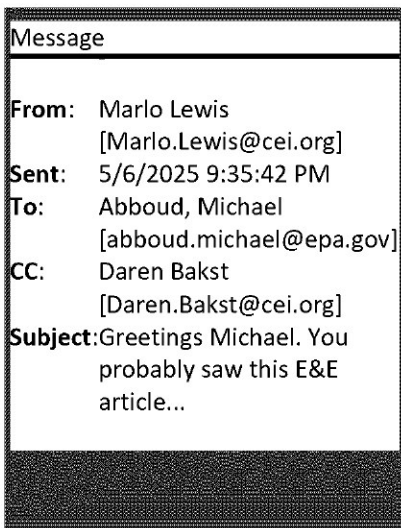




Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Michael,

Back in Trump 45, EPA in October 2017 solicited public comment on [repealing the Clean Power Plan](#) (CPP) and in August 2018 solicited public comment on replacing CPP with the [Affordable Clean Energy](#) (ACE) Rule.

CEI's advice was "Repeal, Don't Replace." The E&E article below suggests EPA may be considering that option for the Biden EPA's CPP2.0 powerplant rule.

The article further suggests EPA is considering repeal-not-replace in the context of a new endangerment finding.

A complementary option would be to determine that CAA 111(d) excludes from its regulatory purview any source category already regulated under CAA 112. Coal- and oil-fueled powerplants have been regulated under 112 since 2011; natural gas powerplants since 2004. Thus, even apart from its well-known legal infirmities, CPP2.0 may be unlawful under 111(d), as would any replacement rule.

CEI's October 2018 comments on ACE

<https://cei.org/sites/default/files/MarloLewisCompetitiveEnterpriseInstituteCommentLetterACERuleDocketIDNoEPAHQOAR.pdf> discuss the 112 exclusion in some detail. The comments also explain why 111(d) and CO2 are a complete mismatch (111d was designed for pollutants that do not come from numerous or diverse stationary or mobile sources, and the risks of which depend on proximity to the source), and why ACE is inconsistent with all previous CAA 111 rules (which base performance standards on specific pollution control technologies, not process efficiency improvements).

I hope you find the comments useful or at least interesting!

Best regards,

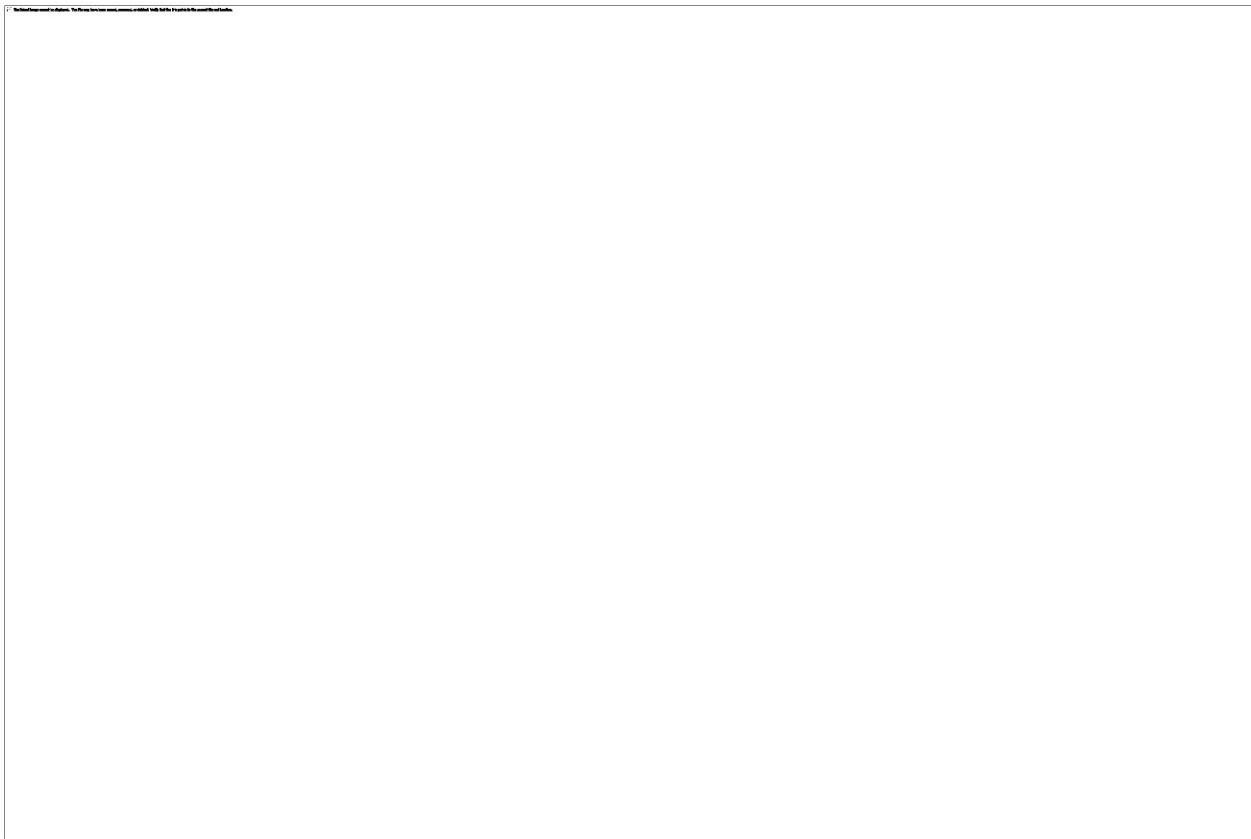
Marlo

CLIMATEWIRE

EPA is betting it won't have to replace the power plant rule

By Jean Chemnick

05/06/2025 06:21 AM EDT



EPA Administrator Lee Zeldin speaks during a Cabinet meeting last week at the White House. | Evan Vucci/AP

The Trump administration may scrap Biden-era climate rules for the power sector without replacing them. EPA submitted its draft repeal of the rules to the White House Office of Management and Budget on Friday. But that repeal does not appear to be paired with replacement rules to limit power plant emissions — an unusual move, given that EPA still has a legal obligation to regulate carbon from the highest-emitting sectors. The White House regulatory website shows that only a “Carbon Pollution Standards Repeal” is under review. The absence of a replacement rule isn't a complete surprise. The agency is under no obligation to repeal and replace the standards at the same time — and EPA has already said it will “reconsider” a 2009 finding that underpins all Clean Air Act climate rules. If that effort is completed and stands up in court, it could remove EPA’s obligation to write a new power rule.

In short, the Trump administration appears to be choosing to not write a rule at all, under the assumption that it will never have to.

That's a deviation from the first Trump administration, when EPA offered a weakened rule for power plant emissions. Joe Goffman, who served as EPA air chief under former President Joe Biden, said the first Trump EPA tried to tie the hands of future Democratic administrations with a power plant rule that argued EPA had limited regulatory options. That didn't work.

“And now I think they're just going for kill shot, removing the carbon pollution standards from the books,” he said.

EPA Administrator Lee Zeldin is also working on a vastly accelerated timeline compared to the repeal and replacement of power plant rules under the first Trump EPA and the Biden EPA.

The White House regulatory office received EPA's proposed repeal on day 102 of the second Trump administration. At about this point in President Donald Trump’s first term, then-EPA Administrator Scott Pruitt was telling reporters that his agency was still weighing its options for repealing the Obama-era Clean Power

Plan, which the Supreme Court had blocked. EPA didn't offer the draft repeal-and-replace package until 15 months later, and the Affordable Clean Energy rule was finalized in June 2019.

The Biden EPA took even longer. It proposed a replacement for Trump's ACE rule, which also stalled in court, on May 2023, with a replacement rule finalized in April 2024.

Meredith Hankins, senior attorney with the Natural Resources Defense Council, said EPA's speed this time around suggests the agency hasn't taken the time to build a record for repealing the Biden standards, which cover existing coal and new gas-fired generation.

"What we do know is that the Biden administration rules were backed up by thousands of pages of regulatory impact analysis — really detailed, legal analysis, technical analysis, economic analysis, scientific analysis, that took years," she said. "And now we're seeing a proposed repeal a couple months after inauguration."

There's no question that the second-term Trump EPA has moved quickly. It announced numerous important deregulatory actions on a single day in March, including its plans to repeal the 2009 endangerment finding and roll back standards for smog, soot and other pollutants.

The Administrative Procedures Act, which governs the rulemaking process, requires agencies to consider the costs and benefits of decisions before making them. Indeed, Zeldin told reporters at a briefing last month that he's "not allowed to prejudge outcomes of each individual rulemaking."

But Hankins asserted that EPA's early velocity shows decisions were settled long before the second Trump term started.

Patrick Traylor, who served as EPA deputy assistant administrator for compliance in the first Trump administration, agreed EPA was moving fast.

"I think the general rule still applies for regulations — the faster you go, the stronger your legal argument has got to be," he said. "If, on the other hand, you move quickly with a legal position that you think is very strong, then you may be able to move more quickly, more safely."

Traylor, who is a partner at Vinson & Elkins, said the case against the Biden-era carbon standards was simple and straight forward enough to make lengthy analysis unnecessary.

The rules require coal-fired power plants and some new gas plants to capture most of their carbon by the 2030s through the use of technology he said wasn't "available at scale."

Given that, Traylor said, he isn't surprised that EPA moved to repeal the power plant rule before it released a draft revision of the endangerment finding.

"A rule like this, where this administration thinks it's got a strong technical argument or a strong economic argument, you don't have to wait for perhaps the more difficult issue of reconsidering the endangerment finding to begin to make progress in specific rules," he said.

To view online:

<https://subscriber.politicopro.com/article/eenews/2025/05/06/epa-is-betting-it-wont-have-to-replace-the-power-plant-rule-00330236>