

*On Monday, Sean Hecht and I filed an [amicus brief](#) with the DC Circuit in the legal challenge to the Trump Administration’s attempt to repeal and replace the Clean Power Plan. (We filed the brief in our personal capacities and not on behalf of our respective institutions. Dan Farber also contributed valuable input.) Our client is one of the original drafters of the 1970 Clean Air Act, whose experience demonstrates how far EPA’s current position is from the intent and structure of the statute. The case is No. 19-1140, [American Lung Association et al. v. EPA](#).*

The [Clean Power Plan](#) was the centerpiece of the Obama Administration’s efforts to reduce power sector greenhouse gas emissions, accelerate the transition to renewable energy, and meet our national emission reduction commitment under the 2015 Paris Agreement. The plan set state-by-state emission reduction goals based on what was achievable using available, cost-effective technologies—improvements at some coal plants, plus shifting from coal to natural gas power and from fossil fuel power to renewable power—and directed the states to craft their own plans to meet those targets.

This structure derived from the legal authority for the Clean Power Plan: [Section 111\(d\)](#) of the Clean Air Act, which directs EPA to set performance standards for air pollutants that aren’t covered by the law’s criteria and hazardous air pollutant provisions, including carbon dioxide. Following the requirements of this section, the plan based its standards on technologies—natural gas and renewable energy—that had been adequately demonstrated. The plan afforded the states significant latitude in crafting their plans and phased in the standards over a seven-year period beginning in 2022. And its standards quickly proved achievable: many states prepared straightforward [plans](#) to meet the 2030 goals, and by last year, utility-scale solar and wind energy were consistently [cost-competitive](#) with their polluting counterparts [throughout the country](#).

Nonetheless, President Trump vowed to repeal the plan, and in 2019 the administration issued its final [Affordable Clean Energy \(ACE\) Rule](#) as a replacement. In the new rule, EPA argues that the Clean Power Plan’s “building blocks” that set emission standards based on shifting to natural gas and renewable power fall beyond the agency’s authority, thus compelling the plan’s repeal. As a result, the rule limits greenhouse gas emission reduction measures to a narrow set of performance improvements at coal plants, resulting in [harmful impacts](#) to climate and air quality.

As Sean Hecht and I argue in an *amicus* brief filed with the DC Circuit on Monday, this rule is directly opposed to what Congress intended, and said, when it crafted the Clean Air Act. Our client, Tom Jorling, is a renowned Clean Air Act expert who served as a staffer on the Senate committee that drafted and negotiated the pivotal 1970 amendments that form

today's law. (I also represented Tom in the [2016 challenge](#) to the Clean Power Plan, which was not resolved in court before the change in administration.) Tom brings unique perspective on how Congress designed the law in general and Section 111(d) in particular—and how the Clean Power Plan aligned exactly with that design.

You can read the brief [here](#). Based on Tom's intimate experience drafting and negotiating the law, the brief argues three key points to demonstrate why, counter to EPA's claims, the agency was not legally compelled to repeal the Clean Power Plan:

- Congress designed the Clean Air Act to give EPA (working with the states) the tools needed to address all air pollutants that threaten public health and welfare in a comprehensive manner. These tools authorize the agency to impose requirements that could have significant impacts on industry operations and economics. Congress did not narrowly circumscribe the types of measures or technologies that EPA can consider in fulfilling its mandate to protect public health, and indeed authorized significant flexibility.
- Congress created Section 111(d) with precisely this flexibility in mind, authorizing EPA to consider adequately demonstrated, cost-effective measures (the “best system of emission reduction”) to ensure there are no gaps in protection of public health and welfare from harmful air pollution.
- The Clean Power Plan used measures to determine that best system—including shifting power generation to natural gas and renewable energy—that are fully within the authority Congress granted to EPA, and the plan delivered on Congress's intent to comprehensively address air pollution problems. Not only is EPA not legally required to repeal the plan, but its repeal directly contradicts the Clean Air Act's text, structure, and spirit.

Tom's role in crafting these provisions brings particular strength to a position that many legal experts have long maintained. His voice joins those of numerous states, clean energy providers, public health experts, and others who demonstrate why EPA's repeal of the Clean Power Plan and its new rule are legally and environmentally unsound.