

Falling Behind

A Report Card on EPA's
Progress on 10 Important
Power Sector Rules

Fall 2022

Analysis by Evergreen Action shows that EPA is falling behind on eight key climate change and air quality regulations for the power sector, with only two rules on track. After several delays and missed deadlines, EPA must go further, faster to finalize these rules during President Biden’s first term and keep our climate and environmental justice targets within sight.

Closing the Pollution Gap

President Biden signed the Inflation Reduction Act (IRA) into law on August 16, 2022, injecting over \$370 billion in climate and environmental justice investments into the economy and America’s fight against climate change. According to multiple analyses put out by the Biden Administration, Senate Majority Leader Schumer, and other independent experts, the IRA will help cut carbon pollution by [around 40%](#) below 2005 levels by 2030—bringing the U.S. closer than ever before to meeting the President’s pledge to reduce carbon pollution 50-52% economy-wide by 2030. [Modeling by Energy Innovation](#) has shown that the law would also create significant air quality benefits, preventing about 2,700 premature deaths in the year 2030.

While the IRA represents historic progress on President Biden’s climate and pollution goals, there is still much more that needs to be done to ensure those reductions are realized and to close the 10-12% emissions gap still on the table. Cleaning up the power sector is the [linchpin](#) in achieving this economy-wide target, as other sectors, including transportation, buildings and some heavy industry, will rely heavily on clean electrification to decarbonize. The IRA contained large incentives to deploy new clean energy—an essential part of the President’s “[standards, investment, and justice](#)” approach to climate policy. However, the bill provided few of the standards that directly reduce power sector emissions.

“Two rules are especially critical: 111(b) standards for new gas plants and 111(d) standards for existing coal and gas plants.”

To finish the job in cleaning up the power sector—and to close the remaining 10-12% emissions gap by 2030—the administration must now pursue a stronger regulatory agenda. This must include standards from the Environmental Protection Agency (EPA) that cut pollution from fossil fuel power plants, including both climate pollutants and the traditional air and water pollutants that harm human health and drive environmental injustice.

Unfortunately, many of these regulations are behind schedule. Because of extensive public comment and procedural requirements and the potential for lengthy litigation, the rulemaking process often takes years. Without picking up the pace, the administration risks leaving critical steps either unfinished at the end of President Biden’s first term or subject to the [Congressional Review Act](#).

This memo provides a report card on 10 important climate and air and water quality regulations that EPA must complete and shows that, to finalize each rule during the first term and guarantee progress on climate and clean air, EPA Administrator Michael Regan must move further, faster.

The 10 Rules EPA Must Act on Quickly

EPA must expedite the timelines of a suite of 10 multi-pollutant rules that would greatly limit carbon and other pollutants from the power sector. This includes updating 8 standards under the [Clean Air Act](#), a bedrock US environmental law that has for over 50 years protected Americans' public health by reducing harmful and deadly air pollution. It also includes modernizing two regulations under the Clean Water Act and the Resource Conservation & Recovery Act that address toxic water and waste pollution from coal fired power plants.

Two of those 10 rules are especially critical because they directly regulate climate pollution: standards for new gas-fired power plants (under Clean Air Act Section 111(b)) and existing coal and gas plants (under Section 111(d)). These two carbon pollution standards are arguably the biggest remaining opportunities that President Biden has to reduce climate pollution in his first term.

What Authority Exists after *West Virginia v EPA* and the IRA?

EPA's authority to set these rules was further reinforced in the IRA. The new law repeatedly amended the Clean Air Act to define carbon dioxide as an "air pollutant" that EPA can and must regulate. And the bill's Low Emissions Electricity Program provides EPA with \$87 million to ensure greenhouse gas emissions reductions are achieved in the power sector using its existing Clean Air Act authority. The courts have repeatedly affirmed this authority since 2007: Even the Supreme Court's infamous *West Virginia v EPA* decision this summer concerned only how EPA regulates carbon pollution, without questioning whether or not it could. EPA retains the ability to set ambitious inside-the-fence rules. Now, by clearly clarifying legislative intent in the IRA, Congress has helped insulate EPA from future judicial overreach. EPA must now move quickly to exercise that authority and propose rules under 111(b) and 111(d) by the end of this year—not by March 2023 as previously announced.

Improving Public Health and Environmental Justice

The remaining eight rules are public health standards that, if strengthened, would force laggard power plants to clean up their act and prevent tens of thousands of deaths and hundreds of thousands of illnesses each year from air and water pollution—while having the secondary benefit of cutting climate pollution and beginning to rectify decades of environmental injustice.

Unfortunately, EPA has stalled or delayed progress on several of these rules. EPA must stop foot-dragging and move more quickly to make substantial progress on each of these rules this year.

This memo outlines each of the 10 rules that EPA must quickly finalize—and analyzes which rules are on track, which are delayed, and which have still seen no action

For every single one of these rules, EPA must go much further, faster to meet its mandate to protect public health and welfare from air and water pollution.

REPORT CARD	EPA	Fall 2022	Evergreen Action
DELAYED		Carbon Standards for New Power Plants	
DELAYED		Carbon Standards for Existing Power Plants	
DELAYED		Stronger Mercury and Air Toxics Standards	
DELAYED		Stronger National Smog Standard	
DELAYED		Stronger National Soot Standard	
DELAYED		Closing Startup, Shutdown, and Malfunction Loopholes	
NO ACTION		Regional Haze Rule	
NO ACTION		Coal Ash Rule	
ON TRACK		Good Neighbor Rule	
ON TRACK		Toxic Water Pollution Rule	

Carbon Standards for New Power Plants

EPA has the ability to set standards on climate pollution at new power plants under section 111(b) of the Clean Air Act. This is one of the most consequential actions EPA can take to reduce power sector pollution, including from the [roughly 200 new gas plants](#) currently proposed or under construction around the country. EPA recently announced a nine month delay in the rule. Waiting to finalize a 111(b) standard would lock in decades of pollution from these uncontrolled fossil plants.

DELAYED

EPA's previous date for a proposed rule:

June 2022

EPA's proposed date after delay:

March 2023

Length of delay:

9 months

Expedited timeline needed:

EPA must submit a proposed rule by December 2022 and a final rule by December 2023.

Carbon Standards for Existing Power Plants

Under section 111(d) of the Clean Air Act, the EPA can set climate pollution standards for existing power plants, including both fossil gas plants and the [173](#) active coal plants with no plans to retire. Existing power plants currently produce [25%](#) of all U.S. carbon pollution. After the Supreme Court decision in *West Virginia v EPA*, EPA should act quickly to propose a new standard focused on “inside the fenceline” technologies to tackle these emissions. EPA recently announced an eight month delay in the rule.

DELAYED

EPA's previously announced date:

July 2022

EPA's proposed date after delay:

March 2023

Length of delay:

8 months

Expedited timeline needed:

EPA must submit a proposed rule by December 2022 and a final rule by December 2023.

Stronger Mercury and Air Toxics Standards

EPA's Mercury and Air Toxics Standards limit the amount of toxic chemicals like mercury and arsenic that power plants (mostly coal) can release. There is [no safe level](#) of these dangerous substances, which can easily enter the brains of young children and irreversibly [harm cognitive development](#). Despite recent technological improvements, EPA has not explored new abatement technologies for nearly a decade. EPA recently delayed the release of this study, the Risk and Technology Review (RTR), by eight months.

DELAYED

EPA's previous date for a proposed RTR:

June 2022

EPA's proposed date after delay:

February 2023

Length of delay:

8 months

Expedited timeline needed:

EPA must submit a proposed RTR by October 2022.

Stronger National Smog Standard

EPA is currently considering strengthening the National Ambient Air Quality Standard (NAAQS) for ground-level ozone, commonly known as smog. Ozone exposure causes long-term respiratory harm and contributes to [365,000 premature deaths](#) around the world each year. EPA's Clean Air Scientific Advisory Committee is currently considering ozone science, but the process is taking months.

DELAYED

EPA's proposed date for a proposed rule:

April 2023

Expedited timeline needed:

EPA must submit a proposed rule by November 2022.

Stronger National Soot Standard

EPA is currently working to strengthen the National Ambient Air Quality Standard (NAAQS) for fine particulate matter, otherwise known as soot or PM2.5. Soot causes up to [200,000 excess deaths](#) in the U.S. per year, and disproportionately harms communities of color. EPA sent its proposed rule for interagency review in August 2022, although it is still being held by the White House Office of Management and Budget. This rule is on track to be finalized in March 2023.

DELAYED

EPA's date for a proposed rule:

August 2022

EPA must stay on track and release a final rule in March 2023.

Closing Startup, Shutdown, and Malfunction Loopholes

EPA is working to close loopholes allowing pollution violations during power plant startup, shutdown, and malfunction (SSM). Under Title V of the Clean Air Act, violators of air pollution standards can skirt liability if they claim the violation occurred during an “emergency” situation. The proposed rule would remove this loophole. EPA has now missed its August deadline to submit a final rule. [Further action](#) is needed to ensure state compliance plans address excess emissions associated with SSM.

DELAYED

EPA’s date for a final

Title V rule:

August 2022

EPA has missed its own deadline and now must announce a final rule as soon as possible.

Regional Haze Rule

The Regional Haze Rule under the Clean Air Act requires states and federal agencies to collaborate to improve visibility in public lands by reducing particulate matter pollution. EPA needs to strengthen the regional haze rule to drive further pollution reduction from power plants, and to hold states accountable if they do not submit adequate implementation plans. EPA has taken [initial steps](#) regarding state implementation plans, but there has been no action to strengthen the rule itself.

NO ACTION

EPA has yet to announce a timeline for strengthening this rule.

They must make progress on this rule immediately.

Coal Ash Rule

In 2015, EPA issued a rule regulating the storage of harmful coal ash to avoid spills and contamination. However, coal ash regulation has been plagued by exemptions, loopholes, and compliance extensions. Without proper storage, coal ash can contaminate groundwater and [cause cancer](#). EPA has said it will issue a proposed rule closing the loophole for legacy storage ponds in November 2022, but the agency has taken no action on other important loopholes. EPA needs to expand the scope of this rule or issue a new rule closing all exemptions for legacy storage facilities, including for [legacy landfills](#), and to crack down on enforcement.

NO ACTION

EPA’s date for a proposed rule on legacy ponds:

November 2022

EPA has yet to announce a timeline for closing other loopholes, including for legacy landfills.

They must make progress on this immediately.

Good Neighbor Rule

EPA has issued a proposed rule to strengthen the Good Neighbor Rule, otherwise known as the “cross-state air pollution rule,” concerning ozone pollution that crosses state borders. This rule is on track.

ON TRACK

EPA’s date for a final rule:

March 2023

EPA must stay on track and release a final rule in March 2023.

Toxic Water Pollution Rule

Under the Clean Water Act, EPA regulates pollution discharges from power plants into surface waters and wastewater treatment plants (called Effluent Guidelines). The Trump EPA introduced several exemptions and loopholes in 2020 that the Biden EPA is set to reverse in a new rule. This rule is on track.

ON TRACK

EPA’s date for a proposed rule:

November 2022

EPA must stay on track and release a proposed rule in November 2022.

EPA Must Go Further, Faster

It’s clear that to deliver on their commitments to combat climate change and air pollution, the administration and EPA must move further, faster on its power sector agenda. The agency must also follow these regulatory actions with a robust strategy of enforcement for these and other existing rules (like the Sulfur Dioxide NAAQS). By finalizing these 10 rules on an expedited timeline, President Biden and Administrator Regan can ensure that key climate and clean air promises are kept before the next election and that our climate targets remain within reach. By delaying, EPA risks leaving signature achievements unfinished—or risks their reversal by a future administration before they can even take effect.

Tell EPA Administrator Regan his agency must go further faster to tackle pollution in the power sector:

EvergreenAction.com/FurtherFaster