

# Affordable Clean Air Energy Rule/Clean Air Act: U.S. Environmental Protection Agency Issues Final Rule



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The United States Environmental Protection Agency (“EPA”) yesterday issued a final version of the previously proposed Affordable Clean Air Act Affordable Clean Energy (“ACE”) Rule.

The ACE rule had been proposed on August 21, 2018. See 83 Fed. Reg. 44746.

The ACE rule replaces the 2015 EPA Clean Power Plan (“CPP”) which the federal agency repealed. The CPP had been stayed by the United States Supreme Court.

EPA has describes the ACE rule as having several components, which include:

- Determination of the best system of emission reduction for greenhouse gas emissions from coal-fired power plants
- A list of candidate technologies states can use when developing their plans
- A new preliminary applicability test for determining whether a physical or operational change made to a power plan may be a major modification triggering New Source Review
- New implementing regulations for emission guidelines under Section 111(d) of the Clean Air Act

The opponents of the CPP have argued that the rule exceeded EPA’s legal authority. Likewise, opponents of the proposed ACE rule have made the same argument.

Arguments in favor of the ACE rule have included:

- States retain authority to make key decisions
- Flexibility
- Needed revisions to Clean Air Act New Source Review
- Remaining useful life considerations are permitted
- Improved regulatory processes

Opponents’ arguments have included:

- A low bar is set for emission reductions
- No numerical standards or targets for greenhouse gas reductions
- States have wide latitude to establish their own performance targets
- United States citizens will incur a net cost
- Major changes to permitting rules could lead to additional increase in emission

Stuart Spencer, Associate Director of ADEQ Office of Air Quality was asked to speak at the announcement of the rule at EPA Headquarters. An ADEQ press release states that Mr. Spencer remarked:

... on the diversity of Arkansas' energy generation portfolio, including the John W. Turk, Jr. ultra-supercritical coal-fired plant. He emphasized ADEQ's commitment to review and implement the rule in Arkansas.

A link to a You Tube video of the EPA ACE rule announcement press conference can be found [here](#). Mr. Spencer's remarks are found at minute 52:00 of the video.

The ACE rule will clearly be the subject of litigation in terms of challenges and intervention by proponents in the near future.

A link to ADEQ's comments on the rule can be found [here](#) along with the You Tube video and a link to the [Ace rule](#).