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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 16, 2015

The Honorable Eddie Bernice Johnson
U.S. House of Representatives
Ranking Member, Committee on Science, Space and Technology
2468 Rayburn Office Building
Washington, D.C. 20515

RE: Greenhouse Gases and Respiratory Health

Dear Ranking Member Johnson:

Thank you for the opportunity to supplement my testimony before the House Committee on Science, Space, and Technology on September 11, 2015, regarding the EPA's Clean Power Plan ("CPP"). In the hearing, you asked if my agency had contemplated the cost of uncompensated care at Parkland Hospital where "many of the conditions are respiratory related" in formulating its position on the CPP. I responded that greenhouse gases ("GHGs"), which are the subject of the CPP, do not have negative impacts on respiratory health. You requested documentation supporting my response.

As I discussed in my testimony, carbon dioxide and other GHGs do not threaten respiratory health at existing or anticipated levels. I have included Appendix C of the EPA's official finding justifying their regulation of GHGs under the Clean Air Act.¹ In the first sentence, the EPA concludes that "Greenhouse gases, at both current and projected atmospheric concentrations, are not expected to pose exposure risks on human respiratory systems..."² A brief description and summary of the literature supporting that assertion follows.³ As you can see, the EPA has never claimed that GHGs pose a *direct* threat to respiratory health.⁴

¹ See Attachment 1 [hereinafter "Technical Support Document"]. ENVTL. PROT. AGENCY, *Technical Support Document for Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act*, Appendix C (December 2009).

² Technical Support Document at 195.

³ The EPA focused primarily on its own report, titled *Carbon Dioxide as a Fire Suppressant: Examining the Risks*, as well as the Intergovernmental Panel on Climate Change report, entitled *Special Report on Carbon Dioxide Capture and Storage*.

⁴ Indeed, the EPA's conclusion that GHGs were a "pollutant" under the Clean Air Act was premised on the alleged *indirect* impacts of elevated GHG levels, such as altered weather patterns and rising sea levels.

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Administrator McCarthy herself has testified to your Committee that the CPP will not have any meaningful direct impact on respiratory health, atmospheric temperatures, or sea level rise.⁵ In response to a question from Chairman Smith regarding the CPP's negligible impact on global temperatures, she responded that "the value of this rule is not measured [in terms of direct impact], it is measured in showing strong domestic action...which can actually trigger global action..."⁶

Administrator McCarthy's statements notwithstanding, the EPA does in fact claim that the CPP will lead to respiratory health benefits. As I mentioned to you during the hearing, the way the EPA presents the claimed benefits of the CPP in its Regulatory Impact Analysis ("RIA") could understandably leave one with the impression that it includes direct respiratory health benefits of reducing GHGs.

However, those alleged respiratory health benefits are *not* due to GHG reductions. Rather, they are linked to pollutants that are scientifically and legally distinct from GHGs and are not even the subject of the CPP. Buried in the RIA is their admission that the direct health benefits they claim the CPP will deliver are "limited to those health effects that are directly linked to ambient PM_{2.5}...and ozone concentrations."⁷ The EPA calls these reductions in pollutants "co-benefits" to lowering GHGs, without regard to whether or not reducing those pollutants will actually have some health benefit.

In claiming economic "co-benefits" to the CPP, the EPA is claiming a health benefit from reducing pollutants that, in some cases, *the EPA has already concluded do not necessarily need to be reduced*. For example, Texas does not have a single county in non-attainment for PM_{2.5}, meaning the EPA has concluded that PM_{2.5} is not impairing health anywhere in Texas. Yet at the same time, this RIA postulates that reducing PM_{2.5} levels, regardless of the fact that they are already protective of public health, will provide some health benefit to Texans. Chief Justice Roberts recently questioned this practice when the EPA's Mercury and Air Toxics Standard was reviewed and rejected by the Supreme Court. While the court ultimately rejected the rule on other grounds, he suggested that the EPA's "co-benefits" analysis could be "an illegitimate way of avoiding the different...quite different limitations on EPA that apply in the [NAAQS] program..."⁸

My job as the Chairman of the TCEQ is to bring together common sense, good science, and the law to ensure that environmental regulations are protective, fair, and predictable. My opposition to the CPP rests primarily on legal and scientific grounds, but the misleading nature

⁵ Examining EPA's Regulatory Overreach: Hearing Before the H. Comm. on Sci., Space, and Tech., 114th Congress (2015) (statements made by Gina McCarthy, EPA Administrator, in response to questioning by Chairman Smith).

⁶ *Id.*

⁷ See Attachment 2 [hereinafter "RIA"]. ENVTL. PROT. AGENCY, *Regulatory Impact Analysis for the Clean Power Plan Final Rule* Ch. 4-16 (August 2015) (emphasis added).

⁸ Transcript of Oral Argument at 64, *Michigan v. EPA*, No. 14-46 U. S. (2015).

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of the EPA's messaging and regulatory scheme gives me pause as well. My concern is that the kind of rationalization EPA has engaged in here only provides a false sense of security to the American people that their government is doing the hard work and making the hard choices requisite to protect their health.

In any case, the enclosed materials confirm my assertion that reducing atmospheric levels of carbon dioxide will do nothing to improve respiratory health for Americans. Please let me know if you have further comments or questions, and I would be happy to meet with you in person to discuss these issues at your convenience.

Sincerely,



Bryan W. Shaw, Ph.D., P.E., Chairman
Texas Commission on Environmental Quality

cc: The Honorable Lamar Smith, Chairman, House Committee on Science, Space, and
Technology

Enclosures