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*Via Email (a-and-r-docket@epa.gov) & Fax (202) 566-9744*

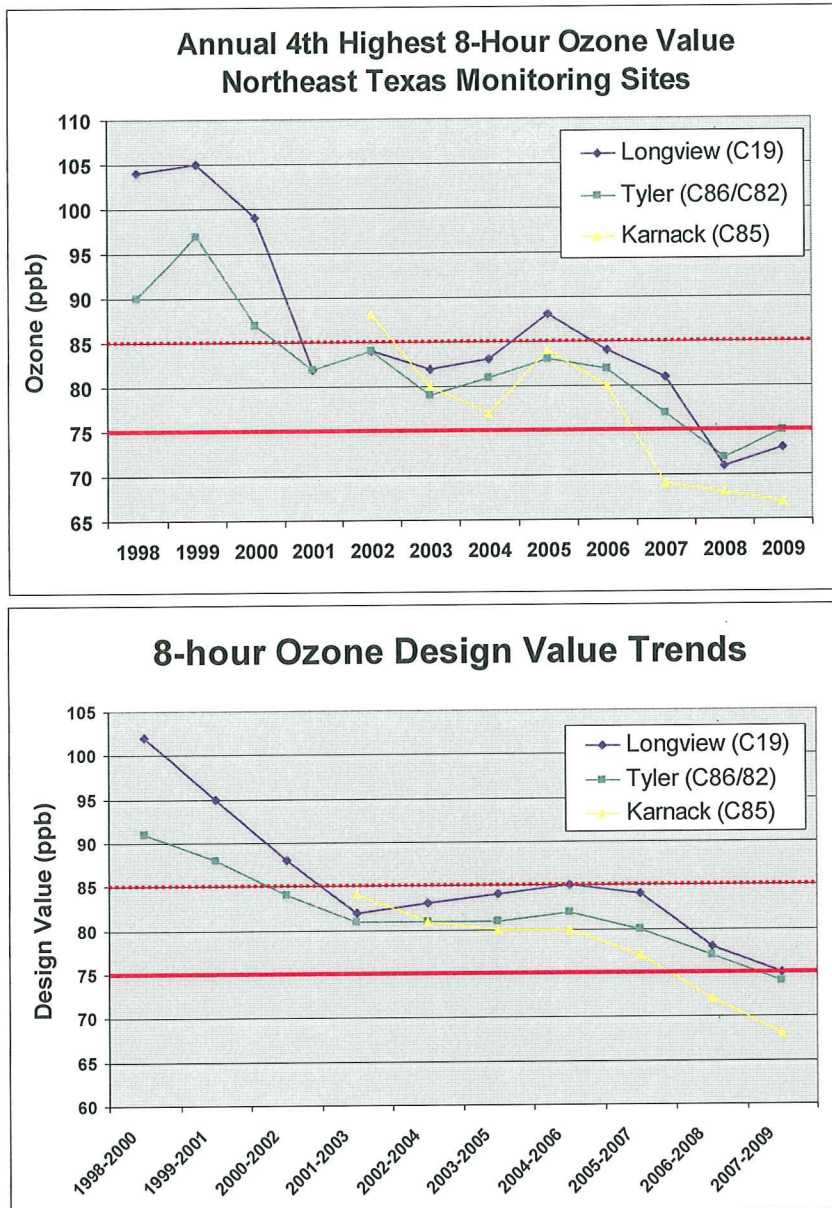
U.S. Environmental Protection Agency  
Mail Code 6102T, 1200 Pennsylvania Ave.  
Northwest Washington, D.C. 20460

Re: Proposed Revision of National Ambient Air Quality Standard for Ozone;  
Docket ID No. EPA-HQ-OAR-2005-0172

Dear Sir or Ms.,

These comments on the proposed revision of the National Ambient Air Quality Standard (NAAQS) for ozone are submitted on behalf of the Northeast Texas Air Care (NETAC) Policy Committee. NETAC is a voluntary association of elected and appointed public officials and representatives of local industry and public interest groups from Gregg, Harrison, Rusk, Smith, and Upshur counties.

Since 1996, NETAC has worked with the Texas Commission on Environmental Quality (TCEQ) and the U.S. Environmental Protection Agency (EPA) to address ozone air quality concerns in Northeast Texas through two separate voluntary emission reduction agreements: a Flexible Attainment Region (FAR) agreement executed in 1997, and an Early Action Compact (EAC) agreement executed in 2002. These voluntary efforts, undertaken without any designation of nonattainment under the Federal Clean Air Act, have resulted in significant air quality improvements that have brought the five county NETAC area into attainment with EPA's 1-hour ozone standard, the 0.08 ppm 8-hour ozone standard adopted in 1997, and the 75 ppb ozone standard adopted in 2008. Figure 1 below demonstrates the significant air quality improvements achieved within the NETAC area over the past decade.



**Figure 1.** Trends in annual 4<sup>th</sup> highest 8-hour ozone values (upper panel) and design values (lower panel) at the Longview, Tyler, and Karnack monitors in Northeast Texas. The solid red line indicates the 2008 75 ppb ozone standard and the dotted red line shows the 1996 85 ppb standard.

NETAC's actions have been guided by air quality research funded through appropriations provided by the Texas Legislature, EPA grants, and local contributions. NETAC believes that a science-based approach to addressing ozone air quality issues is essential to develop feasible emission reduction strategies that will achieve the ozone air quality standard while preserving the economic vitality of the NETAC area. Similarly, NETAC believes that EPA's decisions concerning establishment of a revised ozone standard must be based on science-based determinations concerning public health and remain within the bounds of discretion given to EPA by the Clean Air Act (CAA).

## I. Criteria for Setting Ozone Standard

The criteria that EPA must follow in establishing a national ambient air quality standard for ozone is set out in §109(b)(1) of the CAA. That standard requires EPA to set primary ambient air quality standards “the attainment and maintenance of which... are requisite to protect the public health” with “an adequate margin of safety.”

In its 2001 decision concluding that the Clean Air Act’s standard did not constitute an unlawful delegation of legislative power, the Supreme Court stated that this statutory standard required EPA “to identify the maximum airborne concentration of pollutant that the public health can tolerate, decrease that concentration to provide an adequate margin of safety, and set the standard at that level.” *Whitman v. American Trucking Associations*, 531 US 457, 465 (2001). The Court further noted that Congress had limited EPA’s discretion in setting the standards by requiring that they be set at levels that were “requisite” to protect the public health and emphasized that the word “requisite” means “sufficient, but not more than necessary.” *Whitman*, Id. at 473. In concluding that the scope of discretion given to EPA by §109(b) of the CAA fit within the Supreme Court’s precedents upholding legislative delegations of authority based on intelligible principles to which the administrative agency must conform, the Court noted:

“Section 109(b)(1) of the CAA... [requires] the EPA to set air quality standards at a level that is “*requisite*” – *that is, not lower or higher than necessary to protect the public health with an adequate margin of safety...*”

*Whitman*, Id. at 474.

EPA’s description of its rationale for its proposal to revise the standard to a range of 60 to 70 ppb exceeds the discretion afforded to EPA by §109(b)(1) of the CAA and the Supreme Court’s interpretation of that statutory language. Through the preamble of the proposed rule, EPA indicates an intention to set the standards based on its assessment of risk, even if that risk cannot be identified with precision as to either nature or degree.

“Thus, in selecting standard levels to propose, and subsequently in selecting a final level, the administrator is seeking not only to prevent O<sub>3</sub> levels that have been demonstrated to be harmful, but also to prevent lower O<sub>3</sub> levels that *may* pose an unacceptable risk of harm, *even if the risk is not precisely identified as to nature or degree.*”

75 FR 2944

How can EPA establish a standard that is “requisite” if its decision is to be based upon theoretical risks that scientific methods cannot evaluate with precision concerning either their nature or degree?

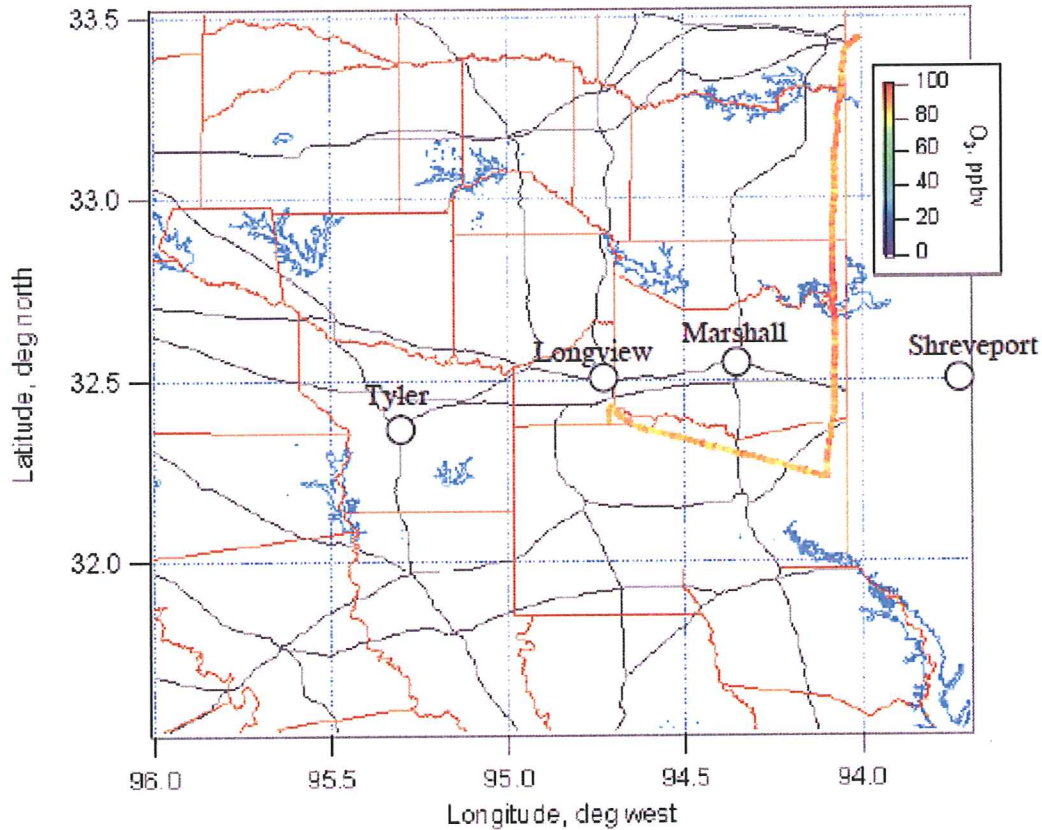
In order to ensure that the standard set is “requisite” EPA’s final decision on revising the ozone standard must be based on an objective analysis of credible and rigorously tested scientific data concerning the effects of ozone on public health. NETAC requests that EPA’s final decision include a clearly articulated determination of both the maximum airborne concentration of ozone that the public health can tolerate and an objective description of the scientific basis for EPA’s determination to decrease that concentration to provide an adequate margin of safety.

## II. Timeline for Implementation Should Recognize Necessity of Controlling Transport

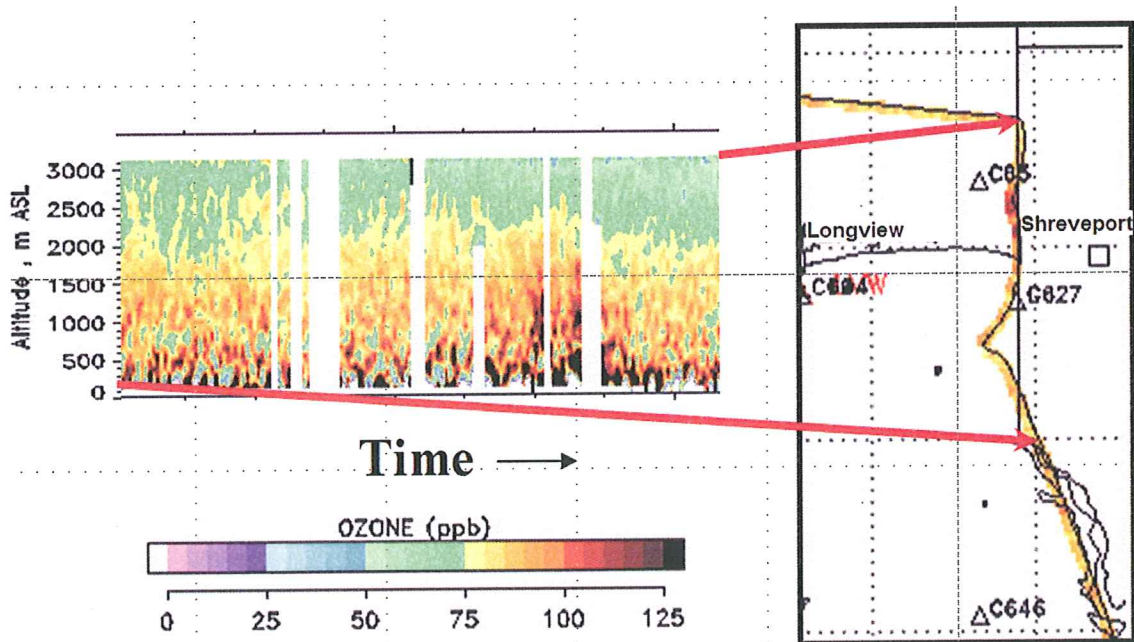
EPA’s proposal describes its plans to accelerate implementation of the revised ozone standards and calls its schedule “ambitious” (75 FR 3036). EPA’s accelerated schedule is not only ambitious, it is also misguided and ill advised. EPA fails to take into consideration the difficulties that marginal or moderate nonattainment areas will have in meeting the revised standards in light of the increased significance that transported ozone and ozone precursors will have in determining attainment with a standard that approaches or is below levels attributable to transport alone. NETAC monitoring has demonstrated that ozone transported into the NETAC area can exceed the 60 to 70 ppb range that EPA proposes to establish as the revised ozone standard. Thus, even if anthropogenic activity in the NETAC area contributed no additional ozone, the NETAC area would still have the potential to exceed the proposed standard based on transport alone.

Based on briefings from EPA staff, NETAC understands that marginal and moderate nonattainment areas will have 3 to 6 years respectively from designation to achieve compliance with the standards. In contrast, severe and extreme areas will have from 15 to 20 years to attain. Ozone and ozone precursors generated in severe and extreme areas will continue to be transported downwind where they will potentially adversely impact marginal and moderate nonattainment areas. As EPA lowers the values of the ozone standard, the relative degree of impact associated with transported pollutants increases.

NETAC has evaluated the contribution of transport on ozone levels monitored locally using both ambient monitoring and photochemical modeling. Ozone measurements collected by aircraft are shown in Figures 2 and 3 for days from 2002 and 2006 when easterly winds transported high concentrations of ozone (above 70 ppb) across the border and into Northeast Texas. On August 29, 2002, Baylor University’s aircraft found ozone above 70 ppb at an altitude of 500 to 600 m along the border between Texas and Louisiana. The daily 8-hr ozone recorded at the Karnack surface monitor was 88 ppb on this day. On September 8, 2006, an aircraft from the National Oceanic and Atmospheric Administration equipped with downward looking ozone LIDAR found ozone above 70 ppb through a deep layer along the border between Texas and Louisiana. Winds were easterly on this day and the daily 8-hr ozone at Karnack was 71 ppb. The aircraft data make clear that ozone transport contributed most of the ozone in Northeast Texas on these days.

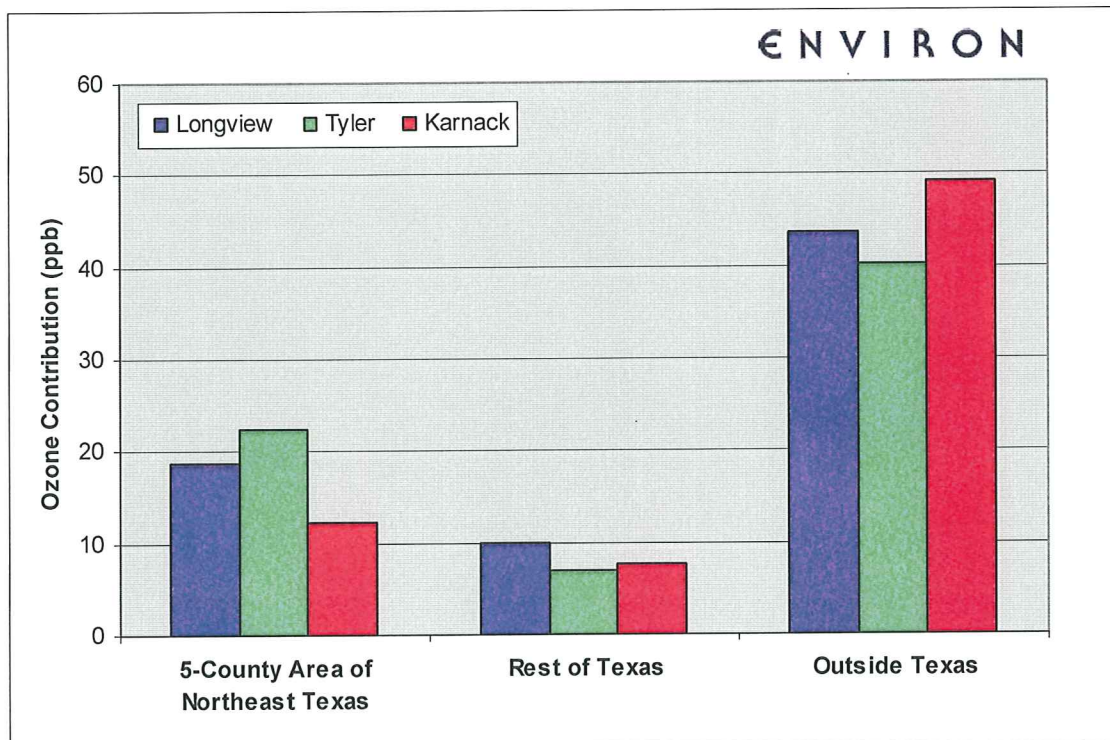


**Figure 2.** Ozone measured upwind of Northeast Texas on August 29, 2002 by the Baylor Aircraft. Under easterly winds, ozone was above 70 ppb at an altitude of 500 to 600 m along the border between Texas and Louisiana. The daily 8-hr ozone at Karnack (near Marshall) was 88 ppb on this day.



**Figure 3.** Ozone measured upwind of Northeast Texas on September 8, 2006 by the NOAA Twin Otter Aircraft. Under easterly winds, ozone was above 70 ppb through a deep layer along the border between Texas and Louisiana. The daily 8-hr ozone at Karnack (near Marshall) was 71 ppb on this day.

Photochemical models can be used to quantify ozone contributed by transport and local emissions. NETAC has modeled the period May 20-June 30, 2005 using the CAMx ozone model with 4-km grid resolution, meteorological data from the MM5 model and emission inventories based on the TCEQ's SIP modeling for Houston and Dallas. The ability of the CAMx model to apportion ozone by geographic source area (using the APCA method) was used to apportion ozone to emissions within the NETAC 5-county area, the remainder of Texas, and regions outside Texas. The average geographic contributions to ozone above 65 ppb are shown in Figure 3 for monitor locations in Northeast Texas. The contribution from out of state transport was largest at Karnack, where 49 ppb out of a total of 74 ppb came from outside Texas. Local sources contributed only 12 ppb at Karnack, which lies in a rural area. At Longview, transport from outside Texas contributed 44 ppb out of a total of 76 ppb, while the local contribution was 19 ppb. At Tyler, the monitor that is furthest from the Texas border, transport from outside Texas contributed 40 ppb out of a total of 74 ppb, while the local contribution was 22 ppb.



**Figure 4.** Geographic contributions to ozone above 65 ppb in Northeast Texas for the May 20-June 30, 2005 period modeled using CAMx with APCA ozone source apportionment. The contribution from outside Texas includes background ozone from outside the CAMx modeling domain.

NETAC requests that EPA's timeline for implementation recognize the necessity of controlling transport in order to avoid penalizing moderate or marginal nonattainment areas through the imposition of overly stringent control mechanisms needed to offset the effects of transported ozone. EPA should either accelerate its time table for the imposition of federal controls that will reduce transport or provide additional time for marginal and moderate nonattainment areas to meet the revised standard. At a minimum,

EPA's implementation plan should allow an area significantly influenced by transport the same amount of time afforded to upwind areas that contribute to that transport.

III. EPA Should Provide Incentive for Voluntary Emission Reduction Programs

Figure 1 clearly demonstrates that voluntary emission reduction programs in the NETAC area over the past decade have been successful in significantly reducing ozone levels. Eight hour design values at the highest monitor in the NETAC area have dropped from a high of 102ppb in 2000 to 75 ppb in 2009. These improved ozone levels are a reflection of significant emission reductions negotiated on a voluntary basis by NETAC with local industry. Although voluntarily negotiated, many of these reduction measures have been incorporated into the Texas State Implementation Plan and are now federally enforceable. NETAC urges EPA to reconsider the opportunity to achieve early emission reductions through agreements which provide an incentive for early implementation of local emission reductions in return for deferment of nonattainment designations. The significant improvement in air quality in the NETAC area over the past decade is confirmation that these agreements can work.

On behalf of the NETAC Policy Committee, I appreciate the opportunity to submit these comments to you.<sup>1</sup>

Sincerely,



Jim Mathews  
General Counsel for NETAC

JM/ndh

cc: Judge Bill Stoudt  
Mayor Barbara Bass  
NETAC Policy Committee  
Al Armendariz, Administrator – EPA Region 6  
Mark Vickery, Executive Director – TCEQ

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<sup>1</sup> Following the NETAC Policy Committee authorizing the filing of these comments, one of the NETAC committee members declined to join in these comments.