



# Environmental Protection Network

## Resetting the Course of EPA

### Reducing Air Emissions from Stationary Sources



*This paper is part of the [Resetting the Course of EPA](#) project by the [Environmental Protection Network \(EPN\)](#), a bipartisan network of more than 500 former EPA career employees and political appointees across the country who served under multiple Democratic and Republican administrations.*

*Resetting the Course of EPA outlines specific and actionable steps that EPA leadership can take to reset the course of the agency to address the most significant and pervasive threats to public health and our environment. As there is no single roadmap, EPN looks forward to collaborating with others to advance the dialogue around the future of EPA and set ideas into motion that will better protect the health and wellbeing of everyone.*

Additional Resetting the Course of EPA documents are available here:

<https://www.environmentalprotectionnetwork.org/reset>

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## Summary

The Office of Air and Radiation (OAR) has a massive to-do list, a huge amount of pressure from outside groups, a demoralized and diminished career staff to tend to, and an incredible sense of urgency. Like no other time in history, it will be essential to make hard choices about priorities.

Fortunately, the OAR career staff is exceptional and can help share the load. EPA political leadership must establish trust with career staff, who can be depended on to handle many important technical, policy, and legal matters.

Stakeholders will advocate to make every issue the highest, most urgent priority. Their list of demands will be vast, including moving quickly to reverse or undo everything the Trump administration has done, meeting numerous court-ordered or statutory deadlines or court remands, prioritizing climate change and environmental justice, restoring underlying functions and norms, and quickly moving projects forward that will reduce air pollution in communities.

## Recommendations

1. **Prioritize, prioritize, prioritize.** Early actions should include those that make real reductions in pollution, providing the greatest health benefit for the greatest number of people and/or reducing health impacts in communities that are already disproportionately impacted by pollution. Our strongest recommendation is that incoming EPA leadership accept that they will not be able to do everything they want to on stationary source air emissions, let alone everything everyone else wants them to do. Priorities and expectations will need to be set early, undoubtedly leaving external and internal audiences unhappy. [\[Read More\]](#)
2. **Examine multiple pathways to reduce greenhouse gas emissions.** Some actions will have bigger climate benefits than others. [\[Read More\]](#)
3. **Decide early on the best approach to the National Ambient Air Quality Standards (NAAQS).** [\[Read More\]](#)
4. **Update assessments based on facts on the ground,** especially for climate change, regional haze, and interstate pollution. [\[Read More\]](#)
5. **Prioritize actions that fix bad precedents and institutional changes** that erode EPA’s capacity to protect public health and the environment under the law. [\[Read More\]](#)

## Recommendation #1: Prioritize, prioritize, prioritize.

The Office of Air Quality Planning and Standards (OAQPS) is constantly managing an existing set of statutory deadlines for rule reviews, court-ordered deadlines, and remands of rules that have been challenged and found deficient by the courts. Leadership should not be overly focused on “rolling back all the rollbacks.” This is not likely to be a strong strategy. Not every change is equally significant, and political leadership is realistically unlikely to be able to “fix” everything. Attempting to do so will bog the system down, tie up resources on less critical matters, and continue the cycle of “do-undo.” This strategy leads to uncertainty and a lack of real progress forward, and, simply, is no way to run a government.

EPA leadership should instead assess the public health and environmental protection value of each proposal/final rulemaking/court case/consent decree and prioritize actions accordingly. Factors to consider include:

- ❖ The impact of an action on multiple objectives, such as reducing air pollution, fixing bad precedents, promoting environmental justice, and co-benefits for addressing climate change and protecting public health.
- ❖ Changes that may have occurred in the real world, such as industry emission reductions/commitments, plant closures, added control technologies, and new information on health impacts.
- ❖ Information and priorities from key stakeholders, including state, local, and tribal government, and low-wealth communities and communities of color.
- ❖ The bandwidth required to get things done.
  - ◆ Policies that can simply be rescinded, and in-process rulemakings that can be withdrawn, will take less bandwidth than ones that need to be rewritten or replaced.
  - ◆ Some rules, such as [New Source Review](#) are exceptionally polarizing, requiring added high-level bandwidth to advance the ball.
  - ◆ Some issues can effectively be handled by career staff (headquarters and regional offices) with minimal involvement from political appointees.

### IMMEDIATE ACTIONS

- ❖ Engage career staff in OAR immediately to assess priorities.
- ❖ Put in place systems to quickly gather external input from state/local/tribal government, non-profit organizations, environmental justice leaders, industry, Congress, and other critical parties.

## Recommendation #2: Examine multiple pathways to reduce greenhouse gas emissions.

Setting priorities and targeting resources to maximize the agency’s effectiveness in addressing the climate crisis will be one of the most urgent immediate tasks for EPA leadership. Climate change may be a top priority for the president, dominating interactions with the White House. EPA will need to coordinate with the administration’s overall strategy to address climate change, including other agencies and international activities.

Early action to assess the relative bandwidth needs and impacts of different options will be critical as the agency helps lead an administration-wide effort on climate change over the years to come. In addition to considering greenhouse gas rules, other clean air actions, such as interstate air pollution rules, could have big climate co-benefits.

### IMMEDIATE ACTIONS

- ❖ Work with staff to assess the climate benefits, co-benefits, and economic impacts of potential [Clean Air Act \(CAA\)](#) actions, including:
  - ◆ [Title I of the CAA](#)
  - ◆ Cross-state air pollution rules
  - ◆ Significant New Alternatives Policy (SNAP) rules for hydrofluorocarbons (HFCs)
  - ◆ [Kigali Amendment](#) Implementation.
- ❖ If still under review, request that the [Affordable Clean Energy \(ACE\)](#) case be stayed, and indicate that EPA’s intent is to stop defending the ACE rule.
- ❖ Announce the intent to withdraw or re-propose the [New Source Performance Standards for the oil and natural gas industry \(the Methane rule\)](#), depending on its status.
- ❖ Assess the status of the [Oil and Gas Information Collection Request](#) and other next steps to address Existing Source oil and gas emissions.
- ❖ Assess the relative costs and benefits of next steps on the landfill methane rules.
- ❖ Assess regulatory framework around carbon storage in both geologic formations and in materials (e.g., cement).
- ❖ Absent the passage of legislation, review options on responding to Court remand on delisting HFCs, including re-issuance of the vacated SNAP rules. The review should consider the impacts of the [California Cooling Act](#).
- ❖ Assess next steps on the Kigali Amendment to the [Montreal Protocol](#).

### EARLY ACTIONS, INCLUDING THE FIRST 100 DAYS

- ❖ Engage with the White House, other agencies, Congress, and stakeholders to formulate EPA’s role in an administration-wide climate action plan.
- ❖ Evaluate the status of the scientific and legal situation regarding biomass emissions and determine priority and potential approaches for next steps.

### Recommendation #3: Decide early on the best approach to the National Ambient Air Quality Standards (NAAQS).

The [particulate matter \(PM\)](#) and [ozone](#) reviews are among the highest profile and most impactful (from a health perspective) rules OAR does. Attention should be paid both to the actual ongoing reviews themselves (especially ozone and PM2.5) and to the [NAAQS](#) review process changes that have recently been put in place. If the current PM and/or ozone reviews are finalized, there will likely be immense pressure to quickly redo them, even as legal challenges are going forward. Beginning the next cycle of review, with a restored science-based process, is likely to be a more successful approach than initiating reconsideration of recent EPA actions.

#### IMMEDIATE ACTIONS

- ❖ Restore the credibility of the NAAQS process by changing limits placed on the Clean Air Scientific Advisory Committee (CASAC), reinstating pollutant-specific panels to supplement CASAC, and scrapping most of the unreasonable short-cuts included in the [May 2018 Pruitt NAAQS Streamlining Memo](#).
- ❖ Assess how to handle pending court challenges to PM and ozone NAAQS and/or to take other immediate actions, such as beginning a process to update the Integrated Science Assessment (ISA) for PM.

#### EARLY ACTIONS, INCLUDING THE FIRST 100 DAYS

- ❖ Leadership should review with staff all proposals, final rulemakings, court case decisions, and consent decrees that have been made during the last four years, the status of those decisions, and hear what staff would recommend as next steps on each and collectively.
- ❖ Determine NAAQS implementation priorities, including designation and redesignation decisions, tackling cross-state air pollution, and revisiting guidance documents from the previous administration, including exceptional events.

### Recommendation #4: Update assessments based on facts on the ground.

Facts on the ground may make some actions less important to address or undo. For example, the Trump administration has weakened a number of regional haze decisions that affected particular power plants. An assessment of those power plants’ current and future status should inform consideration of which of those state-specific decisions needs to be revisited. Many facts have changed in the past several years—including newly planned retirements—and should be evaluated by OAQPS and the regional offices to determine which actions should be taken and prioritized. Likewise, decisions on rules promulgated under Sections 111 and 112 should be reviewed and prioritized in light of the considerations listed in Recommendation #1 and an evaluation of facts on the ground.

## IMMEDIATE ACTIONS

- ❖ Stationary source rules and policies: Ask OAQPS, regional offices, and the Office of General Counsel (OGC) to summarize the status of rulemakings and policies under Sections 111 and 112 in light of statutory deadlines, court-ordered schedules, and recent developments in the industry.
- ❖ Regional haze program:
  - ◆ Ask OAQPS, regional offices staff, and OGC to summarize the status of the regional haze decisions, reconsiderations, and litigation, and identify significant changes that should be considered in determining the path forward for each.
  - ◆ Request staff to make recommendations about recently issued and any upcoming guidance documents and the ongoing regional haze program rules revisions.

## EARLY ACTIONS, INCLUDING THE FIRST 100 DAYS

- ❖ Prioritize actions on stationary source rulemaking under Sections 111, 112, and the regional haze program.

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### **Recommendation #5: Prioritize actions that fix bad precedents and institutional changes.**

EPA leadership should consider prioritizing actions that address institutional repairs or bad precedents as well as an underlying health/environmental issue. In particular, the new [Mercury and Air Toxics Standards \(MATS\)](#) “appropriate and necessary” finding sets a dangerous precedent on devaluing co-benefits. Other rules, such as several regional office actions on Startup, Shutdown, and Malfunction (SSM), have set a bad precedent on regional consistency.

## EARLY ACTIONS, INCLUDING THE FIRST 100 DAYS

- ❖ Announce that EPA will use the most efficient and legally defensible process to expeditiously reverse EPA’s 2020 MATS “appropriate and necessary” finding for coal- and oil-fired power plants and launch this work.
- ❖ Announce the withdrawal of two proposed rules issued by Regions [4](#) and [6](#), proposing that regional administrators could take alternative interpretations of statutory requirements for State Implementation Plans (SIPs) to address emissions during SSM in contravention of the nationally applicable rule on SSM emissions finalized on June 12, 2015. The proposed legal interpretations in both of the proposals conflict with existing longstanding EPA national interpretations in applicable regulations as well as relevant case law interpreting both the CAA and EPA regulations.
- ❖ Direct OAQPS, OGC, and the regional offices to identify and prioritize other rules and policies that set bad precedents.

## FIRST YEAR AND SUSTAINED ACTIONS

- ❖ Implement whatever process has been deemed most appropriate to reverse the revised MATS “appropriate and necessary” finding for coal- and oil-fired power plants.
- ❖ Propose a new national rulemaking reaffirming the principles of the 2015 SSM SIP Call and reinstating national policy holding that 1) affirmative defenses in SSM regulations are not acceptable as they remove the courts’ statutory ability to establish penalties, and 2) emissions controls during SSM cannot be replaced by general state provisions asserting that the SIP as a whole is sufficient. In addition, the national rule should clarify that Regional Administrators cannot take a different legal interpretation from the nationally applicable SSM SIP Call.
  - ◆ Review state SIP submissions in response to the 2015 SSM SIP Call and work with states to get SIPs revised, submitted, and approved, correcting deficient SSM SIP provisions in a timely fashion.
  - ◆ Assess SSM SIP provisions generally and determine if any further national work is necessary to ensure all SIPs provide for adequate emissions controls during SSM events.
- ❖ Proceed with other actions to undo or reverse rules or policies that set bad precedents as priority and bandwidth allow.



## Participants in the EPN Workgroup

### Reducing Air Emissions from Stationary Sources

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