



In the year 2023, the U.S. still does not limit carbon emissions from existing power plants, which generate 25 percent of our greenhouse gases.

Today's the day for the long-awaited release of Environmental Protection Agency regulations to tackle planet-warming pollution by the nation's power plants. (Read the announcement [here](#) and the full text [here](#).) The EPA is proposing a new standard for fossil fuel-fired power plants to avoid 617 million metric tons of carbon dioxide through 2042.

For weeks, we've seen headlines about "Biden going big on regulating power plants" and "Biden's aggressive new rule for power plants" as if it were simply a White House strategy. (And now we're treated to preemptive threats by, who else, Sen. Joe Manchin about [holding up EPA nominations](#) claiming "overreach".) But this is not just about the political calculus of a president trying to make good on a climate pledge. Regulating the carbon emissions of thousands of power plants is not a choice, it's what's required under the Clean Air Act and

subsequent determinations and court decisions.

If this all feels like *deja vu*, that's because we've been here before. On [June 2, 2014](#), this blog led with an almost-identical sentence about EPA releasing its rule to regulate climate change-related carbon emissions from existing power plants, known as the Clean Power Plan. Then as now, some media coverage of Obama's Clean Power Plan left out important historical context about the legislative mandates and court decisions that led us to that moment.

### **How we got here**

This all starts back in October of 1999 when Bill Clinton was president. The song "Smooth" by Santana and the dude from Matchbox Twenty was at the top of the charts.

Several nonprofits filed a petition with the EPA saying it should regulate greenhouse gas emissions from vehicle tailpipes. Four years later under George W. Bush, the EPA denied that petition. Then a coalition of states and environmental groups challenged the denial, and the result was the landmark decision *Massachusetts v. EPA*, which basically found that greenhouse gases are an "air pollutant" as defined by the Clean Air Act and that the EPA had to officially decide whether GHG constituted an endangerment to public health. Long story short, they did and it is. So, EPA and the states have a shared responsibility to regulate "existing sources"—primarily power plants—under Section 111(d) of the Clean Air Act. As this blog pointed out back then in greater detail in the past, "the President is required to issue the rules, required by law and by the interpretation of the law by the highest Court in the land," in other words the EPA has discretion for *how* to design the rules for power plants but not *whether* to do it at all.

Fast forward to June 2014, when the Obama EPA [proposed](#) the Clean Power Plan rule that would have reduced carbon emissions from existing fossil-fuel power plants to 30 percent below 2005 levels by 2030. It was designed to be flexible and allow states a lot of discretion about how to meet that goal. But it was blocked by the Supreme Court and then rolled back by the Trump administration. And of course, last summer the Supreme Court's decision in *West Virginia v. EPA* confirmed that EPA indeed has authority to regulate carbon emissions from power plants but in a more limited way. And so here we are with a new set of rules based on technology at a given power plant.

"EPA has done its homework and crafted a set of rules that fit within the constraints of *West Virginia v. EPA*," says [my colleague Prof. William Boyd](#), co-faculty director of the UCLA Emmett Institute. "Rather than regulating the grid as one big machine, as the Clean Power

Plan tried to do, the new rules stay inside the fenceline of individual power plants and use new control technologies to set greenhouse gas emissions standards for coal and gas plants. Although these new rules are not as flexible as the Clean Power Plan, they fit squarely within EPA's authority under the Clean Air Act to impose the best system of emissions reduction on new and existing sources of greenhouse gas emissions."

### **Haters gonna hate**

It is unbelievable that in the year 2023, the U.S. does not limit carbon emissions from existing power plants, which generate 25 percent of our greenhouse gases. It's been almost a quarter of a century since the EPA was petitioned to regulate greenhouse gas emissions and we're still waiting to implement the result.

And the wait's not over, of course, because the proposed set of rules will be subject to a public comment period. In the coming days and weeks, we'll wade through the details in this plan with regard to timeline, compliance flexibility, and control technologies, and have much more to say on this blog. We'll also learn what kind of legal challenges are coming from opponents like the West Virginia Attorney General.

As critics lay out their arguments about regulating power plants "out of existence", keep in mind what happened in the power sector while litigation over the Clean Power Plan ran its course.

When the Obama administration first proposed the Clean Power Plan, the industry loudly insisted such emissions reductions were unrealistic. The rules would hurt the companies and their customers, they said. But groups like the U.S. Chamber of Commerce and companies like ExxonMobil "inflated the costs and ignored the benefits" of the regulation in their pursuit to defeat it, according to [this analysis by the Union of Concerned Scientists](#).

Meanwhile, the power sector kept evolving, as Lissa Lynch with the NRDC's Climate & Clean Energy Program [has pointed out](#), "We surpassed the Clean Power Plan's 2030 reduction targets in 2019 *without the Clean Power Plan having ever gone into effect.*" In 2019, without Obama's Clean Power Plan ever taking effect, coal power generation dropped a record 18 percent, leading to about a 10 percent reduction in greenhouse gas emissions from the power sector overall, [the Rhodium Group found](#). Since 2005, the power sector has reduced carbon emissions by 36 percent, according to the EPA.

Hopefully journalists who are quoting industry spokespeople voicing their opposition to the new proposed rules ask for evidence and apply some skepticism to the kind of hyperbole

that is usually offered. Because it's not just Coal Country that inflates the costs and understates the benefits of "overreaching regulation." Just look at the progress made in California on tailpipe emissions. Back in 2013, the first [Zero Emission Vehicle Action Plan](#) (ZEV) was released as a roadmap for how to get 1.5 million electric cars in use by 2025. That target, and the California Air Resources Board's actions supporting the goal, were repeatedly criticized by the auto industry as unrealistic. "We are a long, long, long way from the finish line. The ZEV regulation is not sustainable," John Bozzella, CEO of industry trade group Global Automakers, [told USA Today](#) in 2017.

How'd that work out? Oh yeah, California just surpassed its goal of putting 1.5 million electric vehicles on the road—two years ahead of schedule.