

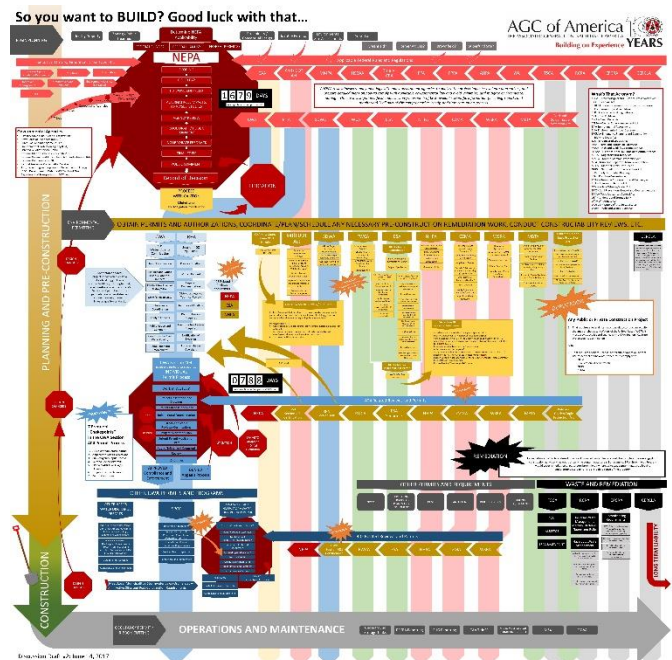
BACKGROUND

AGC's Flowchart of Environmental Approvals for Infrastructure Projects

- AGC of America created this poster-sized flowchart to diagram and describe the environmental review and permitting process for a federally-funded or federally-permitted infrastructure project in the United States.ⁱ
 - So you want to BUILD? Good luck with that...

Overview

- Before breaking ground, most large infrastructure projects must receive *many* environmental approvals pursuant to *many* environmental laws administered by *many* different regulatory agencies and program offices.
 - These projects generally do not qualify for efficient general permitting procedures and must obtain extremely costly and time-consuming individual permits, on a project-by-project basis.
- From top to bottom, AGC's flowchart walks you through the environmental aspects that need to be considered at each stage of a project:
 - BEGIN PLANNING [Grey Boxes - Top]:** identify property, perform preliminary engineering and environmental site assessments and studies.
 - NEPA PHASE [Red Sign - Top]:** identify the project's purpose and need, study environmental impacts and alternatives, conduct public/agency outreach, publish a final environmental impact statement (EIS), including mitigation plans.ⁱⁱ NEPA is an "umbrella" statute because other environmental laws, policies, executive orders, and guidance are considered as part of the review process [**Red Arrows - Top**].
 - ENVIRONMENTAL PERMITTING [Gold Bar - Middle]:** meet the specialized *pre-construction* requirements that apply to the project, each directed at a specific environmental medium or concern (i.e., air [**Yellow Path**], water [**Blue Path**], wildlife habitat [**Green Path**], cultural and aesthetic resources [**Pink Path**], waste and other aspects [**Light Grey Path**]). Dozens of federal statutes, and innumerable implementing regulations – that are ancillary to NEPA – apply to construction activities.
 - DURING CONSTRUCTION:** meet environmental commitments, permit terms and conditions, and other environmental requirements – e.g., maintain management plans, inspect, monitor, report, take corrective action, fulfill mitigation measures, manage waste streams, etc.
 - OPERATIONS AND MAINTENANCE [Grey Footer]:** occupy and operate or transfer property; perform required environmental follow-up – be aware of long-term legal risk and liability associated with the disposal and clean-up of hazardous substances.



AGC's Updated Flowchart – Discussion Draft v2: June 14, 2017

Problem

- Congress needs to address the staggering statutory and regulatory inefficiency that currently exists. The average time to complete one EIS, under the NEPA process, is five years and costs \$6.6 million (Nat'l Assoc. of Environmental Professionals review, 2015). An individual Clean Water Act (CWA) Section 404 permit applicant spends 788 days and \$271,596 to obtain coverage, on average (*Rapanos v. United States*, 2006). What is more, a six-year delay in starting construction on public projects costs the nation more than \$3.7 trillion in lost employment/economic gain, inefficiency, and needless pollution (Common Good report, 2015).
- The current practice of performing sequential and often duplicative environmental reviews, following the NEPA record of decision, is presenting massive schedule, budget and legal hurdles to project delivery.
 - Project proponents are being forced to repeat: analyses and studies; mitigation and management planning; as well as interrelated “authorizations” (i.e., certifications, consultations, consistency determinations, etc.) – all before they can submit their permit applications and receive the necessary approvals to proceed with construction.
- Legal challenges to environmental documentation and permitting procedures are root causes for delays on infrastructure projects.

AGC Recommended Reforms

Both Congress and the White House have turned to AGC for common-sense recommendations on streamlining the federal environmental review and permitting processes.ⁱⁱⁱ In part, AGC has recommended the following:

1. The NEPA review and the regulatory permitting processes must be coordinated, and advanced concurrently, and *not* sequentially. There must be timelines and deadlines for completing the environmental approvals needed for infrastructure work.

Specifically, AGC supports a nationwide merger of the NEPA and CWA 404 permitting processes, with the U.S. Army Corps of Engineers (Corps) issuing a 404 permit at the end of the NEPA review, based on the information generated by NEPA process. Data show these processes take the longest, are the costliest, and are subject to the most disagreements (see above).

2. To reduce duplication, the monitoring, mitigation and other environmental planning work performed during the NEPA review must satisfy federal environmental permitting requirements, unless there is a material change in the project.
3. A reasonable and measured approach to citizen suit reform to prevent misuse of environmental laws.

ⁱ Additional details:

- Not all these permits and related “authorizations” (i.e., certifications, consultations, consistency determinations, etc.) are required to start work on every project. The scope of the environmental review process will depend on the location/nature of the project.
- AGC’s flowchart displays federal requirements only; it does not include the additional state and local requirements that “go beyond” the national baseline to address region-specific needs and concerns.
- U.S. EPA has authorized states to administer some of the fed. programs depicted on this chart (e.g., stormwater permits).

ⁱⁱ If the federal action may *or may not* cause a significant impact the “lead agency” can first prepare a shorter Environmental Assessment (EA) to determine whether an EIS is required. If the EA indicates that no significant impact is likely, the agency can release a finding of no significant impact (FONSI) and proceed. A limited number of federal actions may avoid the EA and EIS requirements under NEPA if they meet the criteria for a categorical exclusion (CATEX).

ⁱⁱⁱ In its [May 2017 testimony before Congress](#), AGC presented reforms included in its comprehensive paper: “Reforms for Improving Federal Environmental Review and Permitting,” April 30, 2017 Discussion Draft. AGC also [testified](#) before Congress in March 2017 on how to reduce environmental permitting paperwork. AGC has met and shared its reforms with the [U.S. Environmental Protection Agency](#) (EPA) and the Army Corps, among others. In addition, the association [submitted](#) detailed proposals at the request of the U.S. Department of Commerce, which was covered in the [Washington Post](#). And, the House Natural Resources Committee sought and [received](#) AGC’s advice on reforming the Endangered Species Act.