

# ISSUE BRIEF

No. 4264 | AUGUST 19, 2014

## Reining in the EPA Through the Power of the Purse

*Daren Bakst*

While significant criticism is rightfully directed to the Environmental Protection Agency (EPA) on issues such as greenhouse gas (GHG) regulation, Congress itself is to blame for not reasserting its lawmaking power over an agency that is supposed to be implementing the will of Congress, not the will of the agency.

Through the appropriations process, Congress can rein in the EPA and its overreach. This power of the purse is a critical check that Congress has on agency power. If Congress is concerned about the actions that the EPA is taking, then Congress needs to stop spending the money that makes it possible for EPA to take these actions.

The following are just three of the major issues that Congress should address through appropriations.

### 1. Greenhouse Gas Regulation

The EPA continues to push an aggressive global warming agenda, as evidenced by its new proposed regulations<sup>1</sup> to control GHG emissions from existing power plants.<sup>2</sup> The EPA is using the regulatory process to require GHG emission reductions even as Congress has been unwilling to take such drastic actions, such as through cap-and-trade legislation. This is despite the fact that drastic reductions in

carbon dioxide emissions would have no meaningful impact on global temperatures.<sup>3</sup>

Many Members of Congress properly criticize the EPA for its overreach with GHG regulations, but Congress needs to take action to stop these regulations and ultimately clarify that GHGs are not covered under the Clean Air Act. Through the regulation of GHGs, the EPA can touch upon almost every facet of Americans' lives, because GHGs emissions come from most energy use. On an issue of this magnitude, elected and accountable legislators—not government bureaucrats—should be making the decision whether or not to regulate GHGs.

**Recommendation:** Congress should prohibit all agencies, including the EPA, from regulating GHGs and prohibit funding for implementation and enforcement of GHG regulations.

### 2. New Ozone Standard

Ozone (i.e., ground-level ozone) is the primary component of smog. The EPA has set standards, known as the National Ambient Air Quality Standards, for six major pollutants, including ozone. Every five years, the EPA is required by law to review and, if appropriate, revise these standards.

In 2008, the EPA issued an ozone standard of 75 parts per billion (ppb). Before five years had even elapsed, the EPA was at work again on trying to make the standards more stringent.<sup>4</sup>

The EPA was considering a new standard of as low as 60 ppb. According to the EPA, a 60-ppb standard would have cost as much as \$90 billion per year.<sup>5</sup> Ultimately, the EPA decided on a 70-ppb standard for its draft final rule, but in 2011, President Obama directed the agency to not move forward with a

---

This paper, in its entirety, can be found at  
<http://report.heritage.org/ib4264>

The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 546-4400 | [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

---

new standard. Now, though, the EPA is expected to release a new standard as early as December 2014 that could be as low as 60 ppb.<sup>6</sup>

The costs of such a stringent and unwarranted standard could be devastating. Even the EPA's own estimates of \$90 billion a year are shocking. The National Association of Manufacturers (NAM) commissioned a new study<sup>7</sup> by NERA Economic Consulting that found a 60-ppb standard would:

- Reduce gross domestic product by \$270 billion per year on average over the period from 2017 through 2040,

- Result in an average annual loss of 2.9 million job-equivalents<sup>8</sup> through 2040, and

- Impose \$2.2 trillion in compliance costs from 2017 through 2040.

According to NAM, this would make the ozone standard the costliest regulation in United States history.<sup>9</sup>

Based on EPA data for the three-year period from 2010 to 2012, 31 percent of the 698 counties with ozone monitors would fail to meet the current 75-ppb ozone standard. If the standard were lowered to 60 ppb, 93 percent of counties with ozone monitors would fail to meet this standard.<sup>10</sup>

- 
1. U.S. Environmental Protection Agency, "Clean Power Plan Proposed Rule," June 21, 2014, <http://www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule> (accessed August 1, 2014).
  2. Nicolas Loris, "EPA Proposes Next Step of Regulatory Cap-and-Trade," Heritage Foundation *Issue Brief* No. 4232, June 3, 2014, <http://www.heritage.org/research/reports/2014/06/epa-proposes-next-step-of-regulatory-cap-and-trade>.
  3. Ibid.
  4. For a history of regulatory actions regarding ozone, see U.S. Environmental Protection Agency, "Regulatory Actions," <http://www.epa.gov/groundlevelozone/actions.html> (accessed August 1, 2014).
  5. Environmental Protection Agency, "Supplement to the Regulatory Impact Analysis for Ozone," January 7, 2010, <http://www.epa.gov/glo/pdfs/fs20100106ria.pdf> (accessed August 1, 2014).
  6. Environmental Protection Agency, "National Ambient Air Quality Standards for Ozone," July 7, 2011, [http://www.epa.gov/groundlevelozone/pdfs/201107\\_OMBdraft-OzoneNAAQSpreamble.pdf](http://www.epa.gov/groundlevelozone/pdfs/201107_OMBdraft-OzoneNAAQSpreamble.pdf) (accessed August 15, 2014); Gabriel Nelson, "EPA Reveals Jackson's Preferred Path on Ozone Rule," *The New York Times*, October 4, 2011, <http://www.nytimes.com/gwire/2011/10/04/04greenwire-epa-reveals-jacksons-preferred-path-on-ozone-r-23864.html> (accessed August 15, 2014); news release, "Statement by the President on the Ozone National Ambient Air Quality Standards," the White House, September 2, 2011, <http://www.whitehouse.gov/the-press-office/2011/09/02/statement-president-ozone-national-ambient-air-quality-standards> (accessed August 1, 2014); Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, letter to Administrator Lisa Jackson, Environmental Protection Agency, September 2, 2011, [http://www.whitehouse.gov/sites/default/files/ozone\\_national\\_ambient\\_air\\_quality\\_standards\\_letter.pdf](http://www.whitehouse.gov/sites/default/files/ozone_national_ambient_air_quality_standards_letter.pdf) (accessed August 1, 2014); Kate Sheppard, "EPA Science Advisers Call for Stronger Smog Rules," *The Huffington Post*, June 27, 2014, [http://www.huffingtonpost.com/2014/06/27/epa-ozone-smog-rules\\_n\\_5538607.html](http://www.huffingtonpost.com/2014/06/27/epa-ozone-smog-rules_n_5538607.html) (accessed August 1, 2014); and Jason Plautz, "EPA Draft Eyes Tightening Ozone Standard to 60 PPB," *Greenwire*, February 3, 2014, <http://www.eenews.net/stories/1059993920> (accessed August 1, 2014).
  7. NERA Economic Consulting, "Assessing Economic Impacts of a Stricter National Ambient Air Quality Standard for Ozone," July 2014, <http://www.nam.org/~media/bc86674093194f13a5d401d7a3306b94.ashx> (accessed August 1, 2014).
  8. According to the NERA study, "'Job-equivalents' is defined as total labor income change divided by the average annual income per job. This measure does not represent a projection of numbers of workers that may need to change jobs and/or be unemployed, as some or all of the loss could be spread across workers who remain employed, thereby impacting many more than 2.9 million workers, but with lesser impacts per worker." Ibid., footnote 2, S-1.
  9. News release, "NAM: New EPA Ozone Regulations Could Be Costliest in U.S. History," National Association of Manufacturers, July 31, 2014, <http://www.nam.org/Communications/Articles/2014/07/New-EPA-Ozone-Regulations-Could-Be-Costliest-in-US-History.aspx> (accessed August 1, 2014).
  10. Environmental Protection Agency, 2012 Design Value Reports: Ozone Detailed Information, Table 5, February 7, 2014, <http://www.epa.gov/airtrends/values.html> (accessed August 1, 2014).

The EPA is chasing marginal benefits in air quality at great cost to the American people.<sup>11</sup> Changing the standard again is premature, as the existing standards have not even been fully implemented. Furthermore, a 60-ppb standard may be impossible to meet because background levels in some areas of the country have been found to regularly exceed 60 ppb.<sup>12</sup> Moreover, concentration levels of ozone have already decreased by 25 percent from 1980 to 2012, and the average number of high ozone days per monitor in a year has decreased by 75 percent.<sup>13</sup>

**Recommendation:** Congress should prohibit funding for the implementation of any new ozone standard.

### 3. “Waters of the United States” Proposed Rule

The EPA, along with the Army Corps of Engineers, has for decades tried to expand its authority under the Clean Water Act (CWA). Property owners may be subject to the requirements of the statute, including having to secure permits prior to taking actions that may impact covered waters. Therefore, determining what waters are covered is central to the scope of the EPA’s authority.

In April, the EPA and the Corps published a proposed rule that would define what waters are cov-

ered.<sup>14</sup> The CWA covers “navigable waters.” This term is further defined as “the waters of the United States, including the territorial seas.”<sup>15</sup>

In defining “waters of the United States,” the EPA is going well beyond the existing regulations. For example, the new rule would regulate all ditches—including man-made ditches—except in narrow circumstances and cover tributaries that have ephemeral flow, such as depressions in land that are dry most of the year except when there is heavy rain.

This water (and land) grab is an attack on property rights. Private property owners would need to obtain permits from the federal government far more often than they already do now when seeking to use and enjoy their land. There has been widespread opposition to the rule from everyone from farmers to counties, which are concerned that the rule will impose costly new requirements on them.

The proposed rule also undermines the principle of cooperative federalism that is supposed to govern the CWA.<sup>16</sup> States play a central role in the implementation of the CWA. Through this proposed rule, the EPA and the Corps would be usurping state and local power. States, local governments, and private property owners are better positioned to address their unique clean water needs than the federal government.

- 
11. Joel Schwartz and H. Sterling Burnett, “A Clean Air Regulation Hazardous to Health,” National Center for Policy Analysis, October 22, 2007, <http://www.ncpa.org/pub/ba598/> (accessed August 14, 2014). See also Anne Smith, “Summary and Critique of the Benefits Estimates in the RIA for the Ozone NAAQS Reconsideration,” NERA Economic Consulting, July 22, 2011, [http://www.nera.com/nera-files/PUB\\_Smith\\_OzoneNAAQS\\_0711.pdf](http://www.nera.com/nera-files/PUB_Smith_OzoneNAAQS_0711.pdf) (accessed August 14, 2014), and Andrew Grossman, “High on Ozone: The EPA’s Latest Assault on Jobs and the Economy,” Heritage Foundation *WebMemo* No. 3330, August 1, 2011, <http://www.heritage.org/research/reports/2011/08/high-on-ozone-the-epas-latest-assault-on-jobs-and-the-economy>.
  12. Jeffrey R. Holmstead, “Background Check: Achievability of New Ozone Standards,” testimony before the Subcommittee on Environment, Committee on Science, Space, and Technology, U.S. House of Representatives, June 12, 2013, <http://docs.house.gov/meetings/SY/SY18/20130612/100968/HHRG-113-SY18-Wstate-HolmsteadJ-20130612.pdf> (accessed August 14, 2014).
  13. Environmental Protection Agency, “Ozone,” November 20, 2013, <http://www.epa.gov/airtrends/ozone.html> (accessed August 14, 2014). The average number of high ozone days per monitor was calculated by dividing the total number of high ozone days (without exceptional events) by the total number of monitors in a given year between 1980 and 2012. U.S. Environmental Protection Agency, Air Data, Monitor Values Report, 1980–2012, [http://www.epa.gov/airdata/ad\\_rep\\_mon.html](http://www.epa.gov/airdata/ad_rep_mon.html) (accessed August 14, 2014).
  14. *Federal Register*, Vol. 79, No. 76 (April 21, 2014).
  15. 33 U.S. Code §1362.
  16. Section 101(b) of the Clean Water Act states, “It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources.” Federal Water Pollution Control Act, 33 U.S. Code §1251.
-

**Recommendation:** Congress should prohibit funding for the implementation of this proposed rule. The House Interior and Environment appropriations bill that passed out of the Appropriations Committee includes a provision that would prohibit funding for the rule.<sup>17</sup>

### **Get Control of Lawmaking**

Under the U.S. Constitution, Congress has the lawmaking power. Yet, for all practical purposes, Congress has given much of this power away to agencies such as the EPA.

While unreasonable agency interpretations of laws and judicial rubberstamping of those interpre-

tations exacerbate the problem, one way to regain control of lawmaking—and to prevent bad policy from being implemented without accountability from voters—is for Congress to use the power of the purse. Ultimately, the buck should stop with Congress when bad environmental regulations are developed. After all, Congress gave the EPA the regulatory power in the first place and should rein in the agency when it proposes bad or unauthorized policy.

—*Daren Bakst is a Research Fellow in Agricultural Policy in the Thomas A. Roe Institute for Economic Policy Studies, of the Institute for Economic Freedom and Opportunity, at The Heritage Foundation.*

---

17. Department of the Interior, Environment, and Related Agencies Appropriations Act of 2015, H.R. 5171, §429, <https://beta.congress.gov/113/bills/hr5171/BILLS-113hr5171rh.pdf> (accessed August 15, 2014). See also news release, “Appropriations Committee Approves Fiscal Year 2015 Interior and Environment Bill,” Committee on Appropriations, U.S. House of Representatives, July 15, 2014, <http://appropriations.house.gov/news/documentsingle.aspx?DocumentID=387928> (accessed August 1, 2014).