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June 18, 2002

Air and Radiation Docket and Information Center
Docket Number A-2001-31
U.S. Environmental Protection Agency
401 M Street, SW
Room M-1500 (Mail Code 6102)
Washington, D.C. 20460

Dear Sirs:

Recent studies have provided evidence of an association between elevated ozone levels and increases in hospital admissions and mortality. These studies also indicated that ozone not only affects people with impaired respiratory systems, but also healthy adults and children. This is the information the United States Environmental Protection Agency (USEPA) used to determine the need for a more stringent ozone standard, the 8-hour standard. Partial attainment of the 8-hour ozone standard is estimated to result in annual benefits in the range of $0.4 to $2.1 billion per year incremental to the 1-hour ozone standard. This estimate includes the cost of from 0 to 330 annual incidences of premature mortality avoided.[1] Consequently, attaining the 8-hour standard is as, or even more, important from a public health protection standard than attaining the 1-hour standard. Given these health concerns, and the conclusion of the lengthy court challenge to the 8-hour ozone standard, we believe that it is important that the USEPA move promptly to implement this standard.

An implementation option for classification of 8-hour ozone nonattainment areas is submitted for your consideration. The Supreme Court's decision on the challenge to the 8-hour ozone standard provides guidance on a number of provisions of the Clean Air Act, namely that:

- The 8-hour ozone standard cannot be implemented under Subpart 1 <u>completely independent</u> of any of the <u>restrictions</u> in Subpart 2.
- The "backbone" of Subpart 2 is Table 1
- There is discretion to decide which requirements of Subpart 2 are "textually applicable" provisions.
- Attainment cannot be required of a more stringent standard by the same times as Congress dictated for a less stringent standard.

[1] USEPA, 1997, *Regulatory Impact Analysis for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule*

The current options which the USEPA has proposed for discussion:

- Do not result in classifications commensurate with the health problem, compared to the 1-hour ozone standard (Table 1); i.e. the great majority of classifications fall below the serious level
- Apply a percent to percent mapping from a 1-hour ozone standard classification table (Subpart 2, Table 1) to an 8-hour average, which given the fundamental mathematical differences in these two metrics seems technically questionable [USEPA Option 1]
- Defines a range of 8-hour ozone design values for the extreme classification that does not encompass any monitored values that exist today[2] (see Table 2), and similarly for much of the severe category range.
- Does not adequately address transport, since under Subpart 2 state implementation plan requirements for marginal and moderate classifications do not have many provisions to address.

Consequently, the USEPA options may not sufficiently invoke the full framework of Table 1 of Subpart 2 of the Act which the Supreme Court decision required the USEPA to consider, and could invite further litigation and delay.

Table 1: USEPA Classification Options

Classifications	Percentage of Current 1-Hour Classifications	Percentage of 8-Hour Classifications based on USEPA Options[1]		
		Option 1	Option 2	Option 3
Extreme	1%	0%	0%	0%
Severe	7%	2%	1%	1%
Serious	10%	2%	5%	5%
Moderate	23%	7%	40%	26%
Marginal	32%	29%	54%	68%
Other	27%			
Submarginal		60%		

[1] This presumably includes all areas which would be nonattainment under the 8-hour standard

An Alternative Classification Option

Subpart 2, Table 1 seems to outline Congress' framework on the classification of ozone nonattainment areas. The range of ozone design values falling into the marginal, moderate and serious classifications is approximately equal, 0.02 parts per million (ppm). The design values included in the severe classification span a range five times greater or 0.1 ppm. The values in the table were based on available 1-hour data that ranged from 0.120 to greater than 0.280 ppm.

The same range proportions of Subpart 2, Table 1 can be applied to the scale of the 8-hour ozone design values found today. This would result in an 8-hour scale ranging from the 0.080 ppm standard to the highest 1997-9 8-hour design value which was in San Bernadino, California, 0.147 ppm. If this approach were applied, the 8-hour classifications would be as follows:

[2] The highest 1997-1999 8-hour design value in the United States was 0.147 ppm.

Table 2: New Jersey's Proposed 8-Hour Ozone Classification Option

	New Jersey Staff Proposal	EPA's Current 8-Hour Classifications
Marginal	0.081-0.088 ppm	0.081-0.092 ppm
Moderate	0.089-0.096 ppm	0.092-0.107 ppm
Serious	0.097-0.103 ppm	0.107-0.120 ppm
Severe	0.104-0.140 ppm	0.120-0.187 ppm
Extreme	0.141 and above	0.187 and above

As an example, if this 8-hour range interpretation were applied to existing 1-hour nonattainment areas, based on their 1997-9 8-hour ozone design values, the following 8-hour designations would result (Table 3).

Table 3: Comparison of New Jersey 8-Hour Classification Option and the USEPA's Options

Classifications	Percentage of 8-hour Classifications **Proposed Here**[1]	Percentage of Current 1-Hour Classifications	Percentage of 8-Hour Classifications based on EPA Options[2]		
			Option 1	Option 2	Option 3
Extreme	1%	1%	0%	0%	0%
Severe	10%	7%	2%	1%	1%
Serious	27%	10%	2%	5%	5%
Moderate	22%	23%	7%	40%	26%
Marginal	15%	32%	29%	54%	68%
Other	14%	27%			
Submarginal			60%		
Attainment	11%				

[1] These values include only areas currently in nonattainment of the 1-hour ozone standard

[2] This presumably includes all areas which would be nonattainment under the 8-hour standard

The classifications that would result through application of the option outlined here are more in line with the 1-hour standard classifications and reflect the greater health risk due to prolonged ozone exposure that the 8-hour standard is supposed to address. This option is also based on ozone conditions today rather than on 1990 conditions that are no longer relevant.

We do, however, believe that flexibility should be found for areas that will have to implement Subpart 2 requirements. We believe this can be addressed through reasonable interpretation of the "textually applicable provisions" of Subpart 2. What are some reasonable benchmarks to use in determining whether or not a provision of Subpart 2 is applicable for implementation under a revised ozone standard? One benchmark might be whether or not a provision has been shown to

be effective in reducing ozone levels. For example, assume that a power plant is located in a rural county. The rural county is found to be in nonattainment due to its downwind contribution. Instituting transportation conformity in the county would do nothing to reduce emissions from the power plant and therefore would not seem to be applicable.

Another benchmark might be, has this provision been superceded by events, technologies or rules promulgated since the 1990 Clean Air Act? There are several instances of updated requirements that would be more reasonable to implement than those listed in Subpart 2. For example, enhanced vapor recovery requirements were developed by California and are being implemented by many states. It might be more reasonable to implement an "enhanced" rather than "basic" vapor recovery.

We recommend that the classification option described above be included in the USEPA's proposed rulemaking. At a minimum this would broaden the scope of the options that undergo review and minimize the risk of needing a rule reproposal.

We appreciate the opportunity to provide these comments and look forward to continuing to work with the USEPA in development of the implementation plans for the 8-hour ozone standard. Should you have questions regarding this proposal or wish to discuss this matter further, please feel free to contact me at (609) 292-7953.

Sincerely,

Bob Stern

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