

## **Sensible Permit Reform Is Needed to Accelerate the Clean Energy Transition**

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It is hard to build anything in Vermont or anywhere in the United States for that matter. Yet the climate crisis demands that we build a massive amount of renewable energy infrastructure—wind, solar, storage, transmission, EV charging stations, and more—faster and better than anything that has been done before in the United States. And that includes the Interstate Highway System, called the greatest public works project in history, which took 35 years and cost five times more than estimated.

We don't have 35 years. We must cut US greenhouse gas emissions by 50% from 2005 levels by 2030 to follow the advice of the world's leading climate scientists, honor our commitments under the Paris agreement, and avoid even worse disasters than the ones we saw this year with record breaking heat, drought, fires, and floods across the country and the globe.

Passage of the \$370 B Inflation Reduction Act of 2022 (IRA) marks the single largest investment in clean energy and climate mitigation in American history. It also advances environmental justice, strengthens America's position as a world leader in domestic clean energy manufacturing, and puts us on a path to achieving the goal of a net-zero economy by 2050.

Several models predict that if implemented expeditiously the IRA will reduce emissions by 40 percent by 2030. But the kicker is that that 80 percent of the potential emissions reductions will be lost if we cannot build electricity generation and transmission faster. That's because much of the law's impact depends on accessing and distributing abundant clean energy from new infrastructure that must be permitted: wind farms, solar arrays, and other renewable energy sources, plus associated transmission lines.

For example, more than 1,400 GW of generation and storage projects, an amount equal to more than half of the nation's current annual electricity consumption, were stuck in interconnection queues across the US at the end of 2021. Facilities now must wait an average of more than three years to link to the grid, according to the Federal Energy Regulatory Commission (FERC).

The Rhodium Group estimates that nearly a quarter of the emissions reductions that are expected to take place by 2030 won't happen if no new transmission is built in the U.S. Other groups say the IRA would take an even bigger hit without reforms that shorten the review processes for renewable energy projects and spur the construction of new interconnections to the grid.

Permit reform got a bad name when Senator Joe Manchin and Majority Lead Chuck Schumer cut a backroom deal to fast track both fossil and clean energy projects and then tried to ram it

through on a “must pass” Continuing Resolution. That gambit failed for lack of support on the Republican side in the Senate and opposition from progressive Democrats in the House. But it is likely that permit reform will return in some form in the next Congress. The outcome of the midterm elections will have a lot to say about what kind of legislation, if any, can get through a bitterly divided Congress and be signed into law by the President.

Meanwhile back home in Vermont, the Global Warming Solutions Act of 2021 sets some aggressive targets starting with reductions in GHGs to 26% below 2005 levels by 2025. Emissions would need to be further reduced by 40% below 1990 levels by 2030 and 80% below by 2050. The 23 member Vermont Climate Council adopted its Climate Action Plan (CAP) in December 2021. Transportation and buildings account for almost 3/4ths of Vermont’s carbon footprint. Electricity accounts for only 2% with agriculture industry and waste management making up the rest.

That said, there will still be a need for lots of construction and moving projects through the multiple permit processes at the local, state and sometimes federal level. For example, according to the 2022 Comprehensive Energy Plan issued by the Department of Public Services, over 400MW of solar power generation and approximately 50 MW of solar-energy storage will be needed to interconnect to the grid. According to the CAP approximately 170,000 light-duty and approximately 50,000 medium and heavy-duty electric vehicles must be added to the Vermont fleet to meet the 2030 reduction requirements. The Cap also envisions moving from 75% Renewable Energy Standard to 100% Carbon Free or Renewable Electricity by 2030.

We are thus at a crossroads for environmental permitting. Historically the permit process was designed to avoid hasty decisions with unintended consequences, to look before your leap, to apply state of the art technology to prevent or reduce pollution, conserve important natural resources like wetlands and wildlife habitat, and to give affected communities an opportunity to weigh in before final decisions were locked in. For the most part these environmental procedures have led to cleaner air and water and improved environmental conditions. And they have done so without impeding the economy. To the contrary data shows that GDP has quadrupled over the 50 years of environmental regulation.

Today we face a different challenge: how to speed up the permitting process without sacrificing the gains that have been achieved. In other words, how not to throw the baby out with the bathwater. Based on my 50 years in this business of lobbying, litigating, administering, and teaching environmental law and policy, here is my list of do’s and don’ts on permit reform.

### **DO**

- Provide adequate staff and resources for the permit agencies to do their job. Studies have shown and my own experience confirms that a principal cause of permit delays and uncertainty –the bane of any developer--is agencies that are understaffed and overburdened with statutory responsibilities.

- Engage communities early in the process with transparent information and a serious effort—not just check the box—to take local concerns and equity into consideration and share economic benefits with affected communities. Yes, NIMBYism is a real problem, but there are legitimate concerns that deserve serious consideration and may require changes in project location or design. Every form of energy has a downside, some much worse than others of course. There is no purely benign source of energy. Permitting is a form of negotiation with bargaining and tradeoffs to finally reach agreement or at least enough consensus to move ahead. That requires permit administrators and staff who recognize the nature of the process they are engaged in and have the training to skillfully execute it.
- Establish clear rules, plainly written and accessible to the public, for the detailed information required to process applications for various kinds of permits. A negotiated (or mediated) rulemaking process that involves stakeholders can be a more effective way of making sure everyone is on the same page. This is different from the usual notice and comment procedure, which only happens after the agency has developed a proposed rule and is less open to making major changes. In fact, the law discourages that by requiring agencies to go back to square one if they do make major changes that were not the “logical outgrowth” of the proposal. No rule can satisfy everyone but at least differences and disagreements can be narrowed.
- Make better use of the energy planning assistance of the Regional Planning Commissions in Vermont. Siting is obviously a major challenge. Developing criteria and GIS mapping capabilities and other techniques to help guide projects to the most suitable locations can help. It’s not a panacea but at least it can put more options on the table and facilitate negotiations.
- Amend the permit review provisions of Vermont law to limit the scope of review conducted by the Environmental Court (technically the Environmental Division of the Superior Court) to the administrative record compiled by the agency with some exceptions to ensure that the record is complete. Under the current law the Environmental Court conducts a *de novo* review which can require a full-blown trial with witnesses and cross examination—in other words lots of time and money. Having litigated many of these cases at the federal and state level I understand the role of the courts in holding agencies accountable to the rule of law and correcting for abuse of discretion. But the truth is that we cannot afford the time it takes to get renewable projects permitted and then a trial that could take years with appeals to the Vermont Supreme Court to get a final decision on what can be built. We need a process that ensures that the agency has acted within its authority, followed all the legislatively prescribed procedures, and compiled a full and complete record to support its decision, but the judge would no longer “stand in the shoes of” the agency head and assume the role of the final decision maker as is the case under the current permit review law.
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## DON'T

- Set arbitrary time limits. Internal deadlines are useful tools for managing workload. But there is a wide variety of permits no two permits are the same
- Set arbitrary page limits on environmental documents used to make decisions. This relates to the point that judicial review should be limited to the record. But for that to work the record must be robust and responsive to the comments received. The Goldilocks rule obtains; not too long or too short but just right for the decision required.
- Take short cuts on procedural requirements or ignore substantive comments from the public. This just hands lawyers for project opponents a hammer in litigation.
- Sweep problems under the rug. To borrow a military expression no plan survives first contact with the “enemy.” In this case there is no real enemy but there will be opposition to almost anything new in the neighborhood. Sometimes the opposition has a point, and it is better to acknowledge it and seek to mitigate
- Ignore environmental justice aspects of facility siting and design. It is a fact, even in Vermont, that minority and low-income communities suffer disproportionate impacts from pollution and infrastructure projects like highways. In the larger picture replacing fossil fuels with clean energy will address these problems, save lives, and improve the health of millions of Americans. But even the greenest projects will have land use and other impacts that must be addressed and mitigated. Again, the sooner affected communities are engaged in the process and genuinely listened to the better the outcome.

The challenges posed by the climate crisis are greater than anything humanity has ever faced. The good news is we have the technologies, financial resources, and skilled professionals to slash emissions in half by 2030, and from there to develop the more sophisticated technologies needed to achieve carbon neutrality by 2050. But we must move with all deliberate speed to deploy these clean technologies in the most environmentally sound way we can. The payoff will be a higher standard of living and better-quality life for all.