

The Trump ACE rule violates all the Administration's own deregulatory principles. To hear Trump talk, the point of deregulation is to reduce the burden of regulation on industry. But weirdly enough, that doesn't turn out to be true of Trump's effort to repeal Obama's Clean Power Plan (CPP) and replace it with his own Affordable Clean Energy (ACE) rule. Both rules regulate carbon emissions from power plants (though Trump's rule covers only coal plants). According to his own EPA, however, the Trump Administration's approach will actually *increase* costs to industry.

It's actually a kind of perfect storm. First, the rule eliminates a trivial amount of carbon and handicaps any future climate efforts. Second, it imposes significant economic costs (many of them avoidable). Third, it reduces state governments to the role of unpaid engineering consultants. And - to mix metaphors - the cherry on top is that the ACE rule is actually likely to be counterproductive in some locations where it will increase carbon emissions and local air pollution. If Obama had issued this rule, Republicans would have screamed their heads off and the Texas Attorney General would have raced to court in order to stop it.

## **The High Cost of a Regulatory Rollback**

As the American Action Forum, a center-right think tank [points out](#), "rather than generating \$58 billion in regulatory savings [as EPA originally projected], the ACE rule instead *imposes* \$970 million in costs" according to EPA's current analysis. The main reason is that repealing the Obama CPP doesn't turn out to generate any savings, according to EPA's current modeling. The country is well on its way to complying with the CPP for reasons relating more to market changes rather than federal regulation. The reasons for that are partly state renewable energy policies but at least as much a change in the economics of energy production. Basically, cheap natural gas and renewables mean that the goals of the CPP will be achieved simply from the operation of market forces (at least according to EPA's modeling).

In short, as EPA's regulatory impact analysis says, "EPA believes repeal of the CPP under current and reasonably projected market conditions and regulatory implementation is not anticipated to have a meaningful effect on emissions of CO<sub>2</sub> or other pollutants or regulatory compliance costs." So much for the idea that the Obama CPP would wreck the economy with its horrendous costs.

According to EPA, it no longer made sense to use the CPP as the baseline for assessing the Trump ACE rule, given these developments. So instead, the EPA used as a baseline the situation with no CPP and then compared that with the proposed ACE rule. According to the Trump EPA, the replacement ACE regulation will generate benefits of between about

twice and five times its \$280 million per year cost. According to a July 18 [working paper](#) by independent experts, updating the Obama CPP with more ambitious targets would have produced much greater benefits. Since EPA now claims it lacked legal authority to issue the CPP or anything like it, it doesn't discuss that option.

Apart from the fact that it achieves tiny overall emissions reductions, the other problem with the ACE is that it's needlessly expensive, a self-inflicted wound by Trump's EPA.

Ironically, the logic adopted by Trump's EPA to repeal the CPP made it impossible to add cost-saving measures to the ACE. The rationale for repealing the Obama rule is that the Clean Air Act allows one and only one way of reducing carbon emissions: technological changes at each individual coal generator that decrease the rate of emissions without changing fuel. To serve the Trump Administration's purposes, all of these restrictions have to be read into the Clean Air Act. The reason was that the CPP relied on fuel changes (using natural gas rather than coal), reducing utilization of coal plants while replacing them with renewables, and emissions trading between states. Allowing any of these measures would have allowed for much deeper emissions cuts, to the detriment of the coal industry. But having adopted this very restrictive interpretation of the statute, the Trump EPA found itself forced to reject a number of features of the ACE plan that would have reduced costs and eliminated counterproductive outcomes.

All of this is further confirmation, if any was needed, that the approach taken by the Obama Administration in the CPP is the only sensible way to read the statute. The alternative interpretation embraced by the Trump Administration results in perverse regulatory results, even in terms of the goals it is supposed to advance.

## **Regulating with Your Hands Tied Behind Your Back**

Thus, when Trump's EPA got around to setting up their own plan, they couldn't include some cost saving methods that industry really wanted. They couldn't exempt plants where, paradoxically, their approach would increase total emissions because plants would run longer. The July 18 working paper projects that this problem will be even worse under the final ACE rule than EPA admits. The working paper concludes that "the ACE rule may result in more cases of respiratory illness, heart attacks, worsening asthma, and premature death in some states from exposure to higher fine particulate matter and ozone than EPA has estimated." Under the logic of EPA's approach, however, increases in total emissions are irrelevant anyway. Having insisted that only the *rate* of emissions counted (emissions per ton of coal), EPA couldn't take into account increases in total emissions due to increased operating levels, though it inconsistently suggested states might be allowed to do so if they

chose. (This is not the only inconsistency in the rule, according to [researchers](#) at RFF.)

Also, EPA couldn't allow utilities to meet the standards by burning biomass with coal. The benefit of using biomass is that the carbon release when you burn biomass is offset by the carbon that was absorbed by the plants when they were growing. That took place in a different location, and the Trump EPA's legal theory is that considering anything that happens outside the coal plant itself is verboten.

Similarly, the Trump EPA couldn't allow any cost-saving mechanisms that involve offsetting higher emissions from one generator against emissions cuts at another. Why not? Because a key part of the attack on Obama's CPP was based on the claimed illegality of such offsets. The rationale for repealing the CPP was that EPA is precluded from using "strategies like generation shifting and corresponding emissions offsets because these types of systems cannot be put into use" within a single generation plant.

The Trump EPA also touts the ACE rule as part of its plan to restore authority to the states. But actually it does the opposite. The Trump rule limits states to making a series of engineering judgments about retrofitting individual facilities, based on a limited menu of options. The Obama plan gave the states multiple tools they could choose to reach the targets they were assigned.

In short, to get rid of the Obama CPP, the Trump EPA had to interpret the Clean Air Act as being incredibly rigid. That same rigidity came back to bite them when they wrote their substitute rule.

## **How to Write a Terrible Regulation**

There's a kind of poetic justice to this. Live by the sword in killing Obama's rule, die by the sword in writing Trump's. But of course, repealing the CPP didn't have much to do with reducing regulatory burdens. After all, EPA found this to be somewhere between slight and nil. But Obama was responsible for the CPP, so it became a conservative boogeyman. And the ACE rule does at least provide a mechanism to keep Trump's favorite industry, coal mining, in the game a little longer. If courts buy its interpretation of the Clean Air Act, it will be harder for a future Administration to do something more useful about climate change.

What about the facts that the ACE (a) is not cost-effective in achieving its own goals; (b) calls for actions in some places that will harm public health and the environment because of local emission increases; and (c) restricts state discretion?

Collateral damage, I guess.