

**Senate Committee on Environment and Public Works  
Subcommittee on Clean Air and Nuclear Safety  
Hearing on Cooperative Federalism Under the Clean Air Act  
April 10, 2018  
Commissioner Toby Baker, Texas Commission On Environmental Quality**

Thank you Chairman Capito, Ranking Member Whitehouse, and members of the Environment and Public Works Subcommittee on Clean Air and Nuclear Safety. For the record, my name is Toby Baker. I am a commissioner of the Texas Commission on Environmental Quality, otherwise known as the TCEQ, and I am here to give the Texas perspective on cooperative federalism under the Clean Air Act. At the outset I would like to say that after my prepared testimony I am happy to answer any questions you may have, but due to ex parte laws I cannot discuss any ongoing permitting or enforcement matters that have not yet come before the commission. If you have any questions regarding any issue that I cannot discuss, I can have the appropriate member of our staff get back to you.

The Texas Commission on Environmental Quality is the third largest environmental regulatory agency in the United States behind the EPA and California. We have close to 3,000 employees across 16 regional offices, with our largest regional office being located in Houston as you may have guessed. By authority delegated to our agency, we regulate water quality, air quality, and waste in Texas. I'd like to first highlight several facts about Texas that I believe were made possible through the tradition of cooperative federalism, that as you know, was built into the federal clean air act and a number of other federal regulatory statutes.

Starting with the amendments to the clean air act in the early 90s, Texas turned a corner in environmental regulation and has become one of the leading states in environmental success relative to our environmental challenges. We currently produce one-third of the nation's crude oil. Thirty percent of all refining capacity is located within our borders and a quarter of all U.S. natural gas production comes from Texas. Balancing this, we also are the largest wind producing state in the U.S. with over 20,000 megawatts of capacity. Solar energy production is ramping up and, if you consider the projects we have in queue, we should have close to 3500 megawatts of utility scale solar constructed or being built by 2019. To sum up, we produce and consume more energy than any other state.

In addition, the population of Texas is increasing rapidly. Since 2000, it is estimated that our population has grown by over 8 million. It is no secret that Texas is hot, and these 8 million newcomers to the state have no doubt discovered the benefits of air conditioning. It is also no secret that Texans like their cars, and 8 million new Texans, moving primarily to already heavily populated areas, adds a number of new vehicles to our transportation system. One could assume an increase in population coupled with our robust manufacturing sector would lead to increased emissions, but in reality the opposite has occurred.

Since the late 90s, we have seen a dramatic drop in both NOx emissions and Ozone emissions. While we have occasional bouts with other criteria pollutants, ozone is our most pressing. Since 2000 we have been one of the top states in reducing ozone emissions. In fact, in the latest ranking of dirtiest cities by the American Lung Association, Texas does not have a city in the top 10. Given the fact that the Houston area is essentially the kitchen for a good portion of the US, and that it has prime ozone making

weather, it's frankly astounding. Our emissions in our major metropolitan areas are currently driven more by mobile sources than any point source. CO2 is worth mentioning as well. While Texas produces more CO2 than any other state, the per capita production, according to EIA, puts us at 14 when ranking the states. If we are objective about it, I would argue that we are a model for efficiency.

So what has led to our success? At a high level, I believe it can be attributed to, among other things, (1) a tradition of cooperative federalism that has allowed Texas to tailor its own unique solutions to our own unique problems, (2) a market that has led to maximizing efficiency in the refining sector, and (3) cleaner burning vehicles.

And since cooperative federalism is the topic of this panel, I believe is a pivotal component of the national environmental regulatory framework. Congress, in enacting many of our major environmental laws including the Clean Air Act, has chosen to delegate the implementation and enforcement of those laws to the states, which have the flexibility and regional expertise necessary to fairly and efficiently put those laws into effect. My agency, the TCEQ, is the delegated agency for the majority of environmental programs in Texas and we have seen over the years how cooperative federalism has worked and how it could be improved.

First and foremost, the benefits of cooperative federalism done correctly were on full display during our response to the worst natural disaster in recent memory for the State of Texas—Hurricane Harvey. Before and after Harvey made landfall both EPA headquarters and Region 6 coordinated closely with the TCEQ and other state agencies to ensure all necessary fuel waiver requests were processed as expeditiously as possible. As a result of this cooperation, requests were usually granted in a matter of hours. Compare that to previous hurricanes, where such waivers would be processed over several days because the EPA took more of a “wait and see” approach. Similarly, EPA staff rapidly processed TCEQ's request for No Action Assurance (NAA) letters concerning vapor controls at gasoline terminals, tank tightness of transport trucks, and landing of floating roofs on gasoline storage tanks. EPA's rapid response and close coordination with TCEQ in approving the fuel waivers and NAA letters helped ensure the flow of gasoline and diesel products throughout Texas and numerous other states.

The previous administration also worked well with TCEQ in transitioning all of the Greenhouse Gas permitting under the Tailoring Rule from the EPA to Texas. Recognizing the ability of a particular state to handle the application load under a certain rule is yet another great example of how cooperative federalism should work in a national regulatory scheme.

While these are some examples of cooperative federalism under the Clean Air Act done correctly, we have also seen the opposite. For example, under the previous administration the EPA often promulgated new National Ambient Air Quality Standards (NAAQS) before plans had been fully implemented for the existing NAAQS. And in the rush to do so, the EPA routinely failed to issue timely guidance to implement the NAAQS. This causes a problem for states that have a multiyear planning and approval process for developing a State Implementation Plan (SIP) because the EPA would then disapprove a SIP that did not follow guidance issued after the SIP process is underway or sometimes even after it is complete. The goal of cooperative federalism is to avoid this absurd and wasteful result.

Another goal of cooperative federalism is to ensure federal Clean Air Act rulemaking is timely. Meaningful cooperation with the states can avoid regulations that are not appropriate to current circumstances in a given state or region. Take, for example, the Clean Power Plan, which would have

imposed significant economic and electric reliability strains on the State of Texas to attain emission reduction benchmarks in a very short time frame that the state has consistently maintained would be met anyway under existing market conditions. Specifically, Texas is currently on pace to nearly hit the initial emissions reduction benchmark of the Clean Power Plan several years ahead of schedule--and all without the rule being in place. This is directly attributable to low cost natural gas and saturation of wind generation into our competitive power market.

Nevertheless, I am pleased to see under this administration a return to the historical norm of a SIP-oriented approach to Clean Air Act enforcement and implementation. By diverting from a "FIP first" approach, the EPA has enabled individual states to implement and enforce federal standards in a manner allowing for greater flexibility and efficiency. This, in turn, leads to both a greater diversity in problem solving methods that are tailored to each state's natural environment, as well as more predictability and consistency in enforcement. Our agency's Texas Emission Reduction Program or TERP, is a perfect example of a state exercising the freedom to solve air pollution issues in its own creative way. That program provides a financial incentive to address emissions from mobile sources through accelerated fleet turnover, and it has reduced roughly 180,000 tons of NOx from mobile sources—which is important because, as referenced earlier, the majority of NOx emissions in Texas comes from mobile sources.

That concludes my testimony. I want to thank you for the opportunity to visit with you today. I am available to answer any questions you may have.