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What will protect Houston's air from Trump's EPA?

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Will Houston's air quality survive the Trump administration? In this photo: the Valero Refinery in Manchester.

Photo: Karen Kasmauski, International League of Conservation Photographers

To the extent that Houstonians breathe better air than they did 40 (or even 10) years ago, much of the credit must go to the EPA's dogged enforcement of the modern Clean Air Act, which was passed into law at the end of 1970.

Though there have been policy reversals under some EPA administrations that have slowed progress, and the air we breathe can still be unhealthy, air quality in Houston has generally improved over time.

Unfortunately, due to climate change and the Texas Commission on Environmental Quality's increasingly antagonistic stance with Obama's EPA and Harris County environmental enforcement, that progress started to stall in 2014. And the policies and priorities of Trump's

EPA threaten to reverse Houston's hard-won gains. If that happens, some of our most vulnerable citizens will get sicker and die earlier. Economic growth will also take a hit and with it, Houston's vision of being a thriving city of the future.

Thank God for the rule of law.

Just last week, the D.C. Circuit Court of Appeals ordered Trump's EPA to stop delaying the implementation of the Chemical Disaster Rule, stating that the agency's delay was "arbitrary and capricious." That followed three other major court losses for the EPA the week before. And since Trump's attempt to make the EPA an agency that protects the coal industry, not the environment, the EPA has been on the losing side of multiple cases, including important air quality cases like implementing methane limits on the oil and gas sector.

Why is this happening? And can we continue depending on our courts to be a last bulwark against the actions of Trump's EPA?

The Clean Air Act and agency action

Understanding Trump's EPA's trouble in our courts requires a brief discussion of the role of agencies in government. Contrary to President Trump's apparent belief, neither the president, nor the agencies in the Executive Branch, have the unilateral power to change the law. No amount of tweetstorming or executive-order signing can alter the obligations of government agencies to follow laws as directed.

Under the Clean Air Act, the EPA is bound by its fundamental requirements: setting air pollution levels to protect public health, protecting vistas and visibility in our national parks, requiring pollution sources to install adequate pollution-control technology and enforcing these requirements on the states and pollution sources.

HIDDEN PROBLEM: How does air pollution make you sick?

While federal agencies, including the EPA, always have some leeway in how they choose to interpret and enforce laws, federal agencies cannot simply ignore legal requirements or change them for any reason. Agencies are required to follow proper procedures in all their actions, as required by the Administrative Procedures Act, a foundational law from 1946 which was designed to ensure fair process and public participation and influence over agencies. The Trump administration, perhaps more than any prior administration in history, doesn't understand or doesn't care about these limitations.

Scott Pruitt's deficiencies have helped protect us

While Trump's EPA has sometimes been compared to a bull in the environmental china shop, that would be an insult to the bull, which at least is acting predictably and without any intent necessarily to break anything. Trump's EPA, under Scott Pruitt in particular, hasn't seemed to act pursuant to any comprehensive plan beyond tearing down anything that was instituted by President Obama and throwing a sop to the coal industry.

Aside from his propensity for ethical scandals, Pruitt also came to the EPA without any expertise in environmental law, his sole qualification in Trump's eyes being his rejection of climate science and his history of repeated lawsuits against Obama's EPA. He then appointed senior staff who had little or no knowledge or experience in environmental law or policy or in requirements for agency action. Pruitt's focus seemed to be selling his own brand and currying favor with President Trump.

Under Scott Pruitt, Trump's EPA has faced multiple legal setbacks.
Photo: Win McNamee, Staff

Not surprisingly, given the lack of expertise and attention, the majority of actions taken by Pruitt in the first year and a half of this administration were not legal or failed to follow proper procedure. Many of the things that Trump's EPA wished to do — roll back climate regulation, make it easier to operate coal-fired power plants or allow older dirty diesel engines back on the road — are simply not countenanced by the Clean Air Act. Without a change in the statute, these actions are simply illegal.

Understanding this reality, or simply out of ignorance, Trump's EPA plowed forward anyway, without even attempting to follow proper procedure or simply not enforcing requirements. Not surprisingly, the agency has faced multiple setbacks.

The EPA attempt to derail requirements on Texas air polluters

An example of Trump's EPA's attempt to secure what it wants regardless of law is its approach to the requirements for Texas industry to clean up pollution that creates regional haze. After years of delays, and though required by a 2012 consent decree to propose a regional haze plan for Texas, Trump's EPA repeatedly tried to get the deadline waived or extended. When forced by a federal court to stick with its legally mandated requirements, the EPA filed a last-minute request to extend the deadline again, offering as a reason that the current administration (i.e.

Trump's EPA) had a better relationship with the state of Texas than the prior one and wanted to reopen negotiations on a plan. The judge was unpersuaded.

"This is not the sort of significant change in circumstance that would warrant relief," Federal District Judge Amy Berman wrote. "Texas has been under the statutory obligation to comply with the Clean Air Act since at least 2007, and it has been on notice of EPA's finding that it had failed to comply with the requirement to submit a state implementation plan since 2009. ... So there has been quite a period of time during which 'cooperative federalism' could take hold."

Forced by the court to file the agreed-upon plan, the Trump administration simply filed a different plan, substituting the prior rejected Texas plan at the last minute, violating another legal principal that states that these plans have to go through notice and comment requirements before they can be implemented.

NO EQUITY: Why your health can depend on where you live

This action is, of course, being challenged in court, and the EPA's opponents will likely win, but this is a perfect example of the "win at all costs, the law be damned" approach that has gotten the EPA rebuffed time and time again by our federal courts.

What about the new EPA administrator?

Unlike Pruitt, the new Acting EPA Administrator Andrew Wheeler does not appear to have a propensity for ethical problems, and he has experience in the environmental and energy sectors. He reportedly has also reached out to reassure EPA employees that they are valued and that he will follow the rule of law. If he follows through with these promises, we should expect less nakedly illegal attempts to lessen environmental protections. In the face of another court loss, Wheeler pulled a Pruitt proposal that would have authorized the use of "glider kits" to reanimate older, polluting truck engines.

But we shouldn't expect the Trump administration to stop its efforts to favor polluting industries over the health of the public. While trying to follow the appropriate procedures for changing requirements could mean that these proposals are less vulnerable to attack, it is still true that much of the Trump agenda flies in the face of Clean Air Act core requirements.

Just this week, Trump's EPA came out with its proposal to rescind the Obama-era Clean Power Plan and replace it with a weaker rule to regulate greenhouse gas emissions from coal-fired power plants. But while the agency followed rote requirements of procedure, at least

some of the proposal, such as waiving requirements that older coal-fired power plants upgrade pollution control equipment, appear legally shaky at best.

The rule of law will still prevail

While the shedding of Pruitt and his reckless, illegal style may have put some nice lipstick on the pig of Trump's EPA, the EPA will still be blocked from carrying out much of Trump's agenda. In many areas in this chaotic administration, our courts have shown themselves standing for the rule of law in the face of Trump's disregard for it. I expect that will continue to place some brake on the many dirty-air policies being pushed by the administration.

Last week's win for the Chemical Disaster Rule should help prevent massive toxic air releases during disaster, like Arkema's explosion during Hurricane Harvey that Houston experienced last year.

RESIDENTS AT RISK: Arkema, CEO indicted for 'reckless' chemical release during Hurricane Harvey

And ongoing lawsuits against Trump's EPA's attempts to weaken hazardous air pollution control and particulate pollution that impact health and visibility should be successful and help hold the line for Houston's air quality.

But as long as President Trump has pointed influence over the EPA, everyone has to remain vigilant and be prepared to fight dirty-air policies in court and keep the public informed of the possible impacts that could occur if these attempts were successful. Hopefully, Houston's air quality can survive the Trump administration, and our city can get back on the road to a better, healthier future.

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