KENNY C. GUINN
Governor

OFFICE OF THE GOVERNOR

May 21, 2004

Michael O. Leavitt
Administrator
U.S. Environmental Protection Agency Headquarters
Ariel Ross Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Request for Delay of Effective Date for Ozone Nonattainment Designation

Dear Mr. Leavitt:

The purpose of this letter is to request that you delay the effective date of the 8-hour ozone nonattainment area designation for Clark County, Nevada until October 15, 2004.

On April 12, 2004, the State of Nevada sent the Regional Administrator for EPA Region 9 a letter recommending that Clark County be designated as a nonattainment area for the 8-hour ozone NAAQS. As you know, our original recommendation of July 10, 2003 concluded that all areas of the State should be designated as either unclassifiable or attainment. In a letter of December 3, 2003, the Regional Administrator agreed with our recommendation but asked that we "expedite submittal of the 2003 ozone monitoring data" so that the final designation "will accurately reflect the State's air quality."

Ordinarily, annual ozone data need not be certified for use until July 1 of the following year, but in order to comply with Region 9's expedited submission request, unaudited annual data were submitted to EPA on March 4 and audited data were submitted on March 16. On March 17, less than a month from EPA's April 15 designation deadline, we informally learned of the agency's decision to designate Nye and Clark Counties as ozone nonattainment areas. In the three weeks available to us before the designation deadline, the State was able to perform the 11-factor analysis for Nye County that is required by your March 28, 2000 guidance for ozone boundary designations. However, because of the added complexity of performing the same analysis for Clark County in such a short timeframe, it was simply not possible to perform the analysis prior to April 12 when our recommendation was made. Also, because our recommendation was made only three days before the designation deadline and was based entirely on 2003 monitoring data, we had no reason to sign an early action compact that would have deferred Clark County's nonattainment designation until September 30, 2005, and that would have given us the additional time required to review the data that we now seek.

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In the preamble to the final designations, you note that counties in the West can be extremely large "leading to different air quality in different parts of the county; . . ." 69 Fed. Reg. at 23861. In our recommendation, we pointed out that as to Clark County, the nonattainment problem appeared to be restricted to the urban core "within the city of Las Vegas, in the center of the Las Vegas valley, in the center of Clark County." In other words, we have reason to believe that exactly the air quality phenomenon you describe may well be occurring in different parts of Clark County. By extending the effective date of the nonattainment area designation for Clark County from June 15, 2004 for an additional 120-days to October 15, 2004, we will have the time needed to perform an analysis of the data and submit the results of that analysis to your agency to either confirm or discredit that belief.

Because we share the desire to base nonattainment area designations and boundaries on the best available technical analysis, and because of the significant public health, environmental and economic consequences if we do not do so, we have contracted with Desert Research Institute ("DRI"), one of the premier air quality analytical firms in the country, to assist us in this effort. Our analysis will adhere strictly to your agency's March 28, 2000 guidance for establishing ozone nonattainment area boundaries. We have requested a review of the data from DRI. DRI's initial review is attached and further supports the necessity of having adequate time to perform a thorough analysis.

In making this request, we recognize that the period for you to act is short, but you were able to approve the State's April 12 recommendation in three days, so your agency clearly places a high priority on moving with alacrity to address these issues. If you have any questions about this request please contact me, or your staff may contact Mr. Allen Biaggi, the Administrator of the Nevada Division of Environmental Protection at (775) 687-9301.

Sincerely,

KENNY C. GUINN
Governor

ABiaggi/lf

cc: Wayne Nastri, Regional Administrator, EPA Region 9
Deborah Jordan, Air Director, EPA Region 9
Allen Biaggi, Administrator, NDEP
Christine Robinson, Director, Clark County Department of Air Quality Management