

Texas Public Policy Foundation

# Environment

Legislator's Guide to the Issues 2017-18

## The Environmental Protection Agency



### The Issue

Over the last seven years, the Environmental Protection Agency (EPA) has carried out what the *Wall Street Journal* calls “a regulatory spree unprecedented in human history.” And while this regulatory initiative would damage the overall American economy, Texas—the nation’s energy powerhouse—sits in the crosshairs of the EPA’s crusade. Below are some of the regulatory attacks on Texas that, in addition to the Clean Power Plan, are negatively affecting the welfare of Texans.

### Ozone National Ambient Air Quality Standards

The EPA’s new ozone standard would impose costs in the billions and would be infeasible for many states. The EPA’s ever-changing, increasingly stringent National Ambient Air Quality Standards (NAAQS) threaten continued economic growth in Texas at a time when low energy prices create unprecedented opportunity for that growth.

In 2015, the EPA lowered the primary and secondary eight-hour ozone NAAQS from 75 parts per billion (ppb) to 70 ppb. In Texas, the EPA currently designates three areas and 19 counties (Brazoria, Chambers, Collin, Dallas, Denton, Ellis, El Paso, Fort Bend, Galveston, Harris, Johnston, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise) as nonattainment areas under this new standard.

The EPA dismisses concerns about cost of the new standard by claiming huge public health benefits. The reality is that these are not benefits from directly lowering ozone levels but instead are the “co-benefits” of reducing fine particulate matter—another pollutant which is already regulated under its own federal standard. Over 75% of the health benefits that the EPA claims derive from the new ozone standard in reality stem from coincidental reduction of particulates under a NAAQS—a standard that most of the country already attains (See *EPA’s Pretense of Science*).

Even if a state’s attainment of the new 70 ppb ozone standard is infeasible, the EPA can enforce its compliance on pain of serious sanctions. These rigid penalties can include federal seizure of state authority through federal implementation plans (FIPs) and loss of federal highway funds. Texas and 10 other states now challenge the new ozone NAAQS in the D.C. Circuit Court.

### Cross-State Air Pollution Rule

The Cross-State Air Pollution Rule (CSAPR) is another major new rule that disproportionately impacts our state. Although Texas has already reduced sulfur dioxide (SO<sub>2</sub>) emissions by 33% since 2000, the state alone is tasked with a quarter of total mandated SO<sub>2</sub> reductions.

The Electric Reliability Council of Texas (ERCOT), the operator of the electric grid carrying 85% of the state’s electric load, concluded that “had CSAPR been in effect [during the record hot temperatures in the summer of 2011] Texans would have experienced rolling outages and the risk of massive load curtailment.” Although vacated by the Fifth Circuit Court of Appeals, most of CSAPR was ultimately upheld by the United States Supreme Court in 2014.

### Mercury Rule: The Utility MACT

In 2015, the Supreme Court rejected the EPA’s rule to control mercury emissions from power plants in a rare decision that invalidated the EPA’s method of estimating costs and benefits. Even before the Court’s ruling, this single rule had imposed multi-billion dollar expenditures, forced closure of power plants, and led to the bankruptcy of major coal companies. Although the rule carried compliance costs that the EPA estimated at \$10.9 billion per year, only 0.004% of the claimed benefits derives from direct reductions of mercury. The remainder, as in the new ozone standard, derive from the EPA’s spurious use of co-benefits from reduced particulate matter.

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**Visibility: Regional Haze Program**

When the U.S. Congress created the Regional Haze program, in the Clean Air Act amendments of 1977, it was clear that Congress intended for the states to take charge of the program. Because regional haze is an aesthetic concern rather than a public health risk, Congress authorized states to decide how to prioritize the visual benefits of reducing regional haze.

The EPA's new rules have stripped the states of this right. Since 2009, the EPA began rejecting state implementation plans for regional haze and imposing FIPs costing at least \$5 billion. FIPs are the most hostile action that the EPA can take against a state, and in practice are seen as total denial of state authority. The George H.W. Bush, Bill Clinton, and George W. Bush administrations issued a combined total of five Clean Air Act FIPs versus the 54 of Obama's EPA.

Under the federal regional haze program, the EPA uses units known as "deciviews" to quantify visibility improvement. A deciview value of zero symbolizes the clearest possible visibility, with increasing value representing increasing amounts of haze. Peer-reviewed research has shown that it takes a reduction of five to ten deciviews for the average person to perceive any improvement in visibility. In December of 2015, the EPA imposed on Texas a \$2 billion federal plan to attain a maximum visibility improvement of a mere 0.5 deciviews. In a 2014 report, ERCOT concluded that the Regional Haze program's CO<sub>2</sub> emission limits could lead to closure of 3,300 to 8,700 megawatts of coal generation in Texas.

**The Facts**

- The EPA projects direct annual compliance cost of \$7.2 billion for the CPP. This estimate excludes all indirect costs such as back-up power for renewables and massive new transmission infrastructure.
- All six of the criteria pollutants regulated under the Clean Air Act have fallen substantially in recent decades. Ambient levels of carbon monoxide fell 82% between 1980 and 2010. SO<sub>2</sub> fell 76% and NO<sub>2</sub> fell 52%.
- Over 60 planned industrial projects in Texas have been waiting more than a year for GHG permits from the EPA.
- A similar power plan to the CPP to cut carbon in Germany has driven retail electric rates to a level three times higher than the average U.S. rate.

**Recommendations**

- Texas should continue to develop State Implementation Plans for genuine pollutants on the basis of law, rigorous science, cost-effectiveness, and local circumstances.
- Texas should continue to legally challenge and lawfully resist infeasible EPA air quality standards unjustified by science or law.
- Congress should pass a law clarifying that states, not the EPA, are the foremost decision makers in implementing the Regional Haze program.

**Resources**

[\*The Cross-State Air Pollution Rule: What American Lung Association v. EME Homer City Generation Means for Texas\*](#) by Josiah Neeley, Texas Public Policy Foundation (Dec. 2013).

[\*EPA's Pretense of Science: Regulating Phantom Risks\*](#) by Kathleen Hartnett White, Texas Public Policy Foundation (May 2012).

[\*EPA's Approaching Regulatory Avalanche\*](#) by Kathleen Hartnett White, Texas Public Policy Foundation (Feb. 2012).

[\*Texas vs. Environmental Protection Agency\*](#) by Josiah Neeley, Texas Public Policy Foundation (April 2012).

[\*Testimony on "EPA's Regional Haze Program" before the Subcommittee on Environment Committee on Science, Space, & Technology\*](#) by William Yeatman, Competitive Enterprise Institute (March 2016).

