



The Daily Dish

IRA Redux

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The Inflation Reduction Act (IRA) is now the lie, er law, of the land. But a key lubricant that greased the congressional skids was a promise to Senator Manchin to vote on legislation – by the end of fiscal year 2022, otherwise known as September 30 – to streamline and accelerate the federal permitting of large energy (and perhaps other) projects. Dan Bosch has a nice [paper](#) with all the details.

At the heart of the proposals are the National Environmental Policy Act (NEPA) and Section 401 of the Clean Water Act. NEPA reviews take a *long* time: “According to a 2018 [study](#) by the Council on Environmental Quality, the federal agency that primarily implements NEPA, review times have more than doubled since the 1970s and 25 percent of reviews completed took more than six years.” Similarly, Section 401 requires states and tribes to certify that water-quality standards will be upheld prior to agency approval of projects. These are another source of delay because there is neither a deadline nor a limit to the factors that can be brought under review.

In both cases, the Trump Administration had used executive rulemaking to attempt to streamline the permitting process, but those rules were rolled back by the Biden Administration. The proposed legislation would codify elements of the 2020 Trump Administration NEPA rule. On Section 401, it would require action within one year and establish that the review is restricted to water-quality impacts of the project. In addition, it would set a statute of limitations for court challenges to permitting decisions and require agencies to act within six months on any permit that is struck down by the courts. Finally, it would require the president to designate a list of 25 high-priority energy infrastructure projects that would receive prioritized permitting review.

The bottom line? Bosch notes: “Taken as a whole, these reforms would address some of the main drivers of permitting delays. Incorporating deadlines should incentivize agencies to make decisions, though it remains unclear what remedies will be available to applicants if a decision is late.” He further cautions: “What remains unclear is whether the proposed reforms, particularly for NEPA and Section 401, apply to all federal permitting review or just those pertaining to energy.”

The real sticking point, however, is probably the need to get this passed in regular order, especially 60 votes in the Senate. Bosch summarizes the congressional politics: “Many congressional Democrats do not support the proposed reforms to National Environmental Policy Act or Section 401 of the Clean Water Act, as they view the imposition of timelines as antithetical to ensuring environmental protection. The same view applies to establishing a statute of limitations to challenge permitting decisions in court. On the other hand, while many Republicans support reforming the permitting process, they may be reluctant to go along with a package that many may view as not going far enough.”

Perhaps it should also be called IRA – the Impossible Reform Act.