

A sleeper provision in one of Trump's executive orders attempts to revolutionize the way NEPA operates and cut environmental review to a minimum. Since Jimmy Carter's presidency, agency compliance with NEPA has been governed by regulations issued by the White House Council on Environmental Quality. Trump aims to end that practice and replace it with agency-by-agency NEPA rules designed to reduce environmental considerations to the barest legal minimum.

This sleeper provision is section 5 of the Executive Order on "Unleashing American Energy." To save you a click I've pasted the relevant language of section 5 at the end of the post.

Section 5 begins by repealing the 1977 order by Jimmy Carter that authorized the CEQ to issue binding instructions to agencies. The CEQ will no longer be in a position of issuing binding rules. Under the new regime, CEQ will issue only guidance, which is supposed to come by February 20. That obviously leaves no time for public input. Given the short timetable, we can expect the guidance to look very much like the rules that Trump's CEQ issued in 2020. This timetable leaves very little time to consider changes relating to the extensive amendments to NEPA at the end of 2023.

By February 20, the chair of CEQ is also supposed to propose repeal of the NEPA regulations issued by the CEQ under Biden. Given that the Executive Order refers to a "proposal," it sounds like this track will use the normal regulatory process of notice to the public, comments, and a final rule, all of which will take time. In the meantime, however, the head of CEQ is supposed to convene a working group to coordinate adoption of the guidelines by individual agencies across the government. So, all agency procedures will presumably end up being clones of the guidelines, but CEQ's marching orders will technically only be guidance documents. Coordinating the efforts across agencies may also be a headache. We can expect at least some of the agency regulations to be challenged in court.

Legal challenges are particularly likely because the executive order is overtly hostile to environmental considerations. The Executive Order says that the "all agencies must prioritize efficiency and certainty over any other objectives . . . that could otherwise add delays and ambiguity to the permitting process." The "other objectives" that are precluded seem to include the environmental objectives of NEPA itself.

What's going on here is pretty obvious. The title of this provision is not "improving environmental review." No, the title is "Unleashing Energy Dominance through Efficient Permitting." Anything that gets in the way of fossil fuel development - which is what Trump

means by energy dominance – is going to get steamrolled. Including the environment.

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**Sec. 5. Unleashing Energy Dominance through Efficient Permitting.**

(a) Executive Order 11991 of May 24, 1977 (Relating to protection and enhancement of environmental quality) is hereby revoked.

(b) To expedite and simplify the permitting process, within 30 days of the date of this order, the Chairman of the Council on Environmental Quality (CEQ) shall provide guidance on implementing the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and propose rescinding CEQ's NEPA regulations found at 40 CFR 1500 et seq.

(c) Following the provision of the guidance, the Chairman of CEQ shall convene a working group to coordinate the revision of agency-level implementing regulations for consistency. The guidance in subsection (b) and any resulting implementing regulations must expedite permitting approvals and meet deadlines established in the Fiscal Responsibility Act of 2023 (Public Law 118-5). Consistent with applicable law, all agencies must prioritize efficiency and certainty over any other objectives, including those of activist groups, that do not align with the policy goals set forth in section 2 of this order or that could otherwise add delays and ambiguity to the permitting process.