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# Legal and Ethics of Tech

# NEPA Updated – Statutory Requirements & Regulatory Updates

# NEPA as amended by the Fiscal Responsibility Act (June 3, 2023)



**SEC. 102(2)(C) CONSISTENT WITH THE PROVISIONS OF THIS ACT AND EXCEPT WHERE COMPLIANCE WOULD BE INCONSISTENT WITH OTHER STATUTORY REQUIREMENTS, . . . [INCLUDE A DETAILED STATEMENT] ON –**

- (i) **reasonably foreseeable** environmental effects of the proposed agency action;
- (ii) any **reasonably foreseeable** adverse environmental effects which cannot be avoided should the proposal be implemented;
- (iii) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal;
- (iv) the relationship between local and short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- (v) any irreversible and irretrievable commitments of **Federal** resources which would be involved in the proposed agency action should it be implemented.

# Fiscal Responsibility Act of 2023 (cont'd)



## SECTION 102(2)(D)-(L) AMENDMENTS

(D) ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document;

(E) make use of reliable data and resources in carrying out this Act;

(F) consistent with the provisions of this Act, study, develop, and describe technically and economically feasible alternatives;

.....

(I) consistent with the provisions of this Act recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

# Fiscal Responsibility Act of 2023



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## SEC. 106 LEVELS OF REVIEW

### (b) Levels of review

(1) ENVIRONMENTAL IMPACT STATEMENT -- An agency shall issue an environmental impact statement with respect to a proposed agency action requiring an environmental document that has a reasonably foreseeable significant effect on the quality of the human environment.

(2) ENVIRONMENTAL ASSESSMENT.—An agency shall prepare an environmental assessment with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown, unless the agency finds that the proposed agency action is excluded pursuant to one of the agency's categorical exclusions, another agency's categorical exclusions consistent with section 109 of this Act, or another provision of law. Such environmental assessment shall be a concise public document prepared by a Federal agency to set forth the basis of such agency's finding of no significant impact or determination that an environmental impact statement is necessary.

# Fiscal Responsibility Act of 2023



## SEC. 107. TIMELY AND UNIFIED FEDERAL REVIEWS.

§4336a.

(a)(1) LEAD AGENCY DESIGNATION.—

(A) IN GENERAL.—If there are two or more participating Federal agencies, such agencies shall determine, by letter or memorandum, which agency shall be the lead agency based on consideration of the—

- (i) magnitude of agency's involvement;
- (ii) project approval or disapproval authority;
- (iii) expertise concerning the action's environmental effects;
- (iv) duration of agency's involvement; and
- (v) sequence of agency's involvement.

(B) JOINT LEAD AGENCIES.—In making a determination under subparagraph (A), the participating Federal agencies may appoint such State, Tribal, or local agencies as joint lead agencies as the involved Federal agencies shall determine appropriate. Joint lead agencies shall jointly fulfill the role described in paragraph (2).

# Fiscal Responsibility Act of 2023



## SEC. 107. TIMELY AND UNIFIED FEDERAL REVIEWS.

(2) ROLE.—A lead agency shall, with respect to a proposed agency action—

(A) supervise the preparation of an environmental document if, with respect to such proposed agency action, there is more than one participating Federal agency;

(B) request the participation of each cooperating agency at the earliest practicable time;

(C) in preparing an environmental document, give consideration to any analysis or proposal created by a cooperating agency;

(D) develop a schedule, in consultation with each cooperating agency, the applicant, and such other entities as the lead agency determines appropriate, for completion of any environmental review, permit, or authorization required to carry out the proposed agency action;

(E) if the lead agency determines that a review, permit, or authorization will not be completed in accordance with the schedule developed under subparagraph (D), notify the agency responsible for issuing such review, permit, or authorization of the discrepancy and request that such agency take such measures as such agency determines appropriate to comply with such schedule; and

(F) meet with a cooperating agency that requests such a meeting.

# Fiscal Responsibility Act of 2023



## SEC. 107. TIMELY AND UNIFIED FEDERAL REVIEWS.

(b) ONE DOCUMENT.—To the extent practicable, if a proposed agency action will require action by more than one Federal agency and the lead agency has determined that it requires preparation of an environmental document, the lead and cooperating agencies shall evaluate the proposal in a single environmental document.

(c) REQUEST FOR PUBLIC COMMENT.—Each notice of intent to prepare an environmental impact statement under section 102 shall include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action.

(d) STATEMENT OF PURPOSE AND NEED.—Each environmental document shall include a statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed agency action.

# Fiscal Responsibility Act of 2023



## SEC. 107(g) DEADLINES. ---

(1) IN GENERAL.—Except as provided in paragraph (2), with respect to a proposed agency action, a lead agency shall complete, as applicable—

(A) the environmental impact statement not later than the date that is 2 years after the sooner of, as applicable—

(i) the date on which such agency determines that section 102(2)(C) requires the issuance of an environmental impact statement with respect to such action;

(ii) the date on which such agency notifies the applicant that the application to establish a right-of-way for such action is complete; and

(iii) the date on which such agency issues a notice of intent to prepare the environmental impact statement for such action; and

(B) the environmental assessment not later than the date that is 1 year after the sooner of, as applicable—

(i) the date on which such agency determines that section 106(b)(2) requires the preparation of an environmental assessment with respect to such action;

(ii) the date on which such agency notifies the applicant that the application to establish a right-of-way for such action is complete; and

(iii) the date on which such agency issues a notice of intent to prepare the environmental assessment for such action.

# Fiscal Responsibility Act of 2023



## SEC. 107(g) DEADLINES. ---

(2) DELAY.—A lead agency that determines it is not able to meet the deadline described in paragraph (1) may extend such deadline, in consultation with the applicant, to establish a new deadline that provides only so much additional time as is necessary to complete such environmental impact statement or environmental assessment.

## (3) PETITION TO COURT.—

(A) RIGHT TO PETITION.—A project sponsor may obtain a review of an alleged failure by an agency to act in accordance with an applicable deadline under this section by filing a written petition with a court of competent jurisdiction seeking an order under subparagraph (B).

(B) COURT ORDER.—If a court of competent jurisdiction finds that an agency has failed to act in accordance with an applicable deadline, the court shall set a schedule and deadline for the agency to act as soon as practicable, which shall not exceed 90 days from the date on which the order of the court is issued, unless the court determines a longer time period is necessary to comply with applicable law.

\* Tested in *Signal Peak Energy v. Haaland*, No. 24-CV-366, 2024 WL 3887386 (D.D.C. Aug. 21, 2024)—lawsuit filed to enforce deadlines – found prudentially unripe

# Fiscal Responsibility Act of 2023



## SEC. 111. DEFINITIONS

- (1) CATEGORICAL EXCLUSION.—The term ‘categorical exclusion’ means a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of section 102(2)(C).
- (2) COOPERATING AGENCY.—The term ‘cooperating agency’ means any Federal, State, Tribal, or local agency that has been designated as a cooperating agency under section 107(a)(3).
- (8) PARTICIPATING FEDERAL AGENCY.—The term ‘participating Federal agency’ means a Federal agency participating in an environmental review or authorization of an action.
- (9) LEAD AGENCY.—The term ‘lead agency’ means, with respect to a proposed agency action—
- (A) the agency that proposed such action; or
  - (B) if there are 2 or more involved Federal agencies with respect to such action, the agency designated under section 107(a)(1).

# Fiscal Responsibility Act of 2023



## SEC. 111. MAJOR FEDERAL ACTION DEFINITION

(A) IN GENERAL.—The term ‘major Federal action’ means an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility.

(B) EXCLUSION.—The term ‘major Federal action’ does not include—

(i) a non-Federal action—

(I) with no or minimal Federal funding; or

(II) with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project;

(ii) funding assistance solely in the form of general revenue sharing funds which do not provide Federal agency compliance or enforcement responsibility over the subsequent use of such funds;

(iii) loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action;

(iv) business loan guarantees provided by the Small Business Administration pursuant to section 7(a) or (b) and of the Small Business Act ( U.S.C. 636(a)), or title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.);

(v) bringing judicial or administrative civil or criminal enforcement actions;

(vi) extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States; or

(vii) activities or decisions that are non-discretionary and made in accordance with the agency’s statutory authority.

# Executive Order 14154, “Unleashing American Energy”



- Revoked President Carter’s Executive Order 11991
- Directed CEQ to propose rescinding its NEPA regulations
- Required CEQ to issue guidance on implementing NEPA by February 19, 2025, and to convene a working group to coordinate the revision of agency-level implementing regulations “for consistency.”
- Any CEQ guidance or agency-specific implementing regulations “must expedite permitting approvals and meet deadlines established in the Fiscal Responsibility Act of 2023,” and “prioritize efficiency and certainty over any other objectives . . . that could . . . add delays and ambiguity to the permitting process.

<https://x.com/WhiteHouse/status/1909779469503807970>

# February 19, 2025: CEQ Guidance Memo



- Agencies should establish new NEPA procedures within 12 months
- Repeats that “agencies must prioritize efficiency and certainty over any other policy objectives that could add delays and ambiguity to the permitting process.”
- Agencies should not delay NEPA reviews while their procedures are being revised; consider relying on rescinded CEQ regs in the interim to complete reviews/defend projects

# February 25, 2025: CEQ Interim Final Rule



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- Over 88,000 comments received
- **U.S. Chamber of Commerce:** *“Predictability is critical . . . . Efficiency is essential . . . . Transparency is crucial . . . .”*
- **Wester Urban Water Coalition:** *“CEQ’s rescission of its NEPA regulations will introduce delays and uncertainties in environmental reviews, increase litigation risk, and increase costs for critical infrastructure projects.”*
- **AASHTO:** *“[W]e ask the CEQ to mitigate any developments that may lead to conflicting or redundant policies and excessive workload.”*

# May 29, 2025: *Seven County Infrastructure v. Eagle, County Colorado*



- Federal agencies need not evaluate environmental effects they have no legal authority to prevent or mitigate.
- D.C. Circuit failed afford the Board the substantial judicial deference required in NEPA cases.
- Court should just confirm that the agency addressed environmental consequences and feasible alternatives.
- Ensure the final decision was “reasonably explained.”
- D.C. Circuit incorrectly required the Board to consider environmental effects of upstream and downstream projects that are **separate in time and place** from the Unita Basin Railway.
  - Separate projects break the “chain of proximate causation”
  - Applied *Public Citizen* holding

# Implications of the *Seven County* Decision



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***“NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents (who may not be motivated by concern for the environment) to try to stop or at least slow down new infrastructure construction projects”***

***“While NEPA requires an EIS to be ‘detailed,’ and the meaning of ‘detailed’ is a legal question, what details need to be included in any given EIS is a factual determination for the agency.” (citing Loper Bright Enterprises v. Raimando, 603 U.S. 369, 391-92).***

***“In sum, when assessing significant environmental effects and feasible alternatives for purposes of NEPA, an agency will invariably make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry—and also about the length, content, and level of detail of the resulting EIS. Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness.”***

# Agency NEPA Rulemaking Post-Seven County



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Department of Agriculture, Interim Final Rule, 90 FR 29632 (July 3, 2025) rescinded:

- Agricultural Research Service: 7 CFR 520;
  - Animal and Plant Health Inspection Service: 7 CFR 372;
  - Farm Service Agency: 7 CFR 799;
  - National Institute of Food and Agriculture: 7 CFR 3407;
  - Natural Resources Conservation Service: 7 CFR 650;
  - Rural Development: 7 CFR 1970; and
  - U.S. Forest Service: 36 CFR 220.
- “Where USDA agency NEPA regulations used agency-developed terms, such as those associated with agency-developed forms and other document types, these have been generalized to allow for the application of consistent Department implementing procedures for NEPA.”
  - *Seven County* sought to address the effect on “litigation-averse agencies” which, in light of judicial “micromanage[ment],” had been “tak[ing] ever more time and [ ] prepar[ing] ever longer EISs [environmental impact statements] for future projects.” *Id.* at 1513. USDA incorporated this case's holdings into these procedures, availing itself of the latest information and guidance from the Court for its future NEPA application.

# Agency NEPA Rulemaking Post-Seven County



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Department of Defense: The Army, Navy, and Air Force rescinded their NEPA implementing regulations in interim final rules and the Department issued the *Department of Defense National Environmental Policy Act Implementing Procedures* (DoD NEPA Procedures) on June 30, 2025.

These procedures apply to DoD Components including functions for the Army Civil Works programs. (<https://www.denix.osd.mil/nepa/>) 90 FR 27857 (June 30, 2025) (“The DoD NEPA Procedures seek to faithfully implement the recent significant changes to NEPA prescribed by Congress, instruction provided by the President, and guidance provided by the Supreme Court.”)

- [Department of the Air Force Notice of Repeal NEPA Regulations](#)
- [Department of the Army Notice of Repeal NEPA Regulations](#)
- [Department of the Navy Notice of Repeal NEPA Regulations](#)
- [United States Army Corps of Engineers Notice of Repeal NEPA Regulations](#)
- [United States Army Corps of Engineers Civil Works Notice of Repeal NEPA Regulations](#)

# Agency NEPA Rulemaking Post-Seven County



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Department of Energy, Interim Final Rule, 90 FR 29676

- “Mindful that the Supreme Court recently clarified NEPA is a ‘purely procedural statute,’ DOE will henceforth maintain the remainder of its procedures in a procedural guidance document separate from the Code of Federal Regulations (DOE NEPA implementing procedures).”
- DOE is revising [10 CFR part 1021](#) to contain only administrative and routine actions excepted from NEPA review in appendix A, its existing categorical exclusions in appendix B, related requirements, and a provision for emergency circumstances.
- DOE is revising appendix A in [10 CFR part 1021](#) to align with DOE's new NEPA implementing procedures that it is publishing separate from the Code of Federal Regulations. Appendix A in [10 CFR part 1021](#) (formerly categorical exclusions) are now administrative and routine actions that do not require NEPA review.
- DOE is also revising [10 CFR part 205, subpart W](#), to remove the NEPA procedures from its Presidential permit regulations.

FERC, Final Rule, 90 FR 29423 (revised NEPA regulations to remove reference to CEQ’s rescinded regulations).

# Agency NEPA Rulemaking Post-Seven County



Department of the Interior, Interim Final Rule, 90 FR 29498 (partially rescinding and making necessary targeted updates to its remaining regulations)

- “Mindful that the Supreme Court recently clarified NEPA is a ‘purely procedural statute,’ DOI will henceforth maintain the remainder of its NEPA procedures— which apply only to DOI’s internal processes—in a Handbook”
- DOI retains and makes limited updates to provisions relating to:
  - emergency responses to ensure that DOI can respond timely to any such event and to avoid any confusion regarding the continued validity of this already-established provision for action in emergency situations (43 CFR 46.150);
  - categorical exclusions and their use to avoid any instability in these vital procedures or uncertainty about the continued validity of its already-established categorical exclusions (43 CFR 46.205, 46.210, 46.215); and
  - “A Responsible Official has discretion to allow an applicant or applicant-directed contractor to prepare an environmental impact statement or an environmental assessment (including analysis supporting these documents).” (43 CFR 46.105, 46.107).
- All other provisions will be removed from 43 CFR part 46.

# Department of the Interior final NEPA Regulations & Handbook



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- Final Rule published Feb. 24, 2026, 91 FR 8738 ([2026-03708.pdf](#))
- Retained a limited number of provisions in regulation at 43 C.F.R. Part 46, including
  - emergency responses (Section 46.150);
  - categorical exclusions and extraordinary circumstances (Sections 46.205, 46.210, and 46.215);
  - applicant- and contractor-prepared environmental documents (Sections 46.105 and 46.107); and
  - procedures for designating lead agencies and selecting cooperating agencies (Sections 46.220 and 46.225).

# CEQ Template for NEPA Implementing Procedures



- *Seven County* noted that the 2023 FRA amendments, by establishing deadlines and page limits, “strictly *prohibit*” the NEPA process from going on too long in time or in volume.
- Template is a non-binding, informational resource intended to support agencies and coordinate agency efforts to provide for consistency, coordination, and use of best practices in their implementation of NEPA’s procedures requirements.
- For procedures that are not being established or revised by rulemaking, the agency’s new or revised NEPA implementing procedures are effective after the conclusion of the [CEQ] consultation. The agency should make the procedures available to the public, such as through publication in the Federal Register.
- Template regulations include : the following types of action are generally “major”:
  - (A) [Insert a list of examples from agency experience that the agency knows will usually or always trigger an EIS. Many agencies already have such a list in their existing NEPA procedures], or
  - (B) Informed by the content of the list generated in (A), Agency should consider distilling from that list an anticipatory (but nonbinding) monetary threshold above which an action will be deemed “major.” This threshold can be calculated, to the extent the agency can substantiate it: 1) by project costs; and/or 2) by overall economic impact, e.g., regulatory costs].



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# Responsible AI Use and Best Practices

# Reminder -- Ethical Guidelines for AI

- Ethical guidelines for AI provide a framework for ensuring that AI systems are developed and used in a manner that respects human rights, promotes fairness, and prevents harm.

# ABA Formal Opinion 512, July 29, 2024



- “Generative Artificial Intelligence Tools”
- [Formal Opinion 512](#)

- **General Proposition:**

- Principles governing the ethical use of AI in legal practice apply in equal force to how and when environmental professionals employ AI tools

# It's NOT Just AI Hallucinations



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- Reported Decisions and Sanctions Grab the Headlines
- Lawyers (many highly skilled) AND Judges!
- But Ethical Issues Go Far Beyond Obvious Lapses

# Principles Identified by ABA Formal Opinion 512



- Competency (training, application of tools, tracking developments)
- Confidentiality/Data Security
- Disclosure/Client Expectations
- Duties of Professional Oversight/Review/Supervision
- Fee Structures



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When AI Writes the Environmental Impact Statement

# Judicial Review of Algorithmic Environmental Analysis under NEPA

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**Presented By:**

Tuoya Saren

**Date:**

Feb 3, 2026

Emory University school of Law

# What is NEPA



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**NEPA=** Procedural Backbone of Environmental Governance

Not an environmental command statute---**A decision-structuring law**

**Force agencies to**

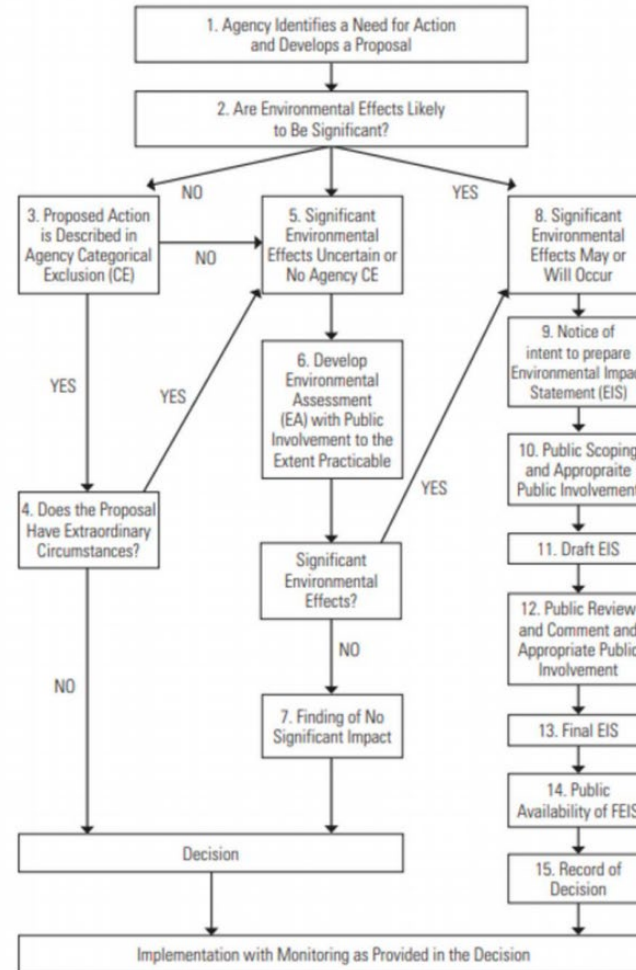
- Generate environmental knowledge
- Disclose impacts
- Justify action publicly

An “information-forcing” regime

# The NEPA process



The NEPA process<sup>8</sup> (Figure 1)



# NEPA Is Procedural, Not Substantive

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The Supreme Court has consistently emphasized that NEPA is a procedural statute.

**“NEPA guarantees a particular procedure, not a particular result.”**

— Robertson v. Methow Valley Citizens Council



# Hard look review as Institutional Logic

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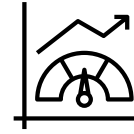
**Hard Look** = Review of institutional Rationality

**Courts do not redo science, they ask:**

- Did the agency consider relevant impacts?
- Did it examine alternatives?
- Did it explain its reasoning?

**The object of review = reasoned agency judgment.**

# Key Hard look Case



1



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## Motor Vehicle Manufacturers Ass'n v. State Farm

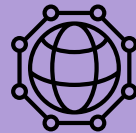
- Agencies must provide a **reasoned explanation**
- There must be a rational connection between facts found and choices made



2

## Robertson v. Methow Valley Citizens Council

- NEPA enforces **procedural rigor**, not substantive outcomes
- Mitigation must be discussed, but not necessarily adopted



3

## Baltimore Gas & Electric Co. v. NRDC

- Courts are **most deferential** when reviewing technical and scientific judgments



4

Together, these cases create a balance: meaningful judicial oversight, but **strong respect** for agency expertise.

# What is EIS



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**The EIS = Institutionalized Reasoning**

**An EIS performs three governance functions:**

- Epistemic---Generate environmental knowledge
- Procedural---structures agency deliberation
- Democratic---enables public & judicial oversight

An EIS must show: Environmental impacts, Cumulative effects, reasonable alternatives

Courts review the EIS, not the project itself.

# TimeLine



Based on its review, CEQ found that across all Federal agencies, **the average** (i.e., mean) EIS completion time (from NOI to ROD) **was 4.5 years and the median was 3.6 years.**<sup>iv</sup> One quarter of the EISs took less than **2.2 years** (i.e., the 25th percentile), and one quarter took more than **6.0 years** (i.e., the 75th percentile).

# TimeLine

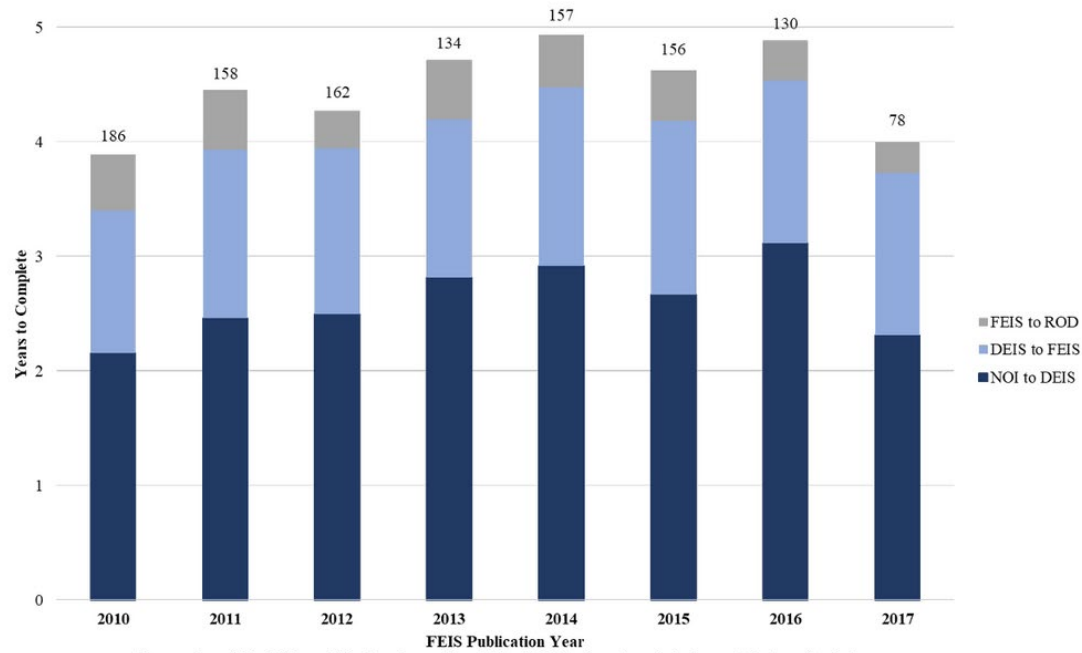


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**Figure 2**

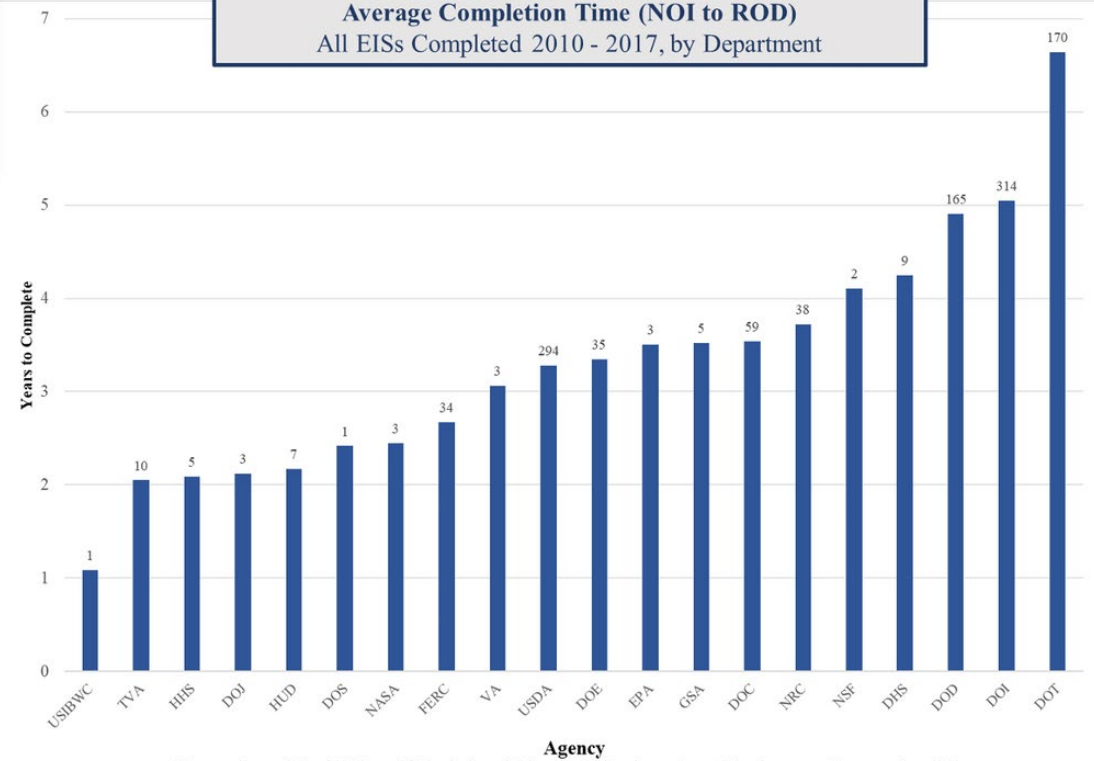
**Average EIS Process Completion Time (NOI to ROD)**  
All EISs completed 2010-2017



The number of Final EISs published each year, for which a ROD has been issued, is shown at the top of each bar.

**Figure 3**

**Average Completion Time (NOI to ROD)**  
All EISs Completed 2010 - 2017, by Department



The number of Final EISs published, for which a ROD has been issued, is shown at the top of each bar.



# Why AI Enters the EIS Process

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## Structural Drivers:

- Expanding environmental data scale
- Cumulative & climate modeling
- Time and staffing constraints

## Already in practice:

- GHG modeling tools
- Public comment classification
- Technical record synthesis

### Winter Storm 2026

- [Visit the FEMA website for the latest information on Winter Storm Fern.](#)
- [Visit USA.gov to learn how the U.S. government is responding to Winter Storm Fern.](#)

Office of Policy > [Faster, Better Permitting with PermitAI](#)

BLOG

# Faster, Better Permitting with PermitAI

Building the infrastructure we need to unleash American energy requires accelerating permitting.

[Office of Policy](#)

July 10, 2025



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## What PermitAI™ is doing

### Data Collection, Enrichment, Management, and Governance



PermitAI™ is creating standardized data to improve quality and access. This includes building connections for NEPA data, including data on projects, processes, documents, and public involvement as well as comments and geographic information system records.

### AI Model Development and Evaluation



Using large language models to analyze thousands of environmental review documents, like categorical exclusions, environmental assessments, and environmental impact statements, can boost efficiency. This method can help to uncover trends, create a detailed map, and catalog all NEPA efforts.

### NEPA Application Development and Deployment



The PermitAI™ team offers safe and reliable support to NEPA experts and users in government agencies, academia, Tribal governments, and the public for developing and evaluating permitting tools and applications.



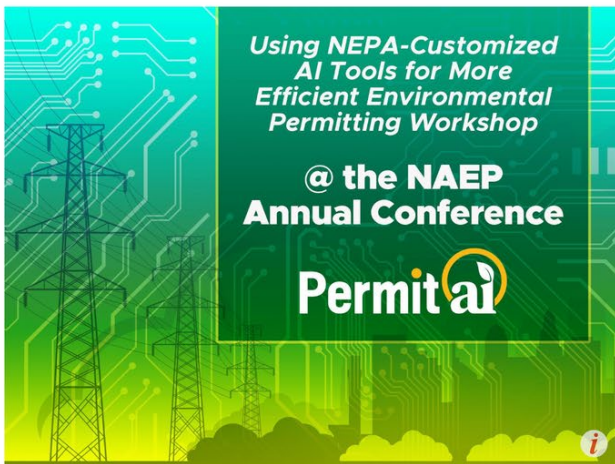
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Meeting/Workshop

# Using NEPA-Customized AI Tools for More Efficient Environmental Permitting

Bringing together technical leaders using AI to modernize and streamline federal permitting



# The Hidden Assumption of This System

The court	The agency
Interpret law	Exercise expertise
review procedure	Make scientific judgments

## The system Assumes: Scientific reasoning

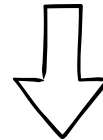
- Agency reasoning-----The EIS reflects **human expert judgment**



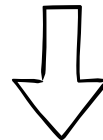
# What Goes Wrong?

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Courts decide law, agencies decide science



**When AI Disrupts the Logic of Judicial Review**



The Disruption: AI-generated analysis challenges this premise

# Strategy Summary

**3** Judicial Review

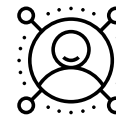
HOW  
COURT  
JUDGE?



?

**2** Hard Look 2.0

IS SPEAK  
RELIABLE?



- Is the reasoning visible?
- Are the assumptions examinable?
- Is the analysis site-specific and complete?

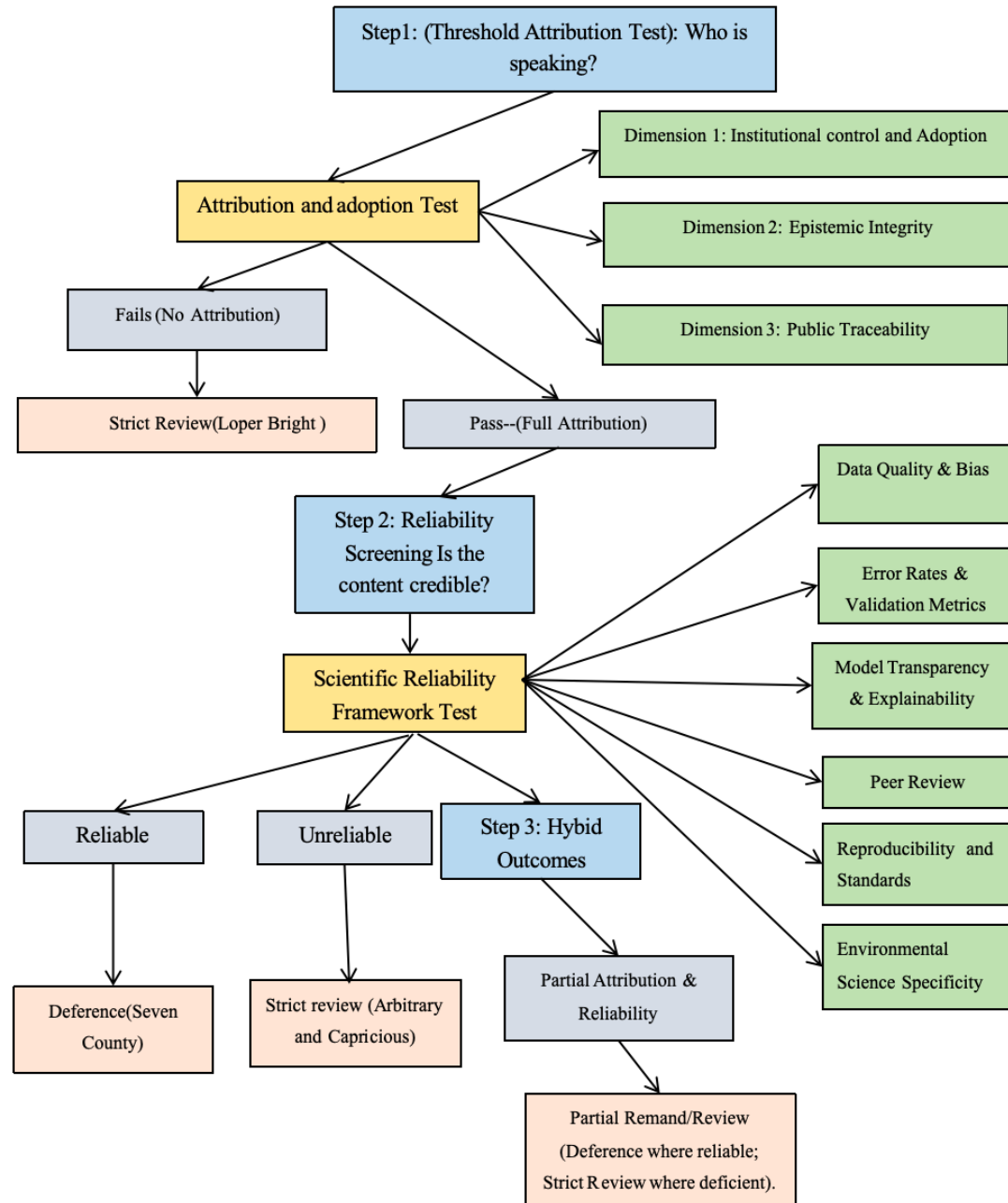
**1** Attribution &  
Adoption

WHO SPEAK?



- Did the agency own the AI output?
- Can the agency explain how the AI reached its conclusions?
- Can the public see where AI influenced the EIS?

Figure 1. AI-EIS Judicial Review Logic Chan





## Functional Comparison of the Three ATT Dimensions (Overview Table)

Dimension	Core Question	Normative Source	Primary Risk Prevented
<b>Agency Responsibility</b> (Control & Adoption)	Is this genuinely the agency's own judgment?	Administrative law(e.g., State Farm; NEPA "hard look")	Substitution of agency judgment by AI; hollowing out of responsibility
<b>Scientific Integrity</b> (Explanation & Validation)	Is this judgment scientifically defensible?	NEPA's information sufficiency requirement + Daubert logic	Black-box models; non-verifiable conclusions
<b>Democratic Accountability</b> (Transparency & Participation)	Does the public know, and can it meaningfully challenge the analysis?	NEPA procedural justice	Technocratic insulation; procedural distortion

# Hard Look 2.0 Dimensions in AI-EIS Review



Content	Core Objective	Included Factors	Core Question
<b>Input Integrity</b>	Ensure the authenticity and quality of data and model inputs.	① Data Quality & Bias ② Error Rates & Validation	Are the scientific inputs reliable?
<b>Procedural Transparency</b>	Ensure that algorithmic reasoning is open, traceable, and externally verifiable.	③ Transparency & Explainability ④ Peer Review & General Acceptance	How does the algorithm reach its conclusions, and can others verify them?
<b>Systemic Adaptability</b>	Ensure that institutional systems maintain integrity and adaptability under uncertainty and change.	⑤ Reproducibility & Standards ⑥ Environmental Science Specificity	Can this analytical system still be trusted under uncertainty and dynamic environmental conditions?

# Strategy Summary

**3** Judicial Review

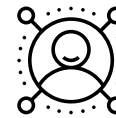
HOW  
COURT  
JUDGE?



?

**2** Hard Look 2.0

IS SPEAK  
RELIABLE?



- Is the reasoning visible?
- Are the assumptions examinable?
- Is the analysis site-specific and complete?

**1** Attribution &  
Adoption

WHO SPEAK?



- Did the agency own the AI output?
- Can the agency explain how the AI reached its conclusions?
- Can the public see where AI influenced the EIS?



# NEED TALK

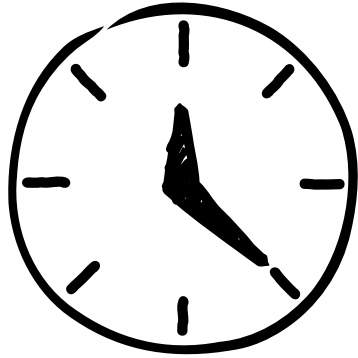
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How the Court Judge?



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**Thanks!**

# Introduction to Responsible AI

- Responsible AI is essential to harnessing the benefits of AI while mitigating its risks. This section will explore the principles and best practices for using AI responsibly in federal agencies.
- We have talked about the the changing NEPA landscape and ABA policy, and other ethical considerations now we will explore best practices.

# Principles of Ethical AI



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- Ethical AI is guided by key principles that ensure ethical and effective use.
  - Fairness
  - Transparency
  - Accountability
  - Privacy and Security
  - Inclusivity
  - Trust
- For a list of all principles, see Rutgers Univ. AI Ethics Lab

# Fairness in AI



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- Fairness in AI is an ethical principle ensuring systems produce impartial, just outcomes, free from discrimination against individuals or groups based on characteristics like race, gender, or age
- Substantive Fairness: Ensures the final outcomes of AI decisions are equitable, avoiding unfair treatment or discrimination.
- Procedural Fairness: Focuses on the fairness of the process, allowing individuals to contest or seek redress for decisions made by AI.
- Individual & Group Fairness: Treating similar individuals consistently, while ensuring different demographic groups are treated equitably, such as equalizing false positive rates (equalized odds)

# Transparency in AI

- Transparency in AI means making AI systems understandable and explainable to users and stakeholders.
  - Clear documentation
  - Explain AI models' and use
  - Open communication
  - How to do this?
    - Internal AI policies involving environmental reviews and handling of data
    - Include in statement of work involving environmental contractor or applicant

# Accountability in AI



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- Accountability in AI involves defining clear responsibilities for AI actions and decisions, ensuring mechanisms for redress and oversight.
- Assigning responsibility
  - Ensuring Proper Training for Personnel on AI
  - Training for Personnel on Avoiding Hallucinations, Verification and Authenticating Output
- Implementing oversight mechanisms
- Establishing redress systems

# Privacy and Security in AI



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- Ensuring privacy and security in AI involves protecting personal data and securing AI systems from attacks.
- Data protection measures
  - Ensure using AI approved for use, especially with "official use" documents or "controlled unclassified information"
- Secure AI development practices
- Regular security audits

# Inclusivity in AI



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Inclusivity in AI involves ensuring that AI systems are accessible and beneficial to diverse groups, preventing exclusion and discrimination.

- Ensure that we consider bias in reviewing data
- Expansion of using translation services
  - Public Engagement
  - Environmental Documents

# Trust in AI



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Trust in artificial intelligence refers to the confidence users and stakeholders have in the reliability, safety, and ethical integrity of AI systems.

- A trustworthy AI system must consistently meet user expectations, deliver reliable outcomes, and align with societal values and norms.
- Trust must be balanced with informed skepticism to prevent blind reliance on AI
- Trust in AI is ongoing process and necessitates collaboration among developers, users, and regulators to uphold ethical standards, protect societal values.

Source: Rutgers University AI Ethics Lab

# AI Governance



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AI governance involves creating policies and structures to oversee the development, deployment, and monitoring of AI systems.

- Establishing AI policies
  - Establishing firm and agency (most cabinet level agencies do have AI policy) but many not at operating administration, bureau level, or involving environmental.
  - Including acquisition/statements of work
- Creating oversight committees
- Implementing monitoring mechanisms

# Best Practices for Responsible AI

- Implementing best practices for responsible AI involves following guidelines and adopting strategies to ensure ethical and effective use.
- Adhering to ethical guidelines
- Regularly auditing AI systems (function of firm/agency)
- Engaging stakeholders in AI development
  - Here, internal stakeholders (in this application) and consultants/contractors, as applicable

# Select AI Policies involving Responsible Use of AI – Federal Agency and Professional Examples



- American Bar Association Statement (Fred Wagner has covered)
- Int'l Assoc. Impact Assessment Statement, Best Practice for AI in AI, *available at:* [https://iaia.org/wp-content/uploads/2025/06/SP16\\_AI-in-IA.pdf](https://iaia.org/wp-content/uploads/2025/06/SP16_AI-in-IA.pdf)
- Dep't of Interior AI Compliance Plan, *available at* <https://www.doi.gov/ai>
- Many agencies, DOW, DHS, DOS, OPM have policies that have been established for trustworthy AI and are moving forward to incorporate ethical principles

# Select AI Policies involving Responsible Use of AI – Federal Agency and Professional Examples

- General Services Administration (GSA): Operates the AI Center of Excellence to share best practices and help agencies navigate responsible implementation, available at <https://coe.gsa.gov/coe/ai-guide-for-government/evolving-principles-and-guidelines/index.html>
- Regulatory Agencies (FTC, EEOC, CFPB, DOJ): Issued a joint pledge to use existing legal authorities to combat discrimination, fraud, and privacy violations arising from automated systems, *available at* [https://www.ftc.gov/system/files/ftc\\_gov/pdf/EEOC-CRT-FTC-CFPB-AI-Joint-Statement%28final%29.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/EEOC-CRT-FTC-CFPB-AI-Joint-Statement%28final%29.pdf)

# Best Practices - Responsible AI Deployment – a summary



- Ethical Standards and Guidelines Established
- Transparency in Deployment
- Stakeholder Engagement – in planned use of AI systems
- Establish Best Practices for Ethical AI Deployment
  
- **Remember: AI does not replace professional judgment OR critical thinking**

# Questions?