



*Weekly Focus*

## Energy Lawyers Warn of Regulatory, Legal Doubts Amid Infrastructure Limits

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Industry lawyers are warning that efforts to meet rising electricity demands amid infrastructure bottlenecks are creating regulatory uncertainties and sustained legal risks, despite Trump officials' efforts to roll back environmental and other requirements to speed permitting for fossil fuel and other preferred energy projects.

"The U.S. energy landscape is entering a period of rapid change, defined by rising demand, shifting policy priorities, and evolving regulatory tools," write Morgan Lewis lawyers in [a May 8 blog post](#) about federal energy priorities.

"While permitting reforms are intended to accelerate development, their durability will continue to be tested in the courts, and infrastructure limitations may ultimately dictate the pace of deployment," the lawyers argue.

Further, they say that companies "operating across the energy value chain should expect continued policy evolution, increased regulatory experimentation, and sustained litigation activity as these changes take hold."

The assessment of how energy priorities could reshape environmental and permitting requirements – by Morgan Lewis partners Ella Foley Gannon, William Kissinger, Kristin Gibbs and Ryan Lighty – comes amid rising power demand and costs driven by data centers, electrification and industrial growth.

"At the same time, demand dynamics are evolving rapidly. Electricity demand is projected to surge through 2050, with growth accelerating rather than stabilizing," the lawyers note. The blog post is based on the firm's 2026 Earth Day webinar series that examined how evolving energy policies are reshaping environmental and permitting requirements for sectors such as transmission, pipeline and nuclear reactors.

To meet this rising energy demand, federal policy "has shifted from a primary emphasis on emissions reduction and renewable deployment to a focus on energy independence, reliability, and domestic production, particularly for oil, gas, coal, and nuclear resources."

The Trump administration has positioned EPA at the forefront of those efforts. For instance, EPA [this week proposed](#) to narrow the definition of "begin construction" to make it easier for projects to get a Clean Air Act (CAA) new source review permit, codifying the agency's approach to a proposed semiconductor facility in Arizona.

“EPA’s goal is to more clearly allow entities that plan to build or modify stationary sources of air pollution to engage in construction of non-emitting components (e.g. infrastructure to provide utility service to a site, concrete pads, foundations and other parts of buildings that are not specifically configured for emitting equipment, and office buildings) at their own risk,” the agency said.

Additionally, a new coalition of mining and other groups is urging President Trump **to issue an executive order** directing EPA to issue rules restricting the use of Clean Water Act section 404(c) authority to block projects involving the dredging or filling of waterways to prevent a future administration from reversing project approvals.

While Trump officials have taken multiple steps to support fossil fuel projects by revising permitting and other requirements, the new coalition warns that the 404(c) authority could undermine some approvals.

“But there is a gaping hole in that agenda that must be closed: the EPA’s unchecked ability to veto a project it simply doesn’t like – even after it has been permitted and operating. That is a political risk more commonly found in a banana republic, not the U.S.A.,” said Myron Ebell, a former policy director at the Competitive Enterprise Institute, in announcing the new Fix the EPA Veto Coalition.

### Administrative Actions

Yet the Morgan Lewis lawyers emphasize that administrative actions are transient and uncertain, as Congress continues to struggle with enacting a bipartisan permit streamlining package.

“Legislative efforts have been more limited but remain directionally aligned,” the lawyers note.

“Proposals include restructuring incentives away from renewable technologies, revising electric vehicle subsidies, and advancing permitting reform through measures such as” overhauling the National Environmental Policy Act (NEPA) “and targeted amendments to the Endangered Species Act.”

But the attorneys add that “much of the practical impact, however, is occurring at the administrative level.” Several federal courts including the Supreme Court have issued decisions narrowing the scope and reach of NEPA, which prompted federal agencies to shift from binding regulations to guidance.

While the lawyers say this has led to faster NEPA approvals, they are at risk of greater legal and other challenges.

“Agencies are increasingly relying on informal rulemaking tools, including secretarial orders, guidance documents, and policy memoranda, rather than traditional notice-and-comment rulemaking. This approach allows for faster implementation but introduces greater uncertainty, as policies can shift without formal procedural safeguards,” the lawyers argue.

They also see “a notable uptick in Administrative Procedure Act litigation that is testing the boundaries of executive authority, informal rulemaking, and agency delay. These challenges are being brought by a wide range of stakeholders, including states, nongovernmental organizations, and developers, and are likely to remain a central feature of the permitting environment.” – *Rick Weber* ([rweber@iwppnews.com](mailto:rweber@iwppnews.com))

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