



Trump is trying to cripple the environment and democracy

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The Trump administration has fired the latest salvo in its never-ending assault on environmental safeguards: a proposal from the White House Council on Environmental Quality (CEQ) to overhaul its regulations governing federal agency compliance with the National Environmental Policy Act (NEPA).

The proposal would narrow the scope of NEPA's protections, weaken federal agency duties when the law applies, and attempt to shield violations of NEPA from judicial oversight. More significantly, the proposal is wildly inconsistent with NEPA's most fundamental goal: fostering deliberation and democratic participation to improve the government's capacity to promote social welfare.

NEPA relies on four key mechanisms.

First, it directs all federal agencies to accompany proposals for "major federal actions significantly affecting the quality of the human environment" with a detailed environmental impact statement (EIS) comparing the environmental impacts of the proposed action and its alternatives.

This requirement forces agencies that might be (and sometimes had been) inclined to subordinate environmental considerations to unbridled development to consider whether creative approaches might achieve programmatic goals without sacrificing the environment.

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Second, NEPA directs agencies to share with the public the information they develop in assessing the environmental effects of their proposals, and especially with those most likely to be affected. This mandate serves to inform communities and catalyze the democratic process by soliciting input on important governmental choices.

Third, NEPA coordinates a decentralized decisionmaking structure in which agencies make decisions, but only after leveraging the expertise of other parts of the government. If, for example, an agency proposes to authorize mining in vulnerable species habitat, it should solicit and consider the views of the U.S. Fish and Wildlife Service (and similarly affected state agencies) before deciding whether, and how, to proceed.

Fourth, NEPA relies on a limited but critical role for the federal courts to ensure that agency decisions are based on sound information, not arbitrary reasoning.

Unfortunately, the CEQ proposal would radically undercut each of NEPA's democratic purposes. First, it would sharply curtail the duty of agencies to consider adverse environmental impacts by narrowing the range of actions that trigger assessments.

Among other things, it would encourage agencies to exclude many significant federal actions from the detailed review, eliminate consideration of cumulative harm of multiple projects, and indiscriminately cut the range of alternatives agencies must consider. These changes would limit the projects for which agencies would have to consider the environmental harms of implementation carefully.

Second, the proposal undercuts NEPA's disclosure and public participation mechanisms in equally troubling ways. For example, it would allow agencies to avoid convening hearings at which the public might hear about and provide input on agency proposals.

CEQ would also impose arbitrary page limits on NEPA documents, as well as thoroughly discredited two-year time limits for preparing those documents. These constraints would short-circuit the process and limit analyses of environmental impacts. CEQ's effort to avoid transparency and public participation is an all-too-familiar Trump administration strategy, as a recent study of the Interior Department's routine disregard of public comments on proposed rule changes documents.

Third, CEQ's proposal would frustrate agency coordination and decentralized determinations of the best way to analyze information. For the first time, it would prohibit agencies from supplementing CEQ's regulations with their own, more expansive procedures. It would expand agency authority to delegate EIS preparation responsibilities to industry (such as a company seeking an oil lease on public lands). The inevitable result would document that downplay or outright ignore adverse environmental effects.

Finally, CEQ's proposal seeks to curtail judicial oversight of this diminished process, even though agencies have no authority to dictate how courts address NEPA challenges. Perhaps most troubling, the proposal purports to allow an agency's certification that it has considered relevant environmental information to preclude judicial inquiry into whether it has complied with NEPA.

NEPA has made careful democratic planning a bedrock of federal decision-making and, according to a study by the Environmental Law

Institute, "affected governance for the better." Though not flawless, it has been hailed by Democrats and Republicans alike for, as [Russell Train](#) (administrator of the Environmental Protection Agency under Richard Nixon) put it, recognizing "that what the people know has great value to a government that seeks their knowledge and takes it seriously."

CEQ's proposal is an ill-disguised hatchet job on NEPA's capacity to foster informed deliberation, public participation, agency coordination, and judicial checks on agency action. If the administration's goal is to impair deliberative democracy on environmental issues, this proposal is tailor-made.

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