Trump Signs Executive Order To Speed Up Project Approvals

By Michael Phillis

Law360 (June 4, 2020, 10:26 PM EDT) -- President Donald Trump signed an executive order Thursday instructing agency heads to use "emergency authorities" to sidestep environmental laws and quickly approve major projects like highways, saying the COVID-19 pandemic created a situation that required quick action to stimulate economic growth.

The executive order instructs federal agencies to take advantage of emergency provisions in the National Environmental Policy Act and other laws that mandate environmental reviews for projects so that they can receive a green light quickly and boost the economy, which has been severely hampered by the pandemic.

The move is the latest deregulatory action by Trump, who has said that it takes too long for agencies to approve major infrastructure projects and that the delays hurt the economy. The executive order notes that in response to the pandemic, a national emergency was declared and the government should use its emergency powers aggressively.

"Agencies ... should take all appropriate steps to use their lawful emergency authorities and other authorities to respond to the national emergency and to facilitate the nation's economic recovery," the executive order said, calling on agencies to "speed infrastructure investments."

The order instructed department heads to look for construction opportunities and push forward. The transportation secretary, for example, was told to "expedite work on" infrastructure projects including highways. Energy and other projects on federal land should be fast tracked, it said. And under NEPA, Trump said projects "with significant environmental impacts" can move forward "without observing the regulations" by going through an alternative process in consultation with the Council on Environmental Quality, which oversees NEPA implementation and makes environmental policy recommendations.

Environmental groups quickly slammed the order, saying the government can't make sound decisions without fully understanding the consequences a project will have before letting construction begin.

Brett Hartl, government affairs director at the Center for Biological Diversity, told Law360 on Thursday that Trump is trying to apply emergency provisions that might make sense in the aftermath of a hurricane or other natural disaster. He said Trump, instead of focusing on a specific area and event, is worryingly trying to wield emergency authority everywhere to advance his agenda.

"Trump is explicitly ... ordering agencies to invoke their emergency power to simply get to 'yes,' which is different than saying 'go fast,'" Hartl said. He called the executive order "very problematic and scary."
The administration this year has also proposed updating NEPA to speed up approvals for a range of projects from pipelines to roads. ConservAmerica, a right-leaning conservationist group, said NEPA often makes it hard for projects to be appropriately and efficiently reviewed.

"We are in the middle of an economic emergency, so it's appropriate for President Trump to look for ways to jump-start the recovery. As a general matter, we believe the changes to NEPA previously proposed by the CEQ would allow projects to proceed while still protecting the environment and we encourage the administration to complete that process," Robert Dillon, a senior adviser to ConservAmerica, said in a statement.

The order could be a boon for developers reeling from a Montana federal judge's recent decision to void Nationwide Permit 12 for oil and gas pipeline construction, which the federal government and developers use to expedite the CWA permitting process in certain circumstances. The order, issued in a challenge to the Keystone XL pipeline, threw projects across the country into chaos.

The executive order addresses nationwide permits under the CWA and instructs the Army Corps of Engineers to identify actions "that may be subject to emergency treatment" and work to boost the economy.

The expedited permit order was the second major environmental action the Trump administration took Thursday. In addition to the executive order, the U.S. Environmental Protection Agency announced a new rule for how costs and benefits are used in Clean Air Act rulemakings, throwing out a popular way of calculating a regulation's benefits favored during the Obama administration.

The executive order is part of a series of orders aimed at loosening environmental rules.

In May, Trump signed an order that instructs agencies to work faster to reduce regulations and cut more red tape to help the economy rebound. If agencies had already temporarily eased enforcement or rules during the pandemic, they should consider making those changes permanent, according to the order. The move followed the EPA's announcement in March to temporarily suspend some compliance obligations for entities affected by the coronavirus.

Soon after Trump took office, he signed an order directing federal agencies to eliminate two regulations for every new one passed. The EPA has far exceeded the administration's goal, according to the agency's Office of Inspector General.

House Speaker Nancy Pelosi, D-Calif., slammed the Trump administration's move Thursday, calling it a "direct threat to the environment and to countless vulnerable communities."

"By using the coronavirus pandemic to justify fast-tracking potentially wasteful, dangerous or destructive infrastructure programs, the president has proven once again his utter contempt for our laws, for the health of our communities and for the future of our children," Pelosi said in a statement.

--Additional reporting by Juan Carlos Rodriguez. Editing by Emily Kokoll.