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The Honorable Ed Whitfield
Chairman, Subcommittee on Energy and Power
Committee on Energy and Commerce
House of Representatives
Congress of the United States
2125 Rayburn House Office Building
Washington, DC 20515-6115

Re: State, Local, and Federal Cooperation in the Clean Air Act forum on Thursday, November 29,
2012

Dear Mr. Chairman,

Thank you and the members of the Subcommittee on Energy and Power for inviting me to participate in the "State, Local, and Federal Cooperation in the Clean Air Act" forum in Washington, DC on November 29, 2012. As a local official in the Houston Department of Health and Human Services responsible for implementing the City's air pollution abatement program within the City of Houston jurisdiction, I am privileged to share my views on the air quality process and in responding to the questions following the ensuing general introduction.

The City of Houston is the fourth most populous city in the nation. It is located in the Houston-Galveston-Brazoria (HGB) Consolidated Metropolitan Statistical Area, eight counties with a population of almost six million, making it the 6th largest metropolitan statistical area in the U.S. The Houston area has a very diverse economy including energy, aeronautics, technology, and the world's largest Medical Center. The Bureau of Pollution Control and Prevention in the Houston Department of Health and Human Services is responsible for implementing the City's Air Pollution Abatement Program. My staff and I conduct air quality monitoring, investigate complaints of violations of the state and federal Clean Air Acts, and take enforcement actions. We also participate in region-wide air quality planning, collecting and disseminating information to the general public on air pollution.

Houston faces challenges implementing the Clean Air Act, by virtue of its population growth and industry. Nearly 250 chemical and petrochemical manufacturing companies operate near nine refineries and the Port of Houston (which is also one of the world's largest). The emissions from industry combine with mobile emissions from cars, ships, trains and heavy construction equipment. While the City of

Houston is proud of our industry and its positive effect on the region's economy, we have been committed to reducing emissions through proactive steps.

Houston is in non-attainment of the 1997 one-hour and eight-hour ground level ozone standards under the National Ambient Air Quality Standards, and is classified as severe. The one-hour standard had an attainment deadline of 2007 and the eight-hour standard has an attainment deadline of 2019. Houston is currently in attainment of the 24-hour and annual PM 2.5 standard. However, Houston has growing concerns in terms of EPA's recently proposed lowering of the annual PM 2.5 standard, and what its impact may be on the HGB region if EPA's proposal is adopted.

Beyond the six criteria pollutants under the NAAQS, there are no other declared air quality national standards. However, the federal Clean Air Act requires EPA to control 187 listed hazardous air pollutants, including benzene, 1,3-butadiene, and formaldehyde, all of which have been of particular concern to Houston. Although trends of 1,3-butadiene and benzene, for example, have been improving in the Houston area, these air toxics remain as serious concerns because: 1) of their relative and varying pollutant concentration in East Houston; 2) about half of the point sources in the HGB area are located in the East Houston area; 3) the close proximity of the Port of Houston and the Ship Channel and associated generation of a variety of pollutants; and 4) the convergence of freeways, highways, and rail in the same area.

In your agency's experience implementing the Clean Air Act (CAA), what is working well? What is not working well?

Air quality in Houston has been gradually improving thanks to: 1) implementation of the NAAQS reducing ground-level ozone pollution while working toward attainment of the 1997 8-hour standard, as well as helping keep the region in attainment of the fine particles standard through voluntary actions; and 2) placing more emphasis on monitoring and data results, leading to more strategic controls of ozone precursors. Further advances in control technologies, progressive development of air quality related science, and greater advocacy for stronger rules, permits and enforcement have all contributed to measurable reductions in many air pollutants.

Among the challenges that the City faces are frequent changes in the regulatory framework and the state's control over the City's air quality program. While the City has been proactive in working with industry to reduce emissions, it has done so with limited regulatory authority.

Do state and local governments have sufficient autonomy and flexibility to address local conditions and needs?

The State of Texas is responsible for implementing the City's air quality program, which is different from other states where the local region or municipality is responsible for air quality programs. In Texas, the state is also responsible for making rules, issuing permits, and enforcing violations of the rules. The only role of the City is in monitoring air toxics, which is restrictive and makes it difficult for the City to implement effective pollution reduction approaches.

The City of Houston receives pass-through funds from EPA through the state to maintain its air monitoring network of instruments measuring NAAQS, O3, PM, NOx, CO, and SO2, as well as weather parameters. Some of these pass-through funds must be matched by the City, which adds a financial burden to the City. The validated results of these measurements are overseen by and provided to the Texas Commission on Environmental Quality for processing to EPA, and used as part of the overall air monitoring system in the HGB area to determine attainment status of the NAAQS.

To address local conditions and needs such as abating local air pollution within the boundaries of the City (approximately 630 square miles), Houston typically relies on its code of ordinance to respond to routine and emerging public health needs. However, Houston is constrained to a narrow margin of operations in its air quality regulating role. For example, Texas law empowers local governments to enter property to inspect the air and measure compliance with Texas law or TCEQ rules. However, in enforcing non-compliance the City can only issue warnings, citations or institute a civil suit to bring a regulated entity into compliance.

Houston has been progressively increasing its case by case response with applied science and engineering to combat air pollution at its source. For example, although verification of air quality compliance of regulated entities through recordkeeping and rules review remains a useful tool, the City's most effective means of ascertaining pollution has been by the use of a diverse inventory of air quality instruments quantifying detected air pollutants. The City performs comparative air and health risk analyses to help give concrete meaning to quantified findings. The City has used data from its comparative air and health risk analyses to reach voluntary agreements with businesses to install better emissions controls which has resulted in the reduction of emissions.

Does the current system balance federal, state, and tribal roles to provide timely, accurate permitting for business activities, balancing environmental protection and economic growth?

The City of Houston does not issue air quality permits because this authority is delegated to the State of Texas, and although in other states this responsibility is shared with local agencies, this is not the case in Houston. From our observation, there is not a consistently good balance because: 1) the air permitting process is complex and long; 2) approved permit provisions are frequently difficult to enforce; 3) lack of air toxic standards restrict the City's ability to address public health impact; 4) the current air quality process does not address cumulative impacts; and 5) the use of emissions quantification methods by EPA that do not account for all emissions sources are partly responsible for underreported emissions in the emissions inventory.

Does the CAA support a reasonable and effective mechanism for federal, state, tribal and local cooperation through the State Implementation Plans? How could the mechanism be improved?

There have been reductions of measured ozone and particulate matter pollution and their related precursors, and progressive reduction of air toxics, in the HGB area, especially over the last 10 years. There have also been large reductions in the mobile source sector. Emissions from mobile sources have been under the purview of the EPA beyond the control of states and locals and outside of the SIP process. The City of Houston has been participating in the stakeholder process as one of many stakeholders in the Metropolitan Planning Organization in the region involving other municipalities, businesses, environmental groups and citizens. However, the SIP process has been problematic for local governments because EPA has imposed new standards when the state and HGB area have seven additional years to comply with standards previously put into effect.

For example, while the deadline for attainment of the 1997 8-hour ozone standard of 0.08 ppm is 2019, EPA adopted a new 2008 8-hour ozone standard of 0.075 ppm with a deadline of December 31, 2015. At the same time, EPA is not expected to finalize its implementation rule for the 2008 8-hour standard until the spring of 2013. Once the rules are finalized, Texas then would be expected to propose its SIP revision by the end of 2013, with a projected SIP revision adoption by the middle of 2014, and EPA would determine attainment of the 2008 8-hour standard using monitoring data from 2013 to 2015. In the meantime, as the CAA requires that EPA review the 8-hour ozone standard every five years, which

will be in 2013 (five years since 2008), it may mean another new standard is proposed by EPA in 2013. If this becomes the case, EPA would then issue a proposed rule to revise the standard again, followed by a final rule sometime in 2014. If all of this ensues, it is possible that states and regions could be simultaneously confronting in 2013: 1) a current SIP implementation of the 1997 8-hour standard; 2) revision of their SIPs to meet the 2008 8-hour standard; and 3) facing a new 2013 standard revising the 2008 standard, whose SIPs would not even yet be in effect. All of the above creates uncertainty for regulators, regulated entities, and local governments.

Specific improvements include reforms to changes to CAA implementation mechanisms, especially where streamlining can reduce unnecessary restrictions to improve coordination within EPA, including headquarters and its 10 regional offices, and between EPA, states and local governments. NAAQS have been remarkably important in the achievement of air pollution reduction, however, Congress may want to consider requirements that incorporate multi-pollutant approaches that address commonly known precursors to ozone and particulate matter, as well as air toxics.

Are cross-state air pollution issues coordinated well under the existing framework?

The State of Texas coordinates cross-State pollution issues. The current regulatory structure appears to make coordination difficult with the result being frequent court challenges.

Are there other issues, ideas or concerns relating to the role of federalism under the CAA that you would like to discuss?

Regional efforts have been underway by state and local governments working together with EPA, and at the national level through associations such as the Environmental Council of States and the National Association of Clean Air Agencies to improve the SIP process. I would also point to the work done in 2004 by the National Research Council (NRC). The NRC responded to a congressional request for conducting an independent evaluation of the CAA, providing a report, "Air Quality Management in the United States (2004)." The report thoroughly analyzed the state of Air Quality Management in the U.S., yielding conclusive findings that I believe may still be relevant to the interests of this CAA forum.

Thank you again and the Subcommittee members for this participation opportunity. If I may help answer further questions, I may be contacted at (832) 393-5619.

Sincerely,



Arturo J. Blanco
Pollution Control and Prevention, Bureau Chief

Cc: Ron Sandberg, Assistant Director/Chief of Staff
Kippy Caraway, Intergovernmental Relations Director, Mayor's Office