TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

DECISION OF THE COMMISSION
REGARDING THE PETITION FOR RULEMAKING
FILED BY THE TEXAS ENVIRONMENTAL LAW CENTER
ON BEHALF OF ANGELA BOSNER-LAIN, KARIN ASCOT, AS NEXT FRIEND
ON BEHALF OF TVH AND AVH, MINOR CHILDREN, AND BRIGID SHEA,
AS NEXT FRIEND ON BEHALF OF EBU, A MINOR CHILD

Docket No. 2011-0720-RUL

On June 22, 2011, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by the Texas Environmental Law Center on behalf of Angela Bosner-Lain, Karin Ascot, as next friend on behalf of TVH and AVH, minor children, and Brigid Shea, as next friend on behalf of EBU, a minor child (Petitioners). The petition, filed on May 5, 2011, requests that the agency initiate rulemaking to adopt by January 1, 2012, a greenhouse gas (GHG) reduction plan that when implemented limits carbon dioxide emissions in Texas from fossil fuels that results in a peak in emissions in the state by 2012; and beginning in January 2013, to reduce fossil fuel carbon dioxide emissions by at least 6% a year.

IT IS THE DECISION OF THE COMMISSION pursuant to Administrative Procedure Act (APA), Texas Government Code, § 2001.021 and Texas Water Code, § 5.102 to deny the petition.

Texas is currently in litigation with the U.S. Environmental Protection Agency (EPA) over the issue of regulation of GHG under the Federal Clean Air Act (FCAA). The commission has a fundamental disagreement with the EPA over how, and if, Congress intended GHG emissions should be regulated under the FCAA. Adoption of a rule to freeze emissions in 2012 would require the Commission to call in permits or revise permits at amendment or renewal for emissions not currently controlled. The Commission does not have this authority under the TCAA. Greenhouse gases, including CO_2, are ubiquitous gases that occur relatively uniformly throughout the global atmosphere. As such, control of emissions by one state, or varied control regimes across many states, will not necessarily impact the global distribution of these gases positively or negatively. The basis for the petitioners' request for reductions on CO_2 emissions is to achieve a level of 350 part per million (ppm) of CO_2 in the atmosphere. The standard the petitioners propose for CO_2 has not been developed through the proper mechanism under federal statute, in particular

FCAA section 109. Texas courts have clearly and regularly ruled that where common law duties, such as the public trust doctrine, have been displaced or revised by statutes enacted by legislatures, the statute controls. In addition, the public trust doctrine in Texas has been limited to waters of the state and does not extend to the regulation of GHGs in the atmosphere.

This Decision constitutes the decision of the Commission required by the Texas Government Code, § 2001.021(c).

Issued date: JUN 23 2011

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw

Bryan W. Shaw, Ph.D., Chairman