

Down to the Wire

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

UPDATED
February 2024

An updated analysis by Evergreen Action shows that EPA is at risk of failing to finalize five key climate change and air quality regulations for the power sector, with two rules dangerously delayed and three completed.

While EPA has made significant progress since the first version of this report card was released in October 2022, only a few months remain to finalize five crucial rules before the April 2024 deadline imposed by the Congressional Review Act. The agency still must go further, faster to finalize these rules strongly and swiftly to keep our climate and environmental justice targets within sight.

POWER SECTOR POLLUTION	EPA Report Card	FEB 2024	 Evergreen Collaborative
AT RISK	Carbon Standards for New Power Plants		HIGH PRIORITY
AT RISK	Carbon Standards for Existing Power Plants		HIGH PRIORITY
AT RISK	Mercury and Air Toxics Standards		HIGH PRIORITY
DANGEROUSLY DELAYED	National Smog Standard		HIGH PRIORITY
COMPLETE	National Soot Standard		HIGH PRIORITY
AT RISK	Toxic Water Pollution Rule		
AT RISK	Coal Ash Rule		
DANGEROUSLY DELAYED	Regional Haze Rule		
COMPLETE	Good Neighbor Rule		
COMPLETE	Closing Startup, Shutdown, and Malfunction Loopholes		

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% 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:
carbon pollution standards for new and
existing power plants”**

Unfortunately, the administration is running out of time to finalize these rules in its first term. 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

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.

“For each of the eight rules the agency has yet to finalize, EPA must go much further, faster.”

Two of those 10 rules are especially critical because they directly regulate climate pollution: carbon pollution standards for new and existing power plants. In May 2023, EPA issued proposed standards covering existing coal, new gas, and some existing gas power plants. If finalized in early 2024, these carbon pollution standards are arguably the most effective tool 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 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-fence rules. Now, by clarifying legislative intent in the IRA, Congress has helped insulate EPA from future judicial overreach.

EPA's recently proposed standards for new gas-fired power plants (111(b)) and existing coal and baseload gas plants (111(d)) fall squarely within the *West Virginia v. EPA* limitation by requiring inside-the-fence emissions reductions at the power plants themselves, using abatement technologies that have been adequately demonstrated and found to be cost-reasonable. For more information on how these two rules, if finalized, would help us hit our science-backed climate targets, check out Evergreen's [new blog](#) that breaks down both proposals, or read Evergreen and NRDC's January 2023 report, [Powering Toward 100% Clean Power by 2035](#).

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 additional benefit of cutting climate pollution and beginning to rectify decades of environmental injustice.

Unfortunately, EPA is running out of time to finalize these rules in the President's first term. EPA must move more quickly to make substantial progress on each of these rules *as soon as possible* so that they can be finalized in early 2024.

This memo outlines each of the 10 rules that EPA must quickly finalize—and analyzes which rules are complete, at risk of being finalized after the Congressional Review Act window, or dangerously delayed and unlikely to be finalized in the President's first term at all.

For each of the seven rules the agency has yet to finalize, 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 effective actions EPA can take to reduce power sector pollution, including from the [145 new gas plants](#) currently proposed or under construction around the country.

In May 2023, EPA proposed a 90 percent rate reduction on new baseload gas plants starting in 2035 (alternatively, a plant can ramp up to 96% hydrogen co-firing by 2038). Less ambitious standards based on hydrogen co-firing and efficiency are required for new intermediate and peaker plants, respectively. The agency announced that they will finalize the rule in April 2024, which would protect the rule from repeal by the Congressional Review Act. However, only a few months remain before April 2024, and time is running out.

Policy ask: EPA's final 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.

AT RISK

EPA's date for a final rule in the previous Unified Agenda:

April 2024

EPA's latest date for a final rule:

April 2024

Strict timeline needed:

EPA must stick to its timeline and quickly finalize its 111(b) rule for new gas plants by April 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.

In May 2023, EPA proposed a 90 percent rate reduction starting in 2030 for existing coal plants that are going to operate past 2040. Lower standards are required of plants that retire before 2040. EPA must swiftly finalize a strong proposal by early 2024. The agency announced that they will finalize the rule by April 2024, which would protect the rule from repeal by the Congressional Review Act. However, only a few months remain before April 2024, so time is of the essence.

EPA also announced a standard for some existing gas plants, namely large baseload gas plants, that requires a 90% emissions reduction by 2035 (or 96% hydrogen co-firing by 2038). The agency is also taking comments on a future standard for the remainder of existing gas plants.

Along with the rule for new power plants, this rule is arguably the biggest remaining opportunity that President Biden has to reduce climate pollution in his first term. **However, neglecting to finalize a carbon standard for the majority of existing gas plants leaves potential emissions reductions on the table.** EPA must expand its rule to reduce more of the pollution from existing gas plants that is driving climate change.

Policy ask: EPA should set 111(d) Emissions Guidelines for both existing gas plants and existing coal plants that require 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.

AT RISK

EPA's date for a final rule in the previous Unified Agenda:

April 2024

EPA's latest date for a final rule:

April 2024

Strict timeline needed:

EPA must stick to its timeline and quickly finalize its 111(d) rule by April 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](#). EPA proposed strengthening the MATS standard in its recent Risk and Technology Review (RTR). The agency plans to finalize the new MATS standard by April 2024.

Policy ask: EPA must finalize a MATS RTR that demonstrates that current technologies can further lower emissions of toxic air pollutants and finalize a strong rule limiting pollution accordingly. EPA should ensure that its new rule strengthens mercury standards for all coal power plants.

AT RISK

EPA's date for a final rule in the previous Unified Agenda:
March 2024

EPA's latest date for a final rule:
April 2024

Strict timeline needed:
EPA must stick to its timeline and quickly finalize the MATS rule by April 2024.

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), which EPA is reconsidering. However, EPA career staff recently issued a flawed "policy assessment" that questioned the need to strengthen the standard and [delayed](#) the reconsideration process by a full year. This delay puts into question whether the rule will be strengthened at all during this administration. The rule was recently removed from the Unified Agenda.

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.

DANGEROUSLY DELAYED

EPA's date for a proposed rule in the previous Unified Agenda:
April 2023 (with a final rule in September 2023)

EPA's date for a proposed rule in the latest Unified Agenda:
No date provided

Expedited timeline needed:
This rule must be revived. EPA must make up for lost time and submit a proposed rule as soon as possible.

Stronger National Soot Standard

HIGH PRIORITY

EPA recently strengthened 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. In January 2023, EPA released a proposal, which was then finalized in February 2024.

Policy ask: EPA now needs to review state implementation plans for the revised Soot NAAQS with care, to ensure that state plans will achieve the new lower pollution levels. Where necessary, EPA should reject state plans that are inadequate—and set federal implementation plans where needed.

COMPLETE

EPA's released its final soot rule in:

January 2024

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. Only a few months remain before April 2024.

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.

AT RISK

EPA's timeline for a final rule:

April 2024

Strict timeline needed:

EPA must stick to its timeline and quickly release a final rule in April 2024.

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](#). After 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. The agency released a proposed rule in May 2023. Before finalizing this rule, EPA should expand the scope of the proposal to close exemptions for every legacy storage facility, including for all [legacy landfills](#). EPA must also crack down on enforcement.

Policy ask: EPA's proposed rule likely [would not close loopholes for some legacy landfills](#). The rule needs to be expanded to cover all types of facilities exempted from regulation under the 2015 rule.

AT RISK

EPA's deadline to submit a final rule for legacy ponds after consent decree:

May 2024

EPA's latest date for a final rule:

April 2024

**Expedited timeline needed:
EPA must stick to its timeline and release a final rule by April 2024.**

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.

DANGEROUSLY DELAYED

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

They must make progress on this rule immediately.

Good Neighbor Rule

COMPLETE

In March 2022, EPA 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 was finalized in March 2023 and no further action is needed.

EPA released its final Good Neighbor rule:

March 2023

Policy ask: EPA has now finalized a strong rule. Next, 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.

Closing Startup, Shutdown, and Malfunction Loopholes

COMPLETE

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 missed several of its own deadlines to submit a final rule and must do so as soon as possible. [Further action](#) is also needed to ensure state implementation plans address excess emissions associated with SSM and to close SSM loopholes in other pollution standards.

EPA released its final rule closing Title V loopholes in:

July 2023

Policy ask: Now that EPA has finalized its Title V SSM rule, the agency should 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.

EPA Must Go Further, Faster

Over the past few months, the EPA has made important progress on several critical rules that will help clean up pollution from the power sector. However, to fully deliver on their commitments to combat climate change and air pollution, the administration and EPA must still move further, faster on its power sector agenda. Only a few months remain before the April 2024 deadline to finalize rules—or risk Republicans undoing all of this progress through the Congressional Review Act. 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