TRUMP AND THE COLLAPSE OF THE ENVIRONMENTAL ADMINISTRATIVE STATE

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The United States, along with the rest of the world, is facing an ecological crisis of unprecedented proportions. On a global scale, the effects of climate change are already being linked to an increase in so-called "billion-dollar disasters", including hurricanes, typhoons, severe thunderstorms, tornadoes, floods, droughts, and crop failures. Pollution and its resulting degradation of the environment is having a disproportionate negative effect on low-income, POC communities who tend to live closer to industry and dumping sites. Despite the well-documented body of evidence by government regulatory offices, non-governmental organizations, independent environmental oversight groups, and intergovernmental research commissions on the reality of climate change and the threats to socioeconomic well-being posed by prolonged environmental deterioration, the US federal government has not issued major environmental protection standards since the administration of President Barack Obama.[7] Between the years of 2016 and 2020, the Republican-controlled Congress and White House have promoted a "pro-business" legislative and regulatory agenda, including the reduction of environmental regulations. As this Essay is written, the federal government is poised to reverse, revoke, or otherwise rollback 100 key environmental regulations, with 26 under litigation, 6 "in-progress", and 68 completed.

The administration's aggressive campaign to curtail federal environmental protections came to a head on 16 July 2020 with the issuance of CEQ-019-0003, a sweeping change in the interpretation of the National Environmental Protection Act's (NEPA) statutes—

—that, among other things: exempts numerous industrial projects from NEPA oversight by narrowing the scope of "major federal actions" to a degree arguably beyond the jurisprudential standard; eliminates the consideration of "indirect" and "cumulative" effects stemming from a particular project, despite them being regularly documented and outlined by the administration since the '80s; and restricts the ability for the public to comment on future policies.

The ability of the executive bureaucracy — in NEPA's case, the Council on Environmental Quality (CEQ) — to unilaterally gut environmental law speaks to a fundamental problem in how the "environmental administrative state" operates, and how the Trump administration has used its decades-old rules against it. The CEQ in particular, through two clauses in the NEPA statute (42 USC § 4344 Clauses 4 and 8), granted itself significant authority on NEPA's interpretation beyond that of mere guidance and better adhering to federal jurisprudence. CEQ-019-0003 states that "NEPA implementation and related litigation can be lengthy and significantly delay major infrastructure and other projects", suggesting that the CEQ intends for its regulatory revisions to primarily serve economic and corollary social interests in the form of "cutting bureaucracy". However, the new regulation's dramatic reshaping of textual interpretations will only result in further federal litigation and Supreme Court involvement as it grapples with the CEQ's authority to make such decisions and the corporate interests who seek to rollback NEPA regulations.

The environmental administrative state has failed America before. On January 26, 2017, President Trump issued an executive order both granting permission for the Keystone XL pipeline project and asserting it and other energy projects are beyond the scope of judicial review. Despite the disapproval of multiple public health NGOs and the EPA due to the project's threat to local ecosystems and public drinking water sources, the President's actions kept Keystone XL in legal limbo through the mechanisms of the—

—environmental administrative state until the Supreme Court's intervention in 2020. As a consequence, within one year of Trump's approval, the Keystone XL pipeline system had leaked 12 times, with one spill amounting to 21,000 gallons of tar sands oil spewing into the air, wildlife, rivers, and wetland environments. In another instance, the White House repealed the Obama-era Clean Power Plan, replacing it with a significantly more "business-friendly" Affordable Energy Plan that nullified many of the most innovative regulations to curb CO_2 emissions. Both plans were issued without Congressional approval, and have relied heavily on the courts to determine their implementation.

This legal turmoil and execution of statutes in a manner arguably against their original legislative intent speaks far beyond an executive aligned with corporate interests to stymie environmental regulations (described in detail as the Takings Project in James Pollack's 2020 article). Rather, it speaks to a failure of Congress to address the longstanding challenges to environmental law, instead leaving behind a patchwork of Supreme Court rulings, federal regulations, and centuries-old Constitutional provisions regarding jurisdiction over matters like "navigable waters" and the interstate commerce clause that have needed vast judicial construement and interpretation in order to allow for the federal government to regulate actions involving the environment. With no clear-cut standard, the executive has been able to take advantage of the separation of powers doctrine to dramatically expand its regulatory power far beyond Congressional statutes, as already described in CEQ-019-0003 and will be seen in future generations.

The 21st Century has seen a revitalisation of environmental concern since the 70s. Unfortunately, decades of Republican political rhetoric has made the term "regulation" a dirty word for economic conservatives, who now view them as nothing more than an overzealous government seeking to obstruct private enterprise. Coupled with the fact that Congressional Republicans tend to be—

—significantly more ideologically conservative than the average Republican and are financially compromised to corporate interests like Koch Enterprises and oil conglomerations, the ability to enact significant environmental policy change in the modern United States is, in mild terms, severely limited.

However, that does not make it impossible. It is this Essay's opinion that Congress must revise its existing federal statutes to more effectively bind the EPA and other regulatory bodies to execute their mandate rather than the 20th Century approach of *carte-blanche* delegation, seen notably in NEPA. Lawmakers should consider compelling regulatory agencies to adhere to a jurisprudential-like doctrine in which newly-promulgated rules can only expand or minimally adjust previous regulations, as determined by an appropriate oversight entity. Rules that seek to undo or otherwise abrogate pre-established regulations must be affirmed by Congress on the basis of its rulemaking authority and ability to apply the intent of its own statutes. This doctrine places a significant check on the efforts of corporate interest groups and their proponents on Capitol Hill, the White House, and the judicial benches and reduces the power held by unelected executive bureaucrats.

On the matter of strengthening NEPA in light of CEQ-019-0003, this Essay proposes a new policy that will hold companies accountable for the illegal and unlawful dumping of their toxic waste, with particular emphasis on protecting low-income communities that lack the resources to mount a legal challenge. As well, this policy seeks to impose civil statutes against the continued pollution of the environment despite notification from a government agency to either cease operations or significantly limit them to halt the ongoing pollution. This can be cited as the Environmental Justice Act, or EJA. The EPA's current oversight and fining powers should be enhanced through funding and new legislation in order for it to stand up against corporate interests and maintain an acute focus on environmental protection per Congressional statute, rather than the whirlwind—

—of external forces that may push it to promulgate reinterpretations of regulations and statutes at the detriment of the general welfare.

The Trump administration has set a clear precedent for how environmental issues should be handled in the current political climate. Its unilateral rollback of NEPA and its associated regulations blew away the house of cards upon which the federal environmental administrative state has sat upon since Richard Nixon. Along with this, it is in the interest of many large corporations, the Keystone XL project, and many members of the republican party to disregard the environment in order to exploit natural resources for profit. In order to combat this, it is imperative that these policies be put in place in order to provide for a better future for our children and our world, especially the world of people of color in lower income areas. By allowing a non-partisan organization to control this issue, it ensures the environment's best interest will be championed, and thus protected. Unless we work directly and swifty to change the power dynamics in government oversight of the environment, the global ecological crisis will only grow while the corporate elites line their pockets and die before the consequences of their actions are plainly visible to all.