

ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 20, 2019

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEW YORK,)	
STATE OF CONNECTICUT,)	
STATE OF DELAWARE,)	
STATE OF MARYLAND,)	
COMMONWEALTH OF MASSACHUSETTS,)	
STATE OF NEW JERSEY, and)	
THE CITY OF NEW YORK,)	
<i>Petitioners</i>)	No. 19-1019
)	consolidated with
)	No. 19-1020 and
)	No. 19-1047
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, and ANDREW)	
WHEELER, in his official capacity as)	
Administrator of the U.S. Environmental)	
Protection Agency,)	
<i>Respondents</i>)	

**RESPONSE of INTERVENOR THE STATE OF TEXAS and
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY to
THE COURT'S ORDER FOR SUPPLEMENTAL BRIEFING**

On September 13, 2019, the Court issued its opinion in *Wisconsin v. EPA*, No. 16-1406, and issued an order in this case requiring supplemental briefing on the effect of that opinion. As to the holding in *Wisconsin* requiring EPA to take into consideration the earliest possible attainment dates when considering an appropriate future attainment year,

EPA clearly did so in the rule challenged here.¹ Texas takes the position that *Wisconsin* has no effect on this case as to Texas because the rule challenged here should be affirmed on the basis that Texas has already met its obligations under the Good Neighbor Provision of the Clean Air Act – well in advance of *any* deadline as discussed in previous briefing. Therefore, any EPA error resulting in a deadline for upwind States to lower their contribution to nonattainment that is later than the deadline for downwind States to attain the NAAQS is irrelevant.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

DARREN L. MCCARTY
Deputy Attorney General for Civil Litigation

PRISCILLA M. HUBENAK
Chief, Environmental Protection Division

/s/ Linda B. Secord
LINDA B. SECORD
Assistant Attorney General
State Bar No. 17973400
Linda.Secord@oag.texas.gov

¹ See discussion of the selection of a future analytic year at 83 *Fed. Reg.* 65878, beginning on p. 65889.

Office of the Attorney General of Texas
Environmental Protection Division
P.O. Box 12548, MC-066
Austin, Texas 78711-2548
Tel. (512) 475-4002
Fax. (512) 320-0911

**ATTORNEYS FOR TEXAS and THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

CERTIFICATE OF COMPLIANCE

The foregoing Response complies with Federal Rule of Appellate Procedure 27(d)(1)(E) and 32(a)(5) and (6) because it is written in 14-point Georgia typeface. It complies with Federal Rules of Appellate Procedure 27(d)(2)(A) and 32(f) and (g) because it contains 190 words, according to Microsoft Word.

/s/ Linda B. Secord
Assistant Attorney General

CERTIFICATE OF SERVICE

On September 17, 2019, the foregoing Response was served via CM/ECF on all registered counsel.

/s/ Linda B. Secord
LINDA B. SECORD
Assistant Attorney General