Bipartisan Environmental Permitting Reform Framework: U.S. House of Representatives Problem Solvers Caucus Announces Release



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The United States House of Representatives Problem Solvers Caucus ("PSC") issued what it describes as a "Permitting Reform Framework" ("Framework").

The stated objective is to eventually turn the "Framework" into legislation.

The PSC describes itself as a group of Members of Congress:

…split between Republicans and Democrats — committed to advancing common-sense solutions to key issues facing our nation. Our Members sit down together every week to debate, exchange ideas, and find common ground.

The PSC states that there is momentum building to act on permitting reform. It characterizes the Framework as encompassing recommendations that:

…offer a commonsense, two-party roadmap to streamline the permitting process, boost energy production of all kinds, and give investors the clarity and confidence they need to invest in America.

The Framework is stated to:

…reflect months of bipartisan collaboration with energy producers, industry experts, Members across committees of jurisdiction, and stakeholders across the political spectrum.

PSC states as its rationale for permitting reform:

- United States will see a significant increase in demand for energy.
- Energy infrastructure projects can dragged out for more than a decade.
- Projects can be burdened by outdated regulatory processes, duplicative reviews, and endless litigation, stifling innovation and driving up costs.

Recommendations include:

- Depoliticize and streamline the permitting process for cross-border linear infrastructure — including pipelines and transmission lines — by removing the Presidential permit requirement and enforcing a one-year deadline from the issuance of the environmental document with automatic approval if unmet.
- Clarify that Clean Water Act Section 401 certifications by states should focus only on water quality impacts of the project that result from the federally permitted or licensed activity.

- Consolidate judicial review for U.S. Department of Energy and Federal Energy Regulatory Commission linear infrastructure projects under the exhaustion and judicial review provisions of the Federal Power Act.
- For Section 368 corridors on federal lands, clarify that the corridor-wide NEPA review satisfies the purposes of NEPA.
- Create categorical exclusions for simple updates to existing linear infrastructure with minimal environmental impact.
- Require FERC to initiate interregional transmission planning (excluding ERCOT) to improve reliability, resilience, and affordability.
- Promote grid-enhancing technologies.
- End mandatory Nuclear Regulatory Commission hearings for nuclear licenses when no stakeholders raise objections
- Expedite the permitting process for geothermal energy projects.
- Extend existing categorical exclusions created for oil and gas development to geothermal energy.
- Exempt the provision of federal grants and loans from triggering NEPA requirements when funding itself is the sole nexus of federal involvement.
- Codify the longstanding functional equivalence to exempt projects from NEPA permitting if they are already reviewed under functionally equivalent laws, such as the California Environmental Quality Act, Clean Air Act, etc.
- Prohibit courts from delaying, setting aside, limiting, staying, vacating, or enjoining a project, unless it poses risk of a proximate and substantial environmental harm and no other equitable remedy is available.
- Elevate litigation for large multi-state infrastructure projects directly to the U.S. Court of Appeals.
- Restrict judicial standing for litigating projects to parties who submitted detailed comments during public review.
- Reduce statute of limitations for lawsuits to one year or less, with 150-day limits for FAST-41 projects.
- Ensure compliance with environmental review timelines.
- Require courts to set a reasonable schedule and deadline for agencies when acting on remand with specific direction on necessary remand.
- Courts cannot require the agency to prepare a new environmental document, unless the court finds the agency failed to prepare the required document.
- Direct federal agencies to replace outdated paper systems with centralized, cloud-based platforms for all permitting processes, etc.
- Require Department of Energy to regularly assess electricity generation and transmission supply chains for security and resilience.

A copy of the Framework can be downloaded here.