

Biden administration wants to give more power back to states to block pipelines

The Environmental Protection Agency is aiming to rewrite Trump-era regulations that curtailed the ability of states and tribes to protest major energy projects that threaten rivers, lakes and streams

By Dino Grandoni

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Plans to build massive ports for shipping coal abroad, seaside terminals for supercooling gas and thousands upon thousands of miles of pipelines cutting through rivers and streams across the United States will all soon be getting extra scrutiny as the Biden administration prepares to give states and tribes more authority to block energy projects.

The Environmental Protection Agency announced Thursday it will rewrite a rule finalized last year under President Donald Trump that upended the way the Clean Water Act had worked for half a century. The Trump administration tried to clear away regulatory hurdles for fossil fuel development after New York and other left-leaning states halted gas pipelines and other projects they feared may contaminate rivers, lakes and other waterways within their borders.

Now, in an about-face, the agency is preparing to rework [those regulations](#), potentially allowing state officials to take a broader array of environmental concerns — including climate change, an increasing concern among officials in blue states — into account when deciding whether to approve major construction that could defile bodies of water. “We have serious water challenges to address as a nation and as EPA Administrator, I will not hesitate to correct decisions that weakened the authority of states and Tribes to protect their waters,” Michael Regan, President Biden’s EPA chief, said in a statement. The decision comes as the construction of new oil and gas pipelines has emerged as a major point of tension in Biden’s infrastructure push.

For years, environmentalists have pressed federal and state officials to stop developers from laying additional oil and gas pipes, arguing that they endanger wetlands with potential spills and threaten to make global temperatures rise even more quickly as the fuel they deliver to market is burned. Heeding protesters’ calls, Biden [revoked](#) a permit for the controversial Keystone XL pipeline on his first day in office.

At the same time, the president is also trying to square environmentalists’ demands with the desire for more well-paying construction jobs among labor unions, another

important Biden constituency, which [are urging](#) the White House not to block other pipelines. But the administration's announcement may end up emboldening blue states to block even more energy projects, taking some the heat off the White House.

"It's going to be a tricky balance for the administration as they begin to relook at this rule, which certainly is what our organization wants," said Julia Anastasio, executive director and general counsel of the Association of Clean Water Administrators, which represents state water administrators in all 50 states.

Under the Clean Water Act, the federal government cannot issue permits for any construction that potentially pollutes waterways without first getting permission from states and tribes. But the Trump administration limited the amount of time local officials had to review projects and restricted them to only consider impacts on water quality.

Trump officials, along with Republicans in Congress, were particularly irked by a decision in New York to block a pair of gas pipelines, with state officials [arguing](#) last year that the "long-term use of fossil fuels is inconsistent" with combating climate change. And the state of Washington [canceled](#) a terminal that would have shipped Wyoming coal to power plants in Asia, arguing that there would be "irreparable and unavoidable harm" to the Columbia River and the fishing rights of Native Americans if approved.

"The prior administration's rule was not only harmful to the environment, it was corrosive to state, federal and tribal partnerships," said Oregon Gov. Kate Brown (D), whose administration blocked the building of a pipeline and export terminal for liquefied natural gas before the Trump rule took effect. "Communities rely on clean water, businesses rely on clean water, and our environment is dependent on clean water."

Among the projects awaiting state water certification is the Mountain Valley Pipeline. The proposed conduit, meant to bring gas from the Marcellus and Utica shales through West Virginia and Virginia, prompted [protesters to perch](#) on platforms high in the trees to halt construction.

Regulators in both states are still [weighing](#) whether to fully approve the pipeline. North Carolina's Department of Environmental Quality, which was once run by Regan, has twice [denied](#) a water permit for a part of the pipeline.

"They want to cross some of the most sensitive aquatic habitats, not only in Virginia, but really in the Eastern U.S." said David Sligh, conservation director of Wild Virginia, a local environmental group.

Since taking power in January, the Biden administration has [adopted](#) nearly two dozen new environmental protections. Just this week, the EPA [nixed](#) a Trump-era rule restricting the research that regulators can consider when crafting public health measures.

The Trump-era limits on states' authority over pipeline projects may have been on shaky legal ground to start. More than a dozen states, led by New York, [sued](#) over the restrictions.

Mark Ryan, a Clean Water Act expert who worked as a lawyer at the agency for 24 years, said the Trump administration ignored long-standing Supreme Court precedent giving states a wide berth in exercising their right to limit energy projects.

“They pushed this one out clearly trying to help the pipeline industry,” Ryan said. “As they often did in that administration, they didn’t think things through carefully.”



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