

# **The Manchin/American Petroleum Institute Permitting Deal: An Environmental Justice and Climate Disaster**

## **The Manchin/API Side-Deal Would be an Environmental Justice Disaster**

- The proposed legislative text fast tracks fossil fuel development at the expense of frontline communities by undermining environmental reviews under the National Environmental Policy Act (NEPA) and the Clean Water Act (CWA). It guts public comment and Tribal consultations on damaging fossil fuel projects.
- The proposal's strict 2-year timelines for NEPA review will prevent robust and effective environmental justice analysis, which will disproportionately harm BIPOC and low-income communities.
- The legislation undermines the CWA Section 401 certification process, which allows states to ensure pipelines and other projects will not harm the environment, by preventing states and Tribes from objecting to fossil fuel projects on broader climate and environmental grounds.

## **The Proposed Legislation Only Benefits the Fossil Fuel Industry**

- This legislation will *not* benefit renewable energy projects. It is a dirty deal designed solely to fast-track fossil fuel projects and limit consideration of harms to the environment and affected communities.
- The Biden Administration has already adopted a [Permitting Action Plan](#) that would fast track clean energy in a responsible and environmentally appropriate way.
- For years, large renewable energy projects have been eligible under the Federal Permitting Council and the Fast-41 Act for expedited review and approval. These projects are consistently approved on time without shortcutting NEPA, rendering this proposed legislation unnecessary.
- NEPA is not a roadblock to most federal agency actions, in fact only [one out of every 450 NEPA reviews](#) are ever challenged in court.
- Fossil fuel projects take longer to approve and are more likely to be rejected by courts because they have a far greater potential for environmental harm (harm to EJ communities, toxic pollution, oil spills, gas leaks, etc). Especially during the Trump administration, federal agencies were pressured to ignore those impacts while failing to properly assess GHG emissions.
- Rather than weakening environmental laws, we should invest more resources into the agencies and staff who can help get these projects built in a responsible way. The Infrastructure Investment and Jobs Act and the Inflation Reduction Act both provide funding for additional staff.

## **Expanding Fossil Fuels Threatens Climate Catastrophe**

- The proposed legislation requires the President to promote and prioritize fossil fuels, biofuels and Carbon Capture and Storage (CCS) projects on a list of 25 energy projects of "strategic national importance" for the next 10 years. Climate science dictates Biden cannot approve ANY new fossil fuel projects.
- Many of the most common biofuel energy sources, including tree farms and corn-ethanol, are actually harmful for our climate.
- CCS technology remains unproven and is likely to allow the fossil fuel industry to continue production under the guise of emissions reductions.

## **Approving the Mountain Valley Pipeline Sacrifices Appalachian Communities and Undermines Climate Goals**

- The proposed legislation would pressure completion of the climate-killing Mountain Valley Pipeline. According to an [Oil Change International analysis](#), MVP would lead to annual emissions of over 89 million metric tons of carbon dioxide equivalent, or the emissions of 26 coal plants or 19 million passenger vehicles per year.
- MVP construction has already made Appalachian communities sacrifice zones and its completion will condemn these communities to generations of pollution and public harm. State inspection reports revealed at least 1,500 erosion and sedimentation violations between May 2018 to October 2021. MVP has accumulated over \$2.5 million in fines from over 300 water quality violations in Virginia and nearly 50 violations in West Virginia.
- MVP construction could also cause the extinction of two endangered species, including the stunningly beautiful candy darter fish.
- A legislative directive to complete the project puts pressure on the Federal Energy Regulatory Commission (FERC) to approve the project's latest extension request and ignore the significant ongoing impacts of the project despite evidence that the project is environmentally irresponsible and does not meet the agency's test of public convenience and necessity.
- The Fourth Circuit has [blocked](#) pipeline construction because of impacts to wildlife, waters, and national forest lands. But the legislation would strip the court of jurisdiction and send new challenges to the D.C. Circuit. This court-stripping provision is solely intended to give MVP a potentially friendlier venue.

## **The Proposed Legislation Attacks the Integrity of the Judiciary and Fundamental Notions of Fairness Under the Law**

- The legislation would cynically declare that independent federal judges were biased simply for ruling against a climate-killing pipeline, chilling the judiciary's ability to provide an independent check and balance when it seeks to protect the fundamental rights of ordinary people.
- When climate justice groups succeed in litigation, courts may remand or vacate a federal permit for the project and tell the federal permitting agency to reconsider its decision. But provisions in this legislation would limit the time agencies can act following a remand to just 180 days. This unreasonably short deadline prevents meaningful agency review on remand and could *increase* the likelihood that federal agencies will ignore the real impacts to frontline communities and the environment in an attempt to meet this arbitrary deadline.