

Unpacking the Impact of NEPA Phase Two Regulations on Environmental Policy and Infrastructure Development

Podcast | Environmental Law Monitor

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Chad Whiteman from the United States Chamber of Commerce's Global Energy Institute joins Daniel Pope and Ann Navaro on this episode of the Bracewell Environmental Law Monitor to dissect the changes stemming from the new Phase Two regulations under the NEPA review process. Discover how these regulations impact industries, the economy and infrastructure projects across the United States, and why understanding these changes is crucial for the future of environmental law and economic development. Uncover the interplay between environmental policy and real-world project implementation in this enlightening conversation.

Featured Guests

Name: Chad Whiteman

About: Chad is vice president for environment and regulatory affairs at the US Chamber of Commerce's Global Energy Institute. He has more than two decades of experience working on energy and environmental policy, including developing and implementing Clean Air Act policies at the US Environmental Protection Agency, as well as leading executive branch review of top Administration regulatory policies for the White House.

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Name: Ann Navaro

About: Ann is a partner in Bracewell's Washington, DC office. She advises on and litigates under the federal laws and policies governing natural resources and the environment. After more than 25 years as a top litigator and policy

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adviser to the federal government, Ann brings exceptional insight and acumen to clients seeking to build infrastructure, produce valuable natural resources, or improve government policies and programs affecting their businesses.

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Episode Highlights

[2:39] **How New Phase Two Regulations Impact IRA Projects:** Congress has invested nearly \$ 2 trillion into grants, loans and tax incentives for infrastructure projects, semiconductor manufacturing and more. If the NEPA review process slows down the permitting process, there's a real risk that these projects may never get done.

[7:42] **Concerns of Shifting NEPA From a Procedural Statute to an Action-Forcing Statute:** Has NEPA shifted from being a statute that requires environmental analysis before decisions are made into a statute that compels a particular decision?

[12:25] **Compliance and Risk Appetite:** The onus is on agencies and project sponsors to ensure they are complying with the new rules. For agencies that are risk averse, they might switch their approach midstream to ensure they are complying with the Phase Two rulemaking, even though they might not be required to do so.

[15:45] **The Potential for Litigation:** The new regulations will open new litigation pathways for project opponents to challenge the agency's compliance with NEPA. We could also see lawsuits that challenge NEPA requirements as overbroad if someone seeking a permit is denied that authorization.

[23:03] **The Need for Legislative Action:** Chad believes that both Democrats and Republicans need to come up with a legislative fix so that long-term energy, infrastructure and manufacturing systems are addressed to fix the "flip-flopping" that happens when a new party comes into power.

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