

## REGULATIONS

# Judge scraps lawsuit over Trump NEPA overhaul

Maxine Joselow, E&E News reporter • Published: Tuesday, June 22, 2021



The White House Council on Environmental Quality is at the center of legal wrangling over former President Trump's changes to federal rules tied to a bedrock environmental law. Francis Chung/E&E News

A federal court yesterday tossed out a legal challenge to former President Trump's overhaul of National Environmental Policy Act rules.

The **decision** by the U.S. District Court for the Western District of Virginia comes as the Biden administration looks to revamp the NEPA implementing regulations with an eye toward climate change and environmental justice.

"I am mindful that courts must not set the bar of justiciability unnecessarily high," Judge James Jones wrote in the opinion dismissing the case, *Wild Virginia v. Council on Environmental Quality*.

"Nevertheless, I am left with the firm conviction that the claims asserted in this case by these plaintiffs are not appropriate for judicial resolution at this time," wrote Jones, who was appointed during the Clinton administration.

Kym Hunter, a senior attorney at the Southern Environmental Law Center (SELC), which represented Wild Virginia and 16 other green groups in the case, expressed dismay at the ruling.

"I think we're disappointed in that it doesn't actually recognize the reality of the situation," Hunter said in a phone interview with E&E News.

"There were some misrepresentations made in court that this rule wouldn't start to apply until agencies issued their own implementing regulations in September," she continued. "And that's not true."

NEPA, enacted by Congress 50 years ago, requires federal agencies to examine how infrastructure projects will affect communities and consider alternatives. The bedrock environmental law has been an important tool for opponents of proposed projects including highways, power plants and pipelines.

In 1978, the White House Council on Environmental Quality issued rules instructing agencies how to implement NEPA. The Trump administration in August overhauled those regulations for the first time in more than 40 years.

Trump's NEPA rule set a two-year deadline for completing environmental impact statements, which proponents said would speed up reviews of major infrastructure projects. It also axed consideration of proposals' "cumulative impacts," which critics said would ignore projects' contributions to climate change.

SELC sued over Trump's rule on behalf of 17 environmental groups, including Cape Fear River Watch and Alabama Rivers Alliance. More than 20 states and other green groups brought similar legal challenges, although SELC's case had progressed the furthest.

Under President Biden, who has taken a whole-of-government approach to combating climate change, CEQ is revising the Trump-era NEPA implementing rule.

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In Biden's first [regulatory agenda](#) released earlier this month, CEQ outlined a two-stage process for reconsidering the Trump-era rule.

The first phase will make a "narrow set of changes" to the rule and is set to be published in July, according to the agenda. The second phase will encompass "broader changes" and is expected in November.

### 'Too ... speculative'

At a virtual hearing in April, Jones weighed a [motion](#) from environmental groups seeking to scrap Trump's NEPA rule and reinstate the prior regulations from 1978 ([Energywire](#), April 22).

The judge also considered a related [motion](#) from Biden's Justice Department asking the court to send CEQ back to work on the rule without axing it outright.

"CEQ is currently reconsidering the 2020 Rule's treatment of, and effect on, environmental justice, climate change and public participation in the NEPA process — all issues raised in this case," DOJ lawyers wrote in their motion.

In dismissing the case, Jones concluded that it was too early to determine how the rule would affect the environmental challengers, as agencies are still figuring out how to apply the regulation to individual projects.

"The potential applications and outcomes of the regulatory changes adopted are simply too attenuated and speculative to allow for a full understanding and consideration of how they may impact the plaintiffs," Jones wrote.

He added that the green groups lacked standing to bring the case in the first place because "the harms the plaintiffs allege are too speculative."

Hunter, the SELC attorney, said Jones appeared to be counting on the regular rulemaking process — not the courts — to undo Trump's NEPA rule.

"I think he's essentially looking to the Biden administration, based on their representations in court, to make this fix so he doesn't have to," Hunter said.

Jones previously rejected the Biden administration's request to pause proceedings in *Wild Virginia v. CEQ* for 60 days ([Energywire](#), Feb. 22). But other federal courts have agreed to 60-day stays in similar lawsuits over Trump's NEPA regulations.

In a [declaration](#) last week to the U.S. District Court for the Southern District of New York, which froze a similar suit from environmental groups for 120 days, CEQ Chief of Staff Matthew Lee-Ashley said the agency is still weighing whether Trump's rule had an adverse impact on climate change and environmental justice communities.

### Outlook for projects

SELC has compiled a list of 28 projects that it says have already been affected by Trump's NEPA rule, including the Mountain Valley pipeline, a hotly contested natural gas project.

The Army Corps of Engineers relied on Trump's NEPA rule when the agency downplayed the need for the developers of Mountain Valley and other pipelines to consider climate change under its Nationwide Permit 12, according to the group.

But Christi Tezak, managing director at ClearView Energy Partners, said she thinks the ruling won't have a big impact on recently proposed energy developments.

"For project sponsors undergoing NEPA reviews this year and next, we think that the situation has not changed as the prospects for formal revision of the rule already created uncertainty," Tezak said in an email to E&E News.

"In our view, CEQ's planned reconsideration already had the potential to disrupt and delay reviews for energy infrastructure projects, particularly if the federal agency has moved reviews forward under the new rule," she added.

A coalition of industry groups including the American Farm Bureau Federation and the American Petroleum Institute had intervened in *Wild Virginia v. CEQ* to preserve the Trump-era NEPA rule.

An API spokesperson didn't respond to a request for comment yesterday. CEQ doesn't comment on pending litigation.

*Reporter Niina H. Farah contributed.*

*This story also appears in Climatewire.*

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