

## Lawsuit Challenging Trump Energy Order May Be Premature

By Keith Goldberg

*Law360 (May 13, 2025, 8:39 PM EDT)* -- States may have good reasons to fight President Donald Trump's declaration of a national energy emergency, but courts may be unwilling to evaluate the strength of a new suit from 15 states in the absence of expedited energy project approvals.

Filed in the wake of the U.S. Army Corps of Engineers releasing emergency guidance and identifying projects for expedited approval under Trump's Jan. 20 executive order, which directed federal agencies to fast-track permit approvals for certain energy projects, 15 Democratic-led states alleged that the order undermines their statutory obligations to protect critical habitats and resources, and forces them to expend significant resources to fill potential regulatory gaps within the sped-up permit approval process. Trump's declaration "does not meet even an expansive definition of the term 'emergency,'" and orders agencies to use emergency permitting authority that they don't lawfully have, the states said.

However, those arguments may not be enough to convince a court that the suit has legs to stand on, as no federal agency has yet issued a permit. Legal experts told Law360 that the states might have jumped the gun in filing the lawsuit as courts are typically hesitant to determine if actions that have yet to take place will lead to harmful consequences.

"There is an issue about whether a court would be willing to reach the merits of this lawsuit; they might say it's not ripe, it's premature," said George Washington University Law School environmental law professor Robert Glicksman. "Until the agency has made a final decision on the application of the executive order to a particular project and issues a permit, there's an argument that the court should wait."

The suit lodged May 9 in Washington federal court appears to capitalize on the timing of the Army Corps' actions in mid-April and identifies projects that the agency approved for emergency, expedited permitting, including the widening of a floodplain and the repair of a natural gas pipeline in Washington state. It also notes the U.S. Department of the Interior's recently announced plan to accelerate the development of domestic energy resources and critical minerals, and boil down multi-year permitting processes to a maximum of 28 days.

However, the Army Corps' emergency guidance may not be considered final agency action that courts have the authority to review, experts said.

"There will likely be some threshold justiciability issues that the plaintiffs will have to confront," said Mayer Brown LLP partner Avi Kupfer, a former attorney for both the Environmental Protection

Agency and the Department of Justice's Environment & Natural Resources Division. "A court may want to resolve a case like this in permits, rather than in challenges to executive policy and agency procedures."

Another hurdle for the states is Trump's executive order itself, which aims to speed up the permitting and development of drilling, pipeline and other fossil fuel projects. Experts say the bar for challenging emergency declarations made under the National Emergencies Act is high for plaintiffs, as courts are deferential to the executive branch and the president.

"Generally, they've been held to be political questions, and so it's difficult to overcome that and have a court set aside an emergency declaration," said Jenner & Block LLP partner Meghan Greenfield, a former DOJ and EPA attorney.

Courts' reluctance to directly review a presidential emergency declaration may further tip the scale against the ripeness of the states' suit, Glicksman of GWU said.

Mike Faulk, a spokesperson for the Washington attorney general's office, declined to comment on the states' litigation strategy, saying simply that the arguments from both sides will play out over the course of the case.

"The case is ripe and the Corps is already moving forward in a way that hurts Washingtonians," Faulk told Law360 on Monday. "The complaint speaks for itself."

Glicksman noted that the states' complaint "is quite strong in its allegations," and that even if the lawsuit gets tossed out for lack of standing, the legal arguments that Trump and federal permitting agencies exceeded their authority will undoubtedly resurface in future lawsuits challenging permitting decisions that are deemed ripe.

And as more federal permitting agencies implement Trump's executive order, the more opportunities that will create for lawsuits that challenge not only agency permitting actions, but the purported emergency authority that underpins them.

For example, the DOI on April 23 announced emergency permitting procedures for pending projects related to fossil fuels, mining and geothermal energy. The centerpiece of the agency's plan is an alternative compliance process for developers under the National Environmental Policy Act in which environmental assessments of projects would be completed within 14 days and environmental impact statements within 28 days.

The states said they will amend their complaint if the DOI moves forward with any alternative compliance processes. On Monday, the DOI said it will use its emergency permitting procedures for Anfield Energy Inc.'s Velvet-Wood uranium mining project in Utah, and aim to complete its NEPA review within 14 days.

Energy and environmental attorneys have told Law360 that not only does the DOI's alternative NEPA process rely on untested emergency legal authority, but the ambitious timelines may hamstring the agency in gathering crucial information for environmental reviews to survive judicial scrutiny.

Greenfield of Jenner & Block said the states' lawsuit is "going to be the first of many." Emergency authority provisions can be found in multiple federal environmental statutes, as well as in the

regulations of multiple permitting agencies, and further actions taken pursuant to Trump's executive order will test the legal boundaries of those provisions, she said.

"We're probably going to see new law be created in these spaces as the administration takes actions," Greenfield said.

--Additional reporting by Dorothy Atkins. Editing by Kelly Duncan.

---

All Content © 2003-2025, Portfolio Media, Inc.