

Texas Public Policy Foundation

Keeping Texas Competitive

A Legislator's Guide to the Issues 2013-2014



EPA's Impact on Texas

The Issue

Over the last few years, the Environmental Protection Agency (EPA) has embarked on what The Wall Street Journal calls “a regulatory spree unprecedented in human history.” EPA rules scheduled to become effective in the next three years could cumulatively cost more than \$1 trillion and destroy hundreds of thousands of jobs. And while these rules pose a danger to the national economy, they would have a disproportionately severe impact on Texas given its high concentration of energy-intensive businesses and the new oil and gas boom currently underway in many parts of the state.

Proposed regulations such as the Cross-State Air Pollution Rule, the Mercury Rule, greenhouse gas limits for power plants, and denial of the Texas flex permitting program, add up to a potentially devastating effect on Texas. Adopted or proposed regulations have already delayed development of so much new electric capacity that Texas' electric reliability is questionable under peak demand. EPA's new mandates are unachievable or impracticable for businesses dependent on abundant and affordable coal, natural gas and petroleum.

Perhaps most damaging in the near term was the EPA's Cross-State Air Pollution Rule (CSAPR). EPA included Texas in this regulation at the last hour, concluding that Texas emissions affected one air quality monitor in Illinois. That monitor, however, is in attainment of the relevant federal standard and is projected to maintain the standard under existing regulation. Texas attains the federal standard for the emission in question. In August 2012, this rule was invalidated by the federal courts.

The impact of CSAPR on Texas' economy and electrical reliability would have been severe. The Electric Reliability Council of Texas concluded that “had the EPA rules been in effect [during the summer of 2011] Texans would have experienced rolling outages and the risk of massive load curtailment.” In response to the rule, Luminant, the largest generator in Texas, announced it would idle 1,200 MW of generating capacity, closing three Texas lignite coal mines and laying-off 500 employees. A new version of this rule by EPA is expected to be forthcoming.

The EPA's new fine particulate matter ozone standards are also a concern. Texas has successfully reduced ozone in major urban areas but EPA continually strengthens the standard on the basis of increasingly questionable science. EPA has begun implementation of a standard of 75 ppb, but EPA is required by law to review and possibly change that standard in 2013. After huge reduction of ozone precursor emissions from stationary sources to meet the 85 ppb standard, the majority of the remaining pollutants in Texas are from mobile sources, over which states have no regulatory authority.

The Administration's rejection of the Keystone XL Pipeline jeopardizes burgeoning oil and gas production. This pipeline would relieve the current bottlenecks in North Dakota and from terminals at Cushing, Oklahoma, bringing oil to Texas refineries that have already invested billions to reconfigure their facilities to process Canadian oil transported by the planned Keystone pipeline.

Since 2009, EPA interference with Texas' state environmental programs has also increased. In July 2010, EPA rejected Texas' Flexible Permitting Program, an innovative regulatory program that has achieved major gains in air quality faster and at less cost than traditional permitting programs. The majority of large power plants and industrial sources in Texas have operated under Flex Permits. In August 2012, the Fifth Circuit Court of Appeals invalidated EPA's disapproval and remanded the case to EPA for further action.

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In 2010, EPA took the exceptional step of imposing a Federal Implementation Plan (FIP) on Texas to force regulation of greenhouse gas emissions. Under the Clean Air Act, states develop State Implementation Plans (SIPs) to implement federal air quality standards. EPA must approve the SIPs on pain of sanctions to the states. In late December 2009, EPA issued an automatically effective FIP on Texas, because the state considered EPA's greenhouse gas regulations unlawful. Promulgated as an "Interim Final Rule," without notice and comment as required by the CAA, this automatic FIP is the first in EPA history.

The Facts

- In modeling impacts of CSAPR, EPA assumed the state's 10,000 MW of installed wind capacity would translate to 10,000 MW of actual electric generation. By contrast, ERCOT derates wind to 8.7% of capacity, because Texas wind is weak during summer's peak demand.
- In 2009 and 2010, the Houston region attained the federal standard of 85 ppb, though the intense summer heat in 2011 pushed the city slightly back over the attainment level. The Dallas-Fort Worth area reduced ozone levels from 96 ppb in 2006 to 86 ppb in 2009, a remarkable improvement.

Recommendation

- Texas must continue to exercise its state authority—as recognized in the CAA—and challenge EPA actions when they exceed federal laws' authority and impede effective and efficient state action.

Resources

EPA's Approaching Regulatory Avalanche by Kathleen White, Texas Public Policy Foundation (Feb. 2012).

Texas vs. Environmental Protection Agency by Josiah Neeley, Texas Public Policy Foundation (Apr. 2012).

EPA Process vs. Texas Results by Kathleen White, Texas Public Policy Foundation (Sept. 2010).

"Impacts of the Cross-State Air Pollution Rule on the ERCOT System" by Electric Reliability Council of Texas (Sept. 2011).

