State of Louisiana
OFFICE OF THE GOVERNOR
Baton Rouge
70804-9004

POST OFFICE BOX 94004
(225) 342-7015

M. J. "MIKE" FOSTER, JR.
GOVERNOR

June 30, 2000

SENT VIA FACSIMILE (214) 665-2118

Mr. Gregg A. Cooke
Regional Administrator (6RA)
US EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

RE: Designations for all areas within the state under the 8-hour national ambient air quality air standard (NAAQS) for ozone

Dear Mr. Cooke:

The United States Environmental Protection Agency (EPA) issued guidance in March of 2000 which requests that states provide recommendations for the new 8-hour ozone standard by June 30, 2000. Louisiana has reviewed the designation guidance document in relationship to the overall air quality management and regulatory process and believes that it is inappropriate for the EPA to proceed with the 8-hour designations at this time. Our concerns are based on the fact that the courts have remanded the 8-hour standard which may result in a change in the standard that forms the very foundation on which the designation decision process is founded. Furthermore, the EPA has not produced an 8-hour standard guidance, schedule or implementation procedure that would allow the air quality planning process to proceed in an orderly fashion. Without appropriate and timely guidance, there will be a disruption of transportation projects and other beneficial economic development within the state. In short, the EPA has provided insufficient information for the state to assess the extent to which designations might ultimately affect our communities.

The EPA promulgated a new 8-hour standard for ozone in July of 1997. The new standard was immediately challenged in the courts. In May of 1999, the D.C. Circuit Court of Appeals remanded the new ozone standard in the American Trucking Association case, finding that the agency failed to articulate "intelligible principles" for establishing the standard and that the EPA had "construed Sections 108 and 109 of the Clean Air Act so loosely as to render them unconstitutional delegations of legislative power." Additionally, the court concluded that the EPA lacks authority to implement the revised ozone NAAQS. In October of 1999, the full court of appeals rejected the EPA's petition for a rehearing of the ozone case. The EPA has appealed to the Supreme Court and a ruling is expected sometime in 2001.

On May 30 of this year, the Supreme Court accepted an industry petition in American Trucking Association, Inc., et al. v Browner, which argues that the agency should use an analysis of the relative costs of regulations to help provide an "intelligible" rationale for establishing clean air standards. The court will hear the industry petition "in tandem" with the EPA petition for review of the D.C. Circuit Court of Appeals decision remanding the new ozone NAAQS. It is possible that the Court could find that cost-benefit analysis would provide the "intelligible principles" needed to help guide the EPA's standard setting process.

Under such a finding, the 8-hour ozone standard could be in immediate jeopardy, since the EPA's own 1997 Regulatory Impact Analyses (RIA) documents show that projected costs of full attainment of the standard exceed expected benefits. Based on these developments, it is not known at this time what the new ozone standard will ultimately be (if indeed there is one) following judicial review.

In addition to the uncertainty surrounding the new standard, there is a bothersome scarcity of information concerning the implications of designation as a nonattainment area under the new standard. States have been invited to provide recommendations on designation, yet the EPA has provided very little information on how the designations might ultimately affect our communities, specifically in the areas of transportation conformity, new source review, levels of emission reductions required and the attainment process in general.

One very disturbing development has been that, although the courts have concluded that the EPA lacks the authority to implement the revised ozone NAAQS, the EPA has indicated that transportation conformity will apply upon nonattainment designation and that new (and possibly existing) nonattainment areas will be in transportation conformity lapse. This will have profound effects on the transportation planning and economic development efforts for the affected parishes. Yet, at this time, the EPA cannot offer any guidance for the transportation conformity planning process under a new standard.

A review of 8-hour ozone design values for the parishes comprising the major urban areas of our state shows averages across all monitors within the potential nonattainment areas either below or only a few parts per billion (ppb) above the 84 ppb criterion. A number of areas have seen an increase in their design value during the unprecedented heat and drought of the past summer. We know that measures planned and currently being implemented will bring these readings down. It appears that with the EPA's planned designations, we may be faced with enormous costs to produce a negligible air quality benefit. Our state constitutional standard of environmental protection is a rule of reasonableness, which does not establish

environmental protection as an exclusive goal, but which requires a balancing process in which environmental costs and benefits must be given full and careful consideration along with economic, social and other factors. I fully agree with this philosophy and it is my hope that the U.S. Supreme Court may adopt the same approach in its resolution of the issues before it.

We currently employ the new Air Quality Index (AQI) reporting system in our major metropolitan areas and will start employing the AQI in our ozone forecasting for the Baton Rouge area in July, 2000. Thus, information on ozone levels in each of these areas is readily available to the general public. The designations, therefore, serve little purpose for informing the public about the air quality in their communities.

Our state regulations require that the Louisiana Department of Environmental Quality (LDEQ) conduct public hearings in all parishes that are under consideration for nonattainment designation with NAAQS. In Louisiana, nineteen (19) parishes have the potential to be designated nonattainment based on current EPA guidance. Comments collected during public hearings held in each of the 19 parishes will be sent to you under separate cover.

The EPA's pursuit of designations under an uncertain standard seems to ignore the gravity of the impacts of a nonattainment designation on a given area and the costs of trying to become informed and comply with the new standard. The designation of our parishes at this time will be particularly burdensome if the standard is changed, effectively rendering this designation process a futile exercise to be repeated again under a revised standard. Meanwhile, there is the potential for adverse economic impacts from averted business starts or cancellation of expansions and havoc with transportation planning and project development based on the tenuous nonattainment designations.

Should the EPA proceed with the designation process under these circumstances, Louisiana can only suggest that the EPA use the unclassifiable designation and not designate any area in the state as nonattainment. After the court has made its final decision on the 8-hour standard and any uncertainty as to the status of air quality in a parish is removed, then the state will make its recommendation based on these standards. If proposed designations from the EPA are forthcoming, then Louisiana will certainly reserve its right to continue discussions.

We are concerned that nonattainment designation will result in a very substantial and incalculable loss of time and money to begin a process to conform with a legally questionable standard that can be vacated in the near future. The record clearly establishes that Louisiana is a proponent for clean air and has been successful in improving and protecting air quality.

The same record clearly shows that Louisiana has worked very closely and cooperatively with EPA in implementing environmental programs and in addressing environmental issues; and we pledge a continuation of this relationship. I assure you that the state will move expeditiously to recommend designation of areas not meeting air quality standards and to meet any new air quality goals and requirements that are legally established.

In closing, I urge the EPA to give further consideration to its designation actions. The unintended consequences of these actions could be of little or no benefit to air quality while at the same time could result in the disruption of the progress made at the national and local levels over the past three decades. Thank you for the opportunity to make recommendations on this important environmental issue.

Please contact Mr. J. Dale Givens, secretary of the Louisiana Department of Environmental Quality at (225) 765-0639 if additional information is needed.

Sincerely,

M. J. "Mike" Foster

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c: J. Dale Givens

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