OFFICE OF THE GOVERNOR
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JOSEPH E. KERNAN
GOVERNOR

January 27, 2004

The Honorable Michael O. Leavitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Leavitt:

I want to bring to your attention an issue that is of great importance to the citizens of Indiana.

On April 15, 2004, USEPA is scheduled to issue its final designation of nonattainment areas under the eight hour ozone air quality health standard. USEPA's preliminary indication is that as many as 25 of Indiana's 92 counties, including all of the most populous areas, will be designated nonattainment.

Indiana is taking the steps necessary to ensure that air quality across the state meets health standards. We have already put in place effective control measures and have begun necessary technical work and outreach efforts with affected communities.

I am writing to express our great concern about the policy USEPA has stated to date. That is, tougher air permitting requirements will automatically apply in all counties designated nonattainment, *even if available evidence indicates that other clean air measures already in place will achieve clean air by the required deadlines.*

That is exactly the situation here in Indiana. For at least 14 of the 25 counties named by USEPA (including the populous areas of South Bend, Elkhart, Evansville, Terre Haute, Fort Wayne, Muncie, Clark and Floyd Counties near Louisville, and perhaps all or portions of the Indianapolis area), USEPA has projected attainment of the ozone standard once measures already put in place by Indiana, surrounding states and USEPA are fully in place by 2007. See Enclosure 1.

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One of the most significant measures, the control of nitrogen oxides from Indiana power plants and those of our surrounding states, will be fully in effect next summer. The majority of the counties are within only a few parts per billion of meeting the health standard. In the Evansville area, for example, the ozone level of 85 parts per billion is just *1 ppb over the standard.* In Fort Wayne, the level is 88 ppb and in Terre Haute, it is 87 ppb. To impose an unnecessary requirement that will harm economic development efforts and that may be counterproductive just a few months before these significant reductions will be achieved does not make common sense.

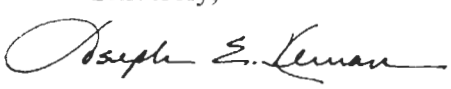
We know from recent experience that in areas with tougher permit requirements, many projects that are important for economic development are either stifled altogether or pushed into areas just outside the core urban areas, thus contributing to sprawl and development of agricultural land or precious greenspace. Yet given the regional nature of ozone, the emissions from these developments outside of nonattainment areas end up impacting urban areas as much, if not more. Strict adherence to USEPA's current policy just doesn't make sense in the situation before us.

Indiana is making progress in recovering from the national recession. Our highest priority is to continue to improve our economy and provide good jobs for our citizens. I am concerned that this federal policy will be antithetical to that goal, with no corresponding health benefit.

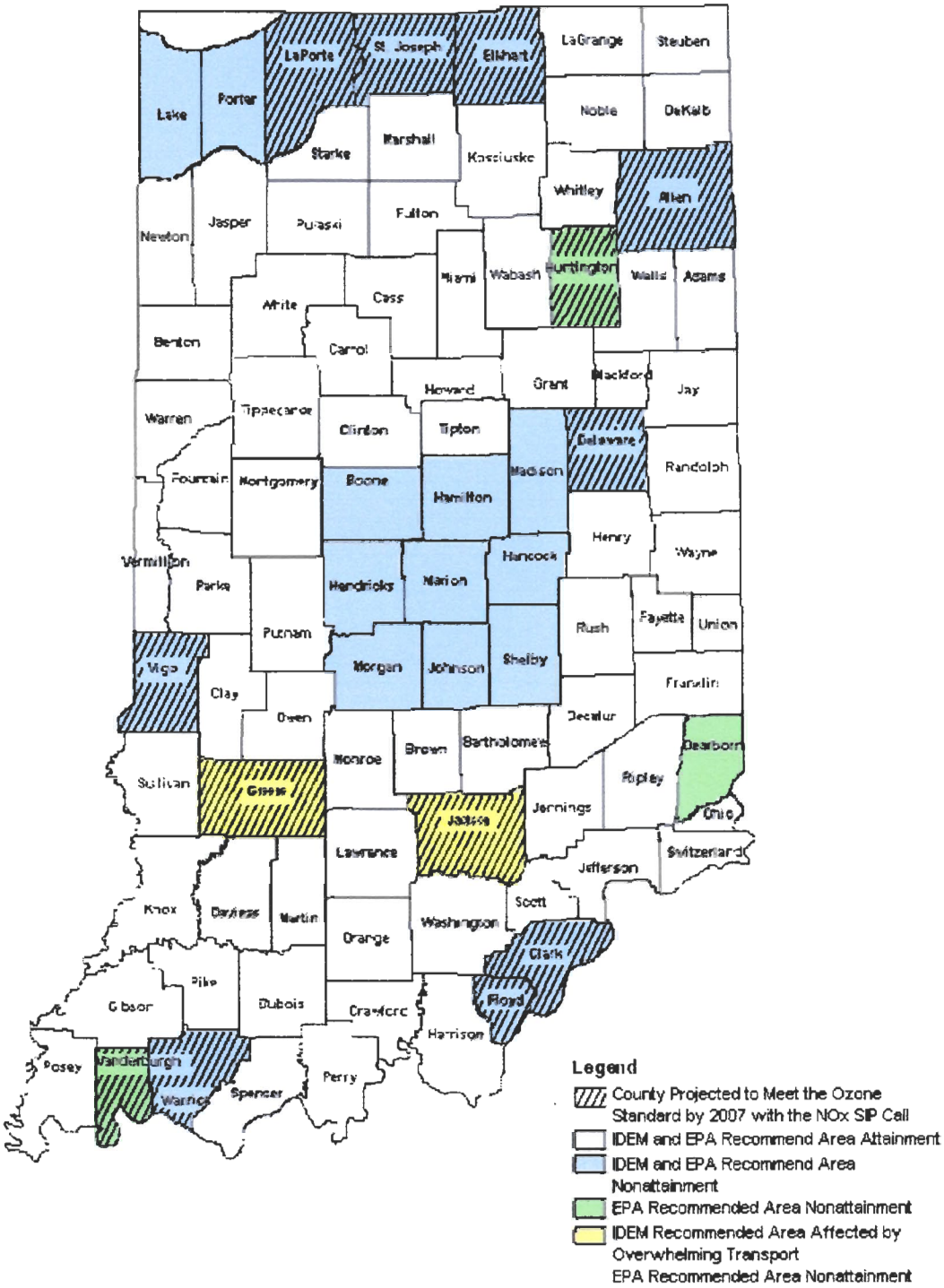
I know that USEPA is bound by court order to issue final designations on April 15 and I am not asking that you seek a delay. What I am urging, most strenuously, is that USEPA defer the imposition of these tougher permitting requirements in areas where the state can make a demonstration that attainment of the ozone standard will be achieved with measures already in place. This would provide a mechanism for Fort Wayne, Evansville, Terre Haute, South Bend, Elkhart, Muncie and other areas in Indiana where we want to encourage economic development and job creation to prevent the economic consequences of a nonattainment designation without jeopardizing in any way the expeditious path to clean and healthy air. I am confident that USEPA can either alter its current policy or seek authority from Congress to make any necessary conforming changes to federal law.

The April 2004 designation will soon be here. Please consider this common sense solution to this unacceptable situation. Our officials are available to assist in any way that we can.

Sincerely,



Joseph E. Kernan
Governor

EPA Ozone Nonattainment Preliminary Recommendations

(with counties projected to meet the ozone standard based on the Nox SIP Call noted)