



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

February 12, 2021

OFFICE OF  
AIR AND RADIATION

**MEMORANDUM**

**SUBJECT:** Status of Affordable Clean Energy Rule and Clean Power Plan

**FROM:** Joseph Goffman  
Acting Assistant Administrator

**TO:** EPA Regional Administrators  
Regions I - X

On January 19, 2021, the D.C. Circuit vacated the Affordable Clean Energy (ACE) rule and remanded to the Environmental Protection Agency (EPA) for further proceedings consistent with its opinion.<sup>1</sup> Since then, EPA Regional staff have received requests from multiple states seeking clarity regarding their obligations in light of the court decision. The purpose of this memo is to provide EPA Regional staff with information so they can respond to those requests regarding EPA's view that the court's opinion did not result in any obligation for states to submit Clean Air Act (CAA) section 111(d) State Plans under the Clean Power Plan (CPP),<sup>2</sup> nor do states have any obligations under the now-vacated ACE rule.<sup>3</sup>

The court's decision vacated the ACE rule, including its requirements that states submit State Plans by July 8, 2022. Because the court vacated ACE and did not expressly reinstate the CPP, EPA understands the decision as leaving neither of those rules, and thus no CAA section 111(d) regulation, in place with respect to greenhouse gas (GHG) emissions from electric generating units (EGUs). As a practical matter, the reinstatement of the CPP would not make sense. The deadline for states to submit State Plans under the CPP has already passed<sup>4</sup> and, in any event, ongoing changes in electricity generation mean that the emission reduction goals that the CPP set for 2030 have already been achieved.<sup>5</sup> Therefore, EPA does not expect states to take any further action to develop and submit plans under CAA section 111(d) with respect to GHG emissions from EGUs at this time.

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1 *Am. Lung Ass'n v. EPA*, 2021 WL 162579 (D.C. Cir. Jan. 19, 2021).

2 80 Fed. Reg. 64,662 (Oct. 23, 2015).

3 84 Fed. Reg. 32,520 (July 8, 2019).

4 Under the CPP, states were required to submit their State Plans no later than September 6, 2018. 80 Fed. Reg. at 64,828.

5 See "Regulatory Impact Analysis for the Repeal of the Clean Power Plan, and the Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units," EPA-452/R-19-003 (June 2019), at 2-14 to 2-15. We note further that none of the parties in the ACE litigation sought reinstatement of the CPP.