

States lose some Clean Water Act authority under new EPA rule

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States have less say in issuing Clean Water Act permits under an EPA rule finalized Monday as the Trump administration and conservative lawmakers seek to speed energy projects.

The rule limits the scope of environmental reviews that states conduct before issuing permits for projects such as pipelines and hydropower plants. It directs states to narrow their reviews to [water](#) quality issues and creates a one-year deadline for states to make decisions.

The EPA proposed the rule in August following directions from President Donald Trump's "Promoting Energy Infrastructure and Economic Growth" executive order. It appears to target blue states that have repeatedly rejected energy projects such as pipelines.

EPA Administrator Andrew Wheeler, who singled out New York Gov. Andrew M. Cuomo's recent vetoing of a planned [natural gas pipeline](#), said many states use their Clean Water Act authority to "inappropriately" trap infrastructure projects "in a bureaucratic groundhog day" hoping that investors would get frustrated and abandon the ventures.

"Today's action will end this abuse of the Clean Water Act," Wheeler told reporters.

Under the new rule, if a state misses the one-year deadline to issue a permit, the requirements for certification under the Clean Water Act would be waived.

Before issuing permits for projects such as pipelines, dams and other energy proposals, states typically consider a wider range of impacts beyond the concentration of pollutants in water. They sometimes also take into consideration water levels, potential damage to aquatic life from dredge and fill activities, downstream impacts and climate change.

Several conservative lawmakers and industry groups have sought an easier permitting process, decrying a protracted evaluation system that they say hampers development.

Senate Environment and Public Works Chairman John Barrasso, R-Wyo., said the rule would curb abuse from states like Washington, which he argued has "hijacked" the permitting process and blocked Wyoming coal from being exported.

"It's an important step in the right direction to help Wyoming coal and other energy markets," he said.

Barrasso and other Republican senators including Montana's Steve Daines, Shelley Moore Capito of West Virginia and North Dakota's Kevin Cramer in November introduced legislation that would codify that rule's prescriptions.

"Just as we expect the federal government to stay within the confines of the law, states must do the same," Cramer said in a news release, adding that Washington and New York have used the Clean Water Act "as an excuse to disrupt interstate commerce and weaken energy producing states to try to score cheap political points."

The National Mining Association also joined the chorus of groups lauding the administration for moving to ease the permitting process.

"Decisions on 401 applications have dragged out for years, putting

projects in jeopardy and exacerbating the already woefully inefficient permitting process hampering so many U.S. mining projects," said Rich Nolan, the mining association's president and CEO. "This new clarity on the timeframes for certification, the scope of certification review and other procedures, is an important step in promoting smart investment in our country's natural resources and infrastructure projects."

Critics say the EPA is overstepping states' rights to protect their water bodies and safeguard public health.

"It's all about really ramming through [energy projects](#), such as hydropower and oil and gas pipelines against the wishes of the state boundaries," said Betsy Southerland, who held different roles at the EPA for three decades, including as director of science and technology in the Office of Water, before retiring in 2017.

Opponents of the rule also say it contradicts the GOP's frequent touting of its support for states' rights.

"This rule is an egregious assault on states' longstanding authority to safeguard the quality of their own waters," Lisa Feldt, Chesapeake Bay Foundation's vice president for environmental protection and restoration, said. "Despite the Trump administration's professed respect for 'cooperative federalism,' it is clearly willing to steamroll states' rights and greenlight major construction projects with no regard for how they might damage state waters."

Southerland, who is a member of the Environmental Protection Network, an organization of former EPA employees, drew parallels between the new rule and the administration's move to rescind the authority of California—the nation's largest automobile market—to set its own vehicle emissions standards under the Clean Air Act.

She said the new Clean Water Act rule would have a "much bigger" impact than the removal of the California waiver authority because it affects every state.

"So this, I think, will get litigated by states," she said. "It will severely limit all aspects of the [states](#)' ability to maintain healthy and abundant fisheries, drinking water supplies and certainly impact their ability to have safe flood control."

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