



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 26, 2011

President Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

The Honorable Harry Reid  
United States Senate  
522 Hart Senate Office Building  
Washington, D.C. 20510-2803

The Honorable John A. Boehner  
United States House of Representatives  
1011 Longworth House Office Building  
Washington, D.C. 20515-3508

Re: Texas' EPA Litigation and Proposed Legislation

Dear Messrs. Obama, Reid, and Boehner:

In December 2009, the Environmental Protection Agency claimed for the first time that the Clean Air Act—which was enacted in 1972 and has not been amended by Congress since 1990—suddenly requires the EPA to regulate so-called “greenhouse gases” such as carbon dioxide. Since then, on six separate occasions the EPA issued legally flawed regulations based on its misguided claim of authority to unilaterally regulate carbon dioxide. These job-killing new regulations impose burdensome costs and economic uncertainties on employers in Texas and around the nation, threatening the livelihoods of thousands of hard-working Americans. Each of the six new regulations also violates the Clean Air Act, the Administrative Procedure Act, or both.<sup>1</sup> As a result, the State of Texas has filed six separate legal actions against the EPA, challenging each improper regulation in the federal courts of appeals.

I write to you in the hope that potential Congressional action can render further legal action by Texas unnecessary. Under our constitutional system, it is Congress—not unelected bureaucrats in the EPA—that should decide whether and how the federal government regulates carbon dioxide emissions.

---

<sup>1</sup> You need look no further than the EPA’s “Tailoring Rule” to see that regulation of carbon dioxide and other greenhouse gases is clearly beyond the scope of what Congress intended under the Clean Air Act. As the EPA admits, regulating carbon dioxide using the pollutant control methods prescribed by the Clean Air Act would be economically disastrous, politically unpopular, and as a practical matter completely unfeasible. But rather than conclude on this basis that Congress must not have intended the Clean Air Act to cover carbon dioxide, the EPA issued the Tailoring Rule, which by bureaucratic fiat alters the Clean Air Act’s Congressionally-mandated pollutant control methods.

I am hopeful that the 112th Congress will reassert its proper role by reclaiming this important decision-making process on behalf of the American people. In particular, recently proposed legislation gives me hope that Congress will act to rein in the EPA in a way that preserves jobs, creates economic opportunity, and restores the proper balance of power between the legislative and executive branches of the federal government. For example, Senator Jay Rockefeller has proposed a bill that would prohibit the EPA from regulating stationary sources of carbon dioxide for the next two years. Other Congressional proposals would take it one important step further. Legislation proposed in the House, for instance, would establish that greenhouse gases like carbon dioxide are not subject to regulation by the EPA under the Clean Air Act.

These and other similar legislative proposals being considered by Congress pave a path to resolving Texas' litigation against the EPA, reclaiming Congress' rightful authority, and boosting the economy by resolving regulatory uncertainty. There appears to be a growing, bipartisan consensus in Congress that, in the words of Rep. Collin Peterson (D-MN), "the EPA cannot regulate greenhouse gases under the Clean Air Act without doing serious damage to the economy. . . Congress should be making these types of decisions." If Congress passes—and the President signs—legislation requiring the EPA to abandon its legally misguided and economically damaging regulation of stationary sources of carbon dioxide emissions, such action will effectively resolve all six of Texas' legal actions, and the State would willingly dismiss those actions.

For several reasons, legislative action is preferable to protracted litigation. First, a legislative solution would allow all involved to redirect taxpayer resources to other matters. In the past, Texas and the EPA have collaborated to improve air quality in Texas by working together to prosecute violations of the Clean Air Act and Texas air quality laws. For example, working together we secured a \$700 million air quality settlement against Valero in 2005. Similar state-federal enforcement efforts against ASARCO and British Petroleum produced agreements from these companies to take significant actions to improve air quality in Texas and to pay stiff penalties for violations of air quality laws. But productive collaboration with the EPA has recently proven difficult in light of the EPA's new priorities. Over the last two years, the EPA has had difficulty balancing its Congressionally-authorized pollution-reducing responsibilities with its newly-claimed oversight of greenhouse gases. New data shows that the EPA reduced 57 percent less air pollution in 2009-10 under President Obama than under President Bush in 2007-08. Such numbers indicate that the EPA's preoccupation with advancing new carbon dioxide regulations has severely hindered its ability to protect Americans from toxic air contaminants, such as sulfur dioxide, carbon monoxide, and lead. Congressional action that resolves the legal disputes between Texas and the EPA would allow the EPA to refocus its resources where Congress intended—on toxic air pollutants that literally poison anyone who inhales them, rather than on non-toxic compounds like carbon dioxide that naturally occur everywhere in the air we breathe and cause no harm when ingested.

Not only would the proposed legislative solution lead to improved air quality, it would free American employers from the burdensome costs and economic uncertainties created by the EPA's recent actions. Unilateral EPA regulation of carbon dioxide imposes direct costs on the energy industry—directly threatening thousands of American jobs. Those costs are also passed along to every business and every individual American in the form of higher energy bills. At a

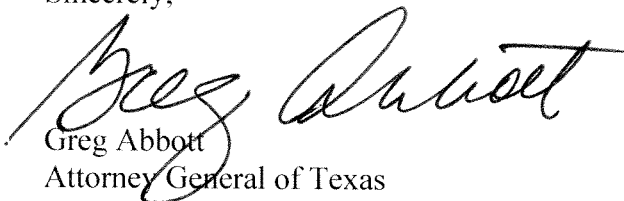
time of high unemployment, low consumer confidence, and crippling economic uncertainty in this country, we should be looking for ways to encourage investment and reduce the cost of doing business—and creating jobs—in America. Allowing unaccountable federal bureaucracies to make sweeping changes to the law without Congress' consent reduces confidence in our democratic system and in the rule of law, which in turn discourages new investment and economic growth. By reining in a bureaucracy run-wild like the EPA, Congress can begin to restore the American people's confidence in our constitutional system of government and in the future of our nation's economy.

I trust that we share a commitment to protecting the American economy from needless, job-killing government intrusion. President Obama recently ordered a sweeping review of the many federal regulations that “stifle job creation and make our economy less competitive.” I applaud this long-overdue effort, and I am glad the Administration recognizes the urgent need to remove unnecessary regulatory barriers to job creation and economic growth. But announcing our opposition to burdensome regulations is easy. It is quite another thing to take real action to end them. Any serious review of economically burdensome federal regulations by this Administration must begin by rethinking the EPA's misguided and illegal attempt to use the Clean Air Act to regulate carbon dioxide emissions.

I can think of no better way for the White House to demonstrate its commitment to ending job-killing regulations than by rescinding the EPA rules Texas has challenged. Congress, too, has the opportunity to act now to save jobs and increase confidence in the future of our economy by ordering the EPA to cease its efforts to regulate carbon dioxide emissions through the ill-suited means of the Clean Air Act. Such action on your part would not only resolve these economically burdensome regulations, it would also bring an end to the six lawsuits brought by Texas against the EPA. Whether it is accomplished through legislation or executive action, if the EPA is required to abandon its legally flawed attempt to regulate stationary sources of carbon dioxide, Texas will willingly dismiss the six legal actions it has filed against the EPA.

I look forward to your response.

Sincerely,



Greg Abbott  
Attorney General of Texas