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2026 Oregon Legislative Session Highlights Environment and Natural Resources

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The 83rd Oregon Legislature completed its work for the 2026 legislative session on Friday, March 6, two days ahead of its Constitutional deadline. For the first time in many years, legislators were able to celebrate in the [newly-reopened Capitol rotunda](#) for a time-honored tradition of concurrently gaveling out both chambers to adjourn "[Sine Die](#)."

Legislative Session Overview

During the even-numbered years, the Oregon Legislature meets in a short, six-week session as opposed to the six-month budgetary sessions that occur in odd years. Unlike the long session, legislators are constrained in the number of bills that they may introduce, and in 2026, 224 measures received a public hearing in a policy committee and 139 ultimately became law.

Significant state budget insecurity surfaced as a major concern prior to session. Mere days after the close of the 2025 long legislative session, during which the Legislature built its budget from the 2025-27 biennium, Congress passed House Resolution 1 ("HR 1"). HR 1 was a sweeping bill with several impacts on Oregon that created both short-term and

long-term budget concerns. Those changes to federal funding largely impact social safety-net programs like Medicaid and SNAP, but also include provisions with direct impacts to Oregon's energy industry.

In response to HR 1, the legislature passed [HB 4031](#) to address specific federal policy changes to renewable energy tax credits. The bill creates a temporary Energy Facility Siting Council ("EFSC") exemption for certain large renewable energy projects to ensure they can meet the shortened federal deadlines for full tax credits. Another measure known as the "surplus interconnection" bill, [HB 4076](#), was passed to make it either automatic or easier to receive a land use exception for new energy facilities, if the facility will deliver energy utilizing existing unused interconnection capacity and will not require more than two miles of associated transmission lines from the existing interconnect. This new law is applicable to facilities sited through EFSC or through the county process and took effect June 5. HB 4076 moved quickly and with little public engagement, also likely benefitting from a larger sense of urgency around the permitting of renewable energy projects brought on by HR 1 and Oregon's increasing energy needs.

The legislature also responded to HR 1 by disconnecting Oregon's tax code (which typically automatically reconnects to changes in federal law) from several of the new federal tax deductions under HR 1 for Oregon income tax purposes ([SB 1507](#)). This measure has proven to be controversial, particularly among the business community, and it is likely that the Legislature will revisit reconnecting at least one of those deductions—relating to Qualified Small Business Stock (QSBS)—during the upcoming long session in 2027.

However, thanks to a slightly better budget forecast, austerity measures at state agencies, vacancy savings and in light of the disconnect bill, the Ways and Means co-chairs were able to [mostly patch Oregon's budget hole](#) with very little reductions to state agency programs.

Transportation funding also continued to be a major focus in 2026, after the transportation package passed in the September 2025 special session was successfully referred to the ballot. In the short session, [SB 1599](#) moved the referendum up to the May ballot and also included a package of cuts to Oregon Department of Transportation programs and staff to redirect funding to address the budget shortfall. Voters ultimately rejected the transportation funding package by a whopping 83% of the vote during the May election, leaving the legislature with more work to do in finding a mutually agreeable solution for transportation funding.

Permitting reform also began to surface in 2026 as a more salient issue for the legislature than in years past, as the state is looking to promote economic growth. The legislature

passed the Governor's economic development bill ([HB 4084](#)) and two other bills ([HB 4020](#), [HB 4021](#)) in light of this push, all of which were designed to bring more efficiency to permitting processes that cross multiple agencies.

Turning to natural resources policy, one of the most pitched battles of 2026 revolved around the "farm store" bill, [HB 4153](#). This bill largely stemmed out of controversial proposed rule changes for farm stand permits that were released by the Oregon Department of Land Conservation and Development in 2025. It allows for farm stores up to 10,000 square feet to operate as long as they sell products produced by the farm itself or in the local agricultural area, including food and beverage for immediate consumption. The "farm stores" category is an entirely new permit category on land zoned for exclusive farm use or mixed farm and forest use, offering farmers more flexibility to diversify revenue streams.

While not necessarily natural resources policy, another highly controversial but ultimately successful policy push centered on the recreational use of Oregon's beautiful natural resources, and who is liable in the case of an injury. In the landmark 2014 *Bagley v. Mt. Bachelor* decision, the Oregon Supreme Court largely invalidated pre-injury liability waivers for ordinary negligence, having a significant impact on litigation and the recreational industry's ability to maintain insurance. After many years of failed attempts by a large recreation industry coalition, [SB 1517](#) was passed to again allow for releases from ordinary negligence in Oregon with several specified exemptions.

Specific bills of interest in the energy, environment and natural resources spaces that did not pass but are anticipated to resurface include a bill to allow for plug-in or "balcony solar" ([HB 4080](#)); a bill to establish a Climate Superfund to pay for the effects of climate change in Oregon ([SB 1541](#)); a bill to require a technical feasibility study for the potential of advanced nuclear energy projects to be sited in Oregon ([HB 4046](#)); and a bill to require establishment of sustainable timber harvest levels and state forest management in line with those levels ([HB 4105](#)).

Session ended with [both Democrats and Republicans claiming wins](#). However, many major Democratic and leadership accomplishments—such as the tax disconnect and transportation referral date change—were highly partisan, with a funding package to renovate the Moda Center celebrated as likely the most significant bipartisan win of 2026.

Looking Ahead

Looking forward to 2027, it is anticipated the state budget will continue to loom large. Legislators will be tasked with working to adjust to significantly less federal funding under HR 1 for Medicaid, SNAP and other important programs, in addition to continuing to address systemic funding challenges at the Oregon Department of Transportation.

There will also be efforts to boost economic development and to consider taxation changes as recently proposed by the Governor's [Prosperity Council](#). Energy and natural resource discussions are anticipated to include policies for enabling transmission and renewable energy development—including through land use changes; the role of emerging technologies like advanced nuclear in meeting Oregon's energy needs; and continued implementation of major climate policies like [HB 2021](#). Carbon cap and invest is reemerging as a policy proposal to replace Oregon's existing Climate Protection Program, and it is certain that conversations about data centers will permeate various policy areas. Wildfire mitigation and wildfire liability also present unfinished and difficult conversations for the legislature to tackle during the upcoming six-month session that will begin in mid-January.

Summary of 2026 Bills of Interest

Below you will find more information on the shape of legislative discussions on energy and environment and natural resource issues during the 2026 short session, organized by topic area. The bullet points provided below are intended to highlight bills that represent major policy themes from session or that resulted in new laws of particular interest to practitioners; it is not an exhaustive list of all environment and natural resource legislation that was considered or passed.

Energy and Environment

Passed:

- [HB 4102](#): Agreements between DEQ and applicant, permittee, or regulated entity to expedite or enhance regulatory process
- [HB 4144](#): Establishes battery producer responsibility program
- [HB 4031](#): Exemption from EFSC site certificate requirements for certain renewable energy facilities qualifying for federal tax credits
- [HB 4076](#): Exception to land use planning goals for energy facilities that use surplus interconnection capacity at an existing facility

Failed:

- [SB 1541](#): Establishes Climate Superfund Cost Recovery Program
- [HB 4080](#): Allows residential use and installation of plug in, or "balcony" solar
- [SB 1582](#): Requires electric companies to establish distributed power plant programs to compensate customer-owned DER
- [HB 4046](#): Requires ODOE to conduct a study assessing potential for nuclear energy projects sited in Oregon

Natural Resources

Passed:

- [HB 4130](#): Clarifies that lands under certain farm crop and farm product processing facilities qualify for farmland special assessment
- [HB 4153](#): Replaces existing regulations for farm stands on exclusive farm use zones with new regulations for farm stores
- [HB 4004](#): Defers imposition of Small Tract Forestland special assessment program taxes on landowners unable to meet stocking and species requirements due to Douglas-fir mortality
- [HJM 201](#): Urges Congress to permanently extend federal tax cuts for wildfire victims

Failed:

- [HB 4105](#): Requires Oregon State Forester to adopt sustainable timber harvest levels
- [HB 4049](#): Voluntary groundwater agreements within subarea of Greater Harney Valley Groundwater Area of Concern
- [SB 1540](#): Requires insurers using catastrophe model, wildfire risk model or other wildfire risk scoring method to submit model to Department of Consumer and Business Services for approval
- [SB 1553](#): Prohibits utility rate recovery for wildfire mitigation

For more detailed information, the Oregon Legislative Policy and Research Office (LPRO) publishes Legislative Summary Reports covering every measure that received a public hearing in policy committee, available under “Research and Publications” on the [LPRO website](#). These materials are organized by topic and subtopic and are an excellent resource. Be mindful that revenue measures are not included in the LPRO Summary Reports. Instead, revenue measures are made available on the [Legislative Revenue Office](#) website, and state budget information is made available on the [Legislative Fiscal Office](#) website, in both instances under a “publications” tab.

Water Reuse Emerges as a Critical Strategy for Data Center Development

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As demand for data centers continues to accelerate, water availability is emerging as a critical factor in project development and long-term operations. Although power supply and transmission access have historically dominated siting discussions, increasing water constraints in many regions are placing greater focus on the substantial volumes of water required to support data center cooling systems. As we [covered previously](#), data centers are frequently located in areas already experiencing water stress and require substantial volumes of water to operate—roughly [228 billion gallons in 2023 in the United States alone](#)—with water use projected to [increase](#) by up to 170% by 2030.

Alternative cooling options, such as free-air cooling or mechanical chillers, can reduce direct water consumption but introduce their own tradeoffs. Free-air cooling is climate-dependent and often ineffective in hotter regions, while mechanical chillers increase energy demand, potentially shifting water consumption upstream through increased electricity generation.

In response, developers are increasingly turning to water reuse, recycling and infrastructure partnership strategies to secure more reliable and sustainable water supplies for large-scale computing infrastructure. In parallel, many major technology companies have adopted broader water sustainability or “water positive” commitments, further accelerating interest in reuse, recycling and alternative water-sourcing strategies for large-scale facilities.

Cooling Technologies and the Tradeoffs Between Water and Energy Efficiency

As developers increasingly evaluate reuse and alternative water sourcing strategies, cooling technologies are also evolving in pursuit of reduced water losses and greater energy efficiency. Reuse-dependent cooling systems also require treatment processes capable of meeting strict water quality thresholds to prevent corrosion, scaling and degradation of sensitive equipment.

Data centers are increasingly adopting closed-loop and liquid-cooling technologies that recirculate water or other cooling fluids through sealed or semi-sealed systems to reduce freshwater withdrawals and improve thermal performance. Microsoft, for example, has developed a [next-generation closed-loop liquid cooling design](#) intended to significantly reduce evaporative water loss. Although these systems can substantially reduce ongoing

water demand compared to traditional cooling technologies, they may still require periodic replenishment and water quality management to address issues such as scaling, mineralization, corrosion, leakage and other system losses over time. Advances in chip-level cooling may also allow systems to operate at higher temperatures, further improving efficiency and reducing cooling-related resource demands. These systems, however, generally require higher upfront capital investment and tighter integration between hardware and cooling infrastructure, limiting near-term scalability across portions of the existing data center market.

Operators can further reduce water use by shifting toward dry cooling technologies, but doing so generally increases electricity demand, creating tradeoffs that implicate grid capacity, operating costs and indirect water consumption associated with power generation.

Wastewater Reuse: A Patchwork of State-by-State Regulation

As water constraints intensify in many regions, data center developers are increasingly evaluating the use of treated wastewater, recycled water and other alternative water supplies to reduce reliance on potable water sources. Reuse strategies can offer significant operational and sustainability benefits, particularly in water-stressed regions where freshwater availability, drought conditions or competing municipal demands may limit long-term project viability. However, implementing reuse-dependent cooling systems requires developers to navigate a complex and highly fragmented regulatory landscape.

No uniform federal or state-level regulatory regime governs the reuse of treated wastewater for industrial cooling purposes, including data center operations. Although federal agencies have issued nonbinding reuse guidance, most reuse regulation remains governed primarily at the state level. Instead, developers must navigate a patchwork of permitting pathways, treatment standards, engineering requirements and agency approval processes that vary significantly across jurisdictions. For developers operating across multiple states, this lack of regulatory consistency can materially increase project complexity, cost, permitting timelines and execution risk.

A significant driver of these regulatory distinctions is concern regarding aerosolization and public exposure associated with cooling towers and evaporative systems. Because reused water may contain residual pathogens, dissolved solids or other contaminants, regulators often focus heavily on treatment standards, drift control, monitoring requirements and engineering measures designed to minimize airborne exposure risks to workers and surrounding communities.

Certain states, such as California, Florida and Virginia, have comprehensive regulations and guidance governing the use of recycled wastewater for cooling purposes, including

treatment standards and administrative requirements intended to protect public health and environmental quality. California specifically regulates recycled water in industrial or commercial cooling and air-conditioning systems, requiring disinfected tertiary recycled water where cooling towers, evaporative condensers, spraying, or misting mechanisms are involved. California also [requires drift eliminators and biological-control measures](#) where workers or the public may be exposed. States with prescriptive frameworks like California's offer developers a more certain compliance roadmap but also limit flexibility and impose potentially burdensome technological and administrative requirements that can increase project costs.

Other states offer more flexible or permit-driven pathways. Oregon, for example, regulates recycled water for industrial cooling through Clean Water Act permitting frameworks and requires a recycled water use plan reviewed by the Department of Environmental Quality. Rather than imposing highly prescriptive standards, Oregon relies heavily on project-specific review of exposure controls, engineering measures and cooling system design. This approach provides greater flexibility for novel cooling technologies but may also require [extensive regulator engagement and longer approval timelines](#).

A third category of states prohibit or sharply limit certain cooling configurations. For instance, Arizona's [reclaimed-water rules](#) prohibit "direct reuse for evaporative cooling or misting," which may limit certain water-efficient cooling strategies commonly used by data centers. For developers, this may require shifts toward closed-loop or hybrid cooling systems to comply with applicable reuse restrictions.

Finally, some states may allow reuse in practice but lack clear guidance tailored to large-scale industrial facilities such as data centers. In these jurisdictions, regulators may permit reuse through site-specific approvals, amended discharge permits, recycled-water use plans, or case-by-case engineering and monitoring requirements. In these jurisdictions, regulators often apply existing regimes to novel reuse scenarios, creating uncertainty around permitting requirements and approval timelines. The challenge is compounded by the fact that rules are changing in real time, complicating project siting decisions and limiting the scalability of reuse-dependent designs, particularly for developers pursuing multistate deployment strategies.

For example, Texas has crafted general water quality and discharge permitting frameworks that expressly recognize that reclaimed water can be used for cooling tower makeup; however, these regulations are broad and do not specifically address reclaimed water use for large industrial cooling operations such as hyperscale data centers. As a result, developers must often work directly with state environmental agencies to craft permit conditions that fit within existing regulatory frameworks or rely on discretionary permitting authority and case-specific approvals. This process may require negotiation of

site-specific treatment standards, monitoring protocols and engineering controls, potentially adding months to project timelines and increasing development uncertainty.

In practical terms, the same data center reuse strategy cannot simply be replicated from one state to another. Project timelines, capital costs, and even fundamental cooling and infrastructure decisions are often shaped as much by the applicable regulatory framework as by engineering considerations. For developers pursuing multistate deployment strategies, each jurisdiction may require independent legal analysis, distinct permitting approaches and tailored engagement with regulators, utilities and local stakeholders. Failure to account for these differences early in the development process can result in stranded design investments, permit delays or denials, and increased project costs.

As a result, evaluating water reuse feasibility requires more than technical analysis alone. Developers must assess legal authority, regulatory appetite, utility capacity, treatment requirements and community acceptance at the outset of project planning. Direct engagement with regulators is often essential, particularly in jurisdictions where formal reuse frameworks remain underdeveloped. For developers seeking to deploy reuse strategies at scale, early legal and regulatory diligence is increasingly becoming a critical component of project viability.

Federal Initiatives: EPA's Water Reuse Action Plan

EPA's National Water Reuse Action Plan (WRAP) has, since 2019, served as a federal coordination platform to advance water reuse and improve the sustainability, security, and resilience of U.S. water resources. [EPA's WRAP 2.0](#), "Multiplying Water Benefits, Maximizing American Prosperity," was released on April 16, 2026, and signals federal interest in promoting water reuse to facilitate the rapid deployment of data centers nationwide. Consistent with broader federal policy goals tied to advancing AI, WRAP 2.0 emphasizes the need to align water availability with infrastructure growth and seeks to "ensure that the microchip fabrication facilities and data centers needed to sustain this vision have reliable, affordable water supplies."

WRAP 2.0 remains a non-regulatory, coordination-focused initiative that includes dozens of active actions and roughly 200 partner organizations. Key initiatives include revising wastewater rules for oil and gas extraction to allow more flexibility for beneficial reuse (such as industrial cooling), developing tools to help stakeholders navigate state-by-state regulatory requirements, and building out data-center-relevant case studies to guide utilities, regulators, and developers. Collectively, these efforts reflect growing federal recognition that water reuse may become an increasingly important component of long-term data center infrastructure planning.

However, WRAP 2.0 does not establish binding federal standards or provide dedicated infrastructure funding. Instead, it functions primarily as a coordination and information-sharing initiative intended to support technical resources, interagency collaboration, and regulatory flexibility. Its release also coincides with broader federal funding uncertainty, including proposals by the Trump administration to [significantly reduce water infrastructure spending](#).

At the same time, water infrastructure constraints are becoming more pronounced in regions experiencing rapid data center growth. In Columbus, Ohio, for example, the local water utility is investing heavily in expanded water supply and treatment capacity to accommodate industrial demand increasing by a projected 120 percent by 2050 in central Ohio. These infrastructure pressures underscore both the growing importance of reuse strategies and the challenges associated with scaling them absent substantial long-term investment.

Federal Legislative Efforts to Incentivize Water Reuse

Federal lawmakers have also begun exploring targeted incentives to encourage industrial-scale water reuse projects, including those supporting data centers and other high-demand facilities. In May 2026, Senators Ben Ray Lujan (D-N.M.) and Katie Britt (R-Ala.) introduced the bipartisan “Advancing Water Reuse Act,” alongside companion legislation in the House (H.R. 2940). The proposal would establish a 30 percent federal investment tax credit for qualifying water recycling and reuse infrastructure projects, including systems installed at data centers, manufacturing facilities and municipal treatment operations.

Although the legislation remains pending, it reflects growing bipartisan recognition that water availability may become a material constraint on AI-driven infrastructure growth and advanced manufacturing expansion. If enacted, the legislation could improve the economics of reuse-dependent cooling systems and municipal partnership arrangements by offsetting a portion of the substantial upfront capital costs associated with water treatment, recycling and distribution infrastructure.

Alternative Water Sourcing: Municipal Partnerships and the Expansion of Reclaimed Water Use

One of the most viable and increasingly common water reuse strategies emerging in the data center industry is partnerships with municipal wastewater treatment plants. For instance, Amazon has [announced plans](#) to expand its use of recycled water across its U.S. data center portfolio—expanding from 24 locations to more than 120 by 2030—by partnering with wastewater treatment facilities. In these arrangements, treated wastewater that would otherwise be discharged is redirected for use in cooling systems.

Developers are also partnering with municipalities to construct reuse infrastructure tailored to site-specific water quality constraints. In Quincy, Wash., Microsoft and the City of Quincy developed the [Quincy Water Reuse Utility](#) after high mineral concentrations in local groundwater increased equipment degradation risks and exceeded the treatment capacity of the municipal facility. The closed-loop system removes dissolved solids from blowdown water, enabling treated wastewater reuse for cooling and reducing potable groundwater consumption by approximately 138 million gallons annually. Municipal wastewater partnerships like these generally benefit from more consistent influent quality and existing treatment infrastructure, making them among the more straightforward reuse arrangements to structure and permit.

While municipal wastewater partnerships represent the most accessible form of water reuse, developers are also exploring arrangements with industrial wastewater treatment plants and remediation-derived water sources. These alternatives, however, are considerably more difficult to structure and permit given the variability and complexity of the underlying waste streams.

Industrial colocation is an emerging reuse strategy in which data centers are located adjacent to industrial facilities, such as manufacturing plants or power stations, and enter into long-term agreements for treated process water. However, variability in wastewater composition often makes these arrangements highly site-specific and may require customized treatment systems tailored to the underlying waste stream. For instance, wastewater from the food and beverage industry typically requires significant biological treatment, whereas semiconductor manufacturing wastewater may present lower total dissolved solids but elevated concentrations of specific minerals requiring targeted treatment processes. Similarly, water derived from environmental remediation efforts—such as groundwater pump-and-treat systems—introduces additional uncertainty due to variable contaminant profiles, including heavy metals, volatile organic compounds, or per- and polyfluoroalkyl substances (PFAS), and differing treatment requirements. These arrangements further raise complex legal and commercial issues, including shared infrastructure agreements, water supply reliability, allocation of environmental liabilities, and long-term operational risk.

In some regions, even more unconventional sources—such as treated produced water from oil and gas operations—are moving from theory toward active engineering and policy evaluation. For instance, as part of a \$1 billion investment into data center development, Five Point Infrastructure announced that it is [exploring ways to desalinate produced wastewater](#) from Permian Basin oil wells for use as cooling water. If viable at scale, produced water reuse could partially decouple data center development from

traditional freshwater constraints, while converting a historically waste byproduct into a usable industrial input.

However, both industrial and produced water reuse models remain highly dependent on site-specific regulatory approval, treatment economics, and long-term supply reliability — factors that must be evaluated early in project structuring. In addition, the use of industrial wastewater and produced water raises complex and unsettled regulatory issues, including treatment standards, discharge permitting under the Clean Water Act, and state-level restrictions on beneficial reuse. The absence of standardized regulatory frameworks creates uncertainty as to whether and how these sources can be reliably permitted for reuse, particularly at the scale required for hyperscale data center operations.

Conclusion

As data center demand continues to expand, water availability is increasingly becoming a defining factor in project siting, infrastructure planning, and long-term operations. Water reuse, recycling and infrastructure colocation strategies are emerging as important tools to address growing supply constraints, reduce reliance on potable water systems and support broader corporate sustainability objectives.

At the same time, the legal and regulatory landscape governing water reuse remains highly fragmented and continues to evolve rapidly across jurisdictions. Differences in permitting frameworks, treatment standards, public-health requirements and agency discretion can materially affect project timelines, capital costs, operational flexibility, and even the feasibility of particular cooling technologies or reuse strategies. As a result, water reuse is no longer solely an engineering or sustainability issue; it is increasingly a core regulatory, infrastructure and project development consideration for large-scale data center projects.

Developers that evaluate water sourcing, reuse feasibility, permitting pathways, infrastructure partnerships and regulatory strategy early in the project lifecycle will be better positioned to manage risk, maintain development timelines and adapt to changing regulatory expectations.

This [article originally published](#) on June 4, 2026.

EPA Launches Superfund Solutions Initiative to Accelerate Cleanups

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The U.S. Environmental Protection Agency's (EPA) new Superfund Solutions Initiative signals the agency's push to accelerate the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) investigations and cleanup decisions. While it does not create any new legal obligations or change CERCLA's liability scheme, it could compress timelines that often take many years. EPA has already begun emphasizing heightened urgency in some Regions, so potentially responsible parties (PRPs) should consider how accelerated deadlines may impact their planning and decision-making at a site.

Key Takeaways

What Happened: On June 3, 2026, EPA [announced](#) its [Superfund Solutions Initiative](#). The effort is intended to accelerate cleanup decisions and activities at contaminated sites, including the more than 1,340 sites on the National Priorities List (NPL). According to EPA, the agency designed the initiative to streamline project management, deploy available cleanup authorities earlier in the process, and incorporate scientific and technical tools into remedy selection and site management decisions.

Who is Impacted: PRPs, including current and former site owners and operators, developers, lenders, insurers, municipalities, state and tribal agencies, and other stakeholders, may be affected.

Action Steps: Stakeholders should review active Superfund matters to identify where EPA may accelerate the investigation and cleanup process, particularly at sites in the investigation, remedy selection, removal action, redevelopment, or settlement negotiations phases. Stakeholders should consider whether they must also engage earlier to develop technical submissions, assess risk, plan future land uses, prioritize cost allocation, or prepare a property redevelopment strategy.

Ongoing: The initiative is already underway. EPA has not announced any specific compliance deadlines or action dates. Stakeholders should therefore monitor EPA's initiative page, site dockets, and proposed plans, engage with EPA staff concerning specific sites of interest, and be aware of EPA's institutional effort to accelerate Superfund activities nationwide.

EPA's Plan to Accelerate Superfund Cleanups

On June 3, 2026, EPA announced the Superfund Solutions Initiative, a long-term effort to accelerate Superfund cleanups. The initiative does not establish new statutory authorities or regulatory requirements. Instead, building on the first Trump administration's focus on Superfund, the initiative focuses on streamlining decision-making, modernizing site management practices, using available cleanup authorities earlier in the cleanup process, and applying what the agency describes as "gold-standard science" to remediation decisions.

Three Areas of Focus

EPA identified three primary focus areas for the initiative:

1. "Enhance Project Management"

The initiative places substantial emphasis on shortening the time required to move sites from investigation to cleanup. To that end, EPA plans to reduce delays between site evaluation and remediation by accelerating activities such as inspections, remedial investigations, feasibility studies, and records of decision. The agency also intends to increase targeted environmental sampling and modernize project management practices, including contractor management and internal review processes, to advance decision-making and direct resources toward higher-priority sites.

2. "Deploy Tools and Authorities Earlier"

Another component of the initiative involves making additional use of existing cleanup programs and authorities earlier in the process by evaluating response options concurrently under CERCLA, the Resource Conservation and Recovery Act (RCRA), and the Brownfields program, where appropriate. The agency also intends to undertake short-term response actions while it develops longer-term remedies. EPA plans to expand collaboration with state agencies through training, technical assistance, and other efforts to support state-led cleanup activities. The initiative also calls for standardizing approaches among federal, state, and local partners to reduce the need to "reinvent the wheel" for each cleanup action.

3. "Apply Smarter Science for Smarter Outcomes"

The initiative emphasizes scientific and technical information in remedy selection and site management. EPA will continue incorporating site-specific risk assessments and anticipated future land uses into cleanup planning and decision-making. The agency will also continue implementing its [October 2025 Residential Lead Directive](#), which established a single target blood lead level for residential Superfund decisions. Beyond traditional remediation approaches, the initiative highlights evaluating critical mineral recovery

opportunities at legacy hard rock mining sites and using emerging technologies to address contaminants such as PFAS.

Implications for Responsible Parties and Developers

The initiative does not create new legal obligations or modify existing Superfund liability provisions, and it is unclear how much this initiative will change current CERCLA practices. However, EPA's stated objective of accelerating cleanup activities could affect the pace and timing of site investigations and remedial decision-making.

PRPs should be aware of the potential for both faster EPA decision-making and compressed timelines for influencing technical assumptions, preparing allocation and litigation positions, evaluating settlements, and aligning cleanup plans with anticipated site redevelopment. Stakeholders should also consider whether they need to reassess existing project schedules and timelines to account for EPA's initiative. Indeed, some EPA Regions have already begun emphasizing heightened urgency and have shifted towards meeting specific, near-term deadlines.

Parties involved at Superfund sites may see:

- Shorter schedules for remedial investigations and feasibility studies, and more rapid progression to remedy selection.
- Increased use of interim or early-action response measures will change how PRPs plan for and implement final remedies.
- Greater coordination among federal and state regulators.
- EPA's earlier engagement of parties regarding PRP identification, information collection, cleanup responsibilities, negotiations, and cost recovery issues.
- Advancement of cleanup decisions that may affect redevelopment planning and site reuse opportunities.
- Although reduced barriers are attractive, shorter schedules and fewer searching investigations also carry the increased risk of site reopeners due to the discovery of site conditions that might otherwise be identified in the investigation phase.

Next Steps

EPA has already started implementing the initiative. Stakeholders should monitor site-specific announcements, proposed plans, records of decision, enforcement developments, and other project milestones to gauge how EPA is applying the initiative at individual sites.

PRPs, developers, lenders, and other interested parties may also wish to assess whether accelerated project schedules or earlier deployment of cleanup authorities could affect ongoing negotiations, remedial planning or implementation, redevelopment activities, or anticipated site obligations.

This [article originally published](#) on June 10, 2026.

District Court Strikes Down Beginning of Construction Guidance Ahead of Pivotal Wind and Solar Deadline

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Key Takeaways

- On June 6, 2026, the U.S. District Court for the District of Columbia struck down **IRS Notice 2025-42**, the applicable guidance for establishing “beginning of construction” for wind and solar investment or production tax credits, holding that the IRS acted arbitrarily and capriciously under the Administrative Procedure Act.
- The court vacated the notice in its entirety and remanded the matter to the IRS for reconsideration; the decision is applicable to all taxpayers, not just the plaintiffs.
- Taxpayers can now aggressively argue that “beginning of construction” may be proven using the IRS’s long-standing prior guidance, specifically **Notices 2018-59** and **2022-61**, which allows all market participants—including large-scale wind and solar developers—to once again utilize the objective 5% Safe Harbor pathway.
- Developers with complex or ambiguous project timelines should act immediately, and taxpayers should establish a robust safety net by looking to pay or incur qualifying costs and satisfy safe-harbor guidelines to secure a defensive, parallel qualification pathway.
- The deadline for establishing “beginning of construction” for projects is imminent, and the ruling is subject to ongoing litigation, potential appellate reviews, or an emergency stay. Project sponsors, investors, and suppliers must rapidly coordinate to evaluate capital expenditures while remaining nimble against further judicial updates.

Overview: District Court Decision

On June 6, 2026, the U.S. District Court for the District of Columbia issued a memorandum opinion in [Oregon Environmental Council v. IRS, No. CV-25-4400 \(D.D.C. June 6, 2026\)](#) that struck down Notice 2025-42, which served as the governing framework for establishing when a renewable energy project “begins construction” ahead of a critical upcoming regulatory milestone: the July 4, 2026, one-year anniversary of the One Big Beautiful Bill Act (OBBBA). The court vacated Notice 2025-42, ruling that the IRS acted arbitrarily and capriciously by failing to adequately justify its sudden departure from past practices or account for the industry’s massive reliance interests. Nor did the IRS justify its failure to explain its decision to apply different rules to wind and large-scale solar projects

even though the credits were technology-neutral. By setting aside Notice 2025-42, the court has introduced immediate flexibility back into tax equity planning—but has also increased tactical complexity as the statutory deadline looms.

Notice 2025-42: What Constitutes 'Beginning of Construction'

Developers, investors, suppliers, outside advisers, and others in the wind and solar industry have been asking this question ahead of the OBBBA deadline. Notice 2025-42 limited the applicability of the “5% Safe Harbor,” under which a taxpayer could begin construction by paying or incurring at least 5% of the costs of the project. This left taxpayers to make the beginning-of-construction determination under the “Physical Work Test” by establishing that “physical work of a significant nature” had begun before the July 4, 2026, deadline. Because the Physical Work Test is inherently dependent on a complex matrix of facts and circumstances, it can be highly difficult to decisively satisfy in a volatile regulatory environment. In addition, Notice 2025-42 raised questions as to the extent to which prior guidance, and related understandings of how to establish beginning of construction, still applied.

The beginning of construction date is crucial, because it determines how much time the developer has to construct the project. Under Notice 2025-42, taxpayers who begin construction of wind and solar facilities after July 6, 2026, must place those facilities in service before 2028 in order to be eligible for the federal Section 48E investment tax credit or Section 45Y production tax credit. In contrast, taxpayers that begin construction prior to that date have a much longer lead time and need only place the facilities in service before 2030, or potentially later if continuity of construction is established under the facts and circumstances. Given the time needed to construct many large-scale projects, as well as the complicated economic and regulatory environment, that extra time can be crucial.

Current State of Play: More Flexible But More Complicated

Based on the ruling, taxpayers now have a strong argument that “beginning of construction” may be established under the IRS's prior guidance, which provides that all taxpayers may use the 5% Safe Harbor. The court acknowledged that reintroducing the 5% Safe Harbor at this late date before the deadline introduces a degree of uncertainty for both clean energy project developers and investors. Nevertheless, it reasoned that some uncertainty was inevitable under the circumstances and that, on balance, the more equitable path was to vacate Notice 2025-42 now, giving taxpayers at least some time to take action to begin construction in accordance with the reinstated rule.

While there is not much time before the OBBBA deadline, taxpayers with complicated facts under the Physical Work Test also should consider paying or incurring costs (and satisfying other requirements) under the 5% Safe Harbor in order to provide an alternative

way to meet the deadline. Taxpayers may also review and evaluate their existing expenditures incurred to date to determine whether they may already have achieved this 5% milestone or be approaching it.

In any circumstance, taxpayers also must exercise caution, as the ruling not only could be appealed, but the IRS could issue new similar guidance that would satisfy the court's concern with its "adequately justify[ing]" its departure from the prior guidance.

Endnotes

[1] The court concluded that "the cursory explanation [in the notice] is insufficient to show the 'path' that led the IRS to eliminate the Five Percent Safe Harbor for wind and large-scale solar projects, while leaving the Safe Harbor in place for other clean energy projects."

[2] Under the notice, taxpayers with low-output solar facilities, with output less than 1.5 megawatts, may still use the 5% Safe Harbor.

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