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The EPA's Anti-Prosperity Agenda

Obama's great job-killer takes on America's great job-creator.

On Labor Day, President Obama pledged to “keep fighting every single day, every single hour, every single minute to turn this economy around and put people back to work.” If job creation is such an overarching priority, the president might take a closer look at the recent barrage of job-suffocating actions from his Environmental Protection Agency (EPA). The president might also look at Texas, where job creation and environmental improvement have occurred simultaneously and at a pace far above the national average.

Texas has been the engine of the current economic recovery, creating more than half of net job growth across the country in the last twelve months. From 2000 to 2009, while Texas created more jobs than all the other states combined, it simultaneously lowered its ozone levels 22 percent; the nation as a whole lowered its ozone level only 8 percent. Houston, which had long been vying with Los Angeles for the title of the most ozone-polluted city in the country, achieved the federally required ozone standard last year. In fact, all Texas urban regions met the federal standard except Dallas/Fort Worth, which exceeded the standard by only one part per billion. Stringent but targeted controls, cutting-edge science, innovative technology, billions of dollars invested by the state and private industry, and the volunteer efforts of thousands of Texans drove the improvements in air quality. The state designed and implemented the undertaking largely in cooperation with EPA.

Since January 2009, however, EPA has behaved more as a “fearsome master” than as a partner with states and businesses. Giving short shrift to the restraints the Constitution places on federal action, EPA has begun to serially invalidate the air-quality rules through which Texas implements the federal Clean Air Act (CAA). In July 2010, EPA disapproved the 16-year-old Texas Flexible Permitting Program, under which more than 120 of the state's major industries, including most refineries, currently operate. The program imposes tight facility-wide emission caps while providing plant operators some operational flexibility.

EPA considers the program insufficient, and thus believes permit holders to be in violation of the CAA and potentially subject to enforcement. This legal limbo freezes business decisions and obstructs job creation. Affected businesses include Motiva, whose planned \$3.5 billion oil refinery would create thousands of new jobs. “Regulatory uncertainty is the enemy of economic development,” commented an executive for Valero Energy Corporation. “If you can't estimate the value of the project, you don't make the investment.”

Over most of its 40-year history, EPA has strengthened environmental standards in a relatively incremental manner, allowing some measure of balance between environmental and economic needs. Using this strategy, the agency has effected much genuine environmental improvement. But for today's EPA, no economic impact is too onerous. The agency is issuing edicts of unprecedented scope at breakneck speed, and with little justification and few identified benefits.

New environmental rules threaten entire sectors of the economy, such as coal-fired power plants, which now provide 50 percent of the electricity generated in the U.S. If, as President Obama has repeatedly declared, the goal is truly “to end the era of fossil fuels in our generation” — although no viable alternatives exist — EPA is blazing the path.

Consider EPA's new emission standards for industrial boilers, just one of more than 25 rules promulgated under the CAA in the last 18 months. Unions for Jobs and the Environment, a coalition of major labor unions, formed to oppose this and other new EPA mandates. In comments on the boiler rule, the United Steelworkers noted: “Tens of thousands of these jobs will be imperiled. In addition many more tens of thousands of jobs in the supply chains and in the communities where these plants are located also will be at risk.”

The sheer number of recent EPA actions is staggering. EPA's boldest moves, though, have been to revise federal ozone standards and implement new greenhouse-gas regulations. These rules will impact industries and small businesses across the country on a scale that could drive the lion's share of the U.S. manufacturing base to foreign countries. With its many energy industries and energy-intensive manufacturing industries, Texas will be disproportionately harmed.

According to the Congressional Research Service, the new ozone standard will likely designate 650 of the nation's 3,000 counties, including sparsely populated Brewster County in the remote Big Bend area of Texas, as “non-attainment areas” — which EPA defines as “areas of the country where air pollution levels persistently exceed the national ambient air quality standards.” Texas could go from two non-attainment areas to ten. EPA estimates that the new ozone standard could cost as much as \$90 billion, which would make it the most expensive EPA rule ever.

But EPA's finding that CO₂ and other greenhouse gases are “pollutants” wins top honors for reckless bureaucratic overreach. Under the CAA, businesses that emit pollutants have to — among other requirements — obtain what are called Title V permits. By EPA's own estimate, regulating CO₂ as a pollutant would increase the number of required Title V operating permits from 12,000 to more than 6 million. EPA estimates a permitting cost for the private sector at \$49 billion over three years, on top of the \$21 billion per year for the agencies that issue the permits.

To avoid this disaster, EPA simply changed federal law without troubling Congress about it. Recognizing that the full legal impact of actually treating CO₂ as a pollutant under existing law would be “absurd” and “infeasible,” and would “adversely affect national economic development,” EPA simply rewrote the law to narrow the scope of impact to larger facilities. The law mandates regulation of sources that emit 100 tons or more of pollutants. Instead of drawing the reasonable conclusion that using the CAA to regulate CO₂ as a pollutant is absurd, EPA simply raised the statutory 100-ton threshold to 100,000 tons.

Executive-branch agencies are subservient to Congress and can't simply rewrite their enabling statutes. For this reason, the “Tailoring Rule” is

vulnerable to legal challenge. EPA nevertheless declared that states must begin regulating CO₂ and other greenhouse gases according to the “Tailoring Rule” by Jan. 2, 2011. If states are unwilling or legally unable to meet this deadline, EPA will assert a Federal Implementation Plan over the state. This fisted hand is not the EPA of decades past.

Through at least eight lawsuits against EPA, Texas has refused to acquiesce. As the Texas attorney general recently wrote to EPA, “Texas has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gases.” To avoid “tangible injury” and “irreparable harm” to the Texas economy, including 167 major construction projects that are currently planned, Texas recently asked for an emergency stay of the Tailoring Rule, arguing that the rule violates explicit provisions of the CAA which recognize “constitutionally protected states’ sovereign interests.”

The cost of compliance with EPA regulations already impedes economic growth and thus job creation. A study by the Small Business Administration concluded that in 2008, environmental compliance cost the U.S. \$281 billion. Small businesses, which provide half of all private-sector jobs, bear the largest regulatory burden, at a cost of \$4,101 per employee. EPA’s new rules could vastly increase an already crippling cost.

Texas has shown how environmental improvement and economic growth can coexist. Prosperity is a prerequisite for environmental quality — an endeavor so expensive that it remains a wild luxury for most of the world. EPA’s radical new agenda promises little environmental gain for all the crippling uncertainty it is already inflicting on our economy.

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