

December 12, 2018

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dear Administrator Wheeler:

The Obama Administration exercised over-zealous federal overreach with a little known provision (404(c)) in the Clean Water Act to propose a pre-permit veto on a natural resource development project in southwest Alaska, even before the project applied for a permit. They also used that provision to issue a post permit veto on a coal mine operating in compliance with their permits in West Virginia. This is an issue that the now former Administrator Pruitt sought to correct with a memorandum instructing the Agency to update EPA's role in permitting and its veto authority under section 404 of the Clean Water Act (CWA).

In a statement on June 27, 2018, Pruitt instructed the EPA to ensure that it is "protecting public health and the environment in a way that is fair and consistent with due process. We must ensure that EPA exercises its authority under the Clean Water Act in a careful, predictable, and prudent manner."

President Trump has proposed to rescind EPA's duplicative veto authority under 404(c) of the Clean Water Act and legislation has been introduced in the House and the Senate to restrain the EPA from abusing the 404(c) veto process that delay and cause adverse regulatory burdens on resource and infrastructure projects.

Unfortunately, the precedent set by the EPA's use of the 404(c) veto provision in the Clean Water Act is still in place. Former Administrator Pruitt suspended the withdrawal of the current proposed pre-permit veto on resource development in southwest Alaska. While the developers of the affected mine in southwest Alaska has been allowed to submit its permit application, and the veto is not final, the pending veto still prevents the U.S. Army Corps of Engineers from issuing any final permits.

Expanding our nation's energy delivery infrastructure is facing increasing challenges across the country as foes of development are attempting to use sections 401 and 404 of the CWA to stop pipeline and other energy projects. The precedent made by purposefully leaving the proposed pre-permit veto in place can be used by a future administration that's hostile to energy development to stop projects, such as ANWR in Alaska or and natural gas production in Pennsylvania. The 404(c) veto process can be used to stop projects on private, state, and federal land.

As you know, there are significant hurdles in Congress to making changes to the 404(c) veto provision. However, this administration can make it difficult for future administrators to use this tool for 'federal zoning' on state and private land. You can do so by implementing the memo on 404(c) veto regulations now; by clearly communicating that these rules will apply to all current and proposed projects; by rescinding any pending vetoes; and by announcing that this administration will not issue any 404(c) vetoes during its term in office.

We appreciate your attention to the matter and your actions to curb past and future federal regulatory overreach by the EPA.

Alaska Oil and Gas Association
Alaska Support Industry Alliance
American Petroleum Institute
GPA Midstream Association

Independent Petroleum Association of America
Oklahoma Independent Oil Producers Association
Resource Development Council for Alaska, Inc.
Western Energy Alliance