

AG Kaul: Joins lawsuit against Trump's dirty power rule

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MADISON, Wis. – Attorney General Kaul, with a coalition of 22 states and 7 local governments, today announced a lawsuit against the Trump Administration's Environmental Protection Agency (EPA) over its "ACE" – aka "Dirty Power" – rule. The ACE rule replaced the Clean Power Plan, the first-ever nationwide limits on one of the largest sources of climate change pollution: existing fossil-fueled power plants. The EPA's rule rolls-back these limits and will have virtually no impact on these emissions, prolonging the nation's reliance on polluting, expensive coal power plants and obstructing progress of states toward clean, renewable, and affordable electricity generation.

"Climate change is not only real; it's a crisis," said Attorney General Kaul. "We're only beginning to see its effects, including severe flooding and extreme temperatures. We can't afford to wait for 20 years or a decade to take meaningful action. We need to step up now and to start responding to the climate crisis like our kids' future depends on it—because it does."

Besides ignoring the science of climate change – the text of the entire ACE rule barely mentions climate change, much less recognizes the dire threat it poses to people's health, the economy, or the environment – the rule disregards requirements of the federal Clean Air Act. The Clean Air Act requires that limits on air pollutants, such as greenhouse gases, must be based on the emissions reductions achievable through the "best system of emission reduction." However, in the "Dirty Power" rule, EPA has ruled out as such a "best system" the most cost-effective, proven, and successful approach to controlling greenhouse gas emissions: shifting from coal-fueled generation to less carbon-intensive generation.

In the 10-state (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont) Regional Greenhouse Gas Initiative (RGGI), a market-based cap-and-trade program, has proven to be an effective, cost-efficient model for reducing power plant emissions of climate change pollution. Power plants in the participating RGGI states have cut their emissions by more than 50 percent, and between 2015 and 2017, these states saw \$1.4 billion of net positive economic activity and the creation of 14,500 new jobs – all while maintaining reliability of service and holding the line on electricity rates.

Imprudently, the “Dirty Power” rule prohibits states from participating in cap-and-trade programs means of complying with the requirements of the Clean Air Act.

Significantly, the “best system of emission reduction” used by the Trump EPA in the “Dirty Power” rule – equipment upgrades at coal power plants – will reduce emissions by only 0.7 percent more by 2030 than having no rule at all, according to EPA’s own analysis. Further, EPA found that emissions of one or more of three pollutants – carbon dioxide (CO₂), nitrogen oxides (NO_x), and sulfur dioxide (SO₂) – will increase in 18 states in 2030 compared to no “Dirty Power” rule.

The differences in benefits provided by the Clean Power Plan compared to the Trump “Dirty Power” rule are substantial, as reflected in the table below using the agency’s own calculations when it finalized the two rules:

	“Dirty Power” Rule (ACE Rule)	Clean Power Plan
Pollutant Reductions by 2030		
CO ₂ (million tons)	11 (0.7%)	415 (16%)
SO ₂ (thousand tons)	5.7 (0.6%)	318 (24%)
NO _x (thousand tons)	7.1 (0.9%)	282 (22%)

Benefits by 2030 (\$ millions)*	570-1,300	34,000-54,000
Costs by 2030 (\$ millions)*	280	8,400
Net Benefits by 2030 (\$ millions)*	300-1,000	26,000-45,000

* 3% Discount Rate; ACE rule in 2016 dollars and Clean Power Plan in 2011 dollars.

Sources: Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, 84 FR 32520, 32583 (July 8, 2019); Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 FR 64661, 64964 (October 23, 2015).

The implications of the “Dirty Power” rule’s failure to achieve virtually any reductions in power plant emissions are serious. The International Energy Agency estimates that climate change pollution from the U.S. power sector must be reduced by 74 percent by 2030, below 2005 levels, for the U.S. to be able to achieve the goal of limiting worldwide temperature increase to less than 2 degrees Celsius. By the EPA’s own estimates, the “Dirty Power” rule falls woefully short of hitting this target with a projected reduction of only 35 percent from 2005 levels. Of that, only roughly one percent is attributable to the impact of the “Dirty Power” rule and 34 percent attributable to market factors.

Today’s suit was filed in the US Court of Appeals for the District of Columbia Circuit. In addition to Wisconsin Attorney General Kaul, the suit, led by New York Attorney General Letitia James, is joined by the Attorneys General of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, Wisconsin, and the District of Columbia, and the chief legal officers of Boulder, Chicago, Los Angeles, New York City, Philadelphia, and South Miami.

<https://www.doj.state.wi.us/news-releases/attorney-general-kaul-joins-lawsuit-against-trump%E2%80%99s-dirty-power-rule>