeline, the American public will no longer have to wait years for an answer as to whether to proceed on a project.

These regulatory changes are to the National Environmental Policy Act (often called NEPA), a law that harkens back to the Nixon administration and was intended to require federal agencies to consider the effects a major federal action may have to the *human environment*. Simply put, the law requires that whenever a federal agency performs a major federal action they must undergo a review in which the agency considers a wide-range of actions and the potential effect that action may have on the human environment (though many would argue the human side of the environment is often ignored). The agency is then supposed to choose from those considered actions and make a final decision.

Since the creation of NEPA, the law has been weaponized by many environmentalist organizations to oppose any policy they disagree with by nitpicking through the document and suing the agency for violating NEPA. Because of the hundreds of lawsuits filed against agencies across the country, it now takes an average of four to seven years for an agency to complete a NEPA analysis just to ensure that the agency can defend itself from the inevitable lawsuits. Some examples of important projects that were unreasonably delayed include taking over 13 years to finalize the NEPA review for expanding I-70, decades plus delays on important water infrastructure projects in the West, and years in delays in grazing permit decisions across the country.

¹ Conner G. Nicklas is an Associate Attorney with Falen Law Offices, LLC with a primary focus on property rights, environmental, and natural resources law. Falen Law Offices, LLC, has attorneys licensed to practice law in Colorado, Illinois, Montana, Nebraska, New Mexico, North Dakota, South Dakota, and Wyoming. This article should not be understood to state or imply that any lawyers of this law firm are certified as specialists in a particular field of law. Colorado does not certify lawyers as specialists in any field. The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This article is informational and is not legal advice. Use of this article or contact with this law firm does not create an attorney-client relationship.

Another problem with NEPA is that some courts and environmentalists craft it apply nearly to everything. Whether the federal agency is only underseeing a small portion of a large project or is only a funding partner, many radical courts have interpreted NEPA to apply to the entire project. TransCanada's Keystone XL Pipeline has experienced this and are now mired in a several year delay on their project because the NEPA review must be for the entire pipeline instead of just those portions crossing federal land.

Because of these major delays and the fact that an entire project would be subject to NEPA, many private companies painstakingly try to avoid projects that may require federal permitting because the delays are too costly for the company to viably complete the project. It is because of these delays in getting NEPA approval that many pipeline companies will zig-zag around public land and condemn landowners rather than pursue the shortest route through mixed federal lands. In turn, because of NEPA, private landowners are now expected to bear most of the burden for public uses.

Despite the fact that NEPA clearly has moved past its intended purpose, it had not been updated or reformed in over forty years. So the proposed changes are long overdue and will hopefully be a shot in the arm for an economy still struggling in the throws of Covid-19.

One of the major changes to NEPA include limiting when NEPA actually applies. The intent behind NEPA was for the federal government to make informed decisions regarding potential environmental proposed *major* federal actions and make the public aware of the agency's decision-making process. The new regulations clearly demarcate that only actions that include major federal involvement and are major in scale are those actions that require NEPA. This means that those projects that the government has a minor role are not included. This also means that minor actions (such as allowing certain range improvements on a grazing allotment) are not included. This is a major step in the right direction toward modernizing NEPA because projects that are either minor in scale or require minimal federal involvement should not be trapped in years of NEPA analysis.

Another major change to NEPA is that there is now a page limit and time limit for all NEPA documents. If the impact of the decision is not significant, the NEPA document can only be 75 pages and must be completed within a year. If the impact of the decision is significant, the NEPA document can only be 300 pages at the most and it must be completed within two years. These are enormous improvements because it now requires the agencies to speed up and simplify the NEPA process and will hopefully make twenty-year delays for project approvals a thing of the past.

In the end, the Trump Administration's NEPA reform may be one of the greatest accomplishments of Trump's first term in office. The new regulations

will hopefully eliminate the ridiculously long delays NEPA has caused for the past forty years and will help disarm radical environmentalists. Many of these radical environmentalist organizations and radical courts will undoubtedly bring lawsuits in order to prevent the new regulations from becoming law, but we can all hope that the courts will agree that NEPA was desperately in need of a makeover.