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## West Virginia Department of Environmental Protection

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Bob Wise  
Governor

Stephanie R. Timmermeyer  
Cabinet Secretary

July 14, 2003

Donald S. Welsh  
Regional Administrator  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103

Re: July 2003 preliminary update to 8-hour  
ozone designation recommendations for the  
State of West Virginia

*Don*  
Dear Mr. ~~Welsh~~

The State of West Virginia most recently provided recommendations for 8-hour ozone designations in a letter from Michael Castle (WVDEP) to Bradley Campbell (U.S. EPA, Region III), dated June 29, 2000. U.S. EPA subsequently requested updated recommendations in letters dated January 30, 2003 and March 6, 2003, specifying deadlines of April 15, 2003 and July 15, 2003 respectively. The latter request explicitly extended the deadline for the former.

Although the extension is welcome, we believe that this deadline is still deficient because we cannot base our recommendation on the same data that should be available to U.S. EPA in finalizing its designations by April 15, 2004 pursuant to the related consent decree. Our Division of Air Quality fully expects to provide quality assured data for the 2003 ozone season as soon as practicable and in a time-frame that will make it reasonably available for U.S. EPA's consideration. Therefore, we are now basing our draft recommendations on the 2000-2002 ozone seasons data whereas U.S. EPA is proposing to base final designations on the 2001-2003 ozone seasons data.

Furthermore, it is disappointing that U.S. EPA proposed the 8-hour ozone implementation policy just a few weeks before recommendations are due. States can have little certainty about the consequences of nonattainment until the implementation rule is finalized. Some have argued that implementation has little bearing on the designations per se but we disagree and believe that as a practical matter, the two are closely linked. Indeed, U.S. EPA has acknowledged that states will be allowed to amend recommendations until February 1, 2004 to accommodate this concern. Nevertheless, the current timing and potential need to make significant changes to the initial state recommendation because of updated data and/or implementation considerations place us in an awkward situation. The recommendations contained herein should be considered preliminary and subject to change until the February 1, 2004 deadline or such later date as may be approved.



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by U.S. EPA. The proposed implementation rule emphasizes that many nonattaining areas are expected to attain by 2007 under existing Clean Air Act requirements. 68 Fed. Reg. 32802 (June 2, 1003). As EPA recognizes in its proposed rule,

“dramatic reductions in NO<sub>x</sub> emissions from power plants and large industrial sources will occur by May 2004 under . . . . the NO<sub>x</sub> SIP Call.” *Id.* at 32806/1.

EPA also recognizes that “[a]reas covered under either subpart 1 or 2 with ozone concentrations close to the level of the NAAQS (*e.g.*, within 0.005 ppm), will likely come into attainment within 3 years after designations as nonattainment *without any additional local planning as a result of national and/or regional emission control measures that are scheduled to occur.*” *Id.* at 32831/1 (emphasis added).

All areas in West Virginia that exceed the standard have design values well within the proposed subpart 2 “marginal” thresholds and should attain by 2007 with existing federal measures, including the NO<sub>x</sub> SIP Call. The NO<sub>x</sub> SIP Call controls will become effective about 45 days after the designation deadline. It seems paradoxical to designate areas as nonattainment just as the controls that should bring them into compliance are being implemented. The proposed implementation rule expresses U.S. EPA’s desire to avoid unnecessary controls and other requirements for such areas.

“Both [classification] options contain features to ensure that areas projected to attain compliance in the near term based on existing requirements are not subject to additional prescribed control obligations.” *Id.* at 32806/2.

Notwithstanding the designation recommendations shown on attachment A-1, the WVDEP believes that U.S. EPA should strongly consider whether it is still appropriate to designate areas that marginally exceed the standard as formal nonattainment areas, especially given the timing of the NO<sub>x</sub> SIP Call controls.

The U.S. EPA approved the Early Action Compact (EAC) for the Eastern Panhandle Region of West Virginia (finalized December 24, 2002). The accompanying letter noted:

“...States are advised that if an EAC area is determined to be part of an area that is designated nonattainment for the 8-hour ozone standard, its nonattainment designation would not be deferred.”

Designation guidance presumes that nonattainment boundaries will be based on the 1999 federally defined Metropolitan Statistical Areas (MSA) and Consolidated MSAs (CMSA). The guidance also specifies eleven factors which states should address to modify presumptive boundaries. The West Virginia Eastern Panhandle Region comprises Berkeley and Jefferson Counties WV which are considered part of the Washington DC PMSA (primary MSA) as well as the Baltimore (MD) - Washington (DC) CMSA. The June 29, 2000 recommendation submittal provided a rationale for excluding Berkeley and Jefferson Counties from any potential Baltimore-Washington 8-hour ozone nonattainment area. The conclusions of that analysis remain valid.

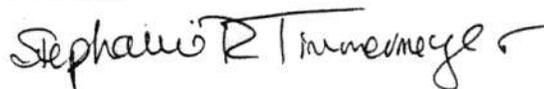
The rationale has been updated where practicable and includes the most recent data provided to WVDEP by the U.S. EPA Region III Air Division (spreadsheet dated 5-15-2003). Please see attachments B1-24 and C1-3. If the WV Eastern Panhandle monitoring data shows a violation of the 8-hour standard, then the effective date of the nonattainment designation should be deferred until 2007 pursuant to the EAC. Berkeley and Jefferson Counties should remain separate from any potential Washington DC MSA nonattainment area even if they opt out of the EAC and/or EPA ultimately designates Berkeley/Jefferson Counties as 8- hour ozone nonattainment.

Finally, the U.S. Congress is also considering the Clear Skies Act of 2003. Among the many provisions of the proposed bill is the following:

“...an area may be designated *transitional* for the PM 2.5 national primary or secondary ambient air quality standards or the *8-hour ozone* national primary or secondary ambient air quality standard *if the Administrator has performed air quality modeling* and, in the case of an area that needs additional local control measures, the State has performed supplemental air quality modeling, *demonstrating that the area will attain the applicable standard or standards no later than December 31, 2015...*” (emphasis added).

Should Congress enact the Clear Skies Act with this provision or enacts substantively equivalent legislation, then the WVDEP requests the Administrator to designate any 8-hour ozone nonattaining areas in West Virginia as transitional nonattainment areas. The regional scale modeling performed by U.S. EPA for OTAG and the Clear Skies Act (base case) justify such a classification. The latter modeled relative reduction factors and adjusted 2002 design values are shown on the West Virginia air quality summary and indicate attainment at all State monitors under existing Clean Air Act requirements by 2010.

Sincerely,



Stephanie R. Timmermeyer  
Cabinet Secretary

Enclosures

cc: Ms. Judith M. Katz, Director  
Air Protection Division

John Benedict, Director  
Division of Air Quality

**State of West Virginia**  
**8-Hour Ozone Designations**  
**Preliminary Update - July 2003**

**Preliminary Recommendations:**

**WEST VIRGINIA**

**NONATTAINMENT AREAS:**

Charleston (WV) MSA

- including Kanawha and Putnam (WV) Counties

Huntington (WV)-Ashland (KY)-Ironton (OH) MSA

- including Cabell and Wayne (WV) Counties

Parkersburg (WV)- Marietta (OH) MSA

- including Wood (WV) County

Steubenville (OH)-Weirton (WV) MSA

- including Brooke and Hancock (WV) Counties

Wheeling (OH/WV) MSA

- including Marshall and Ohio (WV) Counties

**ATTAINMENT AREAS:**

Rest of State