

A photograph of an industrial facility, likely a refinery or chemical plant, at dusk. The scene features several tall distillation columns and large storage tanks, all illuminated by warm yellow lights. The sky is a deep blue, and the foreground shows a line of dark trees and a grassy field.

CIBO MAY CONFERENCE

# NEPA: Changing Procedures & Uncertainties

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# Overview

- What Is NEPA and Why is it Important
- Recent NEPA Developments
- Impacts of Recent NEPA Developments on CIBO Members
- What's Next for NEPA

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# What Is NEPA? Why Is It Important?

- National Environmental Policy Act requires that federal agencies analyze the environmental impacts of their actions prior to making decisions
- Applies to Major Federal Actions
- EIS or EA to evaluate these impacts
- 2023 amendments codified long-standing NEPA practices, which stemmed from long-standing CEQ regulations
- Use of Categorical Exclusions (CatExs)

# Recent NEPA Developments

- 7/2020: Trump Admin significantly revises CEQ regulations, chartered new path for NEPA
- 4/2022-5/2024: Biden Admin reverted back + additional obligations
- 11/2024: Decision in *Marin Audubon Society v. FAA* found CEQ did not have authority to issue regulations
- 1/2025: Trump EO ordered rescission of CEQ regulations
- 2/2025: CEQ rescinded its regulations and issued guidance to agencies
- 4/2025: CEQ issued a template to agencies to revise regulations

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# Impacts on CIBO Members

- Delay
- Uncertainty Surrounding Preparation of Applications
- Increased Litigation Risk
  - Emergency Plans / Expedited Energy Reviews
  - Involvement of Judiciary in Evaluating Agency's Interpretation of Statute (no *Chevron* deference)

# Impacts on CIBO Members

- Projects Receiving Federal Funding
  - Federal funding can trigger NEPA
  - Certain types of funding now carved out; agencies could revise procedures to create a narrower interpretation of what types of funding triggers NEPA
  - Mature funding requests: NEPA may proceed
  - Immature funding requests: NEPA may be stalled

# Impacts on CIBO Members

- Expedited Energy Reviews
  - 1/19/25 EO Declared “Energy Emergency,” directed agencies to identify emergency procedures allowing them to facilitate “generation of domestic energy resources,” defined as “**crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals**”
  - Example: DOI Alternative Arrangements for NEPA Compliance
  - DOI NEPA reg allows if official “determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis ....”
  - DOI created process for 14-day issuance of EAs and 28-day issuance of EISs
  - Projects must opt in and provide fully baked applications

# Takeaways

- For agencies you and your members deal with regularly on NEPA issues, engage with those agencies to help guide their revisions to NEPA procedures and track their progress on revising procedures
- Create strategies to prepare for delay and litigation risk
- Weigh pros and cons of reliance on attempts to fast-track NEPA



# Thank you!



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