Attorney General Frosh Joins Lawsuit Challenging Rule Curtailing Environmental Review of Federal Actions

BALTIMORE, MD (August 28, 2020) – Maryland Attorney General Brian E. Frosh today joined a multistate lawsuit of 27 state and municipal plaintiffs challenging the Trump administration’s unlawful final rule curtailing requirements under the National Environmental Policy Act (NEPA) that federal agencies review and assess the impact of their actions on the environment. The final rule also limits public participation in the review process, robbing vulnerable communities of the opportunity to make their voices heard on actions that are likely to have adverse environmental and health impacts. In the lawsuit, the coalition argues that the final rule abandons informed decision making, public participation, and environmental and public health protections in violation of the Administrative Procedure Act (APA) and NEPA.

“The Trump administration wants to shut out and shut up the public while it continues its environmental destruction,” said Attorney General Frosh. “The changes to NEPA would allow dangerous projects to proceed without proper consideration of environmental impacts. It would also place needless burdens on people who are entitled to have their voices heard before a decision is made that will expose their neighborhoods to pollution.”

Enacted in 1969, NEPA is one of the nation’s foremost environmental statutes. NEPA requires that before any federal agency undertakes “major Federal actions significantly affecting the quality of the human environment,” it must consider the environmental impacts of the proposed actions, alternatives to the actions, and any available mitigation measures. Numerous federal actions, from the approval of significant energy and infrastructure projects to key decisions concerning the management of federal public lands, require compliance with NEPA.

On July 15, 2020, the Trump administration’s Council on Environmental Quality announced a final rule upending the requirement that federal agencies comprehensively evaluate the impacts of their actions on the environment and public health. This will result in agencies taking actions without fully understanding the impacts of those actions on climate change, overburdened and underserved communities, water and air quality, and sensitive, threatened, and endangered wildlife. In addition, the final rule so severely limits NEPA’s public participation process that it threatens to render it a meaningless paperwork exercise.

In the lawsuit, the coalition argues that the final rule violates NEPA and APA because it:

- Is contrary to NEPA’s language and purpose and exceeds the Council on Environmental Quality’s statutory authority;

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• Is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law; and
• Was promulgated without preparing an Environmental Assessment or an Environmental Impact Statement evaluating the rule’s environmental and public health impacts.

Attorney General Frosh joins the attorneys general of California, Colorado, Connecticut, Delaware, the District of Columbia, Guam, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin, as well as the City of New York, Harris County, and the Connecticut Department of Environmental Protection, and New York State Department of Environmental Conservation in filing the lawsuit.