

Small Business Group Sues EPA Over New Power Plant Rule - LawyerRatingz.com

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By Gemma Alexander, courtesy of [AVVO](#)

Claiming that alternatives are costly and may be unreliable, the [National Federation of Independent Business \(NFIB\)](#) is one of four petitioners suing to invalidate a new power plant rule issued by the Environmental Protection Agency (EPA). The new rule could force states to shut down coal-powered plants that generate electricity, shifting energy generation away from coal toward natural gas and renewable sources, such as wind and solar.

While the impact on the large power companies that operate these plants is obvious, it is less clear how the new rule impacts small businesses, which, almost by definition, do not operate coal-fired power plants.

What's the plan?

The [final rule for the Clean Power Plan](#) which is intended to cut carbon pollution emitted by power plants, was announced in August, but the plan has been in the works for years and received over 4.3 million public comments. The plan sets new standards for power plants—the first to apply nationwide—with individual goals for states based on their current mix of plants.

The plan follows from the EPA's recognition in 2009 of greenhouse gases as pollutants. Carbon dioxide is the most prevalent greenhouse gas pollutant, accounting for nearly three-quarters of global greenhouse gas emissions and 82 percent of U.S. greenhouse gas emissions.

[According to the EPA](#), when the Clean Power Plan is fully implemented in 2030, carbon pollution produced by power plants will be 32 percent below 2005 levels. This reduction will avoid 3,600 premature deaths from poor air quality each year.

Mixed response

The [Union of Concerned Scientists lauds the plan](#) as “a historic opportunity to reduce carbon pollution from the single largest source of U.S. global warming emissions.” Yet on the day the Federal Register published the Clean Power Plan, a slew of lawsuits were announced, including proceedings brought by roughly half of the states. The Union of Concerned Scientists claims that opposition to the plan is the result of studies, funded by the fossil-fuel industry, that inflate the costs of the plan while minimizing its benefits.

However, if those studies have influenced state attorneys general, they don't seem to have swayed the voters—according to a [Yale survey](#), 61 percent of adults in the states suing the EPA support the plan.

Where do small businesses fit in?

Among those rushing to file suit was the NFIB, which joined the Chamber of Commerce of the United States of America, the National Association of Manufacturers, and the American Fuel and Petrochemical Manufacturers as signatory to a petition for review of the EPA final rule, filed on October 27. On the same day, these four petitioners

and a number of other industry-based organizations filed a motion to stay enforcement of the EPA's final rule pending the resolution of the lawsuit.

According to a [post on NFIB's web page](#), the rule will raise electricity prices, thus raising the cost of running a small business while simultaneously dampening customer demand, as homeowners cope with higher home electric bills. The NFIB compares these effects to the financial pressures that small businesses experience when gasoline prices rise.

Is the Clean Power Plan legal?

According to the petition, "Petitioners seek review of the final rule on the grounds, inter alia, that it is arbitrary and capricious, contrary to the United States Constitution and the Clean Air Act and regulations promulgated thereunder, and is otherwise contrary to law."

The EPA has stated that the Clean Power Plan is built on a solid legal footing consistent with and based on the Clean Air Act. Opponents claim the new rules overstep the EPA's authority, particularly as it is set out in Section 111(d) of the Clean Air Act (which authorizes the EPA to set emission standards for air pollutants emitted by new and existing industrial sources). Opponents argue that:

- The new rules are a bid to force states to reorganize their power systems, overstepping the EPA's authority under Section 111(d) to regulate broad swaths of the economy
- Section 111 is meant to apply only to systems at a single emitting source, not all sources within a state's power sector
- The EPA is barred from using Section 111(d) in the first place, because power plants are already governed by Section 112 of the Clean Air Act
- Two of the three carbon-reducing measures identified by the EPA are outside of the agency's authority to enforce
- EPA definitions of "best system of emission reduction" (BSER) are open to challenge
- The EPA is trying to force a national policy in an area where states hold jurisdiction

These arguments are procedural and technical and may take years to evaluate in court. But the legal ground under the plan [looks pretty solid](#), and few observers think there is much chance that the lawsuits will block implementation. Support for the new rules is at least as widespread as opposition, with 18 states and numerous environmental organizations prepared to defend the Clean Power Plan in court.

However the court rules, the repercussions will be felt for some time.

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