



# EPA Proposes Shift In Clean Energy Policy

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States are going to have a greater role in setting energy policy under the United States Environmental Protection Agency's ("EPA") proposed Affordable Clean Energy ("ACE") Rule. EPA proposed the ACE Rule to replace the Obama Administration's Clean Power Plan ("CPP"), which never took effect due to legal challenges. Unlike the CPP, where the EPA set standards and requirements for state plans, the newly proposed ACE Rule tasks the States with a larger role in pursuing clean power and addressing pollution from existing coal power plants, invoking mixed emotions from various sectors of the community.

Under the CPP, the prior policy, the EPA was intimately involved in regulating the energy sector and reshaping the grid and energy markets. The proposed ACE Rule reduces EPA's command and control role and allows the states to set standards based on EPA guidelines. The Rule also provides states additional time and flexibility in developing energy efficiency plans and furnishes a list of technologies that states can use to establish performance standards rather than strict emission standards.

Critics of shifting energy policy from the EPA to the states argue that the states will be more vulnerable to the interests of fossil fuel groups, which could weaken standards and emission controls. Moreover, some believe offering existing technologies as performance standards instead of setting emission reductions will result in fewer advancements in new energy technologies.

Unlike the CPP that required the phase-out of coal fired power plants, the proposed ACE Rule would keep such plants operating but require them to become more efficient. It also promotes investments in clean coal plants. Although plans to increase efficiency at coal plants may lead to reductions in greenhouse gas emissions, it could result in increases in traditional pollutants, like soot. The EPA does not refute this potential outcome, but argues that such increases in pollutants can be addressed in other ways.

Moreover, as part of the proposed ACE Rule, the EPA is proposing to change the New Source Review (“NSR”) Permitting Program, which requires a permit when there is a “major modification” at a power plant. Coal power plant owners have argued that they have not pursued efficiency measures in fear of triggering the need for an NSR permit. The proposed change to the NSR permit program would allow plants to use hourly emission rate increases, instead of existing annual emission rate increases, to determine whether an NSR permit is needed. Arguably, this will allow the installation of efficiency projects without triggering the NSR permit requirements. Opponents of this change assert it provides a loophole that allows existing coal power plants to avoid installing potentially costly emission control equipment, even though many do not meet current emission standards and would not be required to do so without the NSR permit requirement. Even with these changes, it still may be difficult to determine when an NSR permit is necessary.

The EPA claims that the proposed ACE Rule will lead to more affordable energy bills, be less expensive than the CPP and obtain the same results as the CPP. Others disagree. It is anticipated that the proposed ACE Rule will be challenged in court, like the CPP. As such, it may continue to be some time before there is an implementable clean energy plan from the EPA.

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