POTAWATOMI
(Keeper of the Fire)

Forest County Potawatomi Community
P.O. Box 340, Crandon, Wisconsin 54520

October 30, 2000

Mr. Bharat Mathur, Director (A-18J)
Air and Radiation Division
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard
Chicago, IL 60604-3590

RE: Request for Recommendation of 8-Hour Ozone Air Quality Standard Attainment/Unclassifiable or Nonattainment Designations for Tribal Lands

Dear Mr. Mathur:

I am writing in response to your August 29, 2000 letter requesting the Forest County Potawatomi ("FCP") to recommend 8-hour ozone air quality standard "attainment/unclassifiable" or "nonattainment" designations for FCP's tribal lands. FCP appreciates the U.S. Environmental Protection Agency's request for recommendations on this important matter. However, FCP believes that EPA is acting prematurely in attempting to designate areas under the 8-hour standard since (1) the matter is still in the courts and (2) the highest court to rule on the issue remanded the standard to EPA to reissue it based upon an "intelligible principle." As you are aware, the District of Columbia Circuit recently held that the Clean Air Act's provision for EPA to set revised NAAQS at a level "requisite to protect public health" with "an adequate margin of safety" was an unconstitutional delegation of legislative authority because neither Congress nor the EPA set out an "intelligible principle" for that level. American Trucking Association, Inc. v. EPA, 175 F.3d 1027 (D.C. Cir. 1999), *reh'g granted in part and denied in part*, 195 F.3d 4 (D.C. Cir. 1999), *cert. granted* 146 L.Ed. 2d 954 (2000). The Court then remanded the standard to EPA for the agency to develop an "intelligible principle" for setting a revised standard. After the DC Circuit's ruling, EPA petitioned for and received a writ of certiorari to argue this matter before the U.S. Supreme Court.

In addition, it should be noted that if the 8-hour ozone standard were enforceable, FCP's Forest County lands would all be properly classified as "attainment/unclassifiable," since there is no monitoring data for Forest County and the EPA's data shows that the surrounding counties of Florence, Vilas and Oneida are attainment.

If you have any questions or comments regarding this matter, please contact Arthur J. Harrington of Godfrey & Kahn, S.C., (414) 273-3500, FCP's environmental counsel with respect to this issue.

Sincerely yours,

FOREST COUNTY POTAWATOMI

Harold Frank, Community Chairman

cc: Executive Council
Jeff Crawford
Christine Hansen
Arthur J. Harrington, Esq.
Lloyd Egan, Wisconsin Department of Natural Resources