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CONTACT: Shravya Jain-Conti, [sjain@climatenexus.org](mailto:sjain@climatenexus.org), 917-328-6973

# Cities and Counties File Amicus Brief in Objection to Trump EPA Power Plant Rule

***As Cities Battle Coronavirus Pandemic, 23 Local Governments Call Out Weak EPA Rule for Adding to City Health Burdens and Straining Budgets***

## ***Brief Highlights Problematic Environmental Justice Repercussions of ACE Rule***

New York, NY— 21 city, town and county governments and the Mayors of Detroit and Durham, from 16 states across the country, together with the United States Conference of Mayors (USCM) and the National League of Cities (NLC) have signed an amicus brief in support of a [lawsuit filed by 22 states and Washington, D.C.](#) challenging the Affordable Clean Energy (ACE) rule. The ACE rule is the Trump administration's much weaker replacement for the Clean Power Plan. The amicus brief states that the ACE rule would do little, if anything, to reduce greenhouse gas pollution, shifting the burden from polluters to poor and vulnerable populations, and onto local governments already under budget strain.

*"Pittsburgh is proud of its industrial roots, but we've fought our battles with air pollution and have worked hard to clean up our city. It's my job to put people before polluters, and we need federal rules that share that priority. This latest rule does the opposite by making it easier to pollute instead of harder, and by passing those costs onto cities, like Pittsburgh, and the people that breathe their air and call them home."* - **Mayor Bill Peduto of Pittsburgh, Pennsylvania**

The legal action cities are taking today is the culmination of repeatedly cautioning the EPA under President Trump not to slacken regulatory frameworks that would help local governments manage pollution and climate risk. As the current administration has ignored their warnings, cities have been left with no recourse but to escalate their dissent by submitting this brief. The signatories represent a diverse geographic, economic, and political mix, including Detroit, Houston, Phoenix, and New Orleans. 16 are local governments within states that have joined the lawsuit against the EPA, while 7 are from states that have not joined the lawsuit. In total, the 23 cities and counties who have directly signed onto the brief are home to over 12 million people. Furthermore, the NLC and USCM networks that have signed onto the brief represent more than 19,000 cities, towns and villages across the country and a collective population of 218 million, or two thirds of the total US population.

The ACE rule is one of many environmental rollbacks from the Trump administration that are expected to exacerbate air pollution problems across the country. There is increasing evidence linking long-term exposure to air pollution with a greater risk of contracting respiratory illnesses, including the most severe impacts of COVID-19. Instead of working to alleviate these risks, the Trump administration has instead dismantled environmental policies designed to protect public health. During the pandemic alone, the Trump administration has continued this trend by temporarily suspending enforcement of a [wide range of environmental rules](#), rolling back clean car standards, [refusing to tighten](#) regulations on industrial soot emissions, and [weakening controls](#) on mercury pollution from power plants.

Today’s brief calls the ACE rule a dangerously weak substitute for the Clean Power Plan and outlines the consequences for cities of the Environmental Protection Agency (EPA’s) failure to take climate change seriously. The Sabin Center for Climate Change Law at Columbia Law School authored the amicus brief and filed it in the D.C. Circuit Court of Appeals on Friday, April 24, 2020.

*"Cities remain on the front lines of the climate crisis," says Michael Burger, Executive Director of the Sabin Center for Climate Change Law at Columbia Law School. "Local governments across the country are committing to reduce their own greenhouse gas emissions, even as they bear the brunt of climate impacts like sea level rise, heat waves and severe storms. They know how important, and how necessary, federal leadership is. And they see clearly exactly how profoundly EPA’s power plant rule fails them."*

The brief makes four principal legal arguments on the shortcomings of the ACE rule:

1. The EPA has acted unlawfully by failing to uphold the Clean Air Act’s intent to reduce pollution;
2. In promulgating the ACE rule, the EPA has failed to consider the grave threats posed by climate change or the need for meaningful greenhouse gas emissions cuts;
3. The ACE rule further violates the Clean Air Act by failing to regulate natural gas plants
4. The EPA’s failure to consider the inequitable (e.g. environmental justice) impacts of climate change and power plant pollution is unlawful.

As a result of these shortcomings of the ACE rule, the brief examines how *“by failing to take climate change seriously today, [the] EPA will cause cities to shoulder greater adaptation costs over the coming decades and centuries.”* The brief makes clear how weakened stipulations of the new rule have created confusion and will “hamstring” local efforts to reduce emissions. The brief states: *“First, repealing the Clean Power Plan disrupts the regulatory and financial certainty that markets crave, complicating cities’ efforts to invest in mitigation measures. Second, whereas the Clean Power Plan would have expanded renewable energy capacity by 24-27% by 2030, the ACE Rule will cause such capacity to increase very little if at all.”*

The brief also highlights the EPA’s failure to consider the environmental injustices created by power plant pollution. By focusing on the rule’s inequitable impacts, the brief highlights an important aspect of climate change that the EPA has an obligation to address. Specifically, the brief explains how *“In promulgating the Clean Power Plan, EPA found—as cities well know—that environmental justice communities are more vulnerable to climate change impacts, and also disproportionately located close to power plants that emit conventional pollutants, which pose even more immediate threats to local public health...[but in the ACE Rule] EPA has not acknowledged the existing disproportionate burden on environmental justice communities, let alone considered the likelihood that the ACE Rule will exacerbate the problem.”* The brief describes the EPA’s failure to address its actions’ unequal public endangerment and likely health impacts of the law for minority communities as unequivocally unlawful.

The table below demonstrates how EPA’s own analysis shows that weakening the pollution rules will be significantly detrimental to public health:

| Clean Power Plan  | Affordable Clean Energy Rule (when using BAU not CPP as the baseline)                  |
|---|--|
| Projected to reduce power plant emissions by <a href="#">32 percent by 2030</a> | Projected to reduce power plant emissions by only <a href="#">0.7% percent by 2030</a> |

|  |   |
|--|---|
| Expected to <b>save as much as <a href="#">\$54 billion</a></b> per year in health costs by 2030 | Expected to result in health savings and climate benefits amounting to <b>only <a href="#">\$730 million</a></b> per year by 2030 |
| Would <b>prevent</b> an estimated <b><a href="#">4,500 premature deaths</a></b> per year by 2030 | Projected to <b>avoid fewer</b> than <b><a href="#">200 premature deaths</a></b> per year by 2030                                 |
| Projected to <b>prevent <a href="#">90,000 asthma attacks</a></b> in 2030                        | Expected to <b>avoid</b> only <b><a href="#">14,000 asthma attacks</a></b> in 2030  |
| <b><a href="#">300,000 fewer</a></b> missed school and work days nationwide in 2030              | Only <b><a href="#">12,800 fewer missed school days</a></b> in 2030   |

Cities have a long track record of voicing their support for the Clean Power Plan. For instance, in 2018, 244 U.S. mayors representing over 52 million Americans [asked the EPA not to repeal the CPP](#), explaining “our local efforts to address climate change are highly sensitive to national policies like the Clean Power Plan, which shape markets, steer state action, and have large direct impacts on nationwide emissions.” And in 2016, over 50 cities from 27 states [joined an amicus brief in support of the Clean Power Plan](#), which argued for the CPP’s critical contribution to the safety and economic security of local communities across the United States.

The EPA will have until June 16, 2020 to file a response to the local government amicus brief and the other briefs challenging the ACE Rule. Oral arguments on the lawsuit are not expected to take place until at least the fall of 2020.

Read the [full brief](#).

### ***Amicus Brief Signatories***

The U.S. Conference of Mayors; The National League of Cities; **ARIZONA:** Phoenix; **COLORADO:** Boulder County; **FLORIDA:** Coral Gables, Cutler Bay; **LOUISIANA:** New Orleans; **MASSACHUSETTS:** Boston; **MARYLAND:** Baltimore; **MICHIGAN:** Detroit; **MINNESOTA:** Minneapolis, Saint Paul; **NEW JERSEY:** Glen Rock; **NEW MEXICO:** Albuquerque, Las Cruces, Santa Fe; **NORTH CAROLINA:** Asheville, Chapel Hill, Durham; **OREGON:** Portland; **PENNSYLVANIA:** Pittsburgh; **RHODE ISLAND:** Providence; **TEXAS:** Harris County, Houston; **UTAH:** Salt Lake City

### ***Voices from the Local Government Coalition***

#### **Asheville, NC**

*"In a state like North Carolina, where cities like Asheville are willing to go much further than our state legislature on climate action, we need a strong signal from the federal government to help us fill that gap. The Clean Power Plan was a saving grace in that it ensured that our power plants would play a role in helping communities with their carbon reduction goals. The Affordable Clean Energy rule falls completely short of what climate science demands, and where communities like Asheville would like to go."* – **Mayor Esther Manheimer of Asheville, North Carolina**

## Minneapolis, MN

*“The toll this pandemic has taken on our society makes climate action even more necessary than it was before. We’re proud to join a coalition of local governments taking a stand against an Affordable Clean Energy Rule that is neither clean nor affordable.” - Mayor Jacob Frey of Minneapolis, Minnesota*

## Las Cruces, NM

*“ At all levels of government we need to be more vigilant about managing and reducing risks, whether it’s a pandemic or climate change. The EPA’s irresponsible weakening of its rules to allow power plants to pollute more will increase air pollution, asthma rates, and the overall burden on public health services for cities like Las Cruces. Moreover, by failing to address the carbon pollution that drives climate change, New Mexico and the southwest will face ever greater risks, including more heat waves, droughts, and water scarcity, from which we are already suffering.” – Mayor Ken Miyagishima of Las Cruces, New Mexico*



The [National League of Cities](#) (NLC) is the voice of America’s cities, towns and villages, representing more than 200 million people. NLC works to strengthen local leadership, influence federal policy and drive innovative solutions. **Contact: Lauren Sinclair, [Sinclair@nlc.org](mailto:Sinclair@nlc.org), 202-626-3186**



The [U.S. Conference of Mayors](#) (USCM), founded in 1932, is the official nonpartisan organization of all United States cities with a population of more than 30,000 people, which includes over 1,400 cities at present. **Contact: Elena Temple-Webb, [etemple@usmayors.org](mailto:etemple@usmayors.org), 202-861-6719**



The [Sabin Center](#) at Columbia Law School develops legal techniques to fight climate change and provides up-to-date resources on key topics in climate law and regulation. **Contact: Michael Burger, [michael.burger@law.columbia.edu](mailto:michael.burger@law.columbia.edu), 212-854-2372**

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