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TCEQ statement on favorable CSAPR court ruling

FOR IMMEDIATE RELEASE

Tuesday, Aug. 21, 2012

The decision by the U.S. Court of Appeals for the D.C. Circuit today struck down the Environmental Protection Agency's Cross-State Air Pollution Rule (Cross State Rule or CSAPR) confirming the state's contention that the rule was legally and scientifically flawed and reiterating that the EPA must stay within the "boundaries that

Congress has set" in the Clean Air Act. Today the court affirmed that EPA had exceeded its authority by using the Clean Air Act to "impose massive emissions reduction requirements" that went beyond the limits of the law. The court further stated that the Clean Air Act does not allow EPA to impose its will before the state has an opportunity to address transport issues.

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The Cross State Rule was a thinly veiled attempt by the current administration to impose such draconian reductions on coal-fired power that the only option for some was a shutdown of electric generation plants and a loss of jobs at coal mining operations. The court's action articulates that the executive branch of government can only "exercise the authority conferred by statute." In other words, EPA can't go beyond what Congress intended. As stated by the court, it seems "inconceivable" that the good neighbor provision (upon which the Cross State rule is premised) would allow an "open-ended authorization for EPA to effectively force every power plant in upwind States to install every emissions control technology EPA deems 'cost effective.'" With this ruling, the court recognized the first obligation of emissions reductions is at in-state sources and not the nonsensical requirement that Texas reduce sulfur dioxide emissions by 47 percent in order to address a hypothetical and minute effect on a monitor hundreds of miles and several states away.

"It is unfortunate that EPA continues to misuse the Clean Air Act. Appropriate and legally defensible emission reductions are delayed when states must challenge EPA's actions in order to ensure compliance with congressional statutes," said TCEQ Chairman Bryan W. Shaw, Ph.D. "The TCEQ hopes that with these recent court rulings, EPA will return to scientifically based environmental protection and shy away from an agenda based on environmental activism."

"Today's court ruling on CSAPR, combined with last week's court ruling on flexible permits that overturned EPA regulations, should give pause to everyone who steadfastly refused to consider the State's legal arguments of overreach by the EPA," said TCEQ Commissioner Carlos Rubinstein. "Challenging the federal government can be risky, but the principle of state sovereignty is one that is held dear by Texans."

"The court confirmed that EPA overstepped its statutory bounds, reminding us that it is our duty to hold government accountable. When government agencies, even the TCEQ, overstep their authority, it is the responsibility of all citizens to fight that action, regardless of politics," said TCEQ Commissioner Toby Baker.

Together with the recent ruling on flexible permits, the courts have made it clear that EPA has again overstepped its bounds, imposing severe regulatory directives that are simply not within its authority. "Congress plainly left with the States. . . the power to determine which sources would be burdened by regulation and to what extent." Fortunately in the case of the CSAPR, the court saw fit to stay the rule before its negative consequences could be felt throughout the Texas economy and on its citizens. The EPA rule would have had real and significant negative impacts on Texas' economy, electric grid, and Texans' access to electricity.

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Last Modified May 2013

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