



EPA's Impact on Texas



The Issue

Over the last few years, the Environmental Protection Agency has embarked on what *The Wall Street Journal* calls “a regulatory spree unprecedented in human history.” And while these rules pose a danger to the overall American economy, Texas—as the energy powerhouse of the country—sits in the crosshairs of EPA’s regulatory initiative.

Among these rules, EPA’s ever-tightening National Ambient Air Quality Standards (NAAQS) for ozone pose a severe threat to Texas’ continued economic growth. On March 27, 2008, EPA lowered the primary and secondary eight-hour ozone NAAQS from 85 parts per billion (ppb) to 75 ppb. In 2012, EPA designated two areas and 18 Texas counties as being in nonattainment of this new standard (Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise). Counties in the Dallas area are listed as moderate nonattainment, while the Houston area counties are designated as being in marginal nonattainment.

After decades of effective reduction of ozone precursor emission state regulation, now only a fraction of the remaining emissions come from industrial sources. Mobile source emissions (cars, trucks, construction equipment) now are the largest sources of remaining ozone precursors. Further regulation of mobile sources is federally pre-empted by federal law. Although the states’ hands are tied, federal law still requires the state to attain the standard on pain of serious sanctions.

A recent EPA policy assessment indicates that the agency is considering lowering the ozone NAAQS again to between 60 and 70 ppb. Under an ozone standard as low as 60-70 ppb, as many as 650 U.S. counties would be in nonattainment, with as many as 12 nonattainment areas in Texas.

Also a matter of concern is the Cross-State Air Pollution Rule (CSAPR). Texas alone accounts for a quarter of all mandated reductions of SO₂ emissions, even though the state has already reduced emissions by 33% since 2000.

ERCOT, the operator of Texas’ electric grid, which carries 85% of the state’s electric load, concluded that “had the EPA rules 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 Fifth Circuit Court of Appeals, CSAPR was ultimately upheld by United States Supreme Court in the spring of 2014.

EPA’s Utility MACT Rule, also known as the “Mercury Rule,” would impose multi-billion dollar expenditures for many Texas power plants effective in 2016. This rule could lead to closure of coal-fired plants and pose significant challenges to Texas’ electrical reliability. The Mercury Rule is the most expensive rule in EPA history, with costs estimated by EPA itself at \$10.9 billion per year. Despite the name, only 0.004% of the claimed benefits of the rule come from reductions in mercury, with the rest based on dubious calculations of harm caused by fine particulates.

Texas’ and over 20 other state’s challenge to the Mercury Rule was denied by the D.C. Court of Appeals. Appeal to the U.S. Supreme Court is expected.

The Facts

- EPA's Cross-State Rule requires Texas to reduce its SO₂ emissions by nearly half, far beyond its own contribution to inter-state pollution.
- 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%.
- Over 60 planned industrial projects in Texas have been waiting more than a year for GHG permits from the EPA.

Recommendations

- Texas must continue to develop State Implementation Plans and permitting mechanisms based on rigorous science and local circumstances.
- Texas should continue to lawfully resist EPA air quality standards unjustified by science or law.

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).

EPA's Pretense of Science: Regulating Phantom Risks by Kathleen White, Texas Public Policy Foundation (May 2012).

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).

