


# Falling Further Behind

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

UPDATED

**March 2023**

An updated analysis by Evergreen Action following the January 4th release of the [White House's latest Unified Regulatory Agenda](#) 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.

| <b>POWER SECTOR POLLUTION</b> | <b>EPA</b><br>Report Card                            | <b>MAR 2023</b> |  <b>Evergreen</b><br>Collaborative |
|-------------------------------|--|-----------------|---|
| <b>DELAYED FURTHER</b>        | Carbon Standards for New Power Plants                |                 | <b>HIGH PRIORITY</b>  |
| <b>DELAYED FURTHER</b>        | Carbon Standards for Existing Power Plants           |                 | <b>HIGH PRIORITY</b>  |
| <b>DELAYED FURTHER</b>        | Mercury and Air Toxics Standards                     |                 | <b>HIGH PRIORITY</b>  |
| <b>DELAYED</b>                | National Soot Standard                               |                 | <b>HIGH PRIORITY</b>  |
| <b>DELAYED FURTHER</b>        | National Smog Standard                               |                 | <b>HIGH PRIORITY</b>  |
| <b>DELAYED FURTHER</b>        | Closing Startup, Shutdown, and Malfunction Loopholes |                 |   |
| <b>NO ACTION</b>              | Regional Haze Rule                                   |                 |   |
| <b>NO ACTION</b>              | Coal Ash Rule  |                 |   |
| <b>ON TRACK</b>               | Toxic Water Pollution Rule                           |                 |   |
| <b>ON TRACK</b>               | Good Neighbor Rule                                   |                 |   |

# Closing the Pollution Gap

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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% carbon pollution 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.

To finish the job in cleaning up the power sector—and to close the remaining 10-12% carbon pollution gap by 2030—the administration must 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.

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

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 an updated 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, the Biden Administration must move further, faster.

# The 10 Rules EPA Must Act on Quickly

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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. Unfortunately, with every added delay, the administration risks missing key opportunities to hit their climate and environmental justice goals.

**“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.”**

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

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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 last summer concerned only how EPA regulates carbon pollution, without questioning whether or not it could. EPA retains the ability to set ambitious inside-the-fenceline 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 both 111(b) and 111(d) as soon as possible. For more information on how these two rules can help us hit President Biden's clean electricity goals, check out Evergreen Action and NRDC's January 2023 report, [Powering Toward 100% Clean Power by 2035](#).

# Improving Public Health and Environmental Justice

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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 as soon as possible.**

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.



# Carbon Standards for New Power Plants

**HIGH PRIORITY**

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 [145 new gas plants](#) currently proposed or under construction around the country. EPA announced a one month delay for this rule in their latest Unified Agenda, after already pushing their timeline back by nine months. Waiting to finalize a 111(b) standard would lock in decades of pollution from these uncontrolled fossil plants.

**Policy ask:** EPA's 111(b) New Source Performance Standards (NSPS) for new gas plants must require substantial carbon pollution reductions of 90% or higher, to protect Americans' public health and welfare from major new sources of climate pollution.

**DELAYED FURTHER**

**Length of additional delay:**

1 month (after an initial 9 month delay)

**EPA's original date for a proposed rule:**

June 2022

**EPA's previous date for a proposed rule:**

March 2023

**EPA's latest date for a proposed rule:**

April 2023

**Expedited timeline needed:**

***EPA must propose a 111(b) rule for new gas plants as soon as possible and, crucially, submit a final rule by early 2024.***

# Carbon Standards for Existing Power Plants

**HIGH PRIORITY**

Under section 111(d) of the Clean Air Act, the EPA can set climate pollution standards for existing power plants, including both 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 fence line" technologies to tackle these emissions. EPA recently announced a one month delay on the proposal of this rule, after already delaying it by eight months.

**Policy ask:** EPA must issue 111(d) Emissions Guidelines for both existing gas plants and existing coal plants, requiring substantial carbon pollution reductions from both sources. Relying on adequately-demonstrated and cost-reasonable technologies, emissions reductions of 90% are achievable for both coal and gas plants.

**DELAYED FURTHER**

**Length of additional delay:**

1 month (after an initial 8 month delay)

**EPA's original date for a proposed rule:**

July 2022

**EPA's previous date for a proposed rule:**

March 2023

**EPA's latest date for a proposed rule:**

April 2023

**Expedited timeline needed:**

***EPA must propose rules for existing coal and gas plants as soon as possible and, crucially, finalize these rules by early 2024.***

# Stronger Mercury and Air Toxics Standards

**HIGH PRIORITY**

EPA's Mercury and Air Toxics Standards (MATS) 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 previously delayed the release of this study, the Risk and Technology Review (RTR), by eight months. In the last Unified Agenda, it was delayed again by a month. The MATS RTR is now in interagency review at the White House Office of Management and Budget (OMB) and will likely be released soon.

**Policy ask:** EPA must undertake a thorough review of available pollution control technologies and practices and finalize a MATS RTR that demonstrates that current technologies can further lower emissions of toxic air pollutants. The RTR findings should result in more protective standards for mercury and air toxics emitted from coal- and oil-fired power plants.

**DELAYED FURTHER**

**Length of additional delay of proposed RTR:**

1 month

**EPA's previous date for a proposed RTR:**

February 2023 (with a final rule in December 2023)

**EPA's latest date for a proposed RTR:**

March 2023 (with a final rule in March 2024)

**Expedited timeline needed:**

***EPA must release a proposed MATS RTR as soon as possible.***

# Stronger National Soot Standard

**HIGH PRIORITY**

EPA is currently working to strengthen the National Ambient Air Quality Standard (NAAQS) for fine particulate matter, otherwise known as soot or PM<sub>2.5</sub>. Soot causes up to [200,000 excess deaths](#) in the U.S. per year, and disproportionately harms communities of color. In January 2023, EPA released a proposal that allows for pollution levels well above those that health experts called for and must be significantly strengthened before being finalized.

**Policy ask:** EPA's current proposal lowers the PM<sub>2.5</sub> annual health standard from 12 micrograms per cubic meters (µg/m<sup>3</sup>) to between 9 and 10 µg/m<sup>3</sup>, but would leave in place the currently insufficiently-protective daily health standard of 35 µg/m<sup>3</sup>. EPA must strengthen and finalize stronger PM<sub>2.5</sub> standards—setting a level of no greater than 8 µg/m<sup>3</sup> (annual) and 25 µg/m<sup>3</sup> (daily), consistent with the expert recommendations from EPA's own independent scientific advisors.

**DELAYED**

**EPA's deadline to submit comments on the proposed rule:**

March 28

**EPA's previous date for a final rule:**

March 2023

**EPA's latest date for a final rule:**

August 2023

**Expedited timeline needed:**

***EPA must move quickly to strengthen and finalize this rule as soon as possible.***



# Stronger National Smog Standard

**HIGH PRIORITY**

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. In 2020, the Trump EPA conducted a rushed review of the ozone standard and decided to keep the standard at 70 parts per billion (ppb). Now, EPA is spending significant time revising and reviewing reports on ozone science, including a “policy assessment” written by EPA career staff. After months of delays, EPA [announced](#) in March 2023 that they would push back their schedule to release a proposal and final rule again, this time by a full year. This delay puts into question whether the rule will be strengthened during this administration.

**Policy ask:** EPA should set the new ozone health standard at a level no higher than 60 ppb, the level in line with the best available science and the recommendation of EPA’s own independent scientific advisors.

**DELAYED FURTHER**

**Length of additional delay:**

At least a year

**EPA’s date for a proposed rule in the most recent Unified Agenda:**

April 2023 (with a final rule in September 2023)

**EPA’s latest date for a proposed rule:** Spring 2024 (with a final rule at the end of 2024)

**Expedited timeline needed: *This rule must be finalized during the first term. EPA must make up for lost time and submit a proposed rule as soon as possible and a final rule before June 2024.***

# 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 and has announced a seven month delay. [Further action](#) is also needed to ensure state compliance plans address excess emissions associated with SSM.

**Policy ask:** EPA should promptly finalize the Title V rule and move to close any remaining SSM loopholes in EPA’s clean air safeguards. That should include instituting Federal Implementation Plans for the [states](#) that EPA has found have not removed SSM loopholes in their state plans.

**DELAYED FURTHER**

**Length of additional delay:**

7 months

**EPA’s previous date for a final Title V rule:**

August 2022

**EPA’s latest date for a final rule:**

March 2023

**Expedited timeline needed: *EPA must release a final rule as soon as possible.***

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# 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.

Furthermore, 39 states failed to submit revised regional haze SIPs at all by the July 2021 deadline. EPA must uphold the law and promulgate Federal Implementation Plans for these states.

**NO ACTION**

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

***They must make progress on this rule immediately.***

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# 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 — currently over half of coal ash in the U.S. remains unregulated. Without proper storage, coal ash can contaminate groundwater and [cause cancer](#). EPA missed its own deadline to release a proposed rule closing the loophole for legacy storage ponds in November 2022, and then announced a delay until June 2023 in the latest Unified Agenda. After subsequent litigation by Earthjustice, EPA signed a [consent decree](#) agreeing to release a proposed rule on legacy ponds by May 2023 and a final rule by May 2024. EPA, however, has not yet indicated that it will close other important coal ash loopholes. EPA needs to expand the scope of the legacy storage ponds rule or issue a new rule closing all exemptions for legacy storage facilities, including for [legacy landfills](#), and crack down on enforcement.

**Policy ask:** EPA has yet to announce a timeline for closing other loopholes, including for legacy landfills. The rule addressing legacy storage ponds needs to be expanded to cover all types of facilities exempted from regulation under the 2015 rule.

**NO ACTION**

**EPA's previous date for a proposed rule for legacy ponds:**  
November 2022 (with a final rule in November 2023)

**EPA's latest date for a proposed rule for legacy ponds:**  
June 2023 (with a final rule in June 2024)

**EPA's deadline to submit a proposed rule for legacy ponds after consent decree:**  
May 2023

**Expedited timeline needed: EPA must release a proposal that closes all coal ash loopholes by May 2023.**

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# 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 to this rule in 2020. In March 2023, the Biden EPA proposed a rule that reverses those exemptions and loopholes and protects the public from water pollutants that come from coal plants, including toxic heavy metals.

**Policy ask:** EPA must finalize their Effluent Limitation Guidelines proposal using the best-available science and technology to better protect the public from 126 priority water pollutants that come from coal plants. The final rule should not only undo the exemptions and loopholes introduced under President Trump but also increase the standards above their prior baseline.

**ON TRACK**

***EPA has not announced a timeline for a final rule.***

**Timeline needed:**  
***EPA must release a final rule in early 2024.***

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# Good Neighbor Rule

EPA has issued a proposed rule to strengthen the Good Neighbor Rule concerning ozone pollution that crosses state borders. This rule serves to implement the 2015 national smog standard, ensuring that out-of-state ozone doesn't make states non-compliant with the health-based smog standard. This rule is on track.

**Policy ask:** EPA should finalize the strong proposal the agency released in 2022. Additionally, once EPA strengthens the national smog standard (as we advocate above), the agency should act quickly to implement that new standard through another Good Neighbor rulemaking—ensuring that upwind states reduce their pollution further in line with the new health standard.

**ON TRACK**

**EPA's date for a final rule:**  
March 2023

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

# EPA Must Go Further, Faster

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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](https://EvergreenAction.com/FurtherFaster)