STATE OF MICHIGAN

JOHN ENGLER, Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

"Better Service for a Better Environment"

HOLLISTER BUILDING, PO BOX 30473, LANSING MI 48909-7973

INTERNET: www.deq.state.mi.us

RUSSELL J. HARDING, Director

June 29, 2000

Mr. Francis X. Lyons, Regional Administrator
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard (R-19J)
Chicago, IL 60604-3590

Dear Mr. Lyons:

This is in response to your letter dated April 28, 2000, to Governor John Engler regarding the state of Michigan recommending 8-hour ozone air quality standard attainment/unclassifiable or nonattainment designations. Governor Engler has asked the Michigan Department of Environmental Quality (MDEQ) to respond. The MDEQ will not be sending recommendations for nonattainment designations for the 8-hour ozone standard to the United States Environmental Protection Agency (USEPA) at this time.

The MDEQ is not in agreement with the USEPA's interpretation of the May 14, 1999 decision by the United States Court of Appeals for the District of Columbia Circuit in American Trucking Association v USEPA, in which the 8-hour ozone standard was remanded to USEPA for further consideration. The court specifically noted that USEPA retains the power to designate areas as nonattainment under a revised National Ambient Air Quality Standard (NAAQS); however, it is clear that there must be a legal standard in place before USEPA makes such designations. The USEPA's new 8-hour ozone standard has been remanded, and as such, is not a legal NAAQS.

Further, the court specified that the standard had not been vacated because it is unlikely to "engender costly compliance activities" in light of the determination that it cannot be enforced by virtue of federal Clean Air Act Section 181(a), 42 U.S.C. Section 7511(a). Nonattainment designations are accompanied by requirements for costly programs such as transportation conformity and New Source Review measures. The imposition of these two programs alone would levy economic burdens on the cities, and rural areas that may be designated as nonattainment.

The MDEQ is also concerned that once again, according to the USEPA's March 28, 2000 boundary guidance for designations, the agency would impose the economic burdens of a nonattainment designation on rural areas affected by overwhelming air transport. For example, the Sleeping Bear Dunes area in northern Michigan, which generates minimal local emissions, would likely be designated nonattainment.

Mandatory "nonattainment area" control programs for receptor areas do not promote air quality improvement. They do, however, succeed in creating a tremendous disincentive for air quality monitoring in non-populous receptor areas.

The MDEQ urges the USEPA to postpone the designation of nonattainment process until a legal ozone standard has been established. If you have any questions, please contact me.

Sincerely,

Russell J. Harding
Director
517-373-7917

cc: Governor John Engler
Mr. Arthur R. Nash Jr., MDEQ
Mr. Dennis Drake, MDEQ