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September 23, 2016, 03:15 pm

As court weighs clean power plan, rule's approach could reduce carbon emissions, improve public health

By Alice Kaswan



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This month, the D.C. Circuit Court of Appeals will hear arguments in a case that will determine the fate of the Obama administration's innovative Clean Power Plan (CPP or "Plan") and its ability to reduce climate-change-causing carbon emissions and improve public health. What is at stake is a fundamentally new and promising approach to reducing pollution from power plants. Unlike other Clean Air Act regulations that focus solely on polluting facilities, this more comprehensive plan recognizes the critical role of state energy planning in reducing pollution and transitioning to clean energy. Done right, that approach would not only curb greenhouse gases, but would also reduce emissions of numerous pollutants that continue to cause unhealthy air quality in vulnerable communities.

The American Lung Association's **most recent survey of U.S. air quality** finds that more than half of the U.S. population, 166 million people, live in counties that fail to meet national air quality standards for ozone (smog) or particulate pollution. As such, they experience a heightened risk of premature death, asthma attacks, cardiovascular harm, and low birthweights.

Communities of color and low-income neighborhoods, frequently buffeted by factories, power plants, and highways, often bear a disproportionate burden. Numerous air pollution studies have found that these at-risk communities and populations are more likely to live in areas with unhealthy air quality and experience the health effects that come with it.

The CPP could play an important role in reducing these harms and improving public health. According to the U.S. Environmental Protection Agency (EPA), the power plants subject to the CPP contribute more than 80 percent of the nation's sulfur dioxide emissions, almost 50 percent of dangerous fine particle emissions, 50 percent of mercury emissions, and almost 30 percent of nitrogen oxide emissions, which contribute to ozone pollution. The EPA projects that, when fully implemented by the states, the rule could prevent 3,600 premature deaths, 90,000 asthma attacks, and 300,000 missed work and school days each year, leading to air quality-related economic benefits of at least \$11 to \$28 billion by 2030.

In developing the Clean Power Plan, the agency went beyond its traditional pollution control strategies and recognized the critical connection between emissions reductions and state energy

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planning decisions about what kinds of energy to use. Under the CPP, states can choose to shut down the most polluting facilities in the most populated areas. They could also invest in energy efficiency and shift their energy supply to less or zero-polluting sources, like solar, wind power, and natural gas. These measures would not only achieve the Clean Power Plan's carbon reduction goals, but also improve air quality.

After the CPP was finalized last year, states across the nation initiated unprecedented discussions: State energy planners, traditionally focused on ensuring sufficient and affordable energy supplies, started talking to state environmental officials, traditionally responsible for achieving emission reductions. Although most states have yet to complete their plans, and some are waiting until the litigation is resolved to take official action, the conversations have begun.

Why worry about traditional pollution under the CPP, when its focus is reducing greenhouse gas emissions? Because decades of traditional regulation have failed to achieve public health goals. By addressing underlying energy planning decisions, the Clean Power Plan offers an unprecedented opportunity to reduce carbon emissions *and* get at the root of the air quality problem.

Many states and utilities have resisted the energy planning contemplated by the CPP, at least in principle if not in practice. They've brought suit in the D.C. Circuit claiming that EPA's approach goes beyond the agency's authority under the Clean Air Act and unduly interferes with state control over their energy systems. If the court strikes down the Plan, it would represent both bad law and bad policy. Without belaboring the legal intricacies, Congress intended EPA to be able to implement the Clean Air Act to achieve meaningful pollution reductions, reductions that require the CPP's energy planning approach. Moreover, the Plan preserves substantial state flexibility and control.

But whatever the courts decide, the states retain their own power to continue an integrated energy and environmental planning process that, if implemented wisely, could set the states on the path toward a cleaner energy future. That will benefit the planet, the public at large, and the marginalized communities that suffer disproportionately from our unsustainable energy infrastructure.

Alice Kaswan is a professor at the University of San Francisco School of Law and a Board member of the Center for Progressive Reform.

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