

# EPA's Clean Power Plan ..... It is not just about coal

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# Status of the CPP Litigation

1. Final Clean Power Plan Rule issued - October 23, 2015
  2. The D.C. Circuit Court of Appeals, three judge panel, denied Stay Motions - January 21, 2016
  3. The SCOTUS then issued an unprecedented Stay of the CPP on February 9, 2016  
The Applicants therefore request an immediate stay of EPA's rule, extending all compliance dates by the number of days between publication of the rule and a final decision by the courts, including this Court, relating to the rule's validity. - Utility Industry Stay Motion that was Granted
  4. Oral argument before the entire D.C. Circuit Court occurred on September 27, 2016
  5. What happens next? (Possibilities: Vacatur of Rule, Remand of Rule, Supreme Court Appeal, Lift of the Stay?)
  6. Impact of the November election
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# EPA's "Best System of Emissions Reduction": Shift Generation to Renewable Energy Sources

EPA's data show that coal-fired generating capacity will be cut nearly in half, from over 336,000 MW in 2012, to 183,000 MW in 2030. RIA at 2-3, 3-31.

EPA projects that the amount of electricity from wind and solar generation, the principal types of non-hydroelectric renewable generation, will need to triple.

Coal Indus. Mot. for Stay (Oct. 23, 2015), Ex. 1, Decl. of Seth Schwartz (Oct. 14, 2015).

## EPA's Unprecedented Theory: Regulating *Owners* Rather than *Sources*

“As a practical matter, the ‘source’ includes the ‘owner or operator’ of [the source] in the sense that the owner operator implements the measures to achieve the source’s emissions limit.”

EPA Br. 62, quoting 80 Fed. Reg. at 64,762.

EPA therefore contends it may impose emissions limits that individual plants cannot meet by requiring the owners of those plants to purchase replacement power or emission credits from other sources.

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## EPA's Plan is Unprecedented

1. Empowers EPA to order companies to invest in the business of others
  2. Allows EPA to force existing sources to cease production altogether
  3. Sets standards for existing sources that are more strict than for new sources
  4. Preempts state authority to set standards for existing sources
  5. Effectively eliminates consideration of the remaining useful life of sources – enormous stranded costs/rate issues for states
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# What Does This Mean for the O&G Industry?

EPA has rulemaking pending for existing O&G sources

Has now set the precedent that it can force closure of existing sources

Has set the precedent that standards for existing sources can be more aggressive than for new sources

Has now set the precedent that it can force investment in other businesses

Has now set the precedent that states must match EPA's standards, regardless of cost or existing investment

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# What Does This Mean for the O&G Industry?

Flaring?

Abandoned wells?

Old gas plants?

Old or small producing wells?

Storage units?

Pipeline closures?

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# What Does This Mean for the O&G Industry?

Large increase in electric power costs

- EPA's Plan assumes power generation across the grid will be rearranged through trading of emission rate credits or mass allowances

- But there is great uncertainty whether this can be done in many states

- This uncertainty will likely cause many utilities to protect their service obligations by building new but technically unneeded generation assets – at enormous expense

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## What Does This Mean for the States?

Construction of new renewable power sources (wind and solar)

Construction and permitting of new transmission corridors

Endangered species, land-use and condemnation issues

Significant increases in electricity costs

Large employment disruptions in coal regions

Shrinking control over local regulatory issues

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# Whose Agenda Is It?

. . . David Doniger, David Hawkins, and Daniel Lashof, were noted by a New York Times analysis of NRDC's influence on these GHG rules as having played an outsized role in developing the rule. It noted, e.g., what was "Indisputable, however, is that the Natural Resources Defense Council was far ahead of the E.P.A. in drafting the architecture of the proposed regulation" about which, the article quoted another supporter of the EPA's rule in saying, "The NRDC's proposal has its fingerprints throughout this."

SUPPLEMENT TO BRIEF OF PETITIONERS ON PROCEDURAL AND RECORD-BASED ISSUES, Energy & Environmental Legal Institute

Citing, Coral Davenport, Taking Oil Industry Cue, Environmentalists Drew Emissions Blueprint, New York Times, July 6, 2014.  
<http://www.nytimes.com/2014/07/07/us/how-environmentalists-drew-blueprint-for-obama-emissions-rule.html>.

# Ending Fossil Fuels: Is the CPP Just the Beginning?

Natural gas is just another dirty, dangerous fossil fuel that will divert us from the path to clean energy, sound economics, and healthy communities.

<http://content.sierraclub.org/naturalgas/clean-up-drilling>

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## Ending Fossil Fuels: Is the CPP Just the Beginning?

**Climate:** Natural gas is also a major threat to our climate. Total greenhouse gas emissions from natural gas are nearly identical to coal, once methane leakage is taken into account -- and newer, more accurate data continues to be collected. Even without accounting for methane emissions, a recent International Energy Agency (IEA) study concluded that a global shift away from coal to natural gas would do little to get us off the path to climate catastrophe. While switching completely to natural gas showed better results than adding more coal to the energy mix, IEA's analysis shows that the atmosphere would still reach 650 parts per million of CO<sub>2</sub> between 2020 and 2060, warming the Earth at least 3.5 degrees Celsius.

<http://content.sierraclub.org/naturalgas/why-move-beyond-natural-gas>

## Ending Fossil Fuels: Is the CPP Just the Beginning?

President Obama and his counterparts from Canada and Mexico are preparing to unveil an ambitious new goal for generating carbon-free power when they meet this week in Ottawa. The three leaders are expected to set a target for North America to get 50 percent of its electricity from nonpolluting sources by 2025. That's up from about 37 percent last year. Aides acknowledge that's a "stretch goal," requiring commitments over and above what the three countries agreed to as part of the Paris climate agreement.

"We do ambitious well here at the White House," said spokesman Eric Schultz.

<http://www.npr.org/2016/06/27/483766620/obama-to-set-new-clean-energy-goal-50-percent-carbon-free-power-by-2025>

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