

Yesterday, the White House [undid](#) an effort by the Trump Administration to undermine the use of environmental impact statements. The pre-Trump rules had been in effect since 1978. Restoring the 1978 version was the right thing to do. The Trump's rules arbitrarily limited the scope of the environmental effects that EPA can consider. Their goal was clearly to prevent consideration of climate change.

More specifically, the Trump revision cut references to indirect or cumulative environmental and discouraged consideration of effects that are remote in time, geographically remote, or the product of a lengthy causal chain. These restrictions flew in the face of everything we know about harm to the environment. We know that harm is often long-term rather than immediately obvious — think of chemicals that cause cancer decades after exposure. We also know that environmental effects aren't limited to the immediate neighborhood — think of the fertilizer runoff in the Midwest that causes dead zones in the Gulf of Mexico. In ecology, causal chains are often complex, and the same is true for atmospheric physics and other parts of environmental science. And we also know that much damage to the environment is cumulative, such as the effect of deforestation on biodiversity.

When it passed NEPA, Congress was well-aware of those realities. Rather than focusing only on direct effects, the statute speaks of the “interrelationships of all components of the natural environment.” (§ 101(a)) Rather than focusing only on the near-term, it speaks of “the responsibility of each generation as a trustee of the environment for succeeding generations” (§ 101(b)(1)), and of “the relationship of short-term uses of man's environment and the maintenance and enhancement of long-term productivity” (§ 101(2)(C)(iv)). Rather than considering only localized effects, Congress was concerned about the “worldwide and long-range character of environmental problems.” (§ 101(2)(F)) In short, Congress knew then what scientists know today about the complex, long-term, and far-flung nature of environmental problem.

The Trump Administration relied on two justifications for restricting what counts as an environmental effect. The first justification is based on the concept of proximate cause in tort law. To begin with, the Trump Administration distorted what tort law really has to say about causation, emphasizing ideas abthat went out of favor by the 1950s. In addition, as the Biden EPA pointed out, tort law has different purposes than environmental impact assessment, so there's no reason to expect the rules to be exactly the same.

The Administration's other justification was a single Supreme Court case, *Department of Transportation v. Public Citizen*. The facts of the case were peculiar. There was a moratorium on allowing Mexican trucks in the U.S. The President couldn't lift the moratorium until DOT came up with safety rules for the trucks. DOT did an environmental

impact statement on the safety rules. It didn't consider the follow-on effect that the President would lift the moratorium, which might increase air pollution. From this offbeat case, the Trump Administration tried to find a basis for transforming the interpretation of NEPA.

That's a drastic over-reading of the Court's very brief opinion. When you get down to it, the Court's reasoning was very simple: Congress deliberately limited the agency to considering truck safety issues and relegated everything else to the President. Therefore, the agency could not consider the effects of a decision that was the President's alone.

In short, the Trump Administration was trying to build an entire brick fortress out of a handful of straw. Rescinding the Trump rule was absolutely the right thing to do.

Interestingly, the Biden Administration did retain one of the Trump change, which requires environmental effects to be foreseeable. There's a risk that doing so might encourage too much reliance on tort law, since foreseeability is a key factor there. On the other hand, it's hard to see how an agency *could* consider an effect that it can't even foresee. Hopefully this language will just serve as a reminder that there needs to be a reasonable basis for anticipating a possible effect.