

Few things were more foreseeable than a repeal of the Clean Power Plan (CPP) by the Trump Administration. The Clean Power Plan had three strikes against it: (1) it addressed climate change; (2) it disfavored coal and promoted the use of renewable energy in electricity generation; and (3) it came from the Obama Administration. The only real questions were when and how it would be rolled back. Tomorrow, the Administration will take the initial step by the release of a proposed rule repealing the CPP. EPA will have to consider comments and then finalize its action, which will then be subject to judicial review.

An [advance copy](#) of the proposal leaked, so we know pretty much what Pruitt's EPA will say. Apparently, EPA is relying wholly on the argument that it can interpret the statute in question ([section 111\(d\)](#) of the Clean Air Act) to cover only regulations within the fence line (that is, within the physical grounds) of a power plant, not regulations that require the owner to obtain power from cleaner sources elsewhere. Section 111(d) calls for EPA to consider systems of emission controls. The Obama EPA said that this allowed it to consider measures that affected the grid as a whole, such as increasing the use of renewables. Trump's EPA says that it is better to interpret "system" to include only measures that can be taken within the fence line.

The action is notable in part for what the agency did *not* do, some good and some bad. Here are some things that were discussed at some point within the Administration, but not ultimately undertaken:

- Repealing the Obama EPA finding that greenhouse gases endanger public health and welfare by causing climate change. The Bannonites really wanted the agency to officially repudiate climate science. Pruitt reportedly thought that would be too hard to defend in court.
- Relying on a glitch in the statute's history to find that EPA has no power at all to regulate power plants under this specific section of the Clean Air Act. The Supreme Court already ruled that greenhouse gases count as "pollutants" under the Clean Air Act, but industry has argued that section 111(d) doesn't apply to power plants because of a weird oversight in the drafting of the section.
- Arguing that the statute unambiguously limits EPA to "within the fence line" regulations like improving the efficiency of coal-fired generators. The proposed rule doesn't seem to say that the statute is unambiguous; only that it disagrees with the interpretation adopted previously.
- Pledging to issue "within the fence line" regulations or actually issuing them on the spot. Instead, EPA only says it will think about whether to issue "within the fence line" regulations some day.

EPA apparently had a hard time getting the cost-benefit analysis for this proposal to come out the way Pruitt wanted. It considered only the harms caused by climate change within the United States, unlike the previous analysis under Obama, which had considered the global impacts of climate change. EPA did several different analyses, incorporating different assumptions. Even so, a number of its estimates showed the rule having large net costs to society after 2020. (See Table 1). To get the benefits of repeal to look good, it had to assume away most or all of the health benefits of reducing the use of coal. I'm sure it played other games with the numbers, which we'll be hearing more about from energy and environmental economists.

How will this repeal stand up in court? My guess is that the courts will say it's not unreasonable to construe section 11(d) to be limited to measures taken within the fence line, although EPA's previous interpretation may also have been reasonable. Trump's EPA might have argued that the previous interpretation was flatly inconsistent with section 111(d), in which case no policy argument would have been required. But because Pruitt takes only the more limited position that it would be "better" to read section 111(d) narrowly, he also presents policy reasons in favor of his interpretation of section 111(d). It is here that the proposed rule may be most vulnerable, because opponents will be quick to attack the evidence and analysis supporting Pruitt's policy arguments.

The agency's refusal to commit to "inside the fence line" actions may also leave it vulnerable, since section 111(d) seems to require it to take action of some kind to reduce emissions from existing power plants. Its refusal to commit more fully also undermines its claim to be acting in good faith to implement the statute. The D.C. Circuit may well push the agency to do more.

By the way, there seems to be a logical hole in Pruitt's argument, although for some reason it hasn't gotten any attention. Reducing the use of a high-pollution power plant is something that can be done within the fence line of that plant. Why couldn't that count as a feasible control measure if cleaner power (including power from the owner's other facilities) is available at a similar price? It doesn't seem crazy to argue on this basis that reducing use of an inherently high-pollution technology where feasible should count as a system of control.

I haven't discussed whether EPA's decision is good social policy primarily because it obviously isn't. The costs of the CPP actually were likely to be minimal. In fact, the U.S. may end up achieving its target even without the CPP, because of economic pressures that are pushing coal out of the market. (Rick Perry has made a desperate proposal to force utility customers to subsidize uneconomic coal plants, but for a variety of reasons I don't think Perry's proposal will come to pass.) But it [appears](#) that we could actually get somewhat

greater reductions for little cost if the CPP were to remain in effect. And readers of this blog don't need to be reminded of the serious risks of climate change and the need to cut carbon where possible.

The CPP would have been a fairly small step toward a national climate change strategy. But as they say, every journey of a thousand miles begins with a single step. The CPP would have established a framework for further efforts. Now Pruitt and Trump are about to remove that framework and take a step backwards.

About the only good thing I can say for Pruitt's action is that clearing away the CPP may conceivably make it easier for the next Democratic President to take even more sweeping action. And if the Democrats ever get control of Congress again, repeal of the CPP will also increase the pressure on Congress to act rather than leaving everything to executive action.