THE NAVAJO NATION

Navajo Nation Environmental Protection Agency
P.O. Box 339
Window Rock, Arizona 86515

P. O. BOX 9000 • WINDOW ROCK, ARIZONA 86515 • (520) 871-6000

KELSEY A. BEGAYE
PRESIDENT

TAYLOR McKENZIE, M.D.
VICE PRESIDENT

Tuesday, October 31, 2000

Felicia Marcus
Regional Administrator
U.S. Environmental Protection Agency – Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

RE: NAVAJO NATION'S RECOMMENDED AREA DESIGNATIONS FOR THE REVISED OZONE NAAQS

The Navajo Nation is responding to the draft document, "Guidance on 8-Hour Ozone Designations for Indian Tribes," dated June 15, 2000. This document encourages interested Tribes to make recommendations for designating their lands as attainment, non-attainment, or unclassifiable with the 8-hour Ozone National Ambient Air Quality Standard by July 31, 2000, and later extended to October 31, 2000 by memo from USEPA. The Navajo Nation recommends that the lands within the exterior boundaries of the Nation be designated as unclassifiable and also offers the following comments to EPA's designation process for the revised 8-hour Ozone NAAQS.

The Navajo Nation is a federally recognized Indian Tribe located in Arizona, New Mexico, and Utah. The U.S. Environmental Protection Agency (EPA) has a federal trust responsibility to federally-recognized tribes, which requires that the Agency consult with and consider the interests of tribes when taking actions that may affect tribal rights or trust resources. This trust responsibility is separate and apart from the requirements of the Clean Air Act (CAA) § 107(d) designation process and has been reaffirmed by the courts, executive orders and agency policy statements. EPA's own 1984 policy regarding Indian Tribes consolidated and expanded on previously issued statements of policy that recognized the importance of tribal governments in regulatory activities that impact reservation environments. The keynote of this policy was "to give special consideration to Tribal interests in making Agency policy, and to insure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands."

It is the Navajo Nation's opinion that during this designation process for the new 8-hour ozone NAAQS, EPA is not meeting it's trust responsibility. As per President Clinton's May 14, 1998 Executive Order, EPA has an obligation "to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." The Navajo Nation does not believe that EPA can satisfy this obligation by simply providing the Nation with a draft guidance document and expecting the Nation to provide "meaningful and timely input" within the timeframe allowed. Without formal notice, consultation, and a reasonable opportunity to provide meaningful comment, the current designation process provides the Nation with merely an inconsequential role in the determination of a matter that substantially affects the Nation's governmental responsibilities and cultural values. While the Nation appreciates the opportunity to offer a recommendation according to the draft 8-hour ozone designation guidance, the fact that the Nation has received no formal notice of the request to participate with only a short amount of time remaining prior to the deadline suggests that the Nation's interests may be overlooked.

The Navajo Nation is formally recommending that it be designated as unclassifiable for the 8-hour ozone NAAQS. The Nation believes that an unclassifiable designation is consistent with the CAA § 107(d)(1) because no valid information exists to determine whether the area of the Navajo Nation is meeting or not meeting the 8-hour ozone standard. The Nation is currently in the process of developing a monitoring network as part of its efforts to assume regulatory responsibility over the Nation's air resources. It is the Nation's goal to develop its air monitoring network to include ozone monitoring within its network and until such time as the network indicates that the 8-hour ozone standard is not met, the Nation should be designated as unclassifiable.

EPA's use of Metropolitan Statistical Areas (MSAs) does not necessarily affect the Nation, but the Nation does not agree that this is the most useful boundary to use in its designation process as it affects tribal lands. Entire counties are typically included in an MSA and Navajo Nation lands are partially located in several counties in 3 states. Unlike the counties, which are mere political subdivisions, the Nation is independent and sovereign (with its own political subdivisions that do not follow state or county boundaries) and provides tribal government services to its citizens without much reliance on state and counties. The Navajo Nation believes that its boundaries should be recognized independently of other (surrounding) areas in support of an unclassified designation for the new 8-hour Ozone NAAQS.

In addition, the Navajo Nation believes that the 11 factors listed in EPA's guidance document for the designation process may be inappropriate for tribal lands. The Navajo Nation encourages EPA to be more flexible in its approach for using these 11 factors when working case-by-case with tribes in any designation process.

The Navajo Nation sincerely appreciates the opportunity to provide comments and make this designation recommendation. The Navajo Nation looks forward to a continued working relationship with Region IX during this designation process. Questions and concerns regarding this letter may be directed to Ms. Tamara Long, Program Manager, Navajo Air Quality Control Program, at (520) 729-4246.

Sincerely,

Derrith Watchman Moore
Executive Director
Navajo Nation Environmental Protection Agency

CC: Calvert Curley, NNEPA, Department Director, Air and Toxics
Tamara Long, Navajo Air Quality Control Program