



## Trump EPA Finally Rolls Back Clean Power Plan

**06.19.2019**

Today, EPA released the final Affordable Clean Energy (ACE) rule fulfilling the President's promise to repeal the Obama EPA's Clean Power Plan (CPP). In addition to repealing the CPP, the ACE rule replaces the CPP. The CPP placed severe CO<sub>2</sub> limits on coal-fired power plants. The CPP would have resulted in the shutdown of virtually all existing utility coal generation and forced utilities to switch to natural gas and renewable generation under a very aggressive time-frame. Most, if not all, of the cost of the generation switch would have been borne by rate-payers.

The ACE rule, on the other hand, sets CO<sub>2</sub> limits based on a joint process between EPA and the states. This process involves states examining potential technologies and operation and maintenance practices that could potentially improve the efficiency of individual coal units. Increasing the efficiency of these units will result in a reduction in CO<sub>2</sub> emissions, because the units will burn less coal to generate the same amount of electricity. All resulting limits must be set based on the CO<sub>2</sub> emissions rate from a unit (i.e. pounds of CO<sub>2</sub> emitted per megawatt hour generated).

In repealing the CPP, EPA draws on the statute (Clean Air Act Sections 111(a)(1) and (d)) which clearly requires that emissions limits can only be set by states, not EPA. Under the CPP, EPA set the limits on CO<sub>2</sub> emissions without state input. The ACE rule also relies on the statute to determine that CO<sub>2</sub> emissions limits can only be set for individual sources. The CPP included both coal units as well as other units in setting CO<sub>2</sub> limits.

CO<sub>2</sub> emissions limits set by states are to be narrowly tailored based on the individual unit. Considerations in the unit-based state analysis include technical feasibility of efficiency improvements, as well as the remaining useful life of the unit. Other factors for states to examine include the operation of the units. For example, units that operate at different levels of generation will have different levels of CO<sub>2</sub> emissions. Maintenance and weather also will influence CO<sub>2</sub> emissions.

Other factors that states can consider are:

- Unreasonable cost to install efficiency improvements;
- Physical impossibility to install efficiency improvements; and,
- Other factors specific to a facility that justify a less stringent limit.

States have broad discretion to choose the means to comply with CO<sub>2</sub> emissions limits, but the compliance measures must be (1) capable of being applied to the source and (2) based on actual

means to demonstrate compliance. Interestingly, among the compliance methods that can be authorized by states are carbon capture and sequestration (CCS) and co-firing natural gas and coal. The basis of how states can allow CCS and natural gas co-firing as compliance methods is unclear. Compliance methods cannot include emissions averaging of any kind.

The repeal and replacement of the CPP will be heavily litigated before both the United States District Court for the District of Columbia and likely before the United States Supreme Court.

## **Related People**

- John M. Holloway, III (Jay) – 804.420.6054 – [jholloway@williamsmullen.com](mailto:jholloway@williamsmullen.com)

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