INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We Protect Hoosiers and Our Environment.

Mitchell E. Daniels Jr.
Governor

Thomas W. Easterly
Commissioner

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October 7, 2011

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

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U.S. Environmental Protection Agency
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Washington, D.C. 20460
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RE: Request for Reconsideration and Stay of Final Rule "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals", Docket No. EPA-HQ-OAR-2009-0491

Dear Administrator Jackson and Assistant Administrator McCarthy:

The Indiana Department of Environmental Management ("IDEM") respectfully requests that the U.S. Environmental Protection Agency ("EPA") grant reconsideration and stay the effective date and compliance deadlines of EPA's final rule signed July 6, 2011 and titled "Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals" ("the Transport Rule"). This Petition for Reconsideration is filed pursuant to Section 307 of the Clean Air Act, 42 U.S.C. § 7607.

IDEM previously submitted comments to EPA that expressed disagreement with the imposition of an immediate Federal Implementation Plan ("FIP") to implement the Transport Rule as well as comments that expressed concern about the integrity of the data used to establish the budgets. Even so, the emission budgets as presented in the proposed rule were considered feasible by IDEM. IDEM had expected Indiana to be in a better position relative to the emission budgets at final rule promulgation after EPA responded to IDEM's comments concerning data integrity. Instead, the final Transport Rule presented Indiana with allocations that were reduced by 30% for 2012 and 22% for 2014. Now, with only a five month window between the final rule and the deadline for

compliance, Indiana cannot comply with its budget through the installation of pollution control technology. EPA has, therefore, dictated the means to achieve compliance by forcing the purchase of credits, fuel switching or shutdown of electrical generating units. This stance contradicts previous transport rule promulgations where EPA has recognized the need for a three to five year compliance deadline to allow for the implementation, by Indiana and other states, of the most cost-effective control measures.

IDEM would again express concern that EPA has gone beyond its authority under the Clean Air Act by imposing an immediate FIP on all states affected by the Transport Rule before allowing the states to develop their own State Implementation Plans ("SIP"). This type of action circumvents the flexibility contemplated by Congress for a state to develop its own customized method and means for achieving the reductions that are necessary to achieve compliance with a prescriptive federal rule as well as the relevant underlying National Ambient Air Quality Standards ("NAAQS"). Additionally, this approach prevents Indiana from being able to redistribute source allocations through a SIP to properly address inadequacies with EPA's distribution of allocations for 2012. In short, the imposition of an immediate FIP in conjunction with the Transport Rule is contrary to the intent of Congress that states have significant input and autonomy in achieving compliance. It also strips the states of the authority to develop SIPs under section 110(a)(2) for achievement of the NAAQS. EPA has properly acknowledged the intent of Congress through SIP calls for the two previous interstate transport rules (NOx SIP Call and Clean Air Interstate Rule ("CAIR")). In both of these cases, EPA only promulgated FIPs as a back stop in the event a state did not develop an adequate SIP.

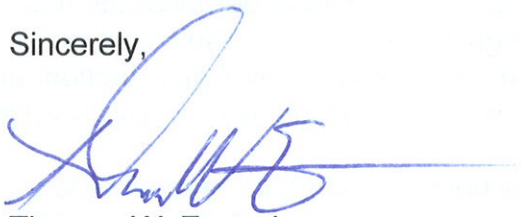
Further, EPA did not provide the 27 states affected by this rule the opportunity to review and comment on the budgets before the final rule was promulgated. EPA presented three different budget methodology options in the proposed Transport Rule. Many states, including Indiana, had commented that the underlying data used to support the budgets in the proposed Transport Rule needed to be revised and updated. EPA agreed to revise and update the data and in January 2011 published its Notice of Data Availability, which included two additional proposed methodologies for consideration in the budget determination for the Transport Rule. While EPA chose one of the three budget methodologies initially presented in the proposed rule, the underlying data was not contained in the proposed rule. As a result, Indiana and other states had never seen the results of this combination of data and methodology, and therefore had no opportunity to comment on the change or plan ahead for the impact. It should also be noted that key underlying data and assumptions were revised by EPA between the proposed rule and final rule without ever being subject to public review or comment. This included the monitoring period factored into the modeling, which actually changed the states affected by this rulemaking and altered the overall impact for individual states such as Indiana. As stated earlier, IDEM had reason to believe that the submission of revised and updated data would produce a more defendable and achievable budget allocation for Indiana in the final Transport Rule. To the contrary, Indiana is now in the unexpected and untenable position of being unable to comply with the Transport Rule other than by the purchase of credits, fuel switching or unit shutdowns.

Had IDEM been provided with the opportunity to comment on the use of the 2003-2007 monitoring data and a base case that relies on 2005 as the center of a five year weighted average, the agency would have objected to the concept. Due to measured concentrations of fine particulate in 2005 being very uncharacteristic, the use of a base case design value period of 2003-2007 is unrealistic and, therefore, unacceptable. This design value period results in the year 2005 being weighted three times (more than any other year) and artificially inflates the base case and target reduction levels because fine particulate concentrations were abnormally high in the entire upper Midwest during 2005. The fact that 2005 is an outlier for Indiana is borne out by the monitoring data within the entire period that fine particulate data have been collected (1999-2010). This is illustrated within a series of charts and tables contained in Attachment 1. In order to properly evaluate the monitoring data, only the years 2004-2010 should be considered. Data from these years reflect the emission reductions from the NO_x SIP Call for affected states like Indiana. Post-SIP Call monitoring data should not be compared to pre-SIP Call data to prevent a bias in the trend analysis. As the charts on page 2 of Attachment 1 illustrate, 2005 is an even more profound outlier for Indiana among the years 2004-2010. In closely reviewing the three out of state counties that Indiana contributes to the most, 2005 is also a profound outlier within the monitoring data for both the annual and daily standards for fine particulate. Page 3 of Attachment 1 includes charts that contain 2004-2010 monitoring data for Hamilton County, Ohio, Wayne County, Michigan, and Madison County, Illinois. These charts demonstrate that the use of 2005 data for the center of a five year weighted distribution results in a non-representative and biased base case design value. However, the level of reduction required of Indiana under the Transport Rule was driven by the 2005 values registered at these sites.

It was not necessary or reasonable to use 2003-2007 as the base case design value period because at the time EPA revised the budget allocations, data was widely available through 2009. The use of 2005 as the center of the base case design value results in budget allocations that are therefore based on a "worst case" scenario rather than a representative scenario for states within the upper Midwest, including Indiana. Furthermore, the modeling projections that EPA used to substantiate the level of reductions for the Transport Rule showed violations for fine particulate in 2012 and 2014 at many monitoring locations including locations in Indiana. In fact, Indiana monitors measured attainment for fine particulate in 2009. The disparity between modeling projections for 2012 and 2014 (that the interstate reductions are based on) and actual monitoring data for 2008-2010 is documented within a series of tables contained in Attachment 2. Please note that the disparity between the actual monitoring data and the modeled values often exceeds what EPA would deem a reasonable margin of error or acceptable model performance, particularly with regard to state attainment SIPs. EPA's use of modeling projections versus actual monitored data makes it very difficult to justify EPA's final Transport Rule from a cost and stringency perspective.

Finally, IDEM does not believe that the District of Columbia Circuit Court of Appeals decision in *North Carolina v. EPA* in any way suggests that EPA is justified or encouraged to promulgate a replacement rule for the Clean Air Interstate Rule ("CAIR") that would not only impose significantly more stringent reductions for the relevant pollutants but would require states to prepare for the necessary reductions within a five month window of time. Nor does the *North Carolina* decision suggest that EPA must usurp the states' role in meeting obligations within its infrastructure SIPs by imposing immediate FIPs. This is especially true in light of the fact that the CAIR rule could remain in place until states have time to develop their Transport Rule SIP and implement their infrastructure SIP obligations as set forth in Section 110(a)(2) of the Clean Air Act. IDEM believes that 2015 represents a logical compliance date for the Transport Rule. This would provide states sufficient time to develop and secure approval of SIPs, affords the regulated community the required time to develop and implement the necessary control scenarios, and does not contradict the decision in *North Carolina v. EPA*. To do otherwise imposes an extreme short term economic burden on Indiana electrical generating utilities and ratepayers and, when combined with the requirements of other recent EPA regulations, threaten the reliability of the power grid. IDEM respectfully contends that a stay of the Transport Rule is justified at this time for all of the reasons stated.

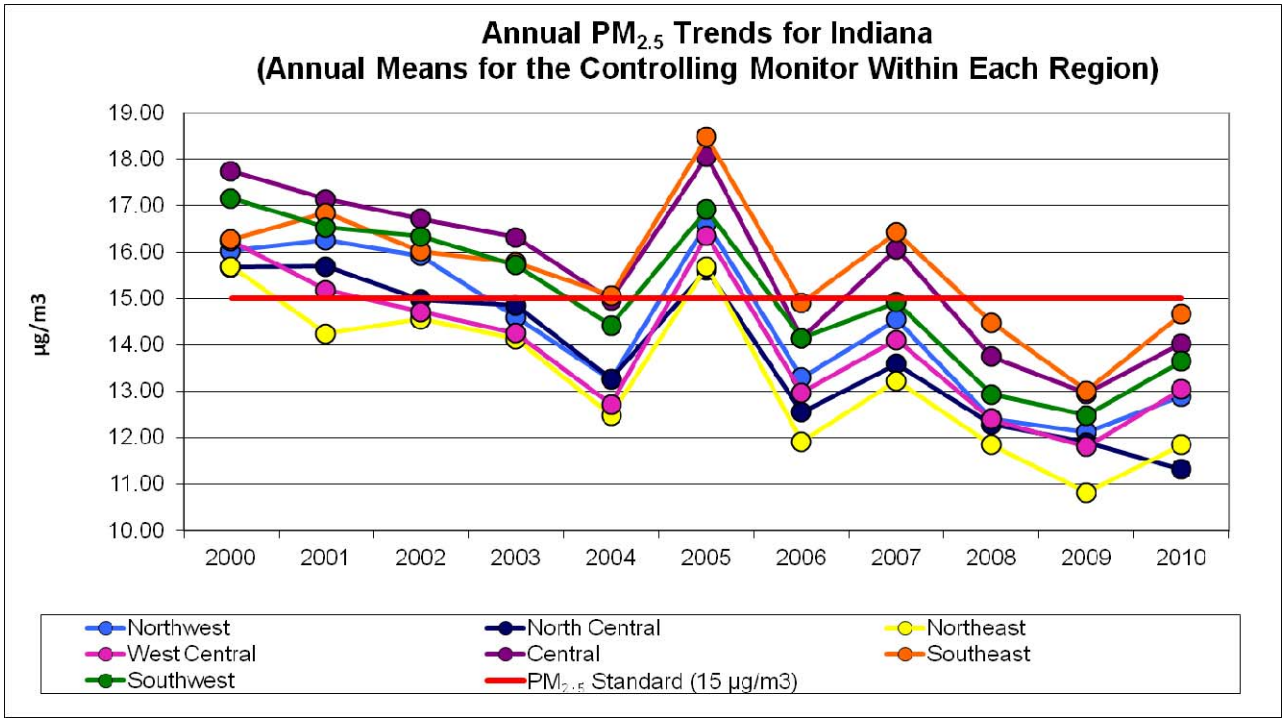
Sincerely,



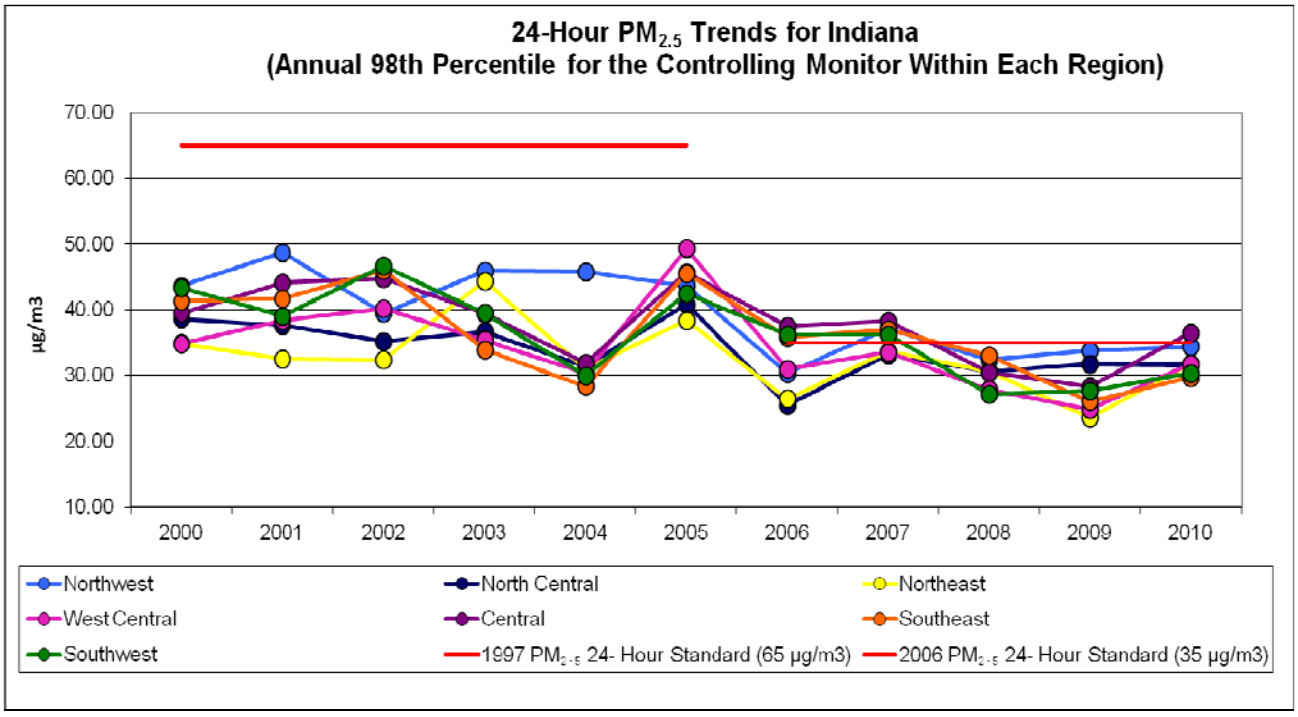
Thomas W. Easterly
Commissioner

TWE/bz/sd
Attachments:

Attachment 1



Source: U.S. EPA's Air Quality System Database.



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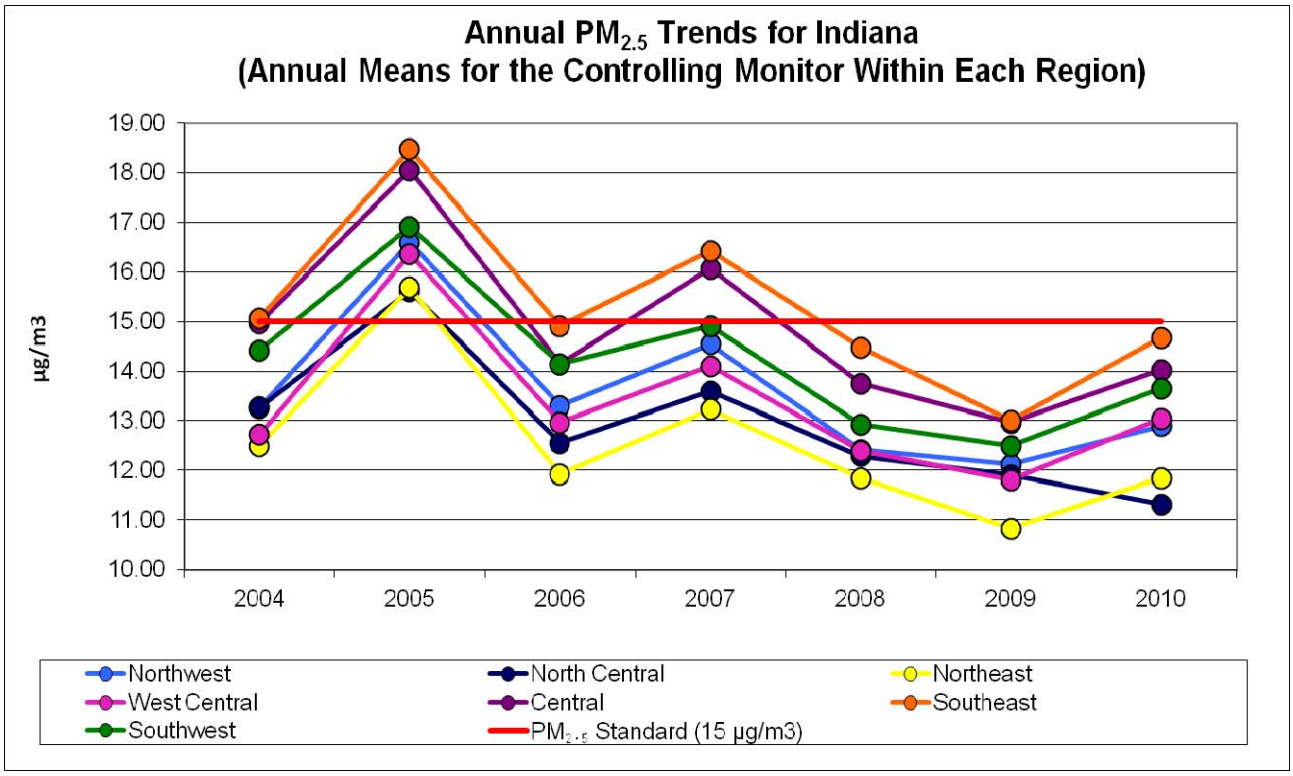

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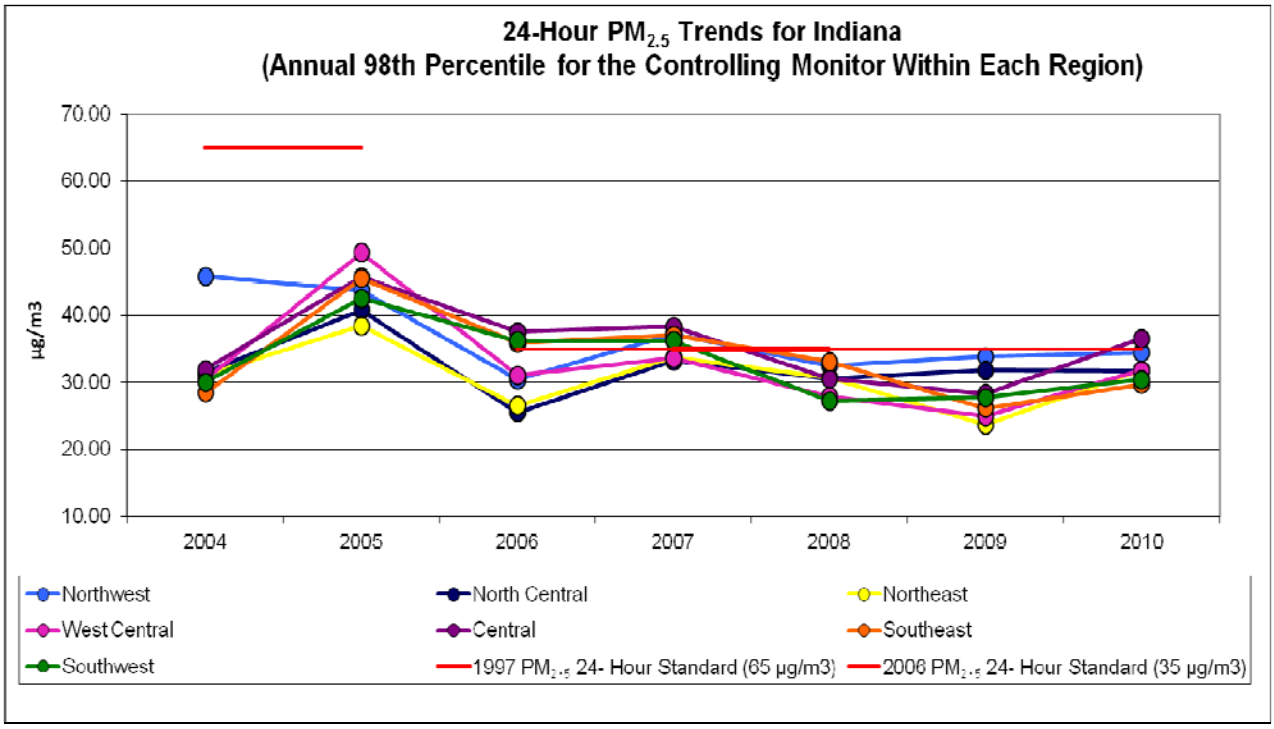
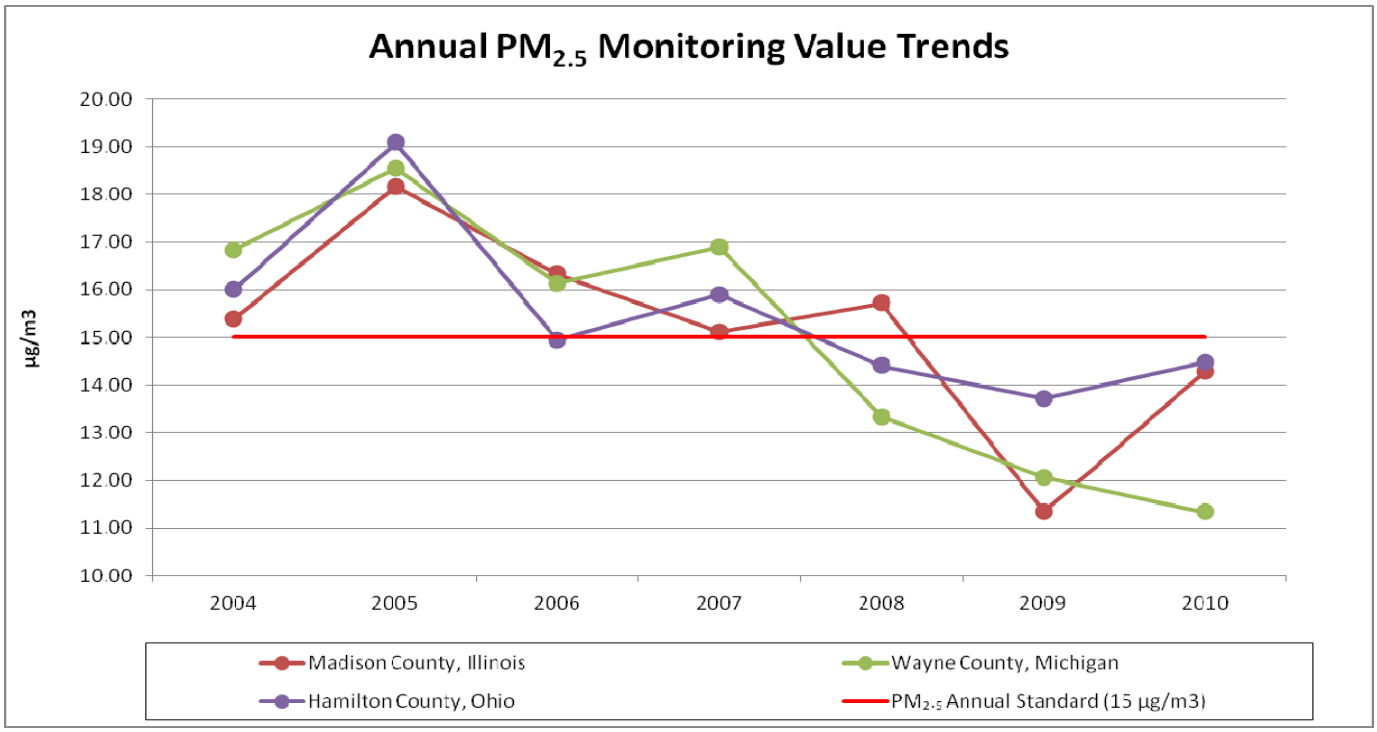
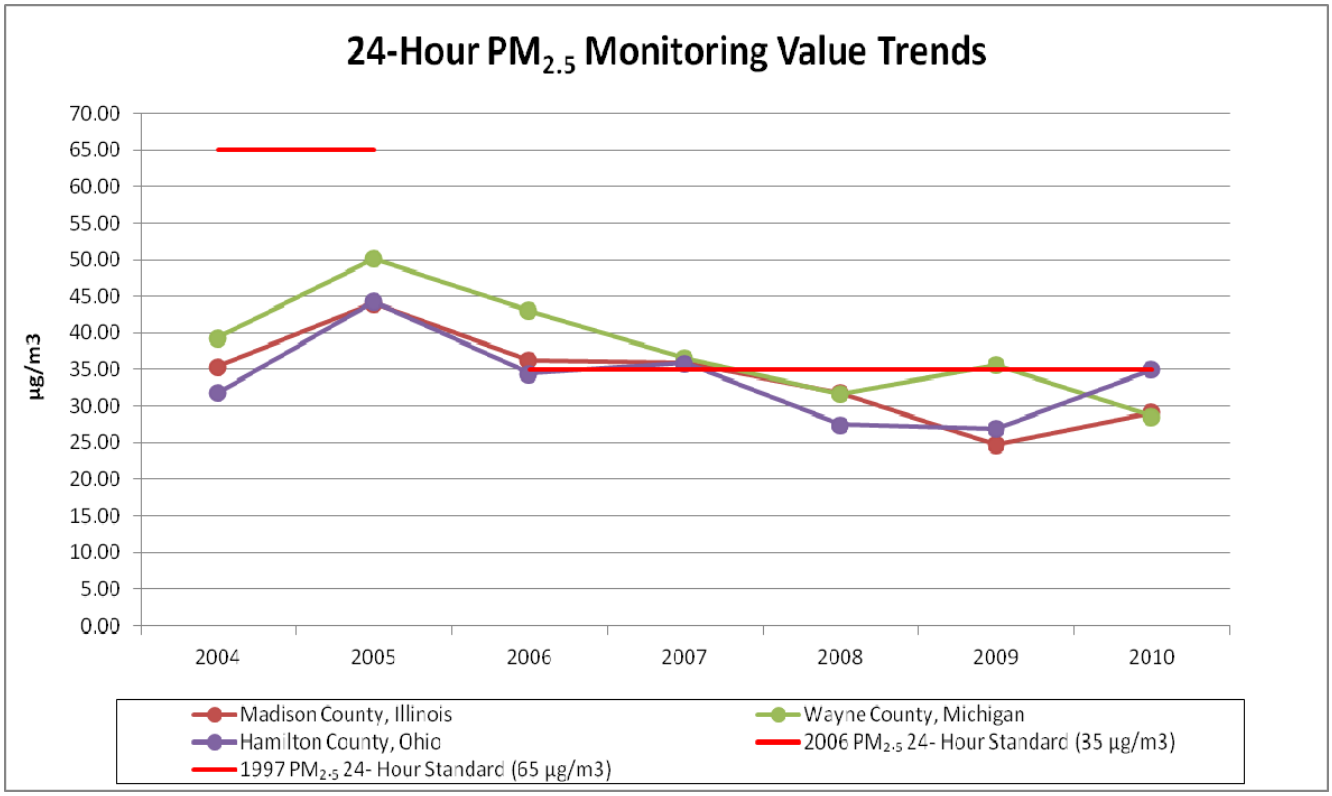


Source: U.S. EPA's Air Quality System Database.



Source: U.S. EPA's Air Quality System Database.



Source: U.S. EPA's Air Quality System Database.

Attachment 2

24-Hour $PM_{2.5}$ ($\mu g/m^3$) Nonattainment Area

State	Site ID	98th Percentile Daily Values ($\mu g/m^3$)			24-Hour 3-Yr Design Value	24-Hour $PM_{2.5}$ Design Values ($\mu g/m^3$)	
		2008	2009	2010		Modeled Base Case Average for 2012	% Difference 2012
Alabama	10730023	33.5	24.4	28.7	29	36.9	28%
Illinois	170311016	33.9	30.8	35.3	33	37.5	13%
Illinois	171191007	31.9	24.8	29.2	29	36.5	27%
Indiana	180970043	30.1	28.3	32.0	30	35.7	18%
Indiana	180970066	36.2	37.2	28.2	34*	35.7	5%
Indiana	180970081	30.5	27.1	32.0	30	35.8	20%
Michigan	261470005	30.3	28.2	25.8	28	36.2	29%
Michigan	261630015	34.3	30.9	26.6	31	35.5	16%
Michigan	261630016	30.0	31.0	27.9	30	38.9	31%
Michigan	261630019	31.9	29.2	28.6	30	37.3	25%
Michigan	261630033	31.7	35.7	28.6	32	39.4	23%
Ohio	390350038	39.4	29.9	30.5	33	39.4	18%
Ohio	390350060	36.9	28.9	30.9	32	37.7	17%
Pennsylvania	420030064	50.0	45.3	48.8	48	56.7	18%
Pennsylvania	420030093		23.1	26.5	**25** [2]	39.1	56%
Pennsylvania	420070014	31.2	28.7	29.4	30	36.2	22%
Pennsylvania	420710007	35.0	29.4	33.7	33	35.9	10%
West Virginia	540090011	34.9	26.3	31.6	31	37.5	21%
Wisconsin	550790043	27.4	41.7		**35** [2]	36.2	3%

* Indiana site discontinued in 9/15/2009 used 06-08 monitoring data

[2] **Two Years of Data**

24-Hour $PM_{2.5}$ ($\mu g/m^3$) Nonattainment Area

State	Site ID	98th Percentile Daily Values ($\mu g/m^3$)			24-Hour 3-Yr Design Value	24-Hour PM2.5 Design Values ($\mu g/m^3$)	
		2008	2009	2010		Modeled Base Case Average for 2014	% Difference 2014
Alabama	10730023	33.5	24.4	28.7	29	35.6	23%
Illinois	170311016	33.9	30.8	35.3	33	35.8	7%
Illinois	171191007	31.9	24.8	29.2	29	34.6	21%
Indiana	180970043	30.1	28.3	32.0	30	34.3	14%
Indiana	180970066	36.2	37.2	28.2	34*	34.2	1%
Indiana	180970081	30.5	27.1	32.0	30	34.1	14%
Michigan	261470005	30.3	28.2	25.8	28	35.0	25%
Michigan	261630015	34.3	30.9	26.6	31	34.1	11%
Michigan	261630016	30.0	31.0	27.9	30	37.9	28%
Michigan	261630019	31.9	29.2	28.6	30	36.3	21%
Michigan	261630033	31.7	35.7	28.6	32	38.2	19%
Ohio	390350038	39.4	29.9	30.5	33	38.2	15%
Ohio	390350060	36.9	28.9	30.9	32	36.7	14%
Pennsylvania	420030064	50.0	45.3	48.8	48	54.1	13%
Pennsylvania	420030093		23.1	26.5	**25** [2]	37.5	50%
Pennsylvania	420070014	31.2	28.7	29.4	30	34.5	16%
Pennsylvania	420710007	35.0	29.4	33.7	33	35.3	8%
West Virginia	540090011	34.9	26.3	31.6	31	36.1	17%
Wisconsin	550790043	27.4	41.7		**35** [2]	34.5	-1%

* Indiana site discontinued in 9/15/2009 used 06-08 monitoring data

[2] **Two Years of Data**

24-Hour $PM_{2.5}$ ($\mu g/m^3$) Maintenance Area

State	Site ID	98th Percentile Daily Values ($\mu g/m^3$)			24-Hour 3-Yr Design Value	24-Hour $PM_{2.5}$ Design Values ($\mu g/m^3$)	
		2008	2009	2010		Modeled Base Case Average for 2012	% Difference 2012
Alabama	10732003	33.5	25.2	25.4	28	35.3	26%
Illinois	170310052	27.8	32.4	33.8	31	34.9	11%
Illinois	170312001	29.5	27.2	25.8	28	33.6	22%
Illinois	170313301	29.3	31.0	35.0	32	34.9	10%
Illinois	170316005	34.1	27.7	27.1	30	34.1	15%
Indiana	180890022	28.9	30.3	33.6	31	34.9	13%
Indiana	180890026	32.4	33.8	31.7	33	34.0	4%
Michigan	261610008	28.2	28.2	23.3	27	35.0	32%
Ohio	390170003	27.1	25.3	31.7	28	34.4	23%
Ohio	390350045	35.3	23.5	32.7	31	34.7	14%
Ohio	390350065	33.8	28.9	27.3	30	34.9	16%
Ohio	390618001	31.0	28.7	33.3*		35.2	
Ohio	390811001	35.0	23.3	25.1	28	34.5	24%
Ohio	391130032	30.5	26.8	30.4	29	33.6	15%
Pennsylvania	420031008	32.1	25.9	34.0	31	35.0	14%
Pennsylvania	420031301	36.3	30.7	37.2	35	33.9	-2%
Pennsylvania	420033007	34.6	25.9	28.2	30	32.3	9%
Pennsylvania	421330008	32.3	26.6	30.2	30	33.3	12%
Wisconsin	550790010	27.3	39.1	30.9	32	35.4	9%
Wisconsin	550790026	27.5	39	32.6	33	33.6	2%

*Data through Feb 7, 2010

24-Hour $PM_{2.5}$ ($\mu g/m^3$) Maintenance Area

State	Site ID	98th Percentile Daily Values ($\mu g/m^3$)			24- Hour 3-Yr Design Value	24-Hour PM2.5 Design Values ($\mu g/m^3$)	
		2008	2009	2010		Modeled Base Case Average for 2014	% Difference 2014
Alabama	10732003	33.5	25.2	25.4	28	34.2	22%
Illinois	170310052	27.8	32.4	33.8	31	33.2	6%
Illinois	170312001	29.5	27.2	25.8	28	32.4	18%
Illinois	170313301	29.3	31.0	35.0	32	33.4	5%
Illinois	170316005	34.1	27.7	27.1	30	32.7	10%
Indiana	180890022	28.9	30.3	33.6	31	33.7	9%
Indiana	180890026	32.4	33.8	31.7	33	32.8	1%
Michigan	261610008	28.2	28.2	23.3	27	33.9	28%
Ohio	390170003	27.1	25.3	31.7	28	33.0	18%
Ohio	390350045	35.3	23.5	32.7	31	33.7	10%
Ohio	390350065	33.8	28.9	27.3	30	33.7	12%
Ohio	390618001	31.0	28.7	33.3*		33.5	
Ohio	390811001	35.0	23.3	25.1	28	33.1	19%
Ohio	391130032	30.5	26.8	30.4	29	32.1	10%
Pennsylvania	420031008	32.1	25.9	34.0	31	33.2	8%
Pennsylvania	420031301	36.3	30.7	37.2	35	32.3	-7%
Pennsylvania	420033007	34.6	25.9	28.2	30	30.9	5%
Pennsylvania	421330008	32.3	26.6	30.2	30	32.6	10%
Wisconsin	550790010	27.3	39.1	30.9	32	34.0	5%
Wisconsin	550790026	27.5	39	32.6	33	32.3	-2%

*Data through Feb 7, 2010

Annual $PM_{2.5}$ (µg/m3) Nonattainment Area

State	Site ID	Weighted Arithmetic			Annual 3-Yr Design Value	Annual $PM_{2.5}$ Design Values (µg/m3)	
		2008	2009	2010		Modeled Base Case Average for 2012	% Difference 2012
Alabama	10730023	15.52	11.67	13.82	13.7	16.15	18%
Alabama	10732003	14.40	11.35	12.44	12.7	15.16	19%
Georgia	131210039	7.55	12.07	14.51	11.4	15.07	32%
Illinois	171191007	15.72	11.34	14.28	13.8	15.46	12%
Michigan	261630033	13.33	12.06	11.33	12.2	15.73	29%
Ohio	390350038	14.08	12.86	13.97	13.6	15.99	17%
Ohio	390350045	13.67	11.85	13.25	12.9	15.14	17%
Ohio	390350060	14.37	12.28	13.70	13.5	15.67	17%
Ohio	390610014	15.12	13.40	14.86	14.5	15.76	9%
Ohio	390610042	14.40	13.71	14.48	14.2	15.40	8%
Ohio	390618001	14.40	13.44	17.55*		16.01	
Pennsylvania	420030064	17.00	15.04	16.06	16.0	17.94	12%

*Data through Feb 7, 2010

State	Site ID	Weighted Arithmetic			Annual 3-Yr Design Value	Annual $PM_{2.5}$ Design Values (µg/m3)	
		2008	2009	2010		Modeled Base Case Average for 2014	% Difference 2014
Alabama	10730023	15.52	11.67	13.82	13.7	15.58	14%
Alabama	10732003	14.40	11.35	12.44	12.7	14.69	15%
Georgia	131210039	7.55	12.07	14.51	11.4	14.42	27%
Illinois	171191007	15.72	11.34	14.28	13.8	14.76	7%
Michigan	261630033	13.33	12.06	11.33	12.2	15.25	25%
Ohio	390350038	14.08	12.86	13.97	13.6	15.54	14%
Ohio	390350045	13.67	11.85	13.25	12.9	14.70	14%
Ohio	390350060	14.37	12.28	13.70	13.5	15.21	13%
Ohio	390610014	15.12	13.40	14.86	14.5	15.16	5%
Ohio	390610042	14.40	13.71	14.48	14.2	14.81	4%
Ohio	390618001	14.40	13.44	17.55*		15.41	
Pennsylvania	420030064	17.00	15.04	16.06	16.0	17.30	8%

*Data through Feb 7, 2010

Annual $PM_{2.5}$ (µg/m3) Maintenance Area

State	Site ID	Weighted Arithmetic Mean			Annual 3-Yr Design Value	Annual $PM_{2.5}$ Design Values (µg/m3)	
		2008	2009	2010		Modeled Base Case Average for 2012	% Difference 2012
Indiana	180970081	13.71	12.99	14.03	13.6	14.86	9%
Indiana	180970083	13.17	12.40	13.91	13.2	14.71	12%
Ohio	390350065	14.60	12.39	13.15	13.4	14.67	10%
Ohio	390617001	13.74	12.97	14.11	13.6	14.74	8%

State	Site ID	Weighted Arithmetic Mean			Annual 3-Yr Design Value	Annual $PM_{2.5}$ Design Values (µg/m3)	
		2008	2009	2010		Modeled Base Case Average for 2014	% Difference 2014
Indiana	180970081	13.71	12.99	14.03	13.6	14.36	6%
Indiana	180970083	13.17	12.40	13.91	13.2	14.21	8%
Ohio	390350065	14.60	12.39	13.15	13.4	14.25	7%
Ohio	390617001	13.74	12.97	14.11	13.6	14.17	4%