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**Sent:** 10/10/2017 9:47:22 PM  
**To:** Myron Ebell [Myron.Ebell@cei.org]  
**Subject:** Cooler Heads Coalition: information on "Clean Power" Plan repeal

Reminder: the Cooler Heads Coalition will hold its next strategy meeting on Monday, 16<sup>th</sup> October, beginning at 12 noon at CEI, 1310 L Street, N. W., Seventh Floor. Please e-mail or ring me at Ex. 6 with agenda items or questions.

Here is the EPA press release on the CPP repeal, followed by links to useful background information, followed by my statement, followed by Marlo Lewis's blog.

CONTACT: [press@epa.gov](mailto:press@epa.gov)

## **EPA Takes Another Step To Advance President Trump's America First Strategy, Proposes Repeal Of "Clean Power Plan"**

**WASHINGTON** (October 10, 2017) - Today, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt issued a Notice of Proposed Rulemaking (NPRM), proposing to repeal the so-called "Clean Power Plan (CPP)." After reviewing the CPP, EPA has proposed to determine that the Obama-era regulation exceeds the Agency's statutory authority. Repealing the CPP will also facilitate the development of U.S. energy resources and reduce unnecessary regulatory burdens associated with the development of those resources, in keeping with the principles established in President Trump's Executive Order on Energy Independence.

"The Obama administration pushed the bounds of their authority so far with the CPP that the Supreme Court issued a historic stay of the rule, preventing its devastating effects to be imposed on the American people while the rule is being challenged in court," **said EPA Administrator Scott Pruitt**. "We are committed to righting the wrongs of the Obama administration by cleaning the regulatory slate. Any replacement rule will be done carefully, properly, and with humility, by listening to all those affected by the rule."

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### **CPP Appears to be Inconsistent with the Clean Air Act**

The CPP, issued by the Obama administration, was premised on a novel and expansive view of Agency authority that the Trump administration now proposes to determine is inconsistent with the Clean Air Act. In fact, the CPP was put on hold in February 2016, when the U.S. Supreme Court issued an unprecedented, historic stay of the rule.

"EPA will respect the limits of statutory authority. The CPP ignored states' concerns and eroded longstanding and important partnerships that are a necessary part of achieving positive environmental outcomes. We can now

assess whether further regulatory action is warranted; and, if so, what is the most appropriate path forward, consistent with the Clean Air Act and principles of cooperative federalism,” **said Administrator Pruitt.**

The CPP was issued pursuant to a novel and expansive view of authority under Section 111 of the Clean Air Act (CAA). The CPP required regulated entities to take actions “outside the fence line.” Traditionally, EPA Section 111 rules were based on measures that could be applied to, for, and at a particular facility, also referred to as “inside the fence line” measures. Prior to the CPP being issued, every single Section 111 rule on the books, including a handful of existing source rules and around 100 new-source rules, obeyed this limit. As the CPP departed from this traditional limit on EPA’s authority under an “inside the fence line” interpretation, EPA is proposing to repeal it.

EPA has now sent the NPRM to the Federal Register for publication. Upon publication, the public will have 60 days to submit comments.

The repeal package includes:

1. The “preamble,” which lays out the proposed legal interpretation, policy implications, and a summary of the cost-benefits analysis of the proposed repeal; and
2. The “Regulatory Impact Analysis (RIA),” an in-depth cost-benefit technical analysis.

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### **CPP Repeal Saves up to \$33 Billion in Avoided Costs in 2030**

The proposed repeal both examines the Obama administration’s cost-benefit analysis, as well as provides insights to support an updated analysis of the environmental, health, and economic effects of the proposed repeal. The Trump administration estimates the proposed repeal could provide up to \$33 billion in avoided compliance costs in 2030.

The previous administration’s estimates and analysis of these costs and benefits was, in multiple areas, highly uncertain and/or controversial. Specific areas of controversy and/or uncertainty in the Obama administration’s analysis of CPP include:

- ✦ **Domestic versus global climate benefits:** The previous administration compared U.S. costs to an estimate of supposed global benefits, and failed to follow well-established economic procedures in estimating those benefits.
- ✦ **“Co-benefits” from non-greenhouse-gas pollutants:** The Obama administration relied heavily on reductions in other pollutants emitted by power plants, essentially hiding the true net cost of the CPP by claiming benefits from reducing pollutants that had nothing to do with the rule’s stated purpose.
- ✦ **Energy cost and savings accounting:** The Obama administration counted “energy efficiency” results of their rule as an avoided cost, resulting in a cost estimate being considerably lower than it would have been if they used the appropriate practice of considering these effects as benefits, rather than subtracting them from costs. Had the Obama administration used the Office of Management and Budget’s longstanding requirements and accounted cost and savings accordingly, it would have presented a more accurate accounting of the total cost of the CPP.

In this proposed repeal and its accompanying technical documents, this administration is, in a robust, open, and transparent way, presenting a wide range of analysis scenarios to the public.

As part of the notice-and-comment process for this proposed repeal, EPA will continue this analysis and inform the public, as necessary, to get feedback on new modeling and other information. The final action on this proposed repeal will address the results of this ongoing work.

Forthcoming is an Advanced Notice of Proposed Rulemaking (ANPRM) that will be reflective of a thoughtful and responsible approach to regulatory action grounded within the authority provided by the statute.

“With this action, the Trump administration is respecting states’ role and reinstating transparency into how we protect our environment,” **said Administrator Pruitt.**

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### Background:

On March 28, President Trump signed an Executive Order on Energy Independence, establishing a national policy in favor of energy independence, economic growth, and the rule of law. The purpose of the Executive Order (EO) is to facilitate the development of U.S. energy resources and to reduce unnecessary regulatory burdens associated with the development of those resources. That same day, EPA Administrator Scott Pruitt signed four Federal Register notices in response to the EO, including a formal announcement of review of the Clean Power Plan. After substantial review, the Agency has proposed to determine that the Clean Power Plan (CPP) must be repealed.

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Visit The EPA's  
Newsroom

Here are some official EPA online resources promoting today’s action on CPP. Feel free to repost and share.

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EPA Twitter: <https://twitter.com/EPA/status/917806465062260738>

EPA Air Office Twitter: <https://twitter.com/EPAair/status/917809327599181825>

Administrator Pruitt Twitter: <https://twitter.com/EPAScottPruitt/status/917802478845988864>

EPA Facebook: [https://www.facebook.com/EPA/?hc\\_ref=ARSr6RzCgQ0tB23ZzO-5z0iW-mIKLIZMzissW0s3Fctjh3iIDw2wkvU\\_0MkV3DUb3Kc&fref=nf](https://www.facebook.com/EPA/?hc_ref=ARSr6RzCgQ0tB23ZzO-5z0iW-mIKLIZMzissW0s3Fctjh3iIDw2wkvU_0MkV3DUb3Kc&fref=nf)

Administrator Pruitt Facebook:

<https://www.facebook.com/ajax/sharer?appid=586254444758776&s=100&u=https%3A%2F%2Fwww.epa.gov%2Fnewsreleases%2Fepa-takes-another-step-advance-president-trumps-america-first-strategy-proposes-repeal>

EPA YouTube: <https://www.youtube.com/watch?v=OplAkmEWEYg&sns=tw>

EPA Instagram: <https://instagram.com/p/BaE8Q4QFvLs/>

# **CEI Applauds Repeal of So-Called Clean Power Plan**

October 10, 2017

The Competitive Enterprise Institute's Myron Ebell responded to the announcement that the Environmental Protection Agency would repeal the Clean Power Plan, an Obama administration rule that has been challenged in court for being an unlawful change to the nation's coal industry.

“CEI applauds EPA Administrator Scott Pruitt's move to repeal the so-called Clean Power Plan. This is a huge step toward dismantling the Obama Administration's war on affordable energy. Repealing the CPP will spur new investment and create new jobs in energy-intensive manufacturing and resource industries. States will now not be forced to close coal-fired power plants or replace them with more expensive and less reliable types of energy.

“While states like California and New York can continue down their chosen path of higher energy prices for consumers, repealing the "Clean Power" Plan means that other states will not have to close down coal-fired power plants and thereby destroy jobs and impoverish consumers with higher electric rates.

“Besides the huge economic benefits from repealing the rule, we congratulate the Trump Administration for restoring legality to the regulatory process. The document released today notes that the rule must be repealed simply because it is illegal. That's why the Supreme Court stayed implementation of the rule in February, 2016, on the grounds that it was likely to be overturned by the court. Especially welcome is the replacement of the legally flawed cost-benefit analysis of the rule with a new analysis.”

## **EPA Proposes Clean Power Plan Repeal Rule**

Marlo Lewis, Jr. • October 9, 2017

On Tuesday, October 10, Environmental Protection Agency Administrator Scott Pruitt is expected to release the agency's proposed rule to repeal the Clean Power Plan (CCP). The CPP, which aims to reduce U.S. electric power sector carbon dioxide (CO<sub>2</sub>) emissions by 32 percent below 2005 levels by 2030, was the Obama administration's marquee domestic climate policy and principal regulatory component of the U.S. emission-reduction pledge under the Paris Climate Accord. On Friday, October 6, someone leaked the repeal rule a few days before its official debut. In this post, I provide excerpts and offer commentary on the leaked document.

Although there are no shortage of policy arguments against the CPP, the repeal proposal is based solely on a legal argument. The CPP is to be repealed because it exceeds the agency's statutory authority. As the proposal states:

Specifically, the EPA proposes a change in the legal interpretation as applied to section 111(d) of the Clean Air Act (CAA), on which the CPP was based, to an interpretation that the Agency proposes is consistent with the Act's text, context, structure, purpose, and legislative history, as well as with the Agency's historical understanding and exercise of its statutory authority. Under the interpretation

proposed in this notice, the CPP exceeds the EPA's statutory authority and would be repealed. The EPA welcomes comment on the legal interpretation addressed in this proposed rulemaking.

What is that interpretation? In brief, CAA section 111(d) authorizes the EPA to adopt emission-reduction guidelines individual sources can meet via modifications to or at those facilities. In contrast, the CPP requires emission-rate reductions that no individual coal power plant or natural gas power plant can achieve via changes in the facility's technology or operation. To comply, owners and operators must shift generation from coal to gas, and from fossil fuels to renewables, either by investing in new renewable generation or purchasing emission credits from renewable facilities.

Thus, putting it now in my own words, the CPP is a plan to transfer wealth from politically disfavored to favored power generators and restructure the nation's electricity marketplace. Neither the text of 111(d), nor the handful of previous 111(d) rules, nor legislative history provides any support for such grandiose ambitions.

Here's how the EPA summarizes its argument:

CAA section 111(d) requires the EPA to promulgate emission guidelines for existing sources that reflect the "best system of emission reduction" (BSER) under certain circumstances. Notwithstanding the CPP, all of the EPA's other CAA section 111 regulations are based on a BSER consisting of technological or operational measures that can be applied to or at a single source. The CPP departed from this practice by instead setting carbon dioxide (CO<sub>2</sub>) emission guidelines for existing power plants that can only realistically be effected by measures that cannot be employed to, for, or at a particular source. Instead, the CPP encompassed measures that would generally require power generators to change their energy portfolios through generation-shifting (rather than better equipping or operating their existing plants), including through the creation or subsidization of significant amounts of generation from power sources entirely outside the regulated source categories, such as solar and wind energy. This raised substantial concerns that the CPP would necessitate changes to a State's energy policy, such as a grid-wide shift from coal-fired to natural gas-fired generation, and from fossil fuel-fired generation to renewable generation.

Let's dig into that a bit deeper. In the CPP, the "best system of emission reduction" consists of three "building blocks": (1) Improve the heat rate (thermal efficiency) of coal power plants, (2) shift baseload generation from coal to gas, and (3) replace generation from fossil-fuel power plants with generation from new renewable facilities. "While building block 1 constituted measures that could be applied directly to a source—that is, integrated into its design or operation—building blocks 2 and 3 were expressly designed to shift the balance of coal-, gas-, and renewable-generated power at the grid-wide level."

Building blocks 2 and 3 make the CPP unprecedented in two obvious ways. First, unlike previous 111(d) rules, the CPP establishes emission performance standards "well below that which could be met by existing units through any retrofit technology of reasonable cost available at the time." Consequently (though the repeal rule does not put it so bluntly), CPP "performance" standards are actually *non-performance mandates*. Owners and operators of fossil-fuel power plants can comply only by producing *less power* from their facilities (including, for example, by shutting them down).

Second, the CPP imposes tougher emission performance standards on existing sources than the corresponding and prerequisite new source rule imposes on new sources. For example, for natural gas combined cycle power (NGCC) plants, the new source rule sets a performance standard of 1000 lbs. CO<sub>2</sub>/MWh. The CPP standard for NGCC plants is 700 lbs. CO<sub>2</sub>/MWh. That flouts statutory logic and common sense, "because the costs of controlling existing facilities will ordinarily be greater than those for control of new sources."

One might wonder why the EPA proposes to repeal the CPP "in its entirety." Why not leave the building block 1 thermal efficiency requirements in place? The agency explains:

The EPA proposes to take this action because it proposes to determine that the rule exceeds its authority under the statute, that those portions of the rule which arguably do not exceed its authority are not severable and separately implementable, and that it is not appropriate for a rule that exceeds statutory authority—especially a rule of this magnitude and with this level of impact on areas of traditional state regulatory authority—to remain in existence pending a potential, successive rulemaking process.

Although the EPA has no current plan to replace the CPP with an alternative scheme for regulating CO2 emissions, the agency “is considering whether it is appropriate to propose such a rule and is intending to issue an Advance Notice of Proposed Rulemaking (ANPRM) in the near future.” The ANPRM will solicit information on “systems of emission reduction that are in accord with the legal interpretation proposed in this notice.” However, the EPA is not soliciting such information at this time.

A 60-day comment period on the proposed repeal rule will begin on the date of publication in the Federal Register. The EPA will also hold a public hearing during the comment period.

Turning to the big picture, the CPP repeal rule is a key part of President Trump’s broader commitment to “suspend, revise, or rescind those [regulations] that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.” Mr. Trump approved the Keystone XL and Dakota Access pipelines, repealed all of President Obama’s climate policy executive orders, signed 14 Congressional Review Act resolutions of disapproval overturning Obama administration regulations, challenged the Obama EPA’s Waters of the United States rule, initiated repeal of Obama’s Arctic offshore drilling ban, disbanded the Interagency Working Group on the Social Cost of Carbon, and announced his intention to withdraw from the Paris Agreement.

Conservatives and free marketers should be grateful. It’s not just that Hillary Clinton would have pushed America farther down the progressive rabbit hole had she won the 2016 elections. No GOP establishment candidate would have dared and done anywhere near as much as President Trump to repeal Obama’s climate “legacy” policies—the CPP and Paris Agreement—and roll back federal regulatory burdens on U.S. energy producers.

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