

The Clean Power Plan: What Happens If States Fail to Comply?

The Environmental Protection Agency's (EPA's) Clean Power Plan aims to reduce greenhouse gas emissions from power plants. A number of states have indicated that they plan to "just say no" and try their luck at evading their requirements under the plan. This raises an important question: What are the consequences for states that fail to comply?

What typically happens if a state fails to comply with a Clean Air Act provision?

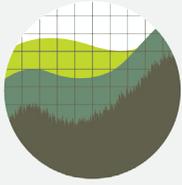
Under the Clean Air Act's model of cooperative federalism, EPA sets standards and states then figure out how best to meet the federal standards by developing state implementation plans. If a state fails to submit an implementation plan, or if that plan is deemed inadequate, EPA steps in and imposes a backstop federal plan, directly regulating pollution sources in the state. Along with its release of the final Clean Power Plan, EPA will also release a proposed federal plan for implementing the Clean Power Plan's targets (which will be open for public comment).

What will EPA's backstop federal plan look like?

EPA is expected to target the federal plan toward power plants in noncompliant states, rather than toward the states themselves. In particular, EPA will most likely determine each state's carbon reduction goal under the Clean Power Plan. Then, in the proposed federal plan, EPA will likely divide the responsibility for meeting a noncompliant state's goal among the power plants in the state. At that point, the state will no longer have responsibility for, or control over, enforcement of these Clean Air Act rules for the state's sources.

How strict will the requirements be in the federal plan?

Some plan opponents have suggested that a federal plan will be less stringent than the state's reduction requirement under the Clean Power Plan because EPA cannot impose the full state target on fossil-fuel plants without causing shutdowns. However, EPA has indicated that it plans to maintain the stringency of the state targets in its federal plan. One of the most likely ways that EPA could accomplish this would be to create an emissions credit system. Under that system, higher-emitting plants could buy carbon credits from cleaner parts of the power sector, like renewable energy producers and energy efficiency programs.



What will happen if sources fail to comply with the federal plan?

If the federal plan is designed as expected, EPA will have the power to enforce emission limitations against sources directly through orders, administrative penalties, and civil lawsuits. If EPA is unwilling or unable to enforce the plan, environmental groups would then be able to sue the sources directly under citizen suit provisions.

Can EPA impose highway sanctions on states that fail to comply?

Under some provisions of the Clean Air Act, EPA can cut a state's federal highway funding if the state fails to comply with federal requirements. The Act is unclear about whether EPA can use these sanctions for a regulation like the Clean Power Plan. The EPA administrator has indicated that EPA does not plan to impose highway-funding sanctions under the Clean Power Plan, and there may be a statement in the final rule to that effect.

What happens if EPA, under the next president, decides not to impose a federal plan for a noncompliant state?

EPA is expected to extend the deadline for final state plans to 2018, which will be well into the next president's administration. In theory, if the next president disagrees with the Clean Power Plan, EPA could delay imposing federal plans on states that fail to comply. However, the Clean Air Act requires EPA to impose a federal plan if a state's plan is deficient. If EPA fails to do so, the Clean Air Act's citizen suit provision allows groups to sue and force EPA to act. History suggests that environmental groups would not be shy about filing suits to make EPA impose federal plans for slacking states.

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