

Energy groups ask Trump to limit EPA's veto authority

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A worker with the Pebble mine project digs in the Bristol Bay region of Alaska near the village of Iliamna, Alaska, on July 13, 2007. | Al Grillo/AP

A coalition of energy industry groups is urging President Donald Trump to limit EPA's ability under the Clean Water Act to veto major project permits, calling the sparsely used power a “significant threat” to the economy.

The [relatively newly formed coalition](#) also asked Trump to yank a Biden-era veto that Trump's administration is scheduled to defend in court next week.

“We are especially concerned that a future, environmentally radical administration could rely on past court decisions to use this authority to eliminate projects, such as power, mining, pipeline, energy, and other infrastructure, that have been permitted by your Administration and that are actually in the process of being built,” the Fix the EPA Veto Coalition wrote in [a letter to Trump](#).

The group is targeting EPA's authority to veto water permits issued by the Army Corps of Engineers under Section 404(c) of the Clean Water Act. EPA has used that power sparingly,

and only three times in the last 35 years, but the courts have also interpreted the law to allow EPA to act years after a potential project has sought its permits.

Despite the rare use of the veto authority previously, "there are good reasons to think that it could be used to pull the plug on many more projects in the future by an even more environmentally extreme Democratic Administration," the coalition wrote to Trump earlier this month. "Moreover, the mere threat that a permit could be revoked after construction has begun provides a strong disincentive to invest billions of dollars in any project that could become the political target of Big Green."

It's not clear to what extent the Trump administration can handcuff future presidents without changing the law, which congressional Republicans have gotten through the House twice in recent years, but not the Senate, where "too many Democratic Senators are bitterly opposed to your energy dominance and re-industrialization agenda," the coalition wrote.

An executive order could direct EPA to limit its vetoes only in cases of "clear and egregious environmental implications" and only at the time the permits are issued, not years after the fact. But that order could be overturned by another president with the stroke of a pen.

More concretely, the coalition suggests a formal rulemaking to define "unacceptable adverse effects" on the environment — the statutory threshold for a veto — to be more stringent than it is now and "require truly extraordinary potential environmental consequences."

The coalition also urged Trump to withdraw two "precedent-setting" vetoes "to make your intent clear on limiting the 404c veto power for future Administrations."

But one of the vetoes they want Trump to pull is about to be defended in court by the Justice Department.

Late in Trump's first term, the Army Corps rejected key water permits for the proposed Pebble mine in Alaska, which would extract copper, gold and other metals. Critics of the mine — including environmentalists, commercial and sport fishermen, and the state's two Republican senators — successfully argued the massive project would threaten the Bristol Bay watershed's salmon population.

Under former President Joe Biden, [EPA vetoed the proposed mine plan](#) on top of the permit denials, although the door was left open to a different, smaller mining plan.

The Trump administration reversed course on most Biden-era actions, but it has continued to defend the Pebble veto in court, with a hearing scheduled before a federal judge in Alaska on June 25.

"Contrary to Plaintiffs' implications otherwise, EPA did not make the Final Determination lightly," [the administration wrote in a February brief](#). "It came after studying the waters at issue and the effects the proposed mining plan would have on the salmon habitat."

An about-face appears unlikely, but Myron Ebell — who led Trump’s first EPA transition team and now serves as a senior adviser to the coalition — is trying anyway.

“I would hope that they could decide that they had made a mistake and that times have changes and they have an understanding of what the material needs of the modern tech world are,” he said.

The coalition also wants Trump to yank the one veto issued by the Obama administration.

A mountaintop removal coal mine in West Virginia was issued permits in 2007, but EPA later [vetoed them in 2011](#). That retroactivity drew significant criticism from Republicans and industry, but the U.S. Court of Appeals for the District of Columbia Circuit, in an opinion written by a trio of Republican-appointed judges, [ruled that the Clean Water Act’s veto authority is "broad"](#) and has no time constraint.

EPA under a future president could theoretically retroactively veto permits from major energy projects approved under Trump.

That power has been used only a handful of times historically, but Ebell argued environmentalists have the ability to target certain projects, raising the specter of a posthoc EPA veto under a “more radical” Democrat.

“Just the threat a project could be vetoed if it became politically controversial could be enough to scare off investors from investing in that project,” said Ebell, adding he believes hundreds of billions of dollars in investments are at stake.

The coalition will follow the letter up with EPA Administrator Lee Zeldin, the National Energy Dominance Council, and the Office of Management and Budget.

Groups backing the letter include the American Energy Alliance, Western Energy Alliance, American Exploration and Mining Association, Alaska Miners Association, U.S. Oil and Gas Association, National Stone Sand and Gravel Association, and Heartland Institute, a group best known for promoting climate science skepticism.

In addition to Ebell, Jeff Loveng of Covenant Government Affairs serves as the coalition's government affairs adviser. Loveng, a former Republican Hill staffer, lobbies for various energy and infrastructure companies, according to public disclosures.