



Written by [James Murphy](#) on August 2, 2023

GOP Senators Call for EPA to Drop “Unlawful” Power Plant Rule

On Tuesday, 39 Republican senators called for EPA Administrator Michael Regan to withdraw the proposed “Clean Power Plan 2.0” regulations, which contain strict new emissions standards for power plants going forward. The GOP senators claim that the EPA is overstepping its bounds by essentially transforming the nation’s energy sector without any congressional authority.

The new emissions rules would also appear to defy a 2022 Supreme Court ruling limiting the power of the EPA to set emissions standards. Among the demands of “Clean Power Plan 2.0” is a requirement that coal plants capture 90 percent of their emissions by 2030, and that natural gas plants either capture 90 percent of their emissions by 2035 or run mainly on hydrogen energy by 2028.



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The signatories [argue](#) that the alphabet agency has overstepped its bounds.

“The EPA has again grossly misinterpreted the scope of authority Congress granted under Section 111 of the Clean Air Act by proposing a rule that would require generation shifting and transform our nation’s power sector with neither a clear and explicit congressional authorization nor adequate process as required under the Administrative Procedure Act,” the letter states.

Among the complaints about the EPA’s new rule is that much of the technology to make such emissions cuts has not yet been fully realized.

Congress’s recent provision of billions in funding for research, development, and demonstration for these technologies demonstrates the technologies are not adequately demonstrated and not sufficiently mature for use in regulatory mandates.... There are fundamental flaws within the proposal, including sweeping claims about the future availability of the proposed emissions control technologies that are considered the best systems of emission reduction.

The letter essentially accuses the EPA of shutting down fossil-fuel plants, since the technology needed to make the emissions cuts is “not commercially operational for any coal or natural gas plant in the United States.”

Regan himself acknowledged the fact that some coal plants would need to shut down to meet the new rule.



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“We will see some coal retirements, but the way this program is designed, this is really a decision that will be made company-by-company and state-by-state,” Regan said in May. “It gives a ton of flexibility so that the power sector can make individual decisions based on available technology and the resources that they want to expend.”

The senators go on to accuse the EPA of knowingly running afoul of the Supreme Court’s aforementioned 2022 decision in [West Virginia v. EPA](#).

“This proposal flagrantly runs counter to the Supreme Court’s decision in *West Virginia v. EPA*,” the letter states. “The major questions doctrine dictates ‘a clear statement is necessary for a court to conclude that Congress intended to delegate authority of this breadth to regulate a fundamental sector of the economy.’ There is no ‘clear congressional authorization’ for the Agency to point to with respect to this rule.”

The GOP letter writers assert that the EPA has usurped powers never granted the alphabet agency by Congress:

While the Agency falsely claims this does not run afoul of the Supreme Court’s decision, it is undeniable the proposal would require generation shifting that the Court has definitively found Congress has never granted EPA the authority to require under the Clean Air Act.

The letter also denounces the EPA for rushing the rule to enforcement without sufficient time for the public to react:

Without an extension in the current comment period, the American people and regulated community will not have adequate time to review and comment on the proposal including the updated modeling, which fundamentally changes the EPA’s predictions for its implementation. This appears to be a willful attempt to subvert the notice and comment requirements of the Administrative Procedure Act.

The letter was spearheaded by West Virginia Senator Shelley Moore Capito. Among the other GOP signatories were Senate Minority Leader Mitch McConnell of Kentucky, Ted Cruz of Texas, Joni Ernst of Iowa, Lindsey Graham of South Carolina, Mitt Romney of Utah, Tim Scott of South Carolina, J.D. Vance of Ohio, and Marco Rubio of Florida. No Democrats signed on, including West Virginia’s Joe Manchin, who has often been at odds with the Biden administration over fossil-fuel policies.

Perhaps the most galling thing about this is that an alphabet agency, the EPA, feels completely comfortable creating regulations that will affect every single American without any oversight from Congress. It’s a textbook example of taxation without representation, and very few seem vexed by that fact.



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