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# NEPA IN MOTION: WHAT'S AT STAKE

October 29, 2025

13<sup>TH</sup> ANNUAL GREEN INFRASTRUCTURE CONFERENCE

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NEPA IN MOTION: WHAT'S AT STAKE

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## AGENDA

- What is NEPA?
- Why are we talking about NEPA now?
- The CEQ and Legislative Reform

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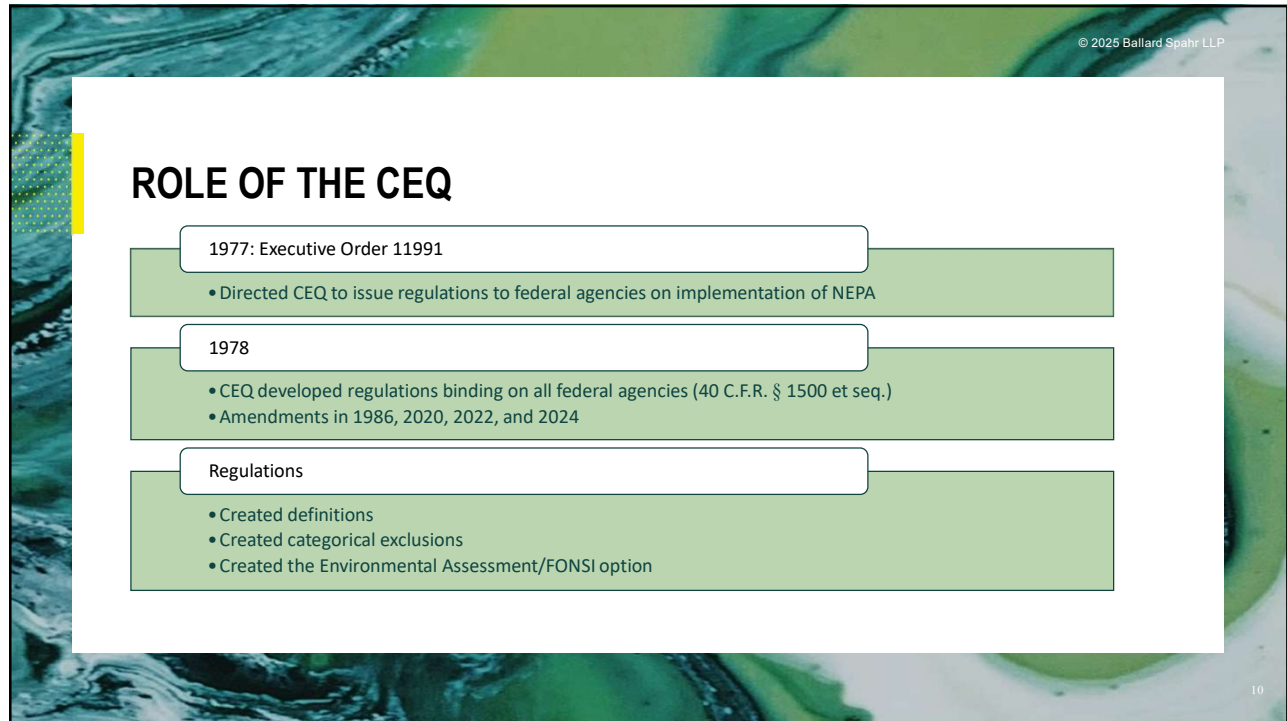
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## INTRO TO THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, 42 U.S.C. §4321 et seq.

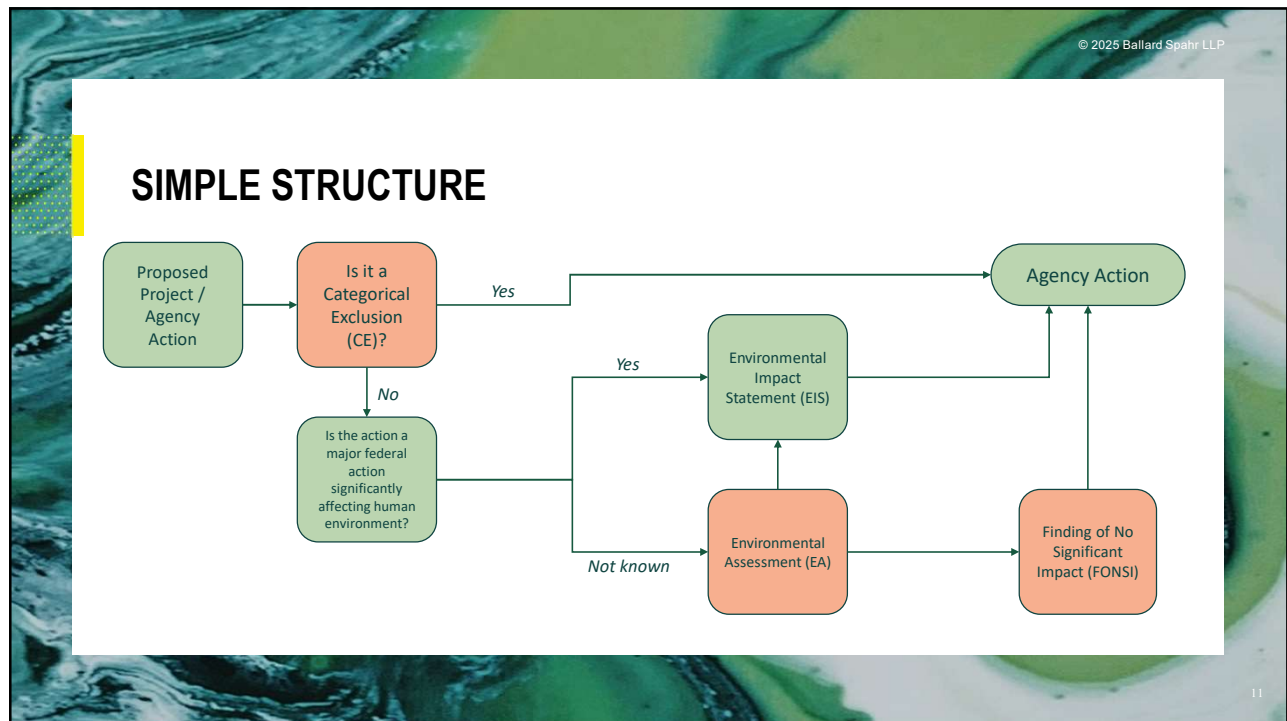
Section 101	Requires the federal government <i>"to use all practicable means and measures" "to create and maintain conditions under which man and nature can exist in productive harmony"</i>
Section 102	<ul style="list-style-type: none"><li>• Major federal actions significantly affecting the environment</li><li>• Must prepare a detailed statement on the environmental impact + alternatives.</li></ul>
Sections 202, 204	<ul style="list-style-type: none"><li>• Created the Council on Environmental Quality (CEQ)<ul style="list-style-type: none"><li>• Outlined CEQ's duties and functions</li></ul></li></ul>

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## BENEFITS + CRITICISMS

### Benefits

- Creates constituencies around project options
- Increased environmental awareness
- Creates a structure + process

### Criticisms

- Imposes pointless paper-shuffling
- Creates costs + delays
- Inconsistencies
- Lots of litigation

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## WHY ARE WE TALKING ABOUT NEPA NOW?

<u><i>Marin Audubon Society v. FAA</i></u> , 121 F.4th 902 (D.C. Cir. 2024)	• CEQ lacks statutory authority to issue binding rules under NEPA.
<u><i>Seven County Infrastructure Coalition v. Eagle County, Colorado</i></u> , 145 S.Ct. 1497 (2025)	• CEQ has latitude in considering effects + “discretion” to determine what is a “feasible alternative”
<u><i>Sierra Club v. FERC</i></u> , 145 F.4th 74 (D.C. Cir. 2025)	• <i>Seven County</i> means that even effects from different components of the same large project can be considered “indirect” so as not to be considered under NEPA analysis.

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## THE CEQ HAS BEEN BUSY IN 2025

February 19	<ul style="list-style-type: none"><li>• Rescinded its regulations (90 Fed. Reg. 10,610 (Feb. 25, 2025))</li><li>• Released a guidance memo suggesting agencies should continue to follow the CEQ regulations voluntarily</li></ul>
April 8	<ul style="list-style-type: none"><li>• Released a template document to guide agencies.</li></ul>
September 29	<ul style="list-style-type: none"><li>• Released new guidance memo</li></ul>

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## LEGISLATIVE REFORM

<p>Congress amended NEPA in the Fiscal Responsibility Act of 2023</p> <ul style="list-style-type: none"><li>• Revised § 102 – added detail to what an Environmental Impact Statement must include, <i>e.g.</i>, “reasonably foreseeable” effects</li><li>• New § 106 – codified Environmental Assessments and categorical exclusions</li><li>• New § 107 – set pages limits and deadlines</li><li>• New § 108 – allows agency to rely on prior analysis</li><li>• New § 111 – added definitions</li></ul>
<p>Congress amended NEPA in the 2025 One Big Beautiful Bill Act</p> <ul style="list-style-type: none"><li>• New § 112 – Created a process for accelerated NEPA review for a fee</li></ul>
<p>Current legislative reform efforts</p> <ul style="list-style-type: none"><li>• The SPEED Act</li></ul>

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