Lugo: Proposed EPA rules go too far

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By Karen Lugo - Special to the American-Statesman

The U.S. Environmental Protection Agency has admitted that its aggressive regulation scheme for carbon dioxide “would have been unrecognizable to the Congress that designed the governing framework” and the agency has acknowledged that its interpretation of the Clean Air Act is prohibited in a literal reading of the

law.

How did the EPA stray so far from the constitutional requirement that it is elected and accountable legislators that are charged with formulating regulations? Agencies, as intended, only have delegated authority to implement those regulations.

In the case of the administration's Clean Power Plan, the agency has gone rogue. Not only will the sweeping and costly cap-and-trade program not reduce overall carbon emissions – even though the U.S. will be forced to drop 30 percent of its emissions in 15 years, the global rate is expected to increase six times over that – early analysis shows that California's cap-and-trade program amounts to a state consumer tax of more than a billion dollars a year. Twenty-nine Texas congressional representatives from both parties have already written the EPA to raise concern over increased electricity bills, energy reliability and anticipated job losses.

Objections notwithstanding, the EPA is forging ahead, even though the plan would preclude new coal-fired plants, impose devastating burdens on existing coal-fired electric plants, and drastically increase electric rates.

The EPA's regulatory stretch in this case evades a conflict between two Clean Air Act code sections by effectively writing new law. Section 112 of the Clean Air Act has already been used by the EPA to comprehensively regulate coal-fired power plants but now the EPA is using an amendment "drafting error" from 1990 to also regulate plants under Section 111(d).

Clean Power is just the current manifestation of EPA bootstrapping. In what has become a series of "if we can do this, then why not try that?" exercises, the EPA is simply producing a line of "regulations by implication."

Until now, the EPA worked with states to devise protocols that regulated "inside the fence" of a plant. But under the Clean Power Plan, states will be required as adjuncts of the EPA to regulate "outside the fence" in a master scheme of energy swaps. If states refuse or dally, the EPA will impose its own plan.

Oklahoma's Attorney General Pruitt has called the Plan unlawful and in pragmatic fashion, offered his own alternative state-focused proposal to restore "inside the fence" controls.

But it is not primarily the responsibility of state attorneys general to challenge this abuse of power. It is a job for Congress. The Clean Air Act was written by Congress; the amendment confusion occurred in Congress; and, Congress is late in addressing questions raised by the Massachusetts v. EPA Supreme Court ruling as to whether the Clean Air Act even provides for EPA regulation of stationary source carbon emissions.

States should not wait for this plan to become law before suing to correct errant agency lawmaking.

The responsibility for correcting unprecedented and egregious agency overreach falls squarely on Congress's shoulders. But it is the duty of states to place it there.

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