

## **A Legislative Fix for Texas Polluters?**

*By Thomas O. McGarity*

Last week, the *Chronicle* reported that the Texas Commission on Environmental Quality (TCEQ) and the U.S. Environmental Protection Agency (EPA) briefed members of the Texas congressional delegation on what they regard as a needed “legislative fix” to the Clean Air Act. Unfortunately, while what they have in mind might fix a political problem or a profit margin problem, it will by no means fix a very real environmental problem faced by residents of the Beaumont/Port Arthur and Dallas/Fort Worth metropolitan areas.

Both areas failed to meet a 1996 deadline established by the Clean Air Act for attaining the air quality standard for ozone, the indicator for urban smog. The photochemical oxidants that make up smog can cause many adverse health effects and exacerbate the difficulties of people suffering from asthma and bronchitis. According to the American Lung Association, more than 200,000 children and adults suffer from asthma and more than 100,000 suffer from chronic bronchitis in the two affected areas. Nevertheless, EPA granted both areas an extension until 2007.

Last month, the Fifth Circuit Court of Appeals overturned EPA’s extension on the ground that it violated the plain language of the Clean Air Act. That law prescribes in great detail the consequences for areas that miss ozone deadlines.

In particular, the law requires that delinquent areas be “bumped up” to the next level of regulatory stringency. From there, the state is required to come up with additional controls on polluting companies sufficient to ensure that the area’s air is clean enough to meet the standard within three years. One obvious effect of the process is that it becomes very difficult to allow the construction of new sources of significant pollution. In the case of Beaumont/Port Arthur and Dallas/Fort Worth, it also meant that existing power plants in the area needed to control one of the two primary smog-forming pollutants, oxides of nitrogen, much more effectively.

In granting an extension, EPA waived clear statutory requirements for more than a decade into the future. The court told EPA that it had exceeded its authority, and it insisted that the TCEQ live up to the law.

The TCEQ argued to the court that Beaumont/Port Arthur and Dallas/Fort Worth failed to comply with the standards because the wind blows pollution up from Houston. Even assuming the accuracy of this highly contestable assertion, there is much that polluters in both of these “downwind” metropolitan areas can do to reduce ozone pollution to acceptable levels besides blaming Houston. More important, if Houston is contributing to poor air quality in other Texas cities, TCEQ is empowered to do something about it — it can require Houston polluters to clean up their operations. Instead, TCEQ tried to do an end-run around the law by giving polluters in Beaumont and Dallas a time-out.

Having failed in court, TCEQ, EPA and the lobbyists for the polluters turn now to Congress, hoping it will rewrite the Clean Air Act's provisions — perhaps by inserting a rider into an appropriations bill or by some other low-visibility legislative maneuver.

A stealth rewrite of the Clean Air Act's "bump-up" provision would be a cowardly non-solution. The provision is one of the few tools that Congress provided to make states accountable for accomplishing what they promise to do in their state implementation plans. If Congress quietly eliminates that requirement for Texas, it will eventually have to remove it for all of the states. And without rigorous implementation of the law, air pollution will only get worse.

The winners in such a scenario would be polluters and politicians—the former because they can avoid the cost of controlling pollution, and the latter because some of them, including the President of the United States, may be spared the discomfort of having to explain why they let polluters off the hook in the 1990s. The losers would be the millions of Texans who continue to breathe polluted air.

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