Trump seeks to roll back environmental reviews for major infrastructure projects

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The Trump administration last week announced a proposal that seeks to fundamentally alter the environmental review process for a wide variety of infrastructure projects, opening another front in his war on environmental safeguards.

The new proposal targets regulations implementing the National Environmental Policy Act (NEPA), a 50-year-old statute that has served as a cornerstone of environmental law in the United States. NEPA mandates the documentation of potential environmental impacts of proposed infrastructure projects and the examination of potential alternatives. The rollback, if successful, would prevent agencies from meaningfully considering climate change impacts, fast-track the review process, limit litigation and exempt a major category of projects from the entire process.

Like dozens of other efforts underway to roll back environmental rules, Trump's attempt to undermine NEPA serves to remove any constraints on oil and gas production, mining, and other highly polluting industries at the expense of human health and the environment.

The NEPA law itself is extremely limited. It carries no requirements to comprehensively plan infrastructure projects. It does not stop projects that seriously harm the environment or even require that the impacts be mitigated. Nonetheless it has come under increasing bipartisan attack for allowing legal challenges and delays, prolonging the approval process for many projects, including the high-profile and environmentally reckless Keystone XL and Dakota Access pipelines.

Prior to Trump, the Obama administration tinkered around the edges of NEPA, reducing the review process for transportation projects and further expediting the permitting process for dozens of other major projects.

In justifying his latest regulatory assault on NEPA, Trump deployed the well-worn trope blaming the deplorable state of the nation's infrastructure not on financial speculation or absence of planning, but on environmental regulations. "We will not stop until our nation's gleaming new infrastructure has made America the envy of the world again," he said at a White House press conference. "It used to be the envy of the world, and now we're like a third-world country. It's really sad."

The head of the US Chamber of Commerce and the president of North America's Building Trades Unions hailed the proposal, claiming in a joint op-ed in The Hill that the rollback would "unleash a building boom that will modernize our deteriorating infrastructure and put more Americans to work in middle-class sustaining jobs." Laborers' International Union of North America (LIUNA) President Terry O'Sullivan also commended Trump, claiming that environmental rules "for far too long allowed crucial infrastructure projects to languish."

While the proposed revisions would provide no new funding to meet critical infrastructure needs, they would enshrine the grossly negligent if not suicidal principle of ignoring climate change in federal decision-making. The proposal would redefine what impacts are considered significant, excluding those that are "remote in time, geographically remote, or the product of a lengthy causal chain." This language is tailored to exclude evaluation of greenhouse gases, which disperse throughout the Earth's atmosphere and act over the course of decades to increase global temperatures.

This policy, in the face of a planetary climate emergency, is nothing short of criminal.

The proposal also seeks to cap at two years the time for federal agencies to conduct environmental reviews. Trump cited a number of examples of instances of lengthy reviews: a bridge approval spanning 25 years, a highway 15 years, and an airport runway 20 years. The Council on Environmental Quality, the agency established under NEPA to oversee assessments of federal actions, estimates that a quarter of reviews take more than six

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years to complete.

Yet in many cases, these delays are caused by companies withholding vital information that the public is entitled to know. The Government Accountability Office recently looked at NEPA reviews in the hardrock mining industry, finding that low quality of information from mining companies was cited as a top cause of delay.

Nonetheless, Richard Nolan, the National Mining Association CEO and president, insisted in a statement, “Our permitting process is broken, and NEPA’s historical problems play a big part in the unnecessary obstacles standing in the way of the responsible use of our natural resources.” At the same time, the industry is responsible for staggering levels of water pollution, estimated at 17 to 27 billion gallons of contaminated water according to a study by Earthworks

Lawsuits filed under NEPA have slowed and in rare cases stopped environmentally destructive projects from moving forward. The proposed regulations undermine the ability of communities and environmental groups to challenge these projects, and ease the way for industry to obtain governmental approvals.

One provision would preclude lawsuits if objections were not raised during the official public comment period. The rules would also narrow the applicability of NEPA, creating a new category of exempt projects. Extensive reviews are currently required for projects categorized as major federal actions, including those that are privately funded if they require federal permits. The new definitions would exclude many privately funded projects, including major pipeline construction, from fulfilling obligations to inform the public of the potential environmental consequences.

The Trump administration will likely need at least another 12 months to finalize the proposal.

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