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Texas May Refuse to Follow Climate Rules

by [Neena Satija](#) | Aug. 7, 2014 | [21 Comments](#)



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photo by: Tom Pennington

Steam rises from the stacks at the Martin Lake coal-fired power plant in Tatum, Texas.

from power plants.

“I’m concerned that if this is not contested, if we don’t dispute this, if we don’t win, the implications ... are only the camel’s nose under the tent,” Bryan Shaw, chairman of the Texas Commission on Environmental Quality, said at an event in the Texas Capitol sponsored by the Texas Public Policy Foundation.

The last time Texas refused to follow federal environmental rules, there were [unintended consequences](#) that caused a slow-down of the permitting process that prompted the energy industry to cry foul after losing millions of dollars.

About 150 people attended the event Thursday to hear Shaw and two other panelists speak about the proposal from the Obama administration, which [could require](#) Texas to reduce its carbon emissions from power plants by close to 200 billion pounds in the next two decades.

The general consensus among both the panelists and the audience was that the state should sue the Environmental

Texas’ top environmental regulator suggested Thursday that the state may ignore a proposed directive from the Obama administration in June to [reduce carbon emissions](#)

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Protection Agency over the rules if they are finalized, and should refuse to follow them. Karen Lugo, director of TPPF's Center for Tenth Amendment Action, said she is working with state lawmakers on legislation affirming that Texas should ignore the rules unless Congress acts on climate change legislation, which it has never done.

The last time Texas regulators refused to implement federal environmental rules, lawmakers ended up reversing the decision. In 2010, the Obama administration started requiring companies that wanted to build new industrial plants to get "greenhouse gas permits" before beginning construction. When the TCEQ refused, the EPA had to take over, [causing delays](#) for some companies that lasted up to two years.

The result was [legislation](#) — supported by Koch Industries and the Texas Conservative Coalition, among others — that explicitly gave the TCEQ authority to regulate greenhouse gas emissions so that companies could get their permits quicker.

Asked whether Texas could avoid the same result this time around, Shaw acknowledged that the delays did cause some "economic development costs." But he said the costs would have been greater had Texas acquiesced to what state regulators say is federal overreach.

"I think those costs were smaller ... than not making a principled stand," Shaw said.

If Texas ignored the most recent proposed rules, the state would simply not develop a plan to reduce carbon emissions from power plants, prompting the EPA to do so instead. It's unclear how the federal agency could force Texas to follow the plan, though.

Lugo said that if enough states resist the rules, the federal government wouldn't have the resources to develop plans for all of them. "A significant number of states must rise to this challenge," she said.

The other strategy of resistance — suing the federal government — also has potential pitfalls. Texas has not won any of its lawsuits against EPA climate regulations, which [have cost the state](#) more than \$350,000. In June, the U.S. Supreme Court [largely struck down](#) Texas' challenge to the 2010 greenhouse gas permit requirements.

Though that decision was mostly a loss for Texas, some

Republicans have pointed to the fact that Justice Antonin Scalia [suggested](#) that the EPA could be getting close to overstepping its authority. Both Shaw and Lugo said that while Texas should again sue over the Clean Power Plan, it cannot count on being successful. Other states and lawmakers need to get involved to force the federal government to back down, they said.

“Lawsuit action can help to mobilize public opinion and focus things,” said John Hays, an adjunct professor of energy law at the University of Texas at Austin, who was the third panelist. “But I think it’s fair to ask, what else might be done?”

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