



## **Analysis of Key NEPA Rollbacks in the Fiscal Responsibility Act**

Division C, Title III of the Fiscal Responsibility Act includes many provisions that will dramatically roll back the National Environmental Policy Act (NEPA)—threatening meaningful community input and engagement from environmental justice communities and the public. Specifically, this legislation:

**Limits environmental review of projects (pp. 91-92):** the amendments limit the definition of “major federal action” in the three following ways. This could shrink the types of projects, including fossil fuel projects, subject to NEPA review. This also could inject severe uncertainty into decades of case law defining which projects trigger NEPA review.

1. The agency must have “*substantial* Federal control and responsibility” over the action for NEPA to apply (emphasis added).
2. Many types of financing / funding actions would be excluded from NEPA, including loans and loan guarantees where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of the funds or the effect of the action.
3. Projects with effects that are located entirely outside the United States would be excluded from NEPA.

**Allows project developer (applicants) to write their own environmental reviews (p. 82):** there is an inherent conflict of interest for the agency to allow the project developer (applicant) to write their own environmental review. Historically, CEQ had issued guidance on this concern noting that it is the agency’s legal responsibility to carry out NEPA and that the agency could already communicate with the developer.

**Increases the use of categorical exclusions (CEs) (p. 81):** an agency has historically been allowed to create and use a CE that is applicable to that specific agency. Since a CE is supposed to be used when an agency has determined that a project will not result in a significant impact, an increase in harm may result by allowing an agency to use a different agency’s CE.

**Creates arbitrary deadlines for environmental reviews (p. 81):** by limiting environmental assessments to one year and environmental impact statements to 2 years, agencies will not be allowed sufficient time to conduct detailed environmental reviews in many instances.

**Creates arbitrary page limits for environmental reviews (p. 81):** by limiting environmental assessments to 75 pages and environmental impact statements to 150-300 pages, agencies will not be able to provide as much information in these important documents, which will likely result in increased litigation.

**Grants project developer (applicants) increased access to the courts to sue agencies (p. 83):** if an agency misses the environmental deadline, the project developer can sue the agency, which allows the judiciary to set deadlines for the review instead of the agency and their experts. Also, Congress is not providing the agencies additional funding to meet these new arbitrary deadlines.