GOVERNOR GREG ABBOTT

August 23, 2022

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500-0005

Dear Mr. President:

I recently wrote to you calling for a halt to the Environmental Protection Agency's (EPA) "discretionary redesignation" of the Permian Basin—a targeted move by your administration against the energy sector that would jeopardize 25 percent of our nation's gasoline supply. Based on your surrogate's response, it is clear that your administration is bound and determined to move forward, regardless of the lasting adverse impacts of this policy on Americans who are struggling against inflation and high gas prices.

What's more, EPA Administrator Michael Regan's response shows that your administration plans to attack Texas production based on illogical and flawed grounds. Take, for instance, the justification of a redesignation of the Texas Permian Basin for ozone when the EPA lacks ozone monitors in the Texas Permian Basin. That itself is arbitrary.

And yet your administration's letter says that it has the right to move forward based on ozone monitors in Carlsbad, New Mexico. The logical flaws in this reasoning are deep. First, there is an ozone monitor in Hobbs, New Mexico. The Hobbs monitor registered NAAQS-compliant design values in 2020, 2021, and 2022 to date. That is, based on the most current information from Hobbs that has been shared with Texas, the EPA lacks the supporting data to redesignate the Texas Permian Basin. Yet your administration seems eager to ignore Hobbs and leapfrog to Carlsbad to supply the support for such redesignation.

Second, your agency apparently conceives nonattainment by ignoring that emissions from Mexico likely affect the New Mexico monitors. Under Section 179B of the federal Clean Air Act (FCAA), the Texas Commission on Environmental Quality demonstrated to the EPA that the El Paso area is affected by emissions from Mexico. But the EPA has not acted on this demonstration, choosing instead to stall on that analysis so that an evidence-based finding will not hamper this hurried case against Texas producers.

Third, if the Carlsbad monitor provides the justification for redesignation of the Texas Permian Basin, that finding conflicts with the EPA's most recent modeling. The EPA's April 6, 2022, proposed Federal Implementation Plan for interstate transport alleged that Texas contributes to nonattainment at two monitors in Wisconsin, but somehow the same EPA modeling does not indicate that Texas contributes to nonattainment in New Mexico. Yet here again, the EPA will ignore its own finding and fabricate a new one in order to eliminate oil and gas production in the Permian Basin.

Of course, the dearth of logic and data to support the administration's position has little to do with process and procedure. It is grounded in your desire to eliminate oil and gas production in Texas. As you said during your campaign, "I guarantee you, we're going to end fossil fuels."

But under federal law, you cannot put politics before process and procedure. The illogical and flawed actions described here would be "arbitrary and capricious." See *Judulang v. Holder*, 565 U.S. 42, 53 (2011); *Luminant Generation Co. v. EPA*, 675 F.3d 917, 925 (5th Cir. 2012). Texas stands ready to challenge these actions if they continue to be ignored.

We will begin by challenging the accelerated timelines that your agency uses to rush through its policies. Administrator Regan's letter references the timing of the FCAA, § 107(d)(3) designation process—240 days from notification, including time for states to provide input. But this time is neither sufficient to conduct the necessary technical analyses nor even afforded in full, as demonstrated in recent matters with Texas in which the EPA arbitrarily shortened procedural timelines.

Cooperating with states and performing a thorough assessment of the available technical data beyond a mere proximity test is a deliberate process that takes time. Because your administration has very little of it remaining, you refuse to deliberate or halt this "discretionary" action despite the adverse impacts on Americans. If those impacts are irrelevant to your administration, be honest and tell us. Don't send your surrogate. Americans have the right to know if their president puts politics over people.

Sincerely,

Greg Abbott
Governor

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