

EPA rulings could force pollution cuts in Texas

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Two federal notices arriving soon will read like dense legalese. Stripped of jargon, they'll actually deliver powerful environmental messages for Texas.

One, expected to be announced as early as today, will say that nearly every Texan breathes dirty air, far more of the population than previously believed. That will force Texas officials to find more ways to cut pollution.

Another will say that Texas officials have let too many toxic chemicals fill the air through a permit system that ducked public scrutiny and skirted federal law. That conclusion is forcing changes in how the state regulates its biggest industries.

For decades, national environmental activism has crashed into Texas' go-slow policies. Now the [Obama](#) administration wants much more action from Texas on clean air.

To some, it's an unprecedented and unfair use of federal muscle.

"It's just an approach that is – I'm sorry to use the word, but hostile," said Kathleen Hartnett White. She's a former chairwoman of the Texas Commission on Environmental Quality under Gov. [Rick Perry](#).

"This is far bolder than anyone can remember on any issue at any time," said White, now a fellow at the conservative Texas Public Policy Foundation, an Austin think tank.

White said she suspects that predominantly [Republican](#) Texas might be a [White House](#) target. "Call it paranoia if you'd like to – Texas paranoia," she said.

To others, the [EPA](#) is just making up for having sleepwalked through the President [George W. Bush](#) years.

"I'm not hostile toward Texas," said Al Armendariz, President Barack Obama's appointee as EPA regional administrator. "All my family lives in Texas. I came from a very industrial area of El Paso."

As an environmental engineering professor at Southern Methodist University before joining the EPA last month, Armendariz called Texas regulators soft on polluters and urged stronger EPA oversight.

Now he's the chief federal environmental enforcer for Texas and four adjacent states, the first scientist with that job.

"My goal in the short term," he said, "is to try to make sure that Texas is running a program that meets minimum [Clean Air Act](#) requirements."

Texas' stake

Texas has a particular stake in the new administration's first-year flurry. The state burns more coal and emits more carbon dioxide than any other. It supplies the nation with oil, gas and chemicals. And it has millions of people breathing dirty air.

Obama's EPA is tightening limits on nitrogen dioxide, sulfur dioxide and ozone, or smog; targeting toxic emissions; and moving toward controlling greenhouse gases.

Conservative scholar H. Sterling Burnett sees a return to the federal environmental dictates of the early 1970s.

That era, with Republicans [Richard Nixon](#) and then [Gerald Ford](#) in the White House, produced the EPA and most major U.S. environmental laws. It was, Burnett said, a time of mistrust of states.

"The perception was that the states were too slow to act," said Burnett, a fellow with the Dallas-based National Center for Policy Analysis. "It's the belief that Washington knows best. They know what the problems are, and the rubes out in Middle America don't."

Environmentalists counter that federal laws are meant to guarantee at least minimal protection. The George W. Bush administration didn't do that, said Ken Kramer, longtime executive director of the Sierra Club's Texas chapter.

"What we're seeing now is basically an administration that has come into office that is dedicated to enforcing the federal Clean Air Act," Kramer said. "It's about time."

Smog limit

The first of the EPA announcements with a direct effect on Texas could come today. Administrator Lisa M. Jackson is expected to announce a national ozone limit of 70 parts per billion or lower, significantly tighter than the Bush EPA's 2008 limit, 75 ppb.

If she does, Austin, San Antonio, Longview-Marshall and perhaps other areas could be declared ozone violators for the first time.

Dallas-Fort Worth, Houston-Galveston-Brazoria and Beaumont-Port Arthur violate the existing limit and would also violate the new one.

Ozone forms from chemicals in the air. It damages lungs and makes breathing difficult, especially for children, the elderly and the ill. High levels can even harm athletes.

North Texas' local options might be limited. Vehicles are the region's biggest ozone source, but only the federal government can order cleaner cars.

And on some summer days, air moving into the region already has about 60 ppb of ozone from distant industries and natural sources.

Those industries, especially Texas' coal-burning power plants, might be an obvious target. Burning coal produces nitrogen oxides, which make ozone.

"What are they going to go after?" asked Neil Carman, clean-air director for the Sierra Club's Texas chapter. "There's not much in terms of cars that you can do. They're going to go after the coal plants."

Power plants in Texas' eastern half, where smog is worst, cut nitrogen oxides by 50 to 80 percent under state orders in the 1990s. More might be required.

"Our industry and others have made tremendous reductions in their emissions dealing with ozone standards," said John W. Fainter Jr., president and CEO of the Association of Electric Companies of Texas. "And I'm sure that we'll be called upon to do some more."

A dozen new coal plants are in the works in Texas. State regulators and the Legislature have rejected calls for a ban on new ones.

The latest new permit was granted Dec. 9. The Texas Commission on Environmental Quality approved a third unit at NRG's plant in Limestone County, about 100 miles south-southeast, and often upwind, of Dallas.

Flexible permits

Another coming EPA ruling is specific to Texas. The agency is expected to make a final determination that parts of the state's industrial permit system violate the federal Clean Air Act.

About 100 Texas industrial plants, including a dozen in North Texas, have flexible state permits that cap pollutants for each plant as a whole without regulating each emissions source at the facility.

White, who led the TCEQ from 2001 to 2007, said flexible permits weren't an industry giveaway. They let industries run their plants while still meeting clean-air goals, she said.

"It wasn't just that 'Oh, it will cost too much and business and industry will be mad,'" White said. "We actually think we can have a win-win."

The EPA said the system denies the public a chance to review a plant's operation – for example, how a plant is releasing toxic chemicals into a neighborhood. The EPA also said flexible permits have let some companies emit more and avoid new controls.

Armendariz, the EPA regional administrator, said constructive talks with Texas have left him optimistic that the EPA won't have to use its ultimate weapon: stripping Texas of its authority to issue the biggest and most important industrial permits.

He added, however, that federal law comes first.

"There's no hidden agenda here to remove [state control of] these programs," he said. "The environmental programs in the state of Texas should be run by the TCEQ and managed by the state. But they have to meet minimum federal requirements."