



July 15, 2025

The Honorable Lee M. Zeldin  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Zeldin:

The Competitive Enterprise Institute applauds the Trump administration's efforts to streamline the federal permitting process for major projects, including those for energy, mining, and infrastructure. Doing so is essential to achieving the President's goals of increased domestic energy and minerals supplies, a reinvigorated manufacturing sector, and robust job creation. That is why it is imperative to stop the Environmental Protection Agency's (EPA) misuse of the Clean Water Act to interfere with such projects.

Section 404(c) of the Clean Water Act enables the EPA to veto a project if the agency says it will have unacceptable impacts on water supplies or fisheries. For decades, EPA administrators under both Democratic and Republican presidents rarely invoked this provision, preferring instead to defer to the U.S. Army Corps of Engineers as the lead agency on permitting matters. However, under the Obama administration, the EPA began to exert its 404(c) power both retroactively and preemptively – that is, revoking a project after it had already been approved or doing so prior to an application being submitted to the government. The Trump EPA took steps to limit the retroactive and preemptive application of 404(c), but these reforms did not survive in the Biden administration.

An egregious example of this Section 404(c) abuse is the EPA's treatment of the Pebble Mine project in Alaska. Pebble has the potential to be America's largest new mine in decades, with vast amounts of copper, gold, molybdenum, and critical minerals. The EPA preemptively vetoed the project in 2014 under President Obama. The first Trump administration rescinded this action, and in 2017 a mine application was submitted to the Army Corps of Engineers. In 2020, the Army Corps during the Trump administration issued an Environmental Impact Statement pursuant to the National Environmental Policy Act and denied the mine application. This decision is currently being challenged in federal court. However, rather than wait until the end of the litigation, the Biden EPA stepped in with another veto in 2023. Though this is not a preemptive veto in that the application for the project had been filed, this 2023 action is superfluous and particularly unhelpful until the litigation is resolved.

The EPA's vetoes have a chilling effect on the Pebble Mine and other important projects. Prospective investors are going to be dissuaded if the EPA can step in and stop an already-approved project or circumvent the Army Corps permitting process before it has begun as originally occurred with Pebble.

For Alaska, the Biden EPA's 2023 EPA veto has a negative effect not only on Pebble but also on other potential projects in the state. And, unlike the Army Corps process, the EPA's actions were done with minimal if any opportunities for the state to weigh in.

For these reasons, we urge you to clarify that the EPA will not issue any future retroactive or preemptive vetoes under section 404(c) of the Clean Water Act, to consider a rulemaking to do so, and work with Congress to support legislative efforts to address this abuse. The House Transportation and Infrastructure Committee recently favorably reported H.R. 3898, the PERMIT Act, which among other things, addresses the problem of retroactive and preemptive vetoes.

Further, we urge you to rescind the EPA's 2023 veto of the Pebble Mine that is unnecessary, unjustified, and harmful not just for this project but other projects in Alaska that could be important for the entire nation.

Sincerely,

Daren Bakst  
Director, Center for Energy and Environment, and Senior Fellow  
Competitive Enterprise Institute

Ben Lieberman  
Senior Fellow, Center for Energy and Environment  
Competitive Enterprise Institute