

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
FULL COMMITTEE**

HEARING CHARTER

Examining the Science of EPA Overreach: A Case Study in Texas

Wednesday, February 5th, 2014

10:00 a.m. – 12:00 p.m.

2318 Rayburn House Office Building

PURPOSE

On Wednesday, February 5th at 10:00 a.m. in Room 2318 of the Rayburn House Office Building, the Committee on Science, Space and Technology will hold a hearing entitled *Examining the Science of EPA Overreach: A Case Study in Texas*. The purpose of this hearing is to focus on the scientific justification and cumulative impacts of regulations, policies and practices promulgated by the Environmental Protection Agency (EPA) and their effects on state sovereignty.

WITNESS LIST

- **The Honorable Bryan Shaw**, Chairman, Texas Commission on Environmental Quality
- **The Honorable David Porter**, Commissioner, Railroad Commission of Texas
- **Mr. Kenneth Dierschke**, President, Texas Farm Bureau
- **Dr. Elena Craft**, Health Scientist, Environmental Defense Fund
- **Dr. Bernard Weinstein**, Associate Director of the Maguire Energy Institute, Cox School of Business, Southern Methodist University

BACKGROUND

When the EPA was created in 1970, an overarching goal was to ensure that the federal government and states work together to efficiently promote environmental stewardship. Given the diversity of our environment, unique regional challenges, and role reserved for the states in regulating business and property, successful environmental safeguards require cooperative federalism.

The principle of cooperative federalism underlies the major environmental regulatory framework of the last four decades. Environmental statutes that incorporate this principle include the Clean Air Act (CAA),¹ the Federal Water Pollution Control Act or Clean Water Act (CWA),² the Resource Conservation and Recovery Act of 1976,³ the Noise Control Act,⁴ the

¹ <http://www2.epa.gov/laws-regulations/summary-clean-air-act>

² <http://www2.epa.gov/laws-regulations/summary-clean-water-act>

³ <http://www.epa.gov/oecaagct/lrca.html>

⁴ http://www.epa.gov/air/noise/noise_control_act_of_1972.pdf

Toxic Substances Control Act,⁵ and the Safe Drinking Water Act.⁶ For many of these statutes, Congress gave EPA the responsibility to set national standards while leaving much of the administration, implementation, and enforcement of those rules primarily in the hands of the states. However, under the CAA and CWA, for example, the Agency may be given the authority to “disapprove” a state’s strategy to meet national environmental goals in some situations.⁷

Air

Under the CAA, the federal government is given the responsibility to set health-based air quality standards while states retain primary authority to implement those standards. The CAA does not rely on any one method for protecting the environment, but creates varied approaches depending on the characteristics of sources, challenges with implementation, and the economic impacts of regulation.

According to the EPA, “It makes sense for state and local air pollution agencies to take the lead in carrying out the CAA. They are able to develop solutions for pollution problems that require special understanding of local industries, geography, housing, and travel patterns, as well as other factors. The states must involve the public and industries through hearings and opportunities to comment on the development of each state plan.”⁸ In her confirmation hearing, EPA Administrator Gina McCarthy described the partnership between states and the federal government as “one of the cornerstone principles of the Clean Air Act.”

The Agency has recently developed, proposed and finalized several CAA rules impacting Texas and other states, including: the Cross State Air Pollution Rule, National Ambient Air Quality Standards for particulate matter and ozone; Mercury and Air Toxics Standards; New Source Performance Standards for greenhouse gas emissions for new power plants; and greenhouse gas emission guidelines for existing power plants under CAA Section 111(d).

Water

The CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Under the CWA, EPA implements pollution control programs and sets water quality standards for all contaminants in surface waters. Over the past decade, different interpretations of the CWA have caused confusion about which waters and wetlands remain protected. In September 2013, EPA and the Army Corps of Engineers announced that it had sent a draft rule to clarify the jurisdiction of the Clean Water Act to the Office of Management and Budget for interagency review.⁹

Additionally, the Safe Drinking Water Act is the main federal law created to ensure the quality of Americans' drinking water. Under the Safe Drinking Water Act, EPA sets standards for drinking water quality and EPA, states, and water systems then work together to make sure

⁵ <http://www.epa.gov/oecaagct/lasca.html>

⁶ <http://water.epa.gov/lawsregs/rulesregs/sdwa/>

⁷ Clean Air Act §110(k)(3), Clean Water Act §303(C)(3).

⁸ United States EPA, “The Plain English Guide to the Clean Air Act,” 2007.

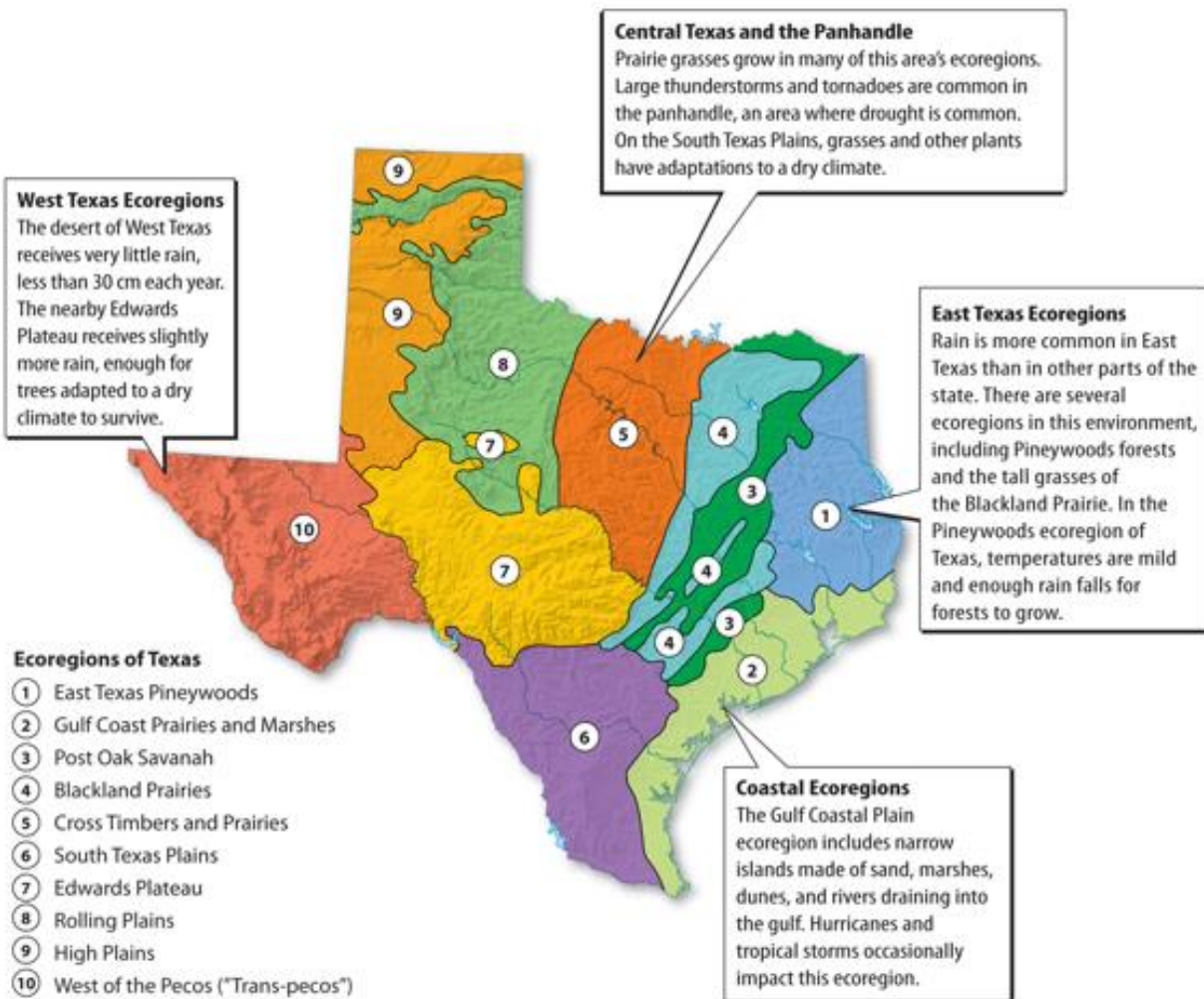
⁹ <http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>.

that these standards are met.

EPA is also conducting an ongoing study to assess any potential impacts of hydraulic fracturing on drinking water resources. During her confirmation, Administrator McCarthy indicated that states “are the primary regulators of fracking activities.”

ECOREGIONS OF TEXAS

Ecoregions are large areas containing a geographically distinct collection of environmental conditions. Ecoregion frameworks are valuable tools for environmental research, assessment, management, and monitoring of ecosystems and ecosystem components. They have been used for setting resource management goals, developing biological criteria and establishing water quality standards.¹⁰



¹⁰ EPA, Ecoregions of Texas, 2007. http://ftp.epa.gov/wed/ecoregions/tx/TXeco_Jan08_v8_Cmprsd.pdf

EPA notes that the “ecological and biological diversity of Texas is enormous. The state contains barrier islands and coastal lowlands, large river floodplain forests, rolling plains and plateaus, forested hills, deserts and a variety of aquatic habitats.”¹¹ The state of Texas is committed to representing the diverse needs and sensitivities across its ecoregions. The Science Committee received testimony about dramatic environmental improvements across the state.¹²

Additional Reading:

Griffith, G.E., Bryce, S.A., Omernik, J.M., Comstock, J.A., Rogers, A.C., Harrison, B., Hatch, S.L., and Bezanson, D., 2004, Ecoregions of Texas: Reston, Virginia, U.S. Geological Survey, available at: http://www.epa.gov/wed/pages/ecoregions/tx_eco.htm

Texas Attorney General Greg Abbott and Chairman Bryan Shaw of the Texas Commission of Environmental Quality’s Letter to EPA, August 2010, available at: <http://www.epa.gov/NSR/2010letters/tx.pdf>

Texas Public Policy Foundation Policy Perspective, *Texas vs. EPA Litigation Scorecard*, September 2012, available at: http://www.texaspolicy.com/sites/default/files/documents/2012-09-PP23-TexasvsEPALitigationScorecard-ACEE-JosiahNeeley_2.pdf

¹¹ EPA, Ecoregions of Texas, 2007. http://www.epa.gov/wed/pages/ecoregions/tx_eco.htm#Please%20note:

¹² <http://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-113-SY18-WState-KWhite-20130214.pdf>