

D.C. Circuit Vacates and Remands Trump Administration's ACE Greenhouse Gas Emissions Rule

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On January 19, 2021, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit in a *per curiam* opinion vacated the Trump Administration's Affordable Clean Energy Rule (ACE Rule).

The ACE Rule repealed and replaced its 2015 predecessor rule, the Clean Power Plan. The Clean Power Plan (CPP) established a nationwide program for reducing greenhouse gas emissions from existing fossil fuel-fired power plants. It aimed to reduce power sector emissions by 32% below 2005 levels by 2030. Because of a stay issued by the Supreme Court in 2016, the CPP never took effect before it was repealed and replaced.

Promulgated in 2019, the ACE Rule established new emissions guidelines for states developing plans to limit greenhouse gas emissions at coal-fired electric generating units. Soon after the rule was finalized, 14 health and environmental groups, 23 states, eight cities, nine power companies, and three clean energy associations filed suit challenging the rule.

As the D.C. Circuit explained, "The question in this case is whether the Environmental Protection Agency (EPA) acted lawfully in adopting the 2019 Affordable Clean Energy Rule (ACE Rule) . . . as a means of regulating power plants' emissions of greenhouse gases. It did not. Although the EPA has the legal authority to adopt rules regulating those emissions, the central operative terms of the ACE Rule and the repeal of its predecessor rule, the Clean Power Plan . . . hinged on a fundamental misconstruction of Section 7411(d) of the Clean Air Act. In addition, the ACE Rule's amendment of the regulatory framework to slow the process for reduction of emissions is arbitrary and capricious."

Among other flaws, the Court highlighted the "rebound effect," caused by the ACE Rule's efficiency upgrades, making coal-based energy cheaper to produce and incentivizing coal-fired power plants to run more often, thereby increasing overall emissions.

The Court vacated and remanded the ACE Rule to the EPA "so that the Agency may 'consider the question afresh[.]'" We expect that the Biden Administration will scrap the ACE Rule propose a new regulatory framework, likely more in line with the Clean Power Plan, for reducing greenhouse gas emissions from existing fossil fuel-fired power plants.

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