

Industry Seeks EPA Rule Curbing 404(c) Veto Amid Permit Bill Uncertainty

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A coalition of mining and other groups is urging the Trump EPA to begin a rulemaking to curb the agency's use of its Clean Water Act (CWA) section 404(c) authority to retroactively "veto" dredge-and-fill permits, warning about uncertainty facing the Senate permitting proposal that includes a provision restricting such vetoes.

The draft Senate bill includes a provision that would limit the timeframe when EPA may issue a CWA 404(c) veto -- to between the date when an applicant submits all the information required for its permit application, and the date when a permit is issued.

This would prevent EPA from "retroactively" issuing a CWA 404(c) veto after a permit has been issued -- a step the agency has taken only sparingly, including in the high-profile case of the proposed Pebble Mine in Alaska.

Myron Ebell, senior advisor to the "Fix the EPA Veto Coalition," tells *Inside EPA* that his coalition supports the Senate bill provision, noting that it broadly mirrors Rep. Pete Stauber's (R-MN) legislation, [H.R. 3935](#) that passed the House twice. The coalition [has long supported](#) that bill.

But Ebell, who led the EPA transition team in the first Trump administration, says "we're not assuming this is a done deal in Congress, so we're still advocating that the EPA do a rulemaking."

"We're cautiously hopeful that this language, since it's in the Senate bill and the House bill, would survive" any negotiations, "so, we're hopeful, but we're not stopping our advocacy with EPA" given broad uncertainty about the overall bill's fate, Ebell says.

His coalition was formed in May with the goal of fully blocking EPA's CWA 404(c) veto power. EPA and the Army Corps of Engineers share responsibility for dredge-and-fill permitting under section 404. While the Corps reviews and approves permit applications, EPA can "veto" permits that it decides would carry "unacceptable adverse effects" by blocking approval of specific disposal sites -- though it rarely uses that power.

The Senate permitting proposal, as well as a House-passed measure, would revise CWA section 404(c) by only allowing EPA to use its veto power after an applicant submits a completed permit application but before the Army Corps issues the permit.

Such a change appears aimed at addressing concerns about a future administration retroactively vetoing a project that does not align with its priorities.

The industry coalition [has raised concerns](#) that future Democratic administrations will use the section 404(c) veto to retroactively block Trump-era approvals of major infrastructure and energy projects, citing the "Alaska Natural Gas Pipeline; Minnesota Duluth Mining Complex; Arctic energy development; [liquid natural gas (LNG)] terminals; critical mineral projects nationwide; most all projects in Alaska; and it doesn't end there."

The coalition also cited the Obama administration's veto of Mingo Logan's Spruce No. 1 coal mine "two years after a permit that had been duly issued by the U.S. Army Corps of Engineers."

The Biden EPA also issued a 404(c) veto in 2023 over the Pebble Mine Project, blocking construction of the massive, planned mine near Bristol Bay, AK.

Further Action

While Ebell and his coalition support the Senate bill's 404(c) provision, he notes that "we have other things that we're pushing or suggesting that EPA should do to put sideboards on the 404(c) veto authority, which are not in the Stauber bill."

For example, he says EPA should rescind any vetoes that were issued outside of the timeframe in the Senate bill.

He also says the agency should make the grounds for issuing a section 404(c) veto much clearer and stronger, arguing there should be demonstrable, "very strong adverse environmental results to even think about doing it."

These recommendations align with the coalition's earlier calls for President Trump to issue an executive order that would, among other things, limit the use of CWA 404(c) vetoes that conflict with administration priorities, including job creation, energy affordability, national security and economic growth.

It also urged the Trump administration to restore transparency, consistency and legal clarity to the 404(c) review process, as well as protect already-permitted projects and those currently being permitted from future regulatory reversal. -- Sam Hess (shess@iwpnews.com)

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