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Easier Said Than Done — Permitting Proves to Be a Delicate Balancing Act for Energy Projects

Debt-ceiling bill offers hope for more reforms, but path forward is uncertain



- Extended debate over Mountain Valley Pipeline shows that permitting issues are well known but with no easy fixes.
- Long-range transmission projects can often face significant delays but are seen as critical in plans to advance clean energy.
- Large-scale wind and solar projects must increasingly deal with permitting challenges at state, local levels.
- Increased production of metals, critical minerals essential to the energy transition may be reliant on process improvements.
- Fiscal Responsibility Act includes several popular permitting reforms, but also shows how much more needs to be done.

1. Introduction

When it comes to proposals to build large-scale energy projects, whether it's a new transmission line, a mining complex or an interstate oil or gas pipeline, the permitting process can be a delicate balancing act. Nearly everyone understands that appropriate social and environmental safeguards are essential. At the same time, the permitting process shouldn't be so cumbersome that it takes a decade or more to build that transmission line, complete that mine, or get a pipeline into operation.

There's a general understanding that the permitting process needs to be improved — but it's a whole lot easier said than done.

Conversations around the need for permitting reform at the federal level have been happening for the last couple of years, but as detailed in Section 2 of this report, there has been relatively little to show for it until recently. Prior to 2023, the highest-profile effort in recent years was headlined by Senator Joe Manchin, a Democrat from West Virginia. As part of his agreement to support passage of the Inflation Reduction Act (IRA) in August 2022, Manchin secured a commitment from the Democratic leadership to hold a vote on a follow-up bill that would speed the permitting process for energy infrastructure, including addressing hang-ups relating to the National Environmental Policy Act (NEPA, see Figure 1 below) and the long-delayed Mountain Valley Pipeline (MVP) project. However, the bill died in late 2022 after it gained only 47 votes in the Senate, including just seven Republicans, who typically favor permitting reform but were upset at Manchin’s support of the IRA.

While the permitting process has sometimes left developers of traditional oil and gas pipelines like MVP feeling like they were stuck in purgatory, the impact has been far more expansive. The difficulties and slow pace of the permitting process have touched numerous sectors, including long-distance electric transmission projects needed to move renewable energy where it’s needed (Section 3); wind and solar projects, which are facing increasing levels of pushback at the local level (Section 4); and large-scale mining operations, which are vitally important in the production of the metals and critical minerals used in batteries and other clean-energy technologies needed for the energy transition (Section 5).

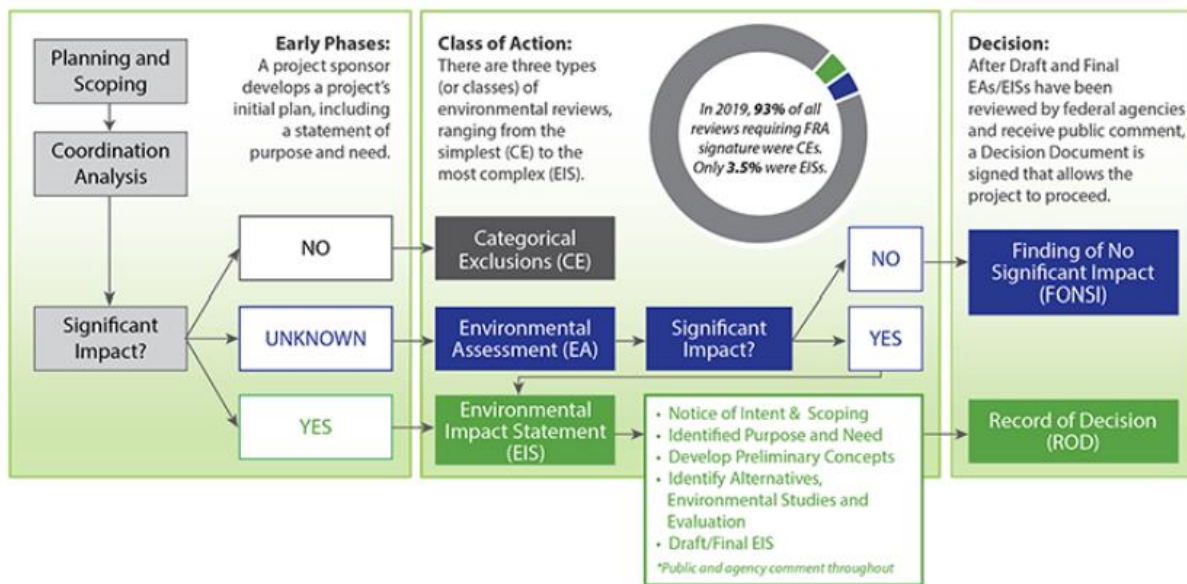


Figure 1. Illustration of Review Process Under National Environmental Policy Act.
Source: Federal Railroad Association

However, if permitting reform seemed to hit a dead-end last year, it was suddenly revived through the unique circumstances around this summer’s must-pass debt-ceiling bill and the continued legal delays surrounding the MVP project. The pressure to get a deal done before the U.S. defaulted on its debt was enormous, something the supporters of permitting reform used to help leverage the deal. (Manchin, whose vote has been critical in passing legislation in an evenly divided Senate, has long supported permitting reform and completion of the MVP project.) As noted in Section 6, the combination of those factors helped form the basis of what became known as the Fiscal Responsibility Act (FRA), which not only raised the federal debt ceiling until 2025 and sought to expedite MVP’s completion, it also contained a number of popular, generally bipartisan reforms to the NEPA process, including:

- **Lead Agency Designation:** When two or more agencies are involved in a review, one will be designated as the lead agency in an effort to reduce confusion and delays. The lead agency is responsible for supervising the preparation of environmental reviews and developing a schedule in consultation with the other agencies and the applicants.
- **Applicant Reviews:** The FRA allows project applicants to prepare their own environmental reviews under the supervision of a federal agency, which is intended to streamline the process for developers.
- **Time Limits:** The FRA includes a two-year limit to prepare and finalize an Environmental Impact Statement (EIS) and a one-year limit for an Environmental Assessment (EA). The lead agency can extend the timeline in consultation with the project applicant.

In this report, we examine the major themes around permitting reform and examine the factors that could help — or hinder — further efforts.

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