

Litigation Against Trump Administration Environmental Rollbacks

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I. The Trump Administration's Record in Court

According to the New York Times:

"Since taking office Mr. Trump has proposed nearly 100 environmental rollbacks, including weakening protections for endangered species, relaxing rules that limit emissions from coal plants and blocking the phaseout of older incandescent light bulbs. Hundreds of thousands of public comments against the president's moves have flowed in. Scientists have spoken out in opposition. Democrats have vowed to stop him, all with little effect. . . .

"But haste and zeal may work against the administration. Nearly 70 lawsuits have been filed to challenge the administration's deregulatory moves, asserting that officials have violated federal procedures in their rollback efforts. The Trump administration has, so far, been successful just four times, according to New York University School of Law data."

See Lisa Friedman, "Trump's Move Against Landmark Environmental Law Caps a Relentless Agenda," N.Y. Times (Jan. 9, 2020)

Professor Lisa Heinzerling explored some of the various classes of defects found by the judiciary in the Trump Administration's early regulatory rollback efforts in "Unreasonable Delays: The Legal Problems (So Far) in the Trump Administration's Deregulatory Binge," 12 *Harv. L. & Policy Rev.* 14 (2018).

II. The Judiciary's Response to the Trump Administration's Actions

According to an Institute of Policy Integrity analysis, the Trump Administration's regulatory rollbacks have faced strong headwinds in the federal courts, regardless of the political party of the President who appointed the judge. See <https://policyintegrity.org/trump-court-roundup>. Half of the Trump Administration's four regulatory-rollback court victories have been decided by judges appointed by Democrats, and half by judges appointed by Republicans, according to that analysis. And, Republican-appointed judges have rules against the Trump Administration in these cases four times more frequently than they have ruled for the Trump Administration.

III. Recent cases against the Trump Administration's regulatory rollbacks

The cases described below are a sampling of the lawsuits in which the Natural Resources Defense Council (NRDC) has engaged to fight the anti-environment actions of the Trump administration.

Illustrative Resolved Cases

- **Dental Mercury Effluent Rule** – On February 1, 2017, NRDC filed the first environmental lawsuit against the Trump administration, suing EPA for illegally withdrawing a rule designed to protect the public from mercury discharged by dental offices, preventing the discharge of more than five tons of the toxin each year. Mercury is a dangerous neurotoxin that can disrupt brain function and is especially harmful to pregnant women, their babies, and young children. EPA unlawfully withdrew the rule without public notice or an opportunity for comment. *EPA quickly reversed course, and the agency re-published the final mercury rule in June 2017.*
- **Rusty Patched Bumble Bee Listing** – On February 14, 2017, NRDC sued the Fish and Wildlife Service (FWS) for delaying the addition of the rusty patched bumble bee to the endangered species list. Once common in twenty-eight states, the bee is now a critically imperiled species and is emblematic of the larger crisis affecting bee species across the country. *Shortly after NRDC sued, the agency reversed course and listed the bee as endangered.*

- **Keystone XL Pipeline** – On March 30, 2017, NRDC and partners sued the State Department for approving a cross-border permit for the Keystone XL pipeline, within days of that permit being issued. The Trump administration’s approval unlawfully relied on an outdated, inadequate environmental review, overlooking serious threats to land, water, and climate from the pipeline’s dirty tar sands oil. *In 2018, a federal district court agreed with NRDC that the Trump administration’s environmental review was inadequate, and it prohibited TransCanada from beginning construction on the project until the federal government completed its environmental review. In March 2019, the Ninth Circuit Court of Appeals denied a request by TransCanada to set aside the district court’s injunction. In March 2019, President Trump attempted to circumvent the courts’ rulings by issuing a new permit for the project. On July 1, 2019, NRDC and partners filed a new lawsuit challenging the administration’s continued efforts to approve the pipeline.*
- **Ceiling Fan Efficiency Standards** – On March 31, 2017, NRDC joined with other public interest groups and ten states to file a lawsuit challenging a Department of Energy (DOE) delay of efficiency standards for ceiling fans, which are found in eighty million American homes. DOE itself projects that the rule would result in \$4.5 billion in consumer savings over thirty years. *After being sued, DOE backtracked and reinstated the standards.*
- **Chlorpyrifos** – NRDC petitioned EPA to ban the dangerous pesticide chlorpyrifos a decade ago, and sued when EPA failed to respond. The court ordered EPA to respond to the petition and decide on the pesticide’s safety by the end of March 2017. EPA initially concluded that the pesticide was unsafe based on harm to children and proposed to ban it. But the Trump administration then abruptly reversed course and said that it needed up to five more years of further study. On June 5, 2017, NRDC and partners, joined by seven states, filed a new lawsuit and an administrative appeal with EPA, challenging the agency’s failure to finalize the ban. *In April 2019, the Ninth Circuit Court of Appeals, sitting en banc, ordered EPA to issue a final decision on the administrative appeal. On July 18, 2019, EPA issued a final order declining to ban chlorpyrifos. On August 7, 2019, NRDC and partners challenged that order in federal court.*

- **Offshore Oil and Gas Leasing** – On April 27, 2017, President Trump issued an executive order purporting to revoke President Obama’s permanent protections of most of the Arctic Ocean and parts of the Atlantic Ocean from oil and gas leasing. On May 3, 2017, NRDC and coalition allies filed suit on the grounds that the governing statute does not authorize Trump’s attempted withdrawal. *On March 29, 2019, the Alaska federal court ruled that Trump’s attempt to reopen the Arctic Ocean and parts of the Atlantic Ocean to oil and gas leasing exceeded his statutory and constitutional powers. The Trump administration has appealed to the Ninth Circuit Court of Appeals.*
- **EPA Methane Rule** – On June 5, 2017, NRDC and partners filed suit against the Trump administration for violating the Clean Air Act when it suspended critical protections against methane leaks and other dangerous air pollution generated by the oil and gas industry (doing so shortly after declaring the U.S. withdrawal from the Paris climate accord). This was the first lawsuit filed against President Trump’s EPA rollbacks of federal efforts to fight climate change. *Less than a month after NRDC and partners filed suit, a federal court struck down the administration’s suspension of the protections.*
- **Other Energy Efficiency Standards** – On June 13, 2017, NRDC and coalition partners joined eleven states and the City of New York to file suit against DOE for illegally stalling energy efficiency standards that could save consumers as much as \$11 billion in energy bills. The delayed standards are for portable air conditioners, uninterruptible power supplies, air compressors, and packaged boilers that heat one-fourth of the nation’s commercial space.
In February 2018, a federal district court judge ordered DOE to publish the standards in the Federal Register. On October 10, 2019, a federal appeals court rejected DOE’s appeal, affirmed the lower court’s ruling, and ordered DOE to publish the standards. On December 3, 2019, DOE sent the rules to the Federal Register for publication, meaning that these long overdue standards will now finally go into effect.

- **Toxic Substances Control Act** – On August 11, 2017, NRDC joined with the Alliance of Nurses for Healthy Environments, Cape Fear River Watch, and other partners to sue the Trump EPA over rules for evaluating the risks of toxic chemicals in consumer products and in the workplace. The suit challenges industry-friendly rules issued in July 2017 that significantly weaken the Toxic Substances Control Act (TSCA) – rules that make it easier for EPA to ignore risks posed to people by chemicals. *On November 14, 2019, the 9th Circuit Court of Appeals held that in evaluating whether chemicals pose an “unreasonable risk” to human health and the environment, EPA must consider all uses and sources of exposure to a chemical. The ruling is expected to result in more thorough evaluations of toxic chemicals, and ultimately stronger health protections.*
- **Fuel Economy Standards** – On September 7, 2017, NRDC filed suit against the National Highway Traffic Safety Administration (NHTSA) and the Department of Transportation for indefinitely suspending an increase in civil penalties for automakers that violate fuel economy standards. The increase was designed to ensure that auto companies invest in fuel-saving technologies, and its delay often made it cheaper for auto companies to simply pay a fine rather than meet the standards. *On April 23, 2018, less than two weeks after oral argument, the U.S. Court of Appeals for the Second Circuit vacated NHTSA’s unlawful suspension and immediately reinstated the penalty increase to ensure that it properly deters violations in the vehicle fleets that automakers are currently designing. With this ruling, the Court set meaningful precedent that will help us and others in subsequent cases.*
- **DOI Methane and Waste Prevention Rule** – On December 19, 2017, NRDC and partners filed a lawsuit challenging the Department of the Interior’s move to halt the Methane and Waste Prevention Rule that requires oil and gas companies to implement cost-effective strategies to reduce natural gas waste from their operations on public and tribal lands. The suspension of the rule is an attempt by the administration and fossil fuel industry to skirt these safeguards. In May 2017, the Senate voted not to consider a repeal of the rule in a bipartisan, 51–49 vote. Interior Secretary Ryan Zinke then unilaterally suspended parts of the rule. *On February 22, 2018, a federal judge issued a preliminary injunction on Zinke’s second attempt to stay the Rule. Zinke’s scandal-plagued tenure ended with his resignation in December 2018.*

- **Vaquita Protection** – On March 21, 2018, as part of NRDC’s work to save the world’s most endangered marine mammal, NRDC filed a lawsuit in the Court of International Trade to protect the vaquita porpoise and force the U.S. government to ban Mexican seafood products caught with gillnets in the northern Gulf of California. The vaquita is the world’s smallest porpoise, and its dwindling numbers swim only in the northern stretches of Mexico’s Gulf of California, where they often become tangled and drown in fishing nets. Fewer than thirty vaquita remain. *In July 2018, the Court of International Trade granted NRDC’s request for a preliminary injunction, imposing an immediate embargo on all fish imports from fisheries using gillnets in the vaquita’s range. The courts have kept this embargo in place despite multiple attempts by the government to undo the preliminary injunction, including an October 2018 motion by the government for a stay pending appeal of the injunction, which the courts denied. And in May 2019, the Federal Circuit issued an order that left the embargo in place while litigation continues in the lower court.*
- **Banning Carcinogens in Food** – On May 2, 2018, NRDC and a coalition of health, consumer, and other environmental organizations filed a lawsuit against the Food and Drug Administration (FDA) to compel the agency to decide whether to ban the use of seven carcinogenic food additives known to cause cancer in animals. NRDC and partners had filed a petition in February 2016 to ban the additives under a provision of the Federal Food, Drug, and Cosmetic Act that prohibits the use of any food additive that causes cancer in people or animals. The FDA’s deadline to respond to the petition was August 2016. The agency failed to respond. *On October 9, 2018, the FDA amended its food additive regulations to no longer allow the use of the carcinogenic food additives. Petition for review was voluntarily dismissed.*

- **Protecting Giraffes Under the Endangered Species Act** – On December 6, 2018, NRDC and partner organizations sued the Trump administration for its failure to consider Endangered Species Act (ESA) protections for Africa’s rapidly dwindling giraffe population, which has dropped nearly 40 percent in the last three decades, leaving fewer than 100,000 giraffes in the wild. Habitat loss and fragmentation, hunting for meat and sport, and the international trade in bone carvings, skins, and trophies, all contribute to the problem. The suit challenged the U.S. Fish and Wildlife Service’s (FWS) failure to meaningfully respond within the required ninety days to a petition filed in April 2017 to list the giraffe under the ESA. *On April 25, 2019, the agency announced that giraffes may qualify for ESA protection. Now, the agency has twelve months to decide whether ESA listing is warranted.*
- **Rusty Patched Bumble Bee Habitat** – On January 15, 2019, NRDC sued the U.S. Department of the Interior for failing to designate critical habitat for the rusty patched bumble bee in violation of the Endangered Species Act. This pollinator was once common throughout twenty-eight states in the midwestern and northeastern United States. Since the mid-1990s, however, the rusty patched bumble bee has disappeared from eighty-seven percent of its range. Threats to this bumble bee include habitat loss, pesticide use, climate change, and disease. NRDC was instrumental in listing it as an endangered species in January 2017, and in ongoing efforts to ensure its protection. The Trump administration has failed to designate critical habitat for the bee, however, which is now listed by the Endangered Species Coalition as one of the top ten species imperiled by the administration. *On September 25, 2019, the U.S. Fish and Wildlife Service agreed to move forward with a timeline for designating critical habitat for the rusty patched bumblebee. Under the settlement, the agency must decide whether it will designate the bee's critical habitat by July 31, 2020; it then has until July 31, 2021 to finalize protections.*

- **Gulf of Mexico Whale** – On February 21, 2019, NRDC, along with Healthy Gulf, filed a lawsuit in federal court in D.C. against the National Marine Fisheries Service (NMFS) challenging the agency’s failure to list the Gulf of Mexico whale as endangered. Under the Endangered Species Act (ESA), NMFS was required to act within a year of publication of its proposed listing decision in December 2016. The Gulf of Mexico whale is one of the world’s most endangered great whale populations with an estimated population of only 33 individuals. NMFS has identified over two dozen threats to the whales, including those posed by oil and gas exploration and seismic blasting. *On April 15, 2019, after years of ignoring legal requests to protect the whale, NMFS listed the Gulf of Mexico whale as endangered, affording it the legal protections it has long deserved.*

Illustrative Pending Cases

- **Neonic Pesticide Registrations** – Bees, butterflies, birds, and insects across the nation are being harmed by neonicotinoid (“neonic”) pesticides that EPA has allowed on the market unlawfully. On October 3, 2017, NRDC asked a federal court to vacate the registrations of nearly one hundred products containing three widely-used neonics until EPA complies with its legal obligations under the Endangered Species Act (ESA). ESA requires that the agency consult with the U.S. Fish and Wildlife Service before approving pesticides to ensure that threatened and endangered species nationwide are protected; however, EPA has approved hundreds of neonic-containing pesticide products without the required consultation. The lawsuit identifies twenty-six species harmed by neonic use. *In September 2019, the court rejected EPA’s motion to dismiss NRDC’s lawsuit. The litigation remains pending.*

- **National Monuments** – In December 2017, President Trump issued unlawful proclamations dismantling the Bears Ears and Grand Staircase-Escalante National Monuments in Utah. NRDC and a coalition of partners filed lawsuits challenging both proclamations the same week. The administration’s unprecedented move stripped essential protections from some two million acres of land and created five small, token protected areas in place of these iconic monuments. In both cases, NRDC and partners are suing on the grounds that Trump exceeded his authority under the Constitution and violated the 1906 Antiquities Act. *In September 2019, the court rejected the federal government’s motions to dismiss these lawsuits, and directed NRDC and the other plaintiffs to file amended complaints reflecting factual developments since 2017. Summary judgment is being briefed, and the case remains pending.*
- **Air Pollution Standards** – On March 26, 2018, NRDC and a coalition of health and environmental groups filed a lawsuit challenging EPA’s January 2018 action allowing certain major industrial sectors to avoid compliance with hazardous air pollution controls. Since 1995, these standards have helped reduce hazardous air pollutants like lead, mercury, arsenic, formaldehyde, and cyanide that are known to cause cancer, reproductive harm, and neurological problems. Under the announced rollback, facilities that are currently regulated would be allowed to increase their emissions of toxins while escaping compliance with the standards altogether – including their emission limits, testing, monitoring, recordkeeping and reporting requirements. *On August 20, 2019, the court dismissed the challenge for lack of subject matter jurisdiction. On October 4, 2019, NRDC and its coalition filed a petition for a rehearing en banc.*
- **Migratory Bird Treaty Act** – On May 24, 2018, NRDC filed a complaint in federal court in New York challenging a recent Interior Department legal opinion that effectively gutted the Migratory Bird Treaty Act, which is one of the nation’s oldest environmental laws. *In July 2019, the court denied the federal government’s motion to dismiss the case, allowing the lawsuit to move forward. The case remains pending.*

- **Trump's Trophy Hunting Council** – On August 1, 2018, NRDC sued the Department of the Interior under the Federal Advisory Committee Act for creating its deceitfully named “International Wildlife Conservation Council” (IWCC). The Council – which is stacked with NRA representatives and celebrity trophy hunters – was created to advise then-Interior Secretary Ryan Zinke “on the benefits international hunting has on foreign wildlife and habitat conservation,” despite the fact that trophy hunting of elephants, giraffes, and other imperiled species actually generates significant harm. In short, this council will increase access to trophy hunting; NRDC’s lawsuit would force the administration to disband it. *The case remains pending.*

Seismic Blasting Permits – On December 11, 2018, NRDC and allies sued the National Marine Fisheries Service after the agency issued five new permits allowing intensive airgun blasting in a large area off the Atlantic coast, from Delaware to central Florida. This extremely loud and dangerous industrial activity – used to search for oil and gas deposits deep below the ocean’s surface – harms marine life including whales, dolphins, fish, and zooplankton, the foundation of the ocean food web. At particular risk is the critically endangered North Atlantic right whale. The new permits follow an executive order issued by President Trump in April 2017, reverse an Obama-era precedent, and are a first step towards opening coastal waters to offshore drilling and the seismic surveys that precede it. *The case remains pending.*

- **Alton Coal Mine Expansion Near Bryce Canyon** – On April 16, 2019, NRDC and allies filed a lawsuit in federal court challenging the 2018 decision by the U.S. Department of the Interior’s Bureau of Land Management (BLM) to approve Alton Coal’s expansion of its mine near Bryce Canyon National Park. The approval allows construction of a gigantic open pit strip mine on 2,114 acres of public land to extract millions of tons of coal. The plan impacts one of America’s most treasured national parks, threatening it with light, noise, and air pollution, and the potential to wipe out an important sage grouse breeding ground. BLM failed to adequately analyze the enormous social costs of the increased air pollution, and the resulting climate and air pollution impacts from burning the anticipated two million tons per year of coal to be extracted from the mine. *The case remains pending in district court.*

- **Challenging EPA’s Failure to Ban Methylene Chloride** – On April 19, 2019, NRDC and partner organizations sued EPA over its failure to ban commercial uses of methylene chloride, a deadly chemical used in paint strippers. EPA banned consumer uses of methylene chloride earlier this year (as a result of a separate lawsuit challenging EPA’s unreasonable delay), but EPA’s decision not to ban commercial uses leaves workers and by-standers at risk. *The legal challenge to EPA’s partial ban remains pending in the Second Circuit.*
- **Trump’s Clean Power Plan Repeal and Replacement** – On August 14, 2019, NRDC and several major public health and environmental groups urged the U.S. Court of Appeals for the D.C. Circuit to overturn the Trump administration’s repeal and replacement of the Obama-era Clean Power Plan. NRDC and partners’ petition asks the court to review the EPA’s so-called “Affordable Clean Energy” rule, which fails to set any limits on the power plant pollution fueling climate change. *The case remains pending.*
- **Challenging Trump Rollback of the Endangered Species Act** – On August 21, 2019, less than two weeks after the Trump administration announced new regulations that dramatically weaken the Endangered Species Act (ESA), NRDC joined with allies to sue the Trump administration. The plaintiffs argue that the new regulations are unlawful in a variety of ways, including by the insertion of final rules that were never made public and not subject to public comment. *The case remains pending, at the motion to dismiss stage.*
- **Challenging the Trump Administration’s Attack on State Authority Over Vehicle GHG Emissions** – In September 2019, EPA and the National Highway Traffic Safety Administration (NHTSA) purported to strip California and other states of their existing authority under the Clean Air Act to adopt state-level greenhouse-gas emission (GHG) standards and zero emission vehicle programs. NRDC and other coalition partners quickly filed lawsuits in both district court and the appeals court in Washington, D.C., challenging EPA’s and NHTSA’s actions. NRDC is litigating in coordination with California and 22 other states that filed their own parallel challenges. *The cases remain pending.*

- **Challenging EPA’s Withdrawal of Clean Water Act Protections for Bristol Bay (Pebble Mine)** – On October 9, 2019, NRDC and allies sued EPA after it abandoned protections that would have placed common-sense restrictions on the Pebble Mine—a giant gold and copper mine proposed at the headwaters of the world’s greatest wild salmon fishery in Bristol Bay, Alaska. Bristol Bay supports a \$1.5 billion commercial fishing industry and is home to Alaska Native cultures that have lived there and subsisted on the region’s incomparable wild sock-eye salmon for thousands of years. After extensive scientific study, EPA in 2014 concluded that a mine even a fraction of the size of the smallest mine contemplated by industry sponsors could have unacceptable adverse effects on the watershed. EPA then issued a proposal that, if adopted, would have prevented the U.S. Army Corps of Engineers from issuing a permit for the project now advancing through Army Corps review. In the summer of 2019, after a change of Administration, EPA withdrew the proposed determination, clearing the way for a mine nearly six times larger than the one EPA previously concluded could have unacceptable adverse effects. NRDC and allies are challenging EPA’s decision in court. *The litigation remains pending.*