

This morning, U.S. EPA released its anticipated rule limiting carbon dioxide emissions from new power plants. The proposed [Carbon Pollution Standard for New Power Plants](#) under Section 111 of the Clean Air Act purports to set national limits on the amount of carbon pollution new power plants can emit.

Today we're taking a common-sense step to reduce pollution in our air, protect the planet for our children, and move us into a new era of American energy, said EPA Administrator Lisa P. Jackson .

The new rule requires that any new power plant built in the United States will have to emit no more than 1,000 pounds of carbon-dioxide per megawatt-hour. The vast majority of modern natural-gas plants already meet this standard. Conventional coal plants average about 1,800 pounds per megawatt-hour. Therefore, any new stationary source will need to be a natural-gas fired plant, a renewable energy facility, or a coal plant built with advanced carbon capture technology (or other carbon-cutting measure).

### **Very Brief Legal Refresher**

In 2007 the U.S. Supreme Court ruled, in *Massachusetts v. EPA*, that GHGs meet the definition of "air pollutant" under the Clean Air Act, and therefore, EPA must determine if GHS threaten public health and welfare. On December 15, 2009, the EPA found that the current and projected concentrations of GHGs endanger the public health and welfare of current and future generations. On December 23, 2010, EPA announced a proposed settlement agreement to issue rules that would address GHG pollution from certain fossil fuel-fired electric utility generating units (EGUs). That brings us here today.

### **A Necessary, Non-Radical Measure**

In an election year, new GHG regulations will undoubtedly draw criticism from conservative candidates. Yet, the standard for new power plants is more notable for what it *won't* do, than any alleged "overreaching." Here are a few reasons why this development should be relatively uncontroversial:

- **Existing power plants are not affected.** This EPA regulation does not apply to any *existing* power plants, nor any plants that will begin construction

over the next 12 months. (Existing plants emit more than [2 billion tons](#) of greenhouse gas emissions a year – roughly a third of the nation’s total).

- **Development of new coal-fired plants was already steeply declining even before this rule.** New coal- fired plants do not make sound business sense in an era of inexpensive natural gas, rising coal prices, increasingly cost-competitive renewable energy sources, declining consumer demand, and strong community opposition. {See, e.g., Tierney, “[Why Coal Plants Retire](#)”}.
- **The new rule won’t hurt jobs.** The market has already shifted away from coal plants, natural gas plants employ the same number of workers as coal plants, and accelerating renewable energy development will provide even more jobs (with added environmental benefits).

### **Expect Delay on Existing Power Plant GHG Regulations**

In a conference call this afternoon, EPA Administrator Jackson stated:

We have no plans to address existing plants and in the future, if we were to propose a standard, it would be informed by an extensive public process with all the stakeholders involved.

Future regulation of existing plants would fall within EPA’s authority under the Clean Air Act. For certain pollutants, CAA section 111(d)(1) requires the EPA to prescribe regulations for state plans covering “existing source[s].” And today’s proposed regulation actually refers to a “future 111(d) rulemaking for existing sources.” ( See p. 43 of 257). In any event, it seems that action on existing sources will not happen any time soon.

The EPA will [seek comments and information](#), including via public hearings, as it completes the new power plant rulemaking process.