STATE OF TEXAS
OFFICE OF THE GOVERNOR

GEORGE W. BUSH
GOVERNOR

June 26, 2000

Mr. Gregg Cooke
Region VI Administration
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733

Dear Mr. Cooke:

I understand that, despite a federal appeals court's ruling that EPA's new ozone air quality standard is not enforceable and the Supreme Court's decision to review the case, EPA nevertheless appears intent on making nonattainment designations under the new standard. Without waiting for any new designations, in Texas we are working to continue to improve air quality and inform the public about air quality.

We are revising our clean air plans to cut ozone in half across eastern Texas - through cleaner fuels, cleaner vehicles, cleaner businesses and cleaner practices. We are providing significant information to the public about air quality - through daily air pollution alerts, on-line real-time monitoring data (and increased monitoring), and educational campaigns. Considering these strong measures, the legal uncertainties of the new standard, and the public comment TNRCC has received about designations, it does not make sense for EPA to make new nonattainment area designations until the Supreme Court has clarified the new standard.

If EPA persists, however, in making designations before hearing from the Supreme Court, then Texas requests that EPA: (1) follow Texas' recommendations for designations (see attached letter from TNRCC), (2) hold public hearings around Texas on any proposed designations, and (3) make those designations effective only after the Supreme Court has issued its ruling.

In the meantime, the TNRCC will: (1) continue working with local communities, businesses and concerned Texans to reduce ozone formation, (2) increase monitoring in Texas' urban areas, and (3) work with local governments to model air quality and emission reductions in the counties TNRCC considers unclassifiable.

We look forward to continuing to work with you to improve air quality for all Texas.

Sincerely,

GEORGE W. BUSH

GWB/jbk

Cc: Mr. Robert J. Huston, Chairman, Texas Natural Resource Conservation Commission

Attachments

POST OFFICE BOX 12428 AUSTIN, TEXAS 78711 (512) 463-2000 (VOICE)/(512) 475-3165 (TDD)

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
John M. Baker, *Commissioner*
Jeffrey A. Saitas, *Executive Director*

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

June 14, 2000

The Honorable George W. Bush
Governor of Texas
P.O. Box 12428
Austin, Texas 78711-2428

Dear Governor Bush:

Guidance issued to the states by the U.S. Environmental Protection Agency (EPA) in March 2000 requires states to provide designation recommendations for the new eight-hour ozone standard by June 30, 2000. The Texas Natural Resource Conservation Commission (commission) believes it is inappropriate for EPA to proceed with any designations under the eight-hour standard until the issues raised by the court are completely resolved. Any such action would appear to be in direct conflict of the court's prohibition against enforcement of the eight-hour ozone standard. However, Texas is proceeding with the implementation and planning of measures to improve air quality throughout Texas, despite this judicial uncertainty.

Recently, the Supreme Court agreed to hear the case later this year, with a decision not expected until mid-2001. However, since EPA is proceeding with designations as scheduled in their guidance, the commission believes it is necessary to provide EPA with a recommendation to preserve our right to continue discussions with EPA. The commission offers the following recommendation for the State of Texas.

Section 107(d)(1) of the Federal Clean Air Act (FCAA) defines three options for designation: nonattainment, unclassifiable, and attainment. Nonattainment indicates that the area does not meet the national ambient air quality standards (NAAQS). Attainment indicates that the area meets the NAAQS. Unclassifiable indicates that the area cannot be classified on the basis of available information as meeting or not meeting the NAAQS.

Commission staff held public meetings in each current one-hour nonattainment area and near nonattainment area and presented two options as recommendations to EPA. Staff solicited comments on these proposals and any alternative proposals.

Option 1 called for all counties currently designated nonattainment for the one hour ozone standard, with the exception of El Paso which is clearly not in violation of the eight hour standard, as well as all near nonattainment counties with a monitored violation of the eight hour standard to be designated nonattainment for the eight hour standard. The remainder of the state would be designated attainment.

Option 2 also called for all counties, with the exception of El Paso, currently designated nonattainment for the one hour standard be designated nonattainment for the eight hour standard, but all counties comprising the Metropolitan Statistical Area (MSA) or Consolidated MSA of the near nonattainment areas of Austin, San Antonio, Tyler, Longview, and certain counties surrounding Dallas/Ft. Worth (DFW) would be designated unclassifiable. The counties of Henderson, Hood, and Hunt in the DFW area would be classified attainment due to photochemical modeling which demonstrates that these counties do not significantly contribute to the area's violation of the 8-hour standard. The remainder of the state would be designated attainment.

The majority of public comment was generally supportive of Option 2. However, some elected officials expressed support for Option 1, while others were supportive of conforming with EPA's guidance and designating the entire MSA/CMSA where a monitored violation occurred as nonattainment. Officials in the Houston/Galveston and Beaumont/Port Arthur areas that commented requested that certain counties in these areas be designated unclassifiable rather than nonattainment.

Based upon these comments, the commission recommends that the EPA should delay action on designation for the eight hour ozone standard until the issues raised by the court are completely resolved. If EPA chooses to proceed with designations, then the commission recommends a designation of nonattainment for all counties currently in nonattainment for the one hour standard, with the exception of El Paso, which is not in violation of the eight hour standard; a designation of unclassifiable for all counties in the near nonattainment areas with the exception of Henderson, Hood, and Hunt Counties in the DFW area, which the commission recommends be classified attainment due to photochemical modeling which demonstrates that these counties do not significantly contribute to the area's violation of the 8-hour standard; and attainment for the remaining counties in the state. Please see the attached table for a listing of each county with its associated recommended designation.

The unclassifiable recommendation is based on the following factors: the uncertain legal status of the eight-hour standard; the impact of federal, state, and regional regulations already in place that will improve air quality in East and Central Texas; the impact of future state and regional measures that will also improve East/Central Texas air quality; and commitments from local areas to implement in an accelerated time frame any additional controls necessary to ensure attainment of the eight-hour standard.

Inherent in the unclassifiable recommendation is a need to incentivize the process for the local leadership to achieve measureable emission reductions in an accelerated time frame in exchange for the unclassifiable designation. Otherwise, the state would be left with the federal processes associated with a nonattainment designation, which would delay efforts to improve air quality.

The commission believes that this approach will give local areas the maximum flexibility in developing emission-reduction measures and accounts for local commitments and existing programs to provide early air quality improvements, while ensuring that the entire State of Texas attain federal air quality standards sooner than possible under the federal State Implementation Plan process.

Enclosed please find an example letter for the submission of your recommendations to the EPA. If you desire any additional information or if I may assist you in any way, please contact me at 512/239-5515.

Sincerely,

Ralph Marquez, Commissioner
Texas Natural Resource Conservation Commission

cc: Mr. Jeffrey A. Saitas, P.E., Executive Director, Texas Natural Resource Conservation Commission

Enclosure

TNRCC Recommendation:

TEXAS-OZONE (8-HOUR STANDARD)

Designated Area	Designation Type	Classification Type
Dallas/Fort Worth Area:		
Collin County	Nonattainment	
Dallas County	Nonattainment	
Denton County	Nonattainment	
Ellis County	Unclassifiable	
Henderson County	Attainment	
Hood County	Attainment	
Hunt County	Attainment	
Johnson County	Unclassifiable	
Kaufman County	Unclassifiable	
Parker County	Unclassifiable	
Rockwall County	Unclassifiable	
Tarrant County	Nonattainment	
Houston /Galveston Area:		
Brazoria County	Nonattainment	
Chambers County	Nonattainment	
Fort Bend County	Nonattainment	
Galveston County	Nonattainment	
Harris County	Nonattainment	
Liberty County	Nonattainment	
Montgomery County	Nonattainment	
Waller County	Nonattainment	
Beaumont/Port Arthur Area:		
Hardin County	Nonattainment	
Jefferson County	Nonattainment	
Orange County	Nonattainment	
El Paso Area:		
El Paso County	Attainment	
Tyler Area:		
Smith County	Unclassifiable	
Longview Area:		
Gregg County	Unclassifiable	
Harrison County	Unclassifiable	
Upshur County	Unclassifiable	
Austin Area:		
Bastrop County	Unclassifiable	
Caldwell County	Unclassifiable	
Hays County	Unclassifiable	
Travis County	Unclassifiable	
Williamson County	Unclassifiable	
San Antonio Area:		
Bexar County	Unclassifiable	
Comal County	Unclassifiable	
Guadalupe County	Unclassifiable	
Wilson County	Unclassifiable	
Rest of State.....	Attainment	