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OPINION | REVIEW & OUTLOOK

## Biden's 'BackDoor' Climate Plan

Emails reveal the strategy behind the new regulation to come.

By [The Editorial Board](#)

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The Environmental Protection Agency building

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President Biden wants Congress to pass climate legislation, but that faces political obstacles. No worries—state Democratic Attorneys General are conspiring with green groups on a regulatory Plan B.

Climate activists have long sought to force CO<sub>2</sub> emissions reductions under the Clean Air Act, but this has been tricky. The Supreme Court in *Massachusetts v. EPA* (2007) ruled that the law's general definition of "pollutant" covered greenhouse gases. But the Court didn't tell the EPA how it should regulate CO<sub>2</sub> under the law.

*Massachusetts v. EPA* set the ground for the Obama EPA's "endangerment finding" in 2009 declaring that greenhouse gases are a threat to public health and welfare. Green groups then petitioned the Obama EPA to list CO<sub>2</sub> as a "criteria pollutant" and set National Air Ambient Quality Standards (NAAQS).

The EPA dictates air quality standards for six "criteria pollutants" known to directly harm human health: nitrogen dioxide, sulfur dioxide, lead, carbon monoxide, ozone and particulate matter. States must craft plans to meet the EPA standards if they are out of

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But unlike the six criteria pollutants, CO<sub>2</sub> doesn't cause asthma or other diseases, and CO<sub>2</sub> emissions generated locally can't be reliably measured. CO<sub>2</sub> can also persist in the atmosphere for centuries, but the Clean Air Act requires the EPA to set deadlines for states to meet their primary NAAQS for criteria pollutants within 10 years.

In other words, it's technically infeasible and legally questionable to regulate CO<sub>2</sub> as a criteria pollutant. Obama EPA Administrator Lisa

Jackson described the idea as not "advisable" and shelved it. The Obama EPA instead tried to force states to reduce CO<sub>2</sub> power plant emissions via its Clean Power Plan, which was blocked by the Supreme Court.

CO<sub>2</sub> emissions from electricity in the U.S. have nonetheless continued to fall as natural gas and subsidized renewables replace coal. But the climate lobby isn't satisfied and wants to force states to reduce emissions from all sources including industry, transportation, farms and homes.

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Enter Joe Goffman, a former Obama EPA official who is now responsible for NAAQS as principal deputy assistant administrator of the Office of Air and Radiation. Mr. Goffman was a chief architect of the Clean Power Plan, and a 2014 article from E&E News described him as the "U.S. EPA's law whisperer. His specialty is teaching an old law to do new tricks."

Tricks indeed. Emails obtained by Chris Horner at Energy Policy Advocates, which were shared with us, show Democratic AGs in 2019 consulted Mr. Goffman, then at Harvard Law School, on using the NAAQS to regulate CO<sub>2</sub>. Mr. Goffman connected the AGs to former EPA officials and environmental attorneys. As his new EPA profile slyly explains, Mr. Goffman at Harvard "led a team of attorneys and communications specialists providing information and analysis to stakeholders, government decision makers and the media."

Consultants referred by Mr. Goffman told the AGs that regulating CO<sub>2</sub> as a criteria pollutant wouldn't fly. But they proposed using ozone NAAQS as what one called a "backdoor." Fossil fuel combustion, motor vehicle exhaust and industrial emissions contribute to ozone. So the EPA could make states reduce CO<sub>2</sub> emissions by tightening ozone standards. States might have to outlaw natural gas-powered appliances, gas stations and internal combustion engines to meet stricter ozone standards.

Any climate legislation Congress enacts will no doubt contain a potpourri of green energy subsidies, but Democrats won't be able to use budget reconciliation to banish fossil fuels. As former EPA official John Bachmann wrote in an email to New York's Office of Attorney General, "New legislation requiring specific actions would be much better than NAAQS, and yet I'm mindful of the obvious problem of how to get such legislation even with a new administration." Other climate consultants agreed.

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Mr. Goffman was included in some email and phone discussions and is now in position to execute their plan at the Biden EPA. Sixteen Democratic AGs on Jan. 19—a day before Mr. Biden's inauguration—challenged the EPA's current ozone NAAQS. Their one paragraph lawsuit says the standards are “unlawful, arbitrary and capricious and therefore must be vacated.”

Their aim is to hasten a replacement ozone rule that regulates CO2. The Obama EPA often entered into legal settlements with third-parties to bypass procedural requirements of the Administrative Procedure Act and impose extralegal regulations. Acting EPA Administrator Jane Nishida showed the Biden team's cards on March 4 by notifying the Center for Biological Diversity and 350.org that the agency plans to reconsider “the important issues” in its 2009 petition to regulate CO2 under NAAQS.

To sum up, Democratic AGs, green groups and a top Biden environmental regulator are colluding on a plan to impose the Green New Deal on states through a back regulatory door because they know they can't pass it through the front in Congress.

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