

REGIONAL HAZE RULE

WHAT IS REGIONAL HAZE RULE?

The 1977 amendments to the Clean Air Act expanded the statute's scope to include haze and visibility impairments at federal National Parks and Wilderness Areas. Haze is caused by both natural and man-made air particulates that absorb or reflect sunlight, obscuring visibility. Since haze is an aesthetic issue—not a health issue—Congress very clearly and explicitly gave states the authority to design visibility regulations and assign values to aesthetic benefits.

States submit their proposed regulations to the Environmental Protection Agency, which in turn enforces the submitted proposals. Recently, the EPA has side-stepped the states and used regional haze plans to target coal and other carbon-based fuel energy producers, implementing costlier and more stringent regulations (1).

EPA EXPANDS POWER AND CONTROL THROUGH “SUE AND SETTLE” LOOPHOLE

While regulating regional haze is unquestionably the states' responsibility, the EPA, with the help of private environmental advocacy groups, has increased its control by exploiting a technical legal loophole called “Sue and Settle.” Sue and Settle is when environmental organizations sue an agency for not regulating as aggressively as the group wants, in this case pushing the states harder on regional haze submissions. Rather than defending itself against these allegations, the EPA simply settles the case and uses a court-approved consent decree to lock in the more stringent regulation. In addition, EPA officials stall the states' haze plans by citing procedural mistakes or second guessing their cost calculations. By delaying state plans with a web of bureaucratic red tape, the EPA can force the states to miss proposal deadlines and, by order of court settlements, step in and take control of haze regulations (2).

PROBLEMS WITH EPA REGULATIONS

The EPA's overreach into regional haze is not only interfering with state powers, but their regulations are also much more expensive without producing better visibility results. A Competitive Enterprise Institute report estimated that, as of 2012, federal takeover of the regional haze programs in eight states—Arizona, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, and Wyoming—cost \$2.16 billion more than what the states had already prepared to spend on visibility improvements. Cost of regulatory compliance for energy producers in these states will skyrocket when the EPA's haze controls are fully implemented. In North Dakota, for example, the EPA proposed a selective catalytic reduction requirement that would cost \$500 million—ten times more than the state's plan. Increasing energy companies' costs will inevitably result in higher utility prices for state residents, as much as \$120 more per year for some in these areas (3).

These expensive measures to reduce emissions will do nothing to improve the environment or general visibility. The National Renewable Energy Laboratory researched the EPA's haze requirements in Arizona and found that their plan would cause “no discernible change” to the quality of the environment and questioned if it would even lead to “any perceptible improvement in visibility” (4).

QUICK FACTS

- The EPA has used the Regional Haze Rule to impose almost \$375 million in annual costs on six coal power plants in New Mexico, Oklahoma, and North Dakota.
- The National Renewable Energy Laboratory doubted if the EPA's \$700 million Arizona regional haze regulations would lead to visibility improvements that were “even perceptible” to the naked eye.

CONCLUSION

The Clean Air Act explicitly gives states the authority to regulate particulate matter in the air to reduce haze. The EPA is using the Regional Haze Rule to expand their power and place heavy regulatory burdens on carbon-based energy producers. These regulations aim to raise costs on CO2 emitters, particularly on coal power plants, and will result in higher utility prices for households in the EPA regulated areas with no improvement in visibility.

Endnotes:

1. William Yeatman, "EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs," U.S. Chamber of Commerce and Competitive Enterprise Institute (2012), <http://cei.org/sites/default/files/William%20Yeatman%20-%20EPA%27s%20New%20Regulatory%20Front.pdf>
2. William Yeatman, "Sue and Settle: Regulating Behind Closed Doors," U.S. Chamber of Commerce and Competitive Enterprise Institute (May 2013), <http://www.uschamber.com/sites/default/files/reports/SUEANDSETTLEREPORT-Final.pdf>
3. Yeatman, "EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs"
4. David J. Hurlbut, "Navajo Generating Station and Air Visibility Regulations: Alternatives and Impacts" National Renewable Energy Laboratory (March 2012), <http://www.nrel.gov/docs/fy12osti/53024.pdf>

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