

2019-20

LEGISLATOR'S GUIDE to the Issues

The EPA

The Issue

From 2009-17, the Environmental Protection Agency (EPA) carried out “a regulatory spree unprecedented in U.S. history”—in scope, stringency, and costs, and with highly questionable justification. The costs of EPA rules dwarf the costs of all other executive branch agencies by a huge margin, accounting for \$23 billion of \$26 billion total regulatory costs in 2010. While the national economy has been impaired, Texas’ prominent industrial and energy sectors were disproportionately affected.

As a result of the national election in 2017, major reforms of EPA’s regulatory rampage is well underway. The EPA has begun at least 50 “deregulatory” actions and has announced that it is refocusing on original “core functions” under the Clean Air Act to protect human health and welfare to include economic growth.

Shared policy objectives within the administration and congressional leadership should present an opportunity for Texas to restore the state authority delegated to the states in the Clean Air Act.

Ozone National Ambient Air Quality Standards (NAAQS)

The EPA’s NAAQS threaten economic growth at a time when low energy prices create unprecedented opportunity.

In February 2018, the U.S. Court of Appeals for the D.C. Circuit struck down nine elements of the EPA’s 2015 rule governing state implementation of NAAQS for ozone set in 2008. Essentially, the court found that EPA had unlawfully authorized areas still in nonattainment of the 1997 NAAQS standard to ignore deadlines.

The decision will likely impact the Trump administration’s intention to promulgate an implementation rule for the 70 parts per billion (ppb) 2015 ozone standard.

In Texas, as of March 2018, the EPA designated 24 counties as nonattainment areas under this new standard.

As adopted, the EPA dismisses concerns about the 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 already regulated under its own NAAQS. EPA’s 70 ppb ozone NAAQS is now challenged in federal court.

Cross-State Air Pollution Rule

Also adopted by the EPA, the Cross-State Air Pollution Rule (CSAPR) is another rule that disproportionately impacts our state. Although Texas has already reduced sulfur dioxide (SO₂) emissions by 33% since 2000, the state alone is tasked with a quarter of total mandated SO₂ 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 9th U.S. Circuit Court of Appeals, most

of CSAPR was upheld by the U. S. Supreme Court in 2014. In late 2016, EPA modeling showed that Texas no longer significantly contributed to downwind nonattainment. In 2016, EPA issued new CSAPR regulations that went into effect in May 2017.

Mercury Rule: The Utility MACT (Maximum Achievable Control Technology)

In 2015, the Supreme Court remanded the EPA’s rule to control mercury emissions from power plants, rejecting the agency’s method of estimating costs and benefits. 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 reduction of mercury. The remainder, as in the new ozone standard, derive from the EPA’s spurious use of co-benefits from reduced particulate matter.

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.

Recent EPA rules have stripped the states of this right. Since 2009, the EPA began rejecting state implementation plans for regional haze and instead imposing federal implementation plans (FIPs). FIPs are the most hostile action that the EPA can take against a state, and in practice are seen as denial of state authority.

In December 2015, the EPA imposed on Texas a \$2 billion federal plan to attain a maximum visibility improvement of a mere 0.5 deciviews. 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 a 2014 report, ERCOT concluded that the Regional Haze Program’s CO₂ emission limits could lead to closure of 3,300 to 8,700 megawatts of coal generation in Texas.

Under the new administration, the Regional Haze Program could receive renewed attention and recognition of state decisions. In October 2017, EPA published a final rule allowing the Lone Star State to implement a flexible, market-based, intra-state emission-allowance trading program for electricity generators to meet requirements at a lower cost.

The Facts

- 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. SO₂ fell 76% and NO₂ fell 52%.
- The previous administration imposed more than 10 times the number of FIPs of the three administrations before it combined. Under the new administration the EPA has on average replaced every one FIP with a State Implementation Plan (SIP) every month.

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- In April 2018, President Trump signed a memorandum for EPA Administrator Pruitt, directing the agency to provide efficient and cost-effective implementation NAAQS air quality standards and Regional Haze Programs of the Clean Air Act.
- Over 60 planned industrial projects in Texas have been waiting more than a year for GHG permits from the EPA.

Recommendations

- Texas should work with the leadership at EPA to reclaim state authority under the Clean Air Act 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).

[“Cross-State Air Pollution Rule \(CSAPR\),”](#) Texas Commission on Environmental Quality (Accessed April 17, 2018).

[*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).

[“Recent Developments in Regional Haze Policy: EPA and Environmental Groups Battle Over a New Program for Texas”](#) by Norman W. Fichthorn, Nickel Report (March 13, 2018).

[*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 23, 2016).

