

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL PARKS CONSERVATION	)	
ASSOCIATION, MONTANA ENVIRONMENTAL	)	
INFORMATION CENTER, GRAND CANYON	)	
TRUST, SAN JUAN CITIZENS ALLIANCE,	)	
OUR CHILDREN'S EARTH FOUNDATION,	)	
PLAINS JUSTICE, POWDER RIVER BASIN	)	CIVIL ACTION NO.
RESOURCE COUNCIL, SIERRA CLUB,	)	1:11-cv-01548 (ABJ)
AND ENVIRONMENTAL DEFENSE FUND	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Scott Pruitt, in his official capacity as	)	
Administrator, United States Environmental	)	
Protection Agency,	)	
	)	
Defendant.	)	
_____	)	

I, Samuel J. Coleman, affirm and declare that the following statements are true and correct to the best of my knowledge, information, and belief, under penalty of perjury. These statements are based on my own personal knowledge or on information contained in records of the United States Environmental Protection Agency (EPA), or supplied to me by EPA employees.

1. I am the Acting Regional Administrator of EPA Region 6. I have been employed by EPA since 1989 and I have held this current position since January 2017. As Acting Regional Administrator, I am in charge of the Region 6 office and assure the effective implementation of all EPA programs managed in the Region, including air planning and permitting. I lead a team of career executives in developing strategic objectives and implementation of those strategies to assure protection of human health and the environment in our area of jurisdiction. I oversee all policy areas, and work with the

managers and staff in Region 6 and EPA Headquarters in the furtherance and implementation of policy decisions made by the EPA Administrator. Prior to becoming Acting Regional Administrator of EPA Region 6 in January 2017, I held the position of Deputy Regional Administrator since March 2012, and in this role I supported the Regional Administrator in performing his responsibilities.

**I. EPA Region 6 Organization and Responsibilities**

2. EPA Region 6, in partnership with the states and tribal nations listed below, is responsible for the oversight or execution of programs implementing federal environmental laws in the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas and for 66 tribal nations.
3. EPA Region 6 is organized into eight Divisions: the Compliance Assurance and Enforcement Division, the Water Quality Protection Division, the Superfund Division, the Management Division, the Office of Regional Counsel, the Office of External Affairs, the Office of Environmental Justice and Tribal Affairs, and the Multimedia Division.
4. EPA Region 6's Multimedia Division includes the Air Program, which is responsible for implementation of the federal Clean Air Act (CAA). The CAA is structured such that States primarily take the lead in designing and adopting plans which provide for the implementation, maintenance and enforcement of standards set under the CAA. 42 USC § 7410(a). The Air Program is responsible for the review of these state implementation plans (SIPs), including in the areas of Texas Regional Haze and Visibility Transport that are the subject of current Consent Decrees (CDs) in *National Parks Conservation Association v. EPA*, No. 1:11-cv-01548 (D.D.C.) and *Sierra Club v. Pruitt*, No. 1:10-cv-01541 (D.D.C.), respectively. These CDs require EPA to

establish requirements for Texas Regional Haze and Visibility Transport by approving SIPs or issuing Federal Implementation Plans (FIPs) by September 9, 2017.

5. The subject matter of *National Parks Conservation Association v. EPA*, No. 1:11-cv-01548 (D.D.C.) is regional haze. As discussed below, CAA Section 169 applies to regional haze and it establishes as a national goal the prevention of any future, and the remedying of any existing, man-made impairment of visibility in 156 national parks and wilderness areas (known as federal Class I areas). The subject matter of *Sierra Club v. Pruitt*, No. 1:10-cv-01541 (D.D.C.) is interstate visibility transport. As discussed further below, CAA Section 110(a)(2)(D)(i)(II) applies to interstate visibility transport and requires that SIPs contain adequate provisions to prohibit interference with measures required to protect visibility in other states.

## **II. Overview of Regional Haze Program Requirements**

6. Section 169A of the CAA required EPA to promulgate regulations requiring Regional Haze SIPs for states with air pollution sources that affect visibility in federal Class I areas (i.e., 156 national parks and wilderness areas). This includes emission limits, schedules of compliance and other measures necessary to make reasonable progress toward meeting the national goal. Under this program, states are responsible for adopting measures in a SIP that will ensure that reasonable progress will be made towards remedying existing visibility impairment and preventing any further degradation. Addressing regional haze is an iterative process and states are required to review and revise their regional haze SIPs approximately every ten years.
7. The CAA also required EPA to promulgate regulations that require major stationary sources (built between August 7, 1962 and August 7, 1977) that emit any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of

visibility in federal Class I areas, to procure, install, and operate, as expeditiously as practicable the best available retrofit technology (BART) as determined by the state, or by EPA when promulgating a FIP, for controlling emissions from such source for the purpose of eliminating or reducing any such impairment. For the first regional haze SIP that was due in 2007, states were required to address the requirements for BART that apply to certain categories of existing stationary sources.

8. For BART, states are required to determine whether certain types of industrial sources with the potential to emit 250 tons or more of a visibility impairing air pollutant (oxides of nitrogen [NO<sub>x</sub>], sulfur dioxide [SO<sub>2</sub>], or particulate matter [PM]) and built between August 7, 1962 and August 7, 1977 may be reasonably anticipated to impair visibility at Class I areas. For those sources that meet this threshold test, states must then determine appropriate BART controls. That is, the state under a SIP, or in the absence of a SIP, then EPA under a FIP, must determine what technological controls constitute BART controls. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. See 40 C.F.R. § 51.308(e).

### **III. Overview of Interstate Visibility Transport Program Requirements**

9. When EPA revises a national ambient air quality standard (NAAQS), section 110(a)(2)(D)(i)(II) of the CAA requires each state to ensure that their SIP contains measures to ensure that emissions from within the state do not interfere with the protection of visibility in another state, also known as the Interstate Visibility Transport requirement or the “requirement of section 110(a)(2)(D)(i)(II) with respect to visibility.” This requirement dovetails with the regional haze program which

requires, among other things, that states and regional planning organizations identify those Class I areas impacted by each states' emissions. In addition, states must address their contribution to visibility impairment in other states in their regional haze SIP.

When a state submits a SIP revision addressing the requirements of Section 110(a)(2)(D)(i)(II) with respect to visibility, EPA must ensure that the SIP revision achieves the necessary control of emissions. EPA has provided guidance that states may use their Regional Haze SIP to address Interstate Visibility Transport. Due to the interrelatedness of Regional Haze and Interstate Visibility Transport, EPA frequently acts on both SIPs submitted by the state at the same time.

**IV. EPA Obligations for Texas Regional Haze and Interstate Visibility Transport**

10. Under the CD obligations in *National Parks Conservation Association v. EPA*, No. 1:11-cv-01548 (D.D.C.), EPA is required to “sign a notice(s) of final rulemaking promulgating a FIP for Texas to meet the regional haze implementation plan requirements...[or]...sign[] a notice of final rulemaking unconditionally approving a SIP or promulgating a partial FIP and unconditional approval of a portion of a SIP, that collectively meet the regional haze implementation plan requirements that were due by December 17, 2007 under EPA’s regional haze regulations.” In January 2016, EPA fulfilled certain parts of its obligation and finalized a FIP addressing, among other things, the CAA’s reasonable progress requirements for Texas. See Final Texas Reasonable Progress FIP, 81 *Fed. Reg.* 295 (January 5, 2016). In that final action, EPA also stated it was deferring action on the State’s BART determinations. 81 *Fed. Reg.* 295, at 301-302 (January 5, 2016). The parties to this CD agreed upon an amended CD to address that BART piece for Texas, with a compliance date of

September 9, 2017 for EPA to approve a SIP or issue a FIP.

11. Similarly, a separate CD (*Sierra Club v. Pruitt*, No. 1:10-cv-01541 (D.D.C.)) requires EPA to sign for publication in the Federal Register a notice or notices promulgating a FIP, unconditionally approving a SIP, or promulgating a partial FIP and unconditional approval of a partial SIP, collectively satisfying the requirements of CAA Section 110(a)(2)(D)(i)(II) that implementation plans contain adequate provisions prohibiting emissions that will interfere with measures in other states related to the protection of visibility for the 1997 ozone and 1997 PM<sub>2.5</sub> NAAQS. EPA's January 5, 2016 action included disapproval of interstate visibility transport for these and other NAAQS, but did not finalize a FIP to fill the gap left by that disapproval for the same reason EPA deferred action on BART. 81 *Fed. Reg.* 295, at 302. As to obligations for establishing interstate transport for visibility as to Texas, the parties to this CD agreed upon an amended CD that has a compliance date of September 9, 2017 for EPA to approve a SIP or issue a FIP.
12. As a step toward compliance with the two CDs referenced above, EPA, in its January 4, 2017 proposed rulemaking at 82 *Fed. Reg.* 912 (Jan. 4, 2017), proposed a FIP with source-by source controls for both BART and interstate visibility transport, since EPA had not received from Texas an approvable SIP. The proposed FIP included these four areas: 1) SO<sub>2</sub> BART for coal-fired electric generating units (EGUs); 2) SO<sub>2</sub> BART for oil- and gas-fired EGUs; 3) NO<sub>x</sub> BART for all EGUs; 4) PM BART for all EGUs.
13. In response to this January 4, 2017 proposed FIP rulemaking on regional haze and interstate visibility transport, EPA received comments from the State, industry and environmental groups. On May 5, 2017, the State of Texas submitted a comment urging EPA to adopt an intrastate trading program for Texas in lieu of source-by-

source controls, as this approach would comply with the CAA and promote market efficiency while helping to ensure reliability of the deregulated power generating grid in Texas. Texas indicated that a more flexible trading program would better allow managing power supply and grid reliability in light of its concerns over the potential for shutdowns with little advanced notice. The source-by-source controls in the proposed FIP would require installation of pollution control equipment on certain EGUs, likely at a substantial cost. The planning and lead time to install equipment may be months or years ahead of the actual installation, and certain EGUs could currently be at the stage where they would need to execute this planning. By contrast, an intrastate trading program offers a market-based approach that could lead to a more efficient outcome.

**V. Preferred Approach to Address the Obligations**

14. EPA and the State of Texas have now entered into a Memorandum of Agreement (MOA) to provide for Texas to submit a SIP for an intrastate trading program to meet the applicable BART regional haze and interstate visibility transport requirements that are the subject of the two CDs. See Attachment A. Because of the time needed for Texas to develop the SIP requirements, and for EPA to act on a SIP submittal consistent with public notice and comment requirements, the MOA provides for final action by EPA by December 31, 2018. This MOA builds on Texas' May 5, 2017 letter submitted to EPA as part of the January 4, 2017 proposed rulemaking, urging consideration of an intrastate trading approach. This letter also builds on the overarching intent of the Clean Air Act to allow States to implement this Act through SIPs in lieu of FIPs. To carry out this SIP approach in lieu of a FIP, EPA would need an extension to the two CDs until December 31, 2018.

15. The commitments in the MOA are an outgrowth of a year of concerted effort between EPA and the State of Texas to develop a SIP approach to outstanding Texas regional haze and interstate visibility transport requirements, including the following key steps:

- on August 11, 2016, EPA met with representatives from industry and environmental groups by videoconference to discuss CAA issues including regional haze;
- on September 13, 2016, EPA met with the Texas Commission on Environmental Quality (TCEQ) and representatives from industry and environmental groups in Dallas, Texas to discuss potential options for addressing regional haze;
- on March 28, 2017, EPA met with TCEQ in Austin, Texas to discuss parameters of a potential SIP;
- EPA extended the comment period for the Regional Haze and Visibility FIP proposal;
- in the Spring of 2017, EPA and TCEQ began to conduct weekly conference calls to examine the State's intrastate trading program concept; and
- in the Summer of 2017, these EPA and TCEQ staff conference calls became biweekly.

16. Under the MOA, the State has committed to a schedule to address BART regional haze and interstate visibility transport in a SIP. EPA would be able to expedite its review and decision making. The resulting schedule is:

- TCEQ staff proposes a SIP to the TCEQ Commissioners by March 31, 2018;
- EPA proposes action in parallel;
- Texas submits the SIP to EPA by October 31, 2018 and

EPA finalizes by December 31, 2018.

In particular, the staff of the TCEQ will submit to the TCEQ Commissioners for their consideration a proposed revision to the Texas SIP that would implement and enforce an intrastate trading program to address the regional haze BART requirements for SO<sub>2</sub>, PM, and NO<sub>x</sub>, and interstate visibility transport requirements for 1997 8-hour ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 8-hour ozone, 2010 1-hour NO<sub>2</sub>, and 2010 1-hour SO<sub>2</sub>. The Texas SIP revision would be submitted to EPA, allowing EPA to process the revision in parallel with the State's rulemaking process, including an opportunity for public comment on the plan. Parallel process means that if EPA determines that it will propose approval of the Texas SIP submittal, EPA will begin its public notice-and-comment process concurrent with the State's public notice-and-comment process. EPA has previously utilized this parallel process with submissions from states, including the State of Texas.

17. The schedule and process described above is designed to fulfill the legally required procedural requirements for a state adopting and submitting a SIP and for EPA acting upon the SIP submittal as required by the CAA and EPA SIP regulations. Further it is conditioned by the recognition that Texas must submit a SIP that is consistent with the CAA, such that EPA can propose and take action on the submitted SIP.
18. The Governor of the State of Texas, and the Chair of the Texas Commission on Environmental Quality, have provided to the Administrator of EPA an August 14, 2017 letter, which is attached as Attachment B to further show the State of Texas' commitment to establish an approved SIP by end of 2018. The letter provides in part:

We are committed to working with your administration to create a state implementation plan (SIP) by the end of next year to implement the best available

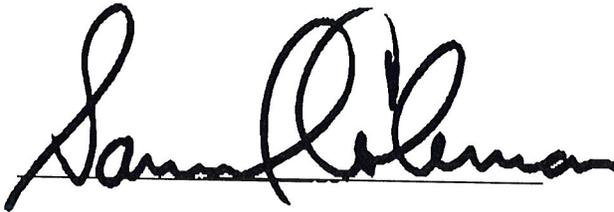
retrofit technology (BART) requirements of the Regional Haze Rule. And we want to assure you that we will bring the full weight and resources of the State of Texas to bear on this issue. ... After extensive consultation between staff members at TCEQ and EPA, we are confident that the BART SIP can be in place by the end of next year.

19. For the past five years, I have served as Acting Regional Administrator or Deputy Regional Administrator. The recent collaborations between TCEQ and EPA Region 6 have been the closest and most productive discussions in the past five years. The discussions are evidenced by the MOA as well as the willingness of both TCEQ and EPA to engage in very detailed discussions between the parties that have the goal of an approvable SIP.

20. For the reasons stated in this Declaration, EPA requests an extension of the CD schedule until December 31, 2018 to allow the State of Texas to develop and submit, and EPA to review and act on, a SIP that will address the outstanding obligations regarding regional haze BART and interstate visibility transport.

I declare that the above stated matters are true and correct to the best of my knowledge, information, and belief, under penalty of perjury.

Dated: 8/15/17

A handwritten signature in black ink, appearing to read "Samuel J. Coleman", written over a horizontal line.

Samuel J. Coleman  
Acting Regional Administrator  
EPA Region 6

**MEMORANDUM OF AGREEMENT  
BETWEEN THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGARDING A STATE IMPLEMENTATION PLAN TO ADDRESS CERTAIN  
REGIONAL HAZE AND INTERSTATE VISIBILITY TRANSPORT REQUIREMENTS  
PURSUANT TO SECTIONS 110 AND 169A OF THE CLEAN AIR ACT**

**BACKGROUND**

This memorandum of agreement memorializes discussions between staff at the Texas Commission on Environmental Quality (“TCEQ”) and the United States Environmental Protection Agency (“EPA”). TCEQ and EPA agree that the regional haze and interstate visibility transport requirements of the Clean Air Act are best met by a state implementation plan (“SIP”), not a federal implementation plan (“FIP”). TCEQ and EPA further agree that this SIP can be and will be implemented quickly and lawfully.

TCEQ and EPA agree that this SIP will meet the best available retrofit technology (“BART”) requirements through a new trading program. The foundation of that trading program will be the electric generating units (“EGUs”) that the EPA would have subjected to BART in its FIP. *See* 92 Fed. Reg. 921 (Jan. 4, 2017). It is possible that some of these units should not be considered subject to BART, and it is possible that some BART units would be better regulated through source specific requirements. Moreover, some non-BART units may want to opt-in to the trading program. Working closely with EPA, the State through its SIP process will address each of these issues while ensuring that the State’s SIP remains consistent with Act’s regional haze requirements.

TCEQ and EPA further agree that the allocations to units included in the intrastate trading program should start from the allocations under the Cross-State Air Pollution Rule (“CSAPR”). That is important for the speed of the State’s SIP process because it will allow regulators to build on work that EPA already has done. TCEQ and EPA recognize that the CSAPR FIP budget already has been held to be over-control for certain interstate transport requirements. *See EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015). The new trading program will start from the CSAPR unit-level allocations and will preserve flexibility to adjust those allocations where necessary.

EPA and TCEQ further agree to parallel processing of the SIP, which will ensure that the trading program is in place and finalized by the end of next year.

At each step, TCEQ and EPA will work together to determine which units should be included, what the unit level allocations should be, and how the trading program should work. The goal of the parties is that at the end of this process, EPA will be able to determine that Texas has met all outstanding requirements for regional haze under CAA § 169A, including SO<sub>2</sub>, PM, and

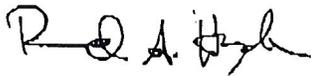
NO<sub>x</sub> BART and interstate visibility transport under CAA § 110(a)(II)(D)(ii) for the 1997 8-hour ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 8-hour ozone, 2010 1-hour NO<sub>2</sub>, and 2010 1-hour SO<sub>2</sub> national ambient air quality standards (NAAQS). And this process could serve as a model for cooperative federalism under the Clean Air Act.

**NOW, THEREFORE, EPA AND TCEQ AGREE AS FOLLOWS:**

1. The executive director of the TCEQ agrees in the spirit of cooperative federalism to submit to the commission for consideration a proposed revision to its SIP to address the outstanding BART and visibility transport requirements.
  - a. The executive director agrees to submit a proposed SIP revision for commission consideration no later than March 31, 2018.
  - b. TCEQ agrees to coordinate with the owners and operators of potentially impacted EGUs in the State to develop a SIP.
  - c. Upon adoption by the commission, TCEQ agrees to submit to EPA for action a revision to its SIP to address the Regional Haze and interstate visibility transport requirements not later than October 31, 2018.
  - d. TCEQ intends for this SIP submittal to incorporate trading program flexibilities, to the extent appropriate.
  - e. TCEQ intends to ask EPA to parallel process this SIP submittal.
  - f. TCEQ intends for this SIP revision to address requirements for regional haze under CAA § 169A for SO<sub>2</sub>, PM, and NO<sub>x</sub> BART and interstate visibility transport under CAA § 110(a)(II)(D)(ii) for 1997 8-hour ozone, 1997 PM<sub>2.5</sub>, 2006 PM<sub>2.5</sub>, 2008 8-hour ozone, 2010 1-hour NO<sub>2</sub>, and 2010 1-hour SO<sub>2</sub> NAAQS.
2. EPA agrees to parallel process this SIP submittal and intends to sign a final action on the SIP revision by December 31, 2018.
3. TCEQ and EPA intend to work together to meet the goals of this MOA.
4. This document does not establish binding legal requirements on EPA or TCEQ or any of their officers, employees, other representatives, or any other person. EPA retains all the discretion afforded to it under the CAA and the general principles of administrative law. As required by the Antideficiency Act, 31 U.S.C. § 1341 and 1342, all commitments made by EPA herein are subject to the availability of appropriated funds. Nothing in this document in and of itself obligates EPA to expend appropriations or to enter into any contract, assistance agreement, or interagency agreement, or to incur other financial obligations. This document does not create any exemption from policies governing competition for assistance agreements. Any transaction involving reimbursement or contribution of funds between the parties to this document will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

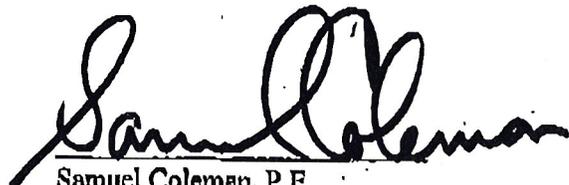
5. All commitments made by TCEQ in this agreement are subject to Texas law, including but not limited to the Government Code, the Water Code, the Texas Health and Safety Code, and the General Appropriations Act. Nothing in this agreement requires TCEQ to expend funds in violation of Texas law.
6. This MOA may be signed in counterparts.
7. This MOA will terminate upon EPA's final rulemaking action on TCEQ's SIP submittal.

Signed this 14th day of August 2017.



---

Richard A. Hyde, P.E.  
Executive Director  
Texas Commission on  
Environmental Quality



---

Samuel Coleman, P.E.  
Acting Regional Administrator  
United States Environmental  
Protection Agency, Region 6



August 14, 2017

The Honorable Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Dear Administrator Pruitt:

On behalf of the State of Texas, we commend you for your commitment to restoring the principles of cooperative federalism under the Clean Air Act. We are committed to working with your administration to create a state implementation plan (SIP) by the end of next year to implement the best available retrofit technology (BART) requirements of the Regional Haze Rule. And we want to assure you that we will bring the full weight and resources of the State of Texas to bear on this issue.

As you know, Congress intended the Clean Air Act to be “[a]n experiment in cooperative federalism.” *Luminant Generation Co. v. EPA*, 675 F.3d 917, 921 (5th Cir. 2012) (internal quotation marks omitted). The act gave the Environmental Protection Agency (EPA) the power to identify pollutants and set air quality standards. And Congress gave states “the primary responsibility for implementing those standards.” *Id.* (internal quotation marks omitted); *see* 42 U.S.C. § 7407(a) (“Each State shall have the primary responsibility for assuring air quality within [its] entire geographic area.”); *id.* § 7401(a)(3) (“[A]ir pollution prevention . . . is the primary responsibility of States and local governments.”).

The principal way states implement air quality standards is through SIPs. The states have “wide discretion” in formulating those plans. *Union Elec. Co. v. EPA*, 427 U.S. 246, 250 (1976). And the Clean Air Act provides that EPA “shall approve” a SIP “if it meets the applicable requirements of this chapter.” 42 U.S.C. § 7410(k)(3). Only where the state fails to meet those requirements does EPA gain the power to issue a federal implementation plan (FIP). *Id.* § 7410(c)(1). As the Fifth Circuit recently observed in a related case involving the Regional Haze Rule, “[t]he structure of the Clean Air Act indicates a congressional preference that states, not EPA, drive the regulatory process.” *Texas v. EPA*, 829 F.3d 405, 411 (5th Cir. 2016).

We agree with you that, in recent years, this regulatory process has become both uncooperative and unproductive. Take first the uncooperativeness. Between January 2009 and January 2017, EPA imposed 56 FIPs. That is more than 10 times as many FIPs as were issued in the three

The Honorable Scott Pruitt  
August 14, 2017  
Page 2

preceding presidential administrations combined. EPA and Texas agree that imposing another FIP here would further unsettle the cooperative federalism that Congress intended to foster in the act.

We also agree that the Cross-State Air Pollution Rule (CSAPR) and the Regional Haze Rule prove that FIPs can be unproductive. In 2011, EPA imposed a CSAPR FIP on 27 states, including Texas, to limit the cross-state transport of certain air pollutants. That approach resulted in years of protracted litigation, and ultimately, the D.C. Circuit held that the Texas FIP was illegal and remanded the issue back to EPA. *See EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015).

Similarly, in January 2016, EPA disapproved the Reasonable Progress portion of the Texas Regional Haze SIP and imposed a Regional Haze FIP on Texas. That FIP set “reasonable progress goals” that Texas must meet to restore natural visibility at two national parks and one federal wildlife refuge by 2064. EPA imposed that FIP because it concluded that Texas’ reasonable-progress calculations were off by between 0.18 percent and 0.65 percent. And as a consequence of that “error,” EPA’s FIP would have required scrubber upgrades and retrofits at 15 electricity generation facilities at a cost of \$2 billion. The Fifth Circuit stayed that FIP and remanded it to EPA, again returning everyone to the drawing board. *See Texas v. EPA*, 829 F.3d 405 (5th Cir. 2016).

We agree with you that it is time to break the FIP-stay-remand cycle. Staff members in your office and at the Texas Commission on Environmental Quality (TCEQ) have been working together for months to implement the Regional Haze Rule in accordance with binding directions from the Fifth and D.C. Circuits. And rather than doing so through yet another FIP — this one to implement the BART requirement — we agree that a SIP provides a better path forward.

We think the BART SIP process should be motivated by three principles. The first is speed. Everyone wants to see clear rules in place as soon as possible. Citizens and environmental groups want to see measurable progress toward natural visibility. Power generators want certainty in their budgets. And consumers want to know their power grid is reliable. This all requires that this SIP be proposed and finalized faster than normal. After extensive consultation between staff members at TCEQ and EPA, we are confident that the BART SIP can be in place by the end of next year.

The second principle is cooperation. Much of the delay associated with the Regional Haze Rule — and CSAPR — stems from a lack of federal-state cooperation, both inside and outside the courtroom. We want to change that and to work collaboratively to establish a trading program that satisfies the BART and interstate visibility transport requirements. As part of that cooperation — and as a further measure to speed up this SIP process — the Texas BART SIP will ask for “parallel processing” by EPA under 40 C.F.R. Part 51, Appendix V.2.3.

Law is the third principle that will motivate this SIP process. The Fifth Circuit held that even without a Regional Haze BART SIP in place, Texas is already under the glide path that both the

The Honorable Scott Pruitt  
August 14, 2017  
Page 3

state and EPA calculated for restoring natural visibility. *See Texas*, 829 F.3d at 414-15; *see also* 79 Fed. Reg. at 74,887 (finding that measured visibility already exceeds reasonable progress goals under both Texas' 2009 SIP and EPA's FIP). We recognize the Fifth Circuit's decision means Texas and EPA will need to work together to fix the problem of over-control.

At the end of the day, we are confident the state and EPA together will create a regulatory program that is good for the air, good for the citizens of Texas and other states, fair to our state's power generators, and that satisfies the legal requirements of the Clean Air Act. We commend you for your commitment to working with the states rather than against them. And we look forward to working with you on this important project.

Sincerely,



Greg Abbott  
Governor



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