

The Obama Administration just released a "Climate Action Plan" to accompany the speech the President will give this morning at Georgetown University. I applaud the President for delivering a speech devoted exclusively to climate change. But for all the hooplah surrounding the President's speech as "major," the measures he's proposed in the new plan to combat greenhouse gas emissions from power plants are nothing new. In fact, as far as I can tell, all Obama has done is tell his Environmental Protection Agency to issue rules that are already required under the terms of a settlement EPA entered into after being sued for missing deadlines. Moreover, several states and environmental groups have sent new notices of intent to sue to the agency for unreasonably delaying the issuance of the rules the President is now calling on EPA to complete.

Here's what the Climate Action Plan says about regulating greenhouse gas emissions from power plants, which emit a whopping [third](#) of the country's total emissions:

President Obama is issuing a Presidential Memorandum directing the Environmental Protection Agency to work expeditiously to complete carbon pollution standards for both new and existing power plants.

The plan says nothing about the substance of the rules and it says nothing about when the rules should or will be issued. Perhaps the Presidential Memorandum does; I haven't seen it yet and [an article](#) in today's L.A. Times says that the administration is aiming to issue rules for existing plants by next June. But assuming the Memo says what is indicated above — that EPA should "work expeditiously" with virtually no additional guidance — the President's announcement appears to say, "work expeditiously to finish rules that you should have issued years ago and that you're legally obligated to issue anyway."

Now if EPA follows the President's directive and actually issues rules for *both* new power plant rules *and* existing ones — depending on the content of those rules — then Obama really will have made significant strides in reducing greenhouse gases without Congressional action. I have argued [elsewhere](#) that the power he has under the Clean Air Act is huge and that he should use it. And maybe getting the President's voice behind the rules is meaningful. Time will tell.

Here's legal background about the rules, which I explained in detail in a previous [post](#) and repeat here.

The U.S. Supreme Court's landmark decision, [Massachusetts v EPA](#), required EPA to

determine whether greenhouse gases endanger public health and welfare (something the then-Bush Administration's EPA had refused to do). EPA made the so-called [endangerment finding](#) under the provision of the Clean Air Act — Section 202 — that regulates cars (mobile sources in techno-speak). The [new](#) fuel economy standards, requiring cars to achieve an average of 54.5 miles per gallon by 2025, are the impressive result, representing the single most significant emissions reduction achievement of Obama's presidency.

But the influence of *Mass v. EPA* didn't end with cars. Once EPA regulated greenhouse gas emissions from cars, other provisions of the Clean Air Act that apply to big industrial and manufacturing facilities — stationary sources in techno-speak — kick in. The Obama Administration has already developed greenhouse gas regulations under one of those provisions, called [New Source Review](#) under the Prevention of Significant Deterioration section of the act. Those regulations will require new facilities that emit large amounts of greenhouse gases to obtain permits that require the installation of the best available technology to reduce emissions. Existing facilities that engage in large modifications to their operations will also be required to obtain permits, but otherwise the regulations apply only to new facilities. The U.S. Court of Appeals for the D.C. Circuit has [upheld](#) the regulations against multiple legal attacks.

If the Administration were to stop with the regulations it has already issued, then all of the existing power plants, oil refineries and other major contributors to greenhouse gas emissions would remain unregulated unless they made significant changes to their operations. That's a real problem because, while it's important to get new facilities to operate with as low a carbon footprint as possible, a much bigger part of the problem comes from old, often outdated industrial facilities like coal fired power plants and oil refineries. But Obama has another tool under the Clean Air Act, Section 111, that allows — indeed requires — him to regulate existing sources of greenhouse gases.

Section 111 requires the EPA to regulate emissions from categories of polluters like Electric Generating Units. The standards issued under Section 111 are called New Source Performance Standards and are usually limited to new sources when those sources are regulated elsewhere under the statute, including for typical air pollutants like nitrous oxide, lead, sulfur dioxide and particulate matter (the so-called NAAQS pollutants). But for pollutants that aren't considered NAAQS (and greenhouse gases are not regulated as NAAQS), Section 111(d) requires EPA to set minimum standards and have states issue plans to regulate non-NAAQS pollutants from **existing** sources. (For a helpful analysis see [here](#)). That's a big deal.

The Administration first issued proposed Section 111 standards for new Electric Generating

Units in April of 2012 (after [agreeing](#) in [December, 2010](#) to issue them much earlier and failing to do so). But last month, just days before the rule was to be finalized, EPA [announced](#) it would not issue the rules pending further review after loud complaints from the electricity sector.

So to date, EPA has yet to issue rules for new Electric Generating Units and has yet to circulate even a draft of rules for existing EGUs even though the agency is required to by law. A Presidential memo asking EPA to “work expeditiously” to complete rules that the agency is already required to complete, that it’s late in completing and that it’s just been threatened with suit over does not strike me as major new action to combat climate change. But EPA actually issues the rules, then the action will meet the rhetoric.