Power Plant Emissions

There's an uproar over EPA's proposed rules for CO2 emissions from new coal plants, even though no one expects anyone to build a new coal plant for at least a decade. I've argued (here and here) that the industry won't have standing to challenge the rules because they won't have any imminent impact. In fact, a new report from the Congressional Research Service calls the rules "symbolic," which bolsters my standing argument. But the body of the report also suggests that, despite their lack of immediate impact, the rules are really significant in less blatant ways that may not establish legal standing, but do really matter.

First, issuance of rules for new plants will open the door for a further round of rule making under section 111(d) setting CO2 standards for the existing fleet of coal-fired plants. Given the importance of coal in the U.S. fuel mix, reductions from existing plants would be quite meaningful. Changes would probably be incremental, such as mandates to increase efficiency, but the added investments could be one more factor tipping the balance more in favor of renewables and natural gas.

Second, because the rules would require carbon capture and sequestration for new plants, they would boost development of the technology. For instance, state utility commissions would be more prone to support construction of demonstration plants if EPA requires CCS for new plants.

Finally, the rules would send a message to the rest of the world, including countries like China that rely on cheap coal, that the U.S. considers CCS to be the future of coal. Those countries *are* going to be building new coal plants — a lot of them — and in the long run their policies about coal will matter much more than ours will.

In short, EPA's new rules could be quite consequential. This doesn't mean that the industry would have standing under current Supreme Court doctrine. Don't forget that when Congress substantially expanded NSA's surveillance powers, the Supreme Court said that not even the people most likely to be wiretapped had standing to challenge the expansion. Policy impact and "concrete injury-in-fact" appear to be two separate things.