

September 6, 2018



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



Dear Acting Administrator Wheeler,

In 2013, organizations from coast-to-coast called on then-U.S. Environmental Protection Agency (EPA) Administrator Gina McCarthy to reject an unprecedented decision on Pebble Mine and warned that a preemptive veto, "would have a dramatic chilling effect on investment in America." Unfortunately, this call went unheeded as the Obama EPA promulgated the "Proposed Determination." This action was essentially a preemptive veto on the development of a copper mine in Southwest Alaska (AKA Pebble Mine) before the project had a chance to go through the permitting process. The proposed veto was based on incomplete, shoddy analysis and agency collusion with liberal environmental activists and other project opponents.

The conduct of the EPA over the last forty years confirms that the issuance of a proposed preemptive veto is unprecedented. EPA has only exercised its authority under Section 404(c) thirteen times. In each previous instance, EPA invoked Section 404(c) only after receipt of a permit application describing the scope and details of the project proposed, the anticipated environmental impact, and the techniques employed to mitigate, which is normal for all applicants under the well-established NEPA process.

One does not have to be a mining proponent to oppose the unprecedented action taken by the Obama EPA with their proposed preemptive veto of the Pebble Mine—before it even submitted a permit application. The harmful effects of continuing with EPA's veto process go well beyond the mining industry. The need to secure 404 permits touches every state and all areas of our economy.

In late June, former Administrator Pruitt correctly recognized the dangerous precedent set by the Obama EPA and issued a memorandum instructing the agency to update the regulations governing EPA's role in permitting and its veto authority under section 404 of the Clean Water Act (CWA). In the news release on June 27, 2018, former Administrator Pruitt instructed the EPA to ensure the agency 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."

We applaud this action and encourage you to not back down to those who have asked you to withdraw the memo and the directive for the EPA to update the 404c regulations and guidelines. Further, with the proposed regulatory reform, the EPA has an opportunity to establish a lasting precedent for the federal permitting process that protects "human health and the environment while improving predictability and regulatory certainty," per the EPA's news release. The Agency can make sure that this message is received clearly by communicating that these rules will apply to all current and proposed projects, not just future permit applications.





Unfortunately, the Obama Administration's proposed preemptive veto is still in place. While the developers of the Pebble Mine have been allowed to submit the permit application, the U.S. Army Corps of Engineers is still precluded from issuing any permits. So long as the preemptive veto on Pebble Mine remains in place, there remains a dangerous precedent for future administrations to undermine a fair, traditional, and rational permitting process.

We firmly believe that the continuing existence of the proposed preemptive veto on Pebble Mine undermines the Pruitt Memo and the necessary regulatory reform it seeks to establish.

You have the ability to right the wrongs of the Obama EPA and remove the precedent of a preemptive 404(c) veto entirely. We urge you to rescind the proposed "veto" (proposed determination) for Southwest Alaska as soon as possible. This action would be an important step to reestablishing a fair and due process at the EPA, which Pruitt called for in his memo.

We applaud the President's proposal to eliminate the EPA's statutory authority to issue a veto, which is part of his infrastructure plan. Implementing regulations based on Pruitt's memo and taking the steps outlined in this letter is consistent with Trump's intentions and would make it even more difficult for future administrators to use the 404c provision as a tool for 'federal zoning.'

We appreciate your leadership and look forward to continued EPA action to reduce the burdensome regulations implemented by the Obama EPA.

Sincerely,

Grover Norquist
President
Americans for Tax Reform

Dick Patten
President
American Business Defense Council

Rick Manning
President
Americans for Limited Government

Brent Gardner
Chief Government Affairs Officer
Americans for Prosperity

Jennifer Fielder
CEO
American Lands Council

Myron Ebell
Director, Center for Energy & the Environment
Competitive Enterprise Institute

James Edwards
Executive Director
Conservatives for Property Rights

Ron Kliewer
President
Public Lands for the People

Derrick Hollie
President
Reaching America

Jim Martin
Chairman
60 Plus Association

Amy Oliver Cooke
Executive Vice President
Director, Energy and Environmental Policy
Independence Institute (Colorado)

Sal J. Nuzzo
Vice President of Policy
The James Madison Institute (Florida)

Paul Gessing
President
Rio Grande Foundation (New Mexico)

John M. Tidwell
Oklahoma State Director
Americans For Prosperity Oklahoma Chapter

Brett Healy
President
John K. MacIver Institute for Public Policy (Wisconsin)