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WATER POLLUTION

Republican AGs defend EPA interstate permit rule in court

Pamela King, E&E News reporter

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Louisiana Attorney General Jeff Landry (R) is leading a coalition of red states that want to defend the Trump administration's rule limiting states' authority in Clean Water Act permitting for federally approved projects like pipelines. Gage Skidmore/Flickr

Seven states led by Republican attorneys general joined a federal lawsuit yesterday over a new EPA rule that limits states' role in Clean Water Act permitting for federally approved projects such as oil pipelines and hydroelectric dams.

Louisiana, Wyoming and other energy-rich states said they had a vested interest in the U.S. District Court for the District of South Carolina battle over the EPA rule that seeks to eliminate a long-standing practice that allowed blue states to blockade interstate projects.

In response to urging by red states, the Trump administration last year directed EPA to determine whether its Section 401 rules needed clarification. The agency followed up by releasing a rule this year.

The states' request is an attempt to "defend their sovereign interests and their hard-earned regulatory achievement," they wrote in a [brief](#) led by Louisiana Attorney General Jeff Landry (R).

Under Section 401 of the Clean Water Act, states and authorized tribes may grant, deny or waive certification that certain federally approved projects meet their water quality standards.

EPA's rule aims to stop states from blocking projects due to climate concerns or other issues beyond the scope of the Clean Water Act.

Landry and the other red-state attorneys pointed to Washington state's denial of a water permit for the Millennium Bulk Terminals project, which was designed to ship coal from landlocked Wyoming and Montana to Asian markets across the Pacific Ocean, as "a paradigmatic example of abuse" of states' Section 401 authority.

Montana and Wyoming have called on the Supreme Court to get involved in the dispute ([Energywire](#), Jan. 22).

Critics of the Trump rule have noted that it appears to significantly restrict states' rights, a departure from the Trump administration's general position of favoring state sovereignty.

Some legal experts have also said that the rule appears to conflict with Supreme Court precedent in *Public Utility District No. 1 of Jefferson County v. Washington Department of Ecology*, a 1994 decision that allowed states to include a minimum streamflow requirement in hydropower permits even though the Clean Water Act does not directly address stream flow ([Greenwire](#), June 2).

EPA's rule is now subject to several federal lawsuits from blue states, environmental groups and tribes. The red states' motion comes in response to a challenge filed by the South Carolina Coastal Conservation League and other green groups ([E&E News PM](#), Aug. 26).

Twitter: [@pamelalauren](#) | Email: pking@eenews.net

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