TEXAS PUBLIC POLICY FOUNDATION
Testimony

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Center for Energy & the Environment

House Bill 2545: Regarding Texas Participation in a Regional Air Quality Compact

Before the House Select Committee on State Sovereignty

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On behalf of Texas Public Policy Foundation, I testify in strong support of HB 2545. In the last two years, the U.S. Environmental Protection Agency (EPA) has aggressively asserted federal authority over the state of Texas, and in particular the Texas Commission on Environmental Quality (TCEQ). Running roughshod over fundamental state authority provided in the federal Clean Air Act (CAA), EPA's dictates treat Texas as if this state were a branch of the federal government or a regional office of EPA.

In March, *The Wall Street Journal* characterized EPA's actions of the last two years as a "regulatory spree unprecedented in U.S. history." Invalidation of the state's highly successful Flexible Permit Program and an instantaneous Federal Implementation Plan to revoke state authority are actions never before taken in EPA's more than forty year history. We live in exceptional times in need of extraordinary response. The compact envisioned in HB 2545 would provide a strategic check on EPA's steadily expanding authority over states—a restraint that would direct EPA back to the more limited role articulated in EPA's own enabling law—Clean Air Act.

The original federal CAA established a partnership between federal and state authorities—with a strong role for the states. To quote the CAA, "Air pollution prevention … at its source is the primary responsibility of States and local governments."[1] Congress "carefully balanced State and national interests by providing for a fair and open process in which State and local governments, and the people they represent, will be free to carry out the reasoned weighing of environmental and economic goals and needs."[2] How far from current EPA practice is this statutory framework!

The CAA originally gave EPA the authority to set national ambient air quality standards (NAAQS) for six criteria pollutants and for select emission standards. The law gave states the authority to implement these standards and the obligation to attain the NAAQS as measured by ambient air quality monitors. The states had the primary authority to regulate the sources of emissions through specific rules, permits and enforcement actions by the states.

In other words, the states were legally bound to attain the standard set by EPA but could choose how to get there. Subsequent amendments to the CAA in 1977 and in 1990 increased EPA's oversight authority over states but reaffirmed the dual roles of the federal and state agencies, importantly retaining the decision-making authority of the states.

The CAA requires that states develop State Implementation Plans (SIP)—to be approved by EPA—compiling the programs which comprise the state's recipe for attainment of the NAAQS. Overtime, EPA has steadily increased the range of contents required in the SIP to the point that EPA demands that approvable SIPS must contain every rule, program, enforcement standard, technical analyses and modeling, and public participation requirements even remotely related to air quality. Today, any change to any TCEQ rule or program connected with air quality must be individually approved by EPA. The role of the federal government has morphed from mandating what air quality the state must have to exactly—and I mean exactly in excruciating detail—how the state must operate. Under the CAA, lack of an approved SIP can lead to a Federal Implementation Plan revoking state authority and sanctions such as loss of federal highway funds and a freeze on road construction.

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[1] (42 U.S.C. 7401 (a)(3).
[2] H.R. Rep. No. 95-294, at 46 (1977).

EPA used this SIP approval authority to invalidate TCEQ's Flexible Permits Program—a wholly state permitting program—and also to force states to regulate greenhouse gases. EPA asserted an automatic Federal Implementation Plan on Texas in late December 2010, also on the basis of SIP Approval authority.

The Regional Air Quality Compact of HB 2545 would restore the states' role as the primary decision makers for state management of air quality by suspending EPA SIP approval authority. I submit this would accelerate air quality improvements at less cost. EPA's excessive emphasis on process and micro-management of TCEQ delays and confounds the state's efficient, creative, and effective programs to act. The National Academy of Science reached a similar conclusion about the now process-heavy SIP requirements—a process at odds with effective protection of air quality.

The Compact under discussion would, in no way, diminish air quality standards. Under the compact of HB 2545, the states would still be obligated to meet the NAAQS established by EPA on the date stipulated by EPA. But the state's would have the full authority to decide what were the most effective rules, permit programs, enforcement standards, and technical studies to reach attainment. ✭

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