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Sent: Tuesday, March 28, 2006 4:39 PM

To: Amaditz, Kenneth (ENRD)

Cc: galelea@jacksonkelly.com

Subject: Catawba County v. USEPA

Ken:

As a followup to our telephone conversation today, I would like to confirm a request on behalf of our clients the Midwest Ozone Group and the West Virginia Chamber of Commerce that USEPA agree to undertake a review of what we now understand to be a self-admitted error made by USEPA in connection with the non-attainment designations that are the subject of this litigation.

In particular, I would like to bring to your attention that on March 10, 2006, at the meeting of the ABA's Section on Natural Resources and Environmental Law, USEPA's John Bachmann spoke on USEPA's multi-pollutant strategy and the proposed new PM NAAQS. In his discussion of the PM 2.5 NAAQS proposal, Mr. Bachmann identified several sources of carbonaceous material as being most likely to receive new controls if the standards were to be finalized and implemented. Among the sources of carbonaceous material identified by Mr. Bachmann that were likely to receive new controls were:

- a. automobiles
- b. wood stoves and
- c. coke ovens.

During the question and answer period, I asked Mr. Bachmann to confirm that EGUs were not among the sources being targeted under the proposed PM 2.5 rule. Mr. Bachmann responded that they were not being considered because their carbon emissions were too small. When I asked him to explain why carbon emission from EGU's had provided the basis for a majority of the PM 2.5 non-attainment designations last year, Mr. Bachmann said "we were wrong, we missed the EGU estimate by a factor of 10." Mr. Bachmann went on to point out that some of the "adjacent county" designations had, however, been based on SO<sub>2</sub> emissions.

Mr. Bachmann's admission of error has significant implications for the PM 2.5 non-attainment designations that are the subject of the litigation in which we are involved pending in the DC Circuit.

The effect of a factor of 10 error, is, alone, enough to significantly alter the emission weighting score that was relied upon by USEPA as the primary factor for bringing into non-attainment adjacent counties which have monitored attainment or have no monitor at all. Moreover, by reducing the significance of level of emissions of carbon from EGUs, the calculation of the emission weighting score is far more sensitive to reduction of emissions of SO<sub>2</sub> and NO<sub>x</sub> that will occur as the result of controls that have been committed for many EGUs in response to CAIR and the NO<sub>x</sub> SIP call, among other programs.

The error identified by Mr. Bachmann is consistent with our own assessment of the error made in USEPA's designation action.

Attached is an excerpt from a chart contained in Section 3 of the Technical Support Document associated with the PM 2.5 non-attainment rule. This chart identifies the urban excess information used to make the decision to bring "adjacent" counties into the non-attainment designation. Any "adjacent" county designation based upon urban excess information reflecting a high carbon percentage would appear to be a candidate for reconsideration. Also attached is a document prepared by us that sets forth a partial listing of counties that have attaining monitors (or no monitors) that appear to have been placed in the non-attainment category because they contain power plants.

USEPA has not provided specific data on the extent to which all EGUs have carbon emissions; however, such data is suggested for a few counties. In the case of Jefferson County, Indiana, for example, USEPA's Technical Support Document at page 6-289 provides a breakout of the carbon emissions for that county and states that the Clifty Creek plant represents approximately 99% of the SO<sub>2</sub>, 93% of the NO<sub>x</sub>, 62% of the carbonaceous particles and 76% of the crustal emissions. Applying that information to the county's stated carbon emissions data, we can calculate that USEPA initially assumed that Clifty Creek is emitting 340 tons of carbon a year. To the extent that USEPA has overestimated carbon emissions for Clifty Creek by a factor of 10, we assume that USEPA would now estimate the carbon emissions from Clifty Creek to be reduced by a factor of 10 to 34 tons per year. Thus the weighted emissions score for Jefferson County would be reduced from 11.2 to 6.2. This revised score would put Jefferson County well within the category of other Indiana Counties that were designated by USEPA to be attainment.

In addition, the weighed emission score for Jefferson County would be reduced even further with consideration being given to the SCRs that were installed on Units 1 through 5 at that plant in 2004 and the commitment that has been made to install FGD controls on Units 1 through 6 at that plant by 2010.

We urge that USEPA agree to rerun its emission weighting score for these and all other counties affected by the error made by USEPA with respect to carbon emissions from EGUs. We also believe that it will be necessary to reconsider the effect of controls on NO<sub>x</sub> and SO<sub>2</sub> emissions from these plants, since the effect of changing that carbon emissions will make the weighted emission score calculation much more sensitive to changes in SO<sub>2</sub> and NO<sub>x</sub> emissions.

We urge that USEPA to agree to reconsider the designation for these counties and that we agree to a process for having issues related to these counties not be pursued in the current litigation pending USEPA reconsideration.

Please let us know how you wish to proceed.

<<Urban Excess.DOC>> <<County List.xls>>

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tmp.htm



Urban Excess.DOC



County List.xls

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**PM2.5 DESIGNATIONS - DATA USED IN CALCULATING URBAN EXCESS PERCENTAGES BY PM2.5 COMPONENT**

**PM2.5 Speciation Data from the period 4/02 - 3/03**

<b>Metropolitan Area(s) with Violating Monitor</b>	<b>URBAN EXCESS INFORMATION</b>			
	<b>Carbon %</b>	<b>Crustal %</b>	<b>Sulfates %</b>	<b>Nitrates %</b>
Athens, GA	57%	5%	30%	7%
Atlanta, GA; Macon, GA	88%	0%	10%	3%
Baltimore, MD	85%	2%	13%	0%
Birmingham, AL	60%	18%	16%	6%
Canton, OH; Youngstown, OH; Steubenville, OH-WV	49%	10%	11%	30%
Charleston, WV; Parkersburg, WV-OH; Huntington, WV-KY-OH	84%	0%	10%	6%
Chattanooga, TN-GA	66%	10%	17%	7%
Chicago, IL-IN-WI; Elkhart, IN	65%	2%	25%	8%
Cincinnati, OH-KY-IN	78%	0%	7%	15%
Cleveland, OH	42%	11%	13%	34%
Columbus, GA-AL	100%	0%	0%	0%
Columbus, OH; Dayton, OH	73%	0%	0%	27%
Detroit, MI	42%	4%	0%	54%
Evansville, IN-KY	23%	6%	20%	51%
Greensboro, NC	52%	29%	8%	11%
Greenville, SC	81%	0%	0%	19%
Hickory, NC	77%	0%	3%	20%
Indianapolis, IN	59%	0%	3%	38%
Knoxville, KY	75%	0%	0%	25%
Lexington, KY	60%	0%	22%	19%
Lincoln County, MT	93%	0%	2%	5%
Los Angeles, CA	31%	1%	14%	55%
Louisville, KY-IN	93%	0%	0%	7%
New York, NY-NJ-CT-PA	67%	3%	6%	25%

	<b>URBAN EXCESS INFORMATION</b>			
<b>Metropolitan Area(s) with Violating Monitor</b>	<b>Carbon %</b>	<b>Crustal %</b>	<b>Sulfates %</b>	<b>Nitrates %</b>
Philadelphia, PA-NJ-DE-MD	45%	2%	24%	29%
Reading, PA; Lancaster, PA	39%	0%	11%	50%
San Diego, CA	51%	0%	16%	33%
San Joaquin, CA	42%	2%	8%	48%
St. Louis, MO-IL	58%	5%	8%	29%
Toledo, OH	36%	0%	0%	64%
Washington, DC-MD-VA-WV	88%	1%	11%	0%
Wheeling, WV-OH; Pittsburgh, PA; Marion County, WV; Johnstown, PA	46%	3%	27%	24%
York, PA; Harrisburg, PA	72%	0%	0%	28%

County List.XLS

PARTIAL LIST OF ADJACENT COUNTIES	PLANT	PAGE REF (Ch. 6 Tech Support Document) Ch. 6 TSD	MSA	MSA Urban Excess Percentages			
				Carbon %	Crustal %	Sulfates %	Nitrates %
<b>Pennsylvania</b>							
Indiana	Seward, Conemaugh and Homer City	75	Johnstown	46	3	27	24
Armstrong	Armstrong, Keystone, Hatfields Ferry and New Castle	90	Pittsburgh, PA	46	3	27	24
Greene	(in Armstrong, Greene and Lawrence Counties)	90					
Lawrence		90					
<b>West Virginia</b>							
Mason	Mountaineer and Sporn	118	Huntington MSA	84	0	10	6
Pleasants	Pleasants	129	Parkersburg WV-OH MSA	84	0	10	6
<b>Kentucky</b>							
Boone	East Bend	196	Cincinnati-Hamilton MSA	78	0	7	15
Clark	East Kentucky	208	Lexington MSA	60	0	22	19
Lawrence	Big Sandy	216	Huntington-Ashland MSA	84	0	10	6
<b>Illinois</b>							
Randolph	Baldwin	258	St. Louis	58	5	8	29
<b>Indiana</b>							
Porter (MSA)	Nisource	263	Chicago	65	2	25	8
Dearborn	Tanners Creek	269	Cincinnati	78	0	7	15
Gibson	Gibson	277	Evansville	23	6	20	51
Pike	Petersburgh and Ratts	277	Evansville	23	6	20	51
Spencer	Rockport and AK Steel	277	Evansville	23	6	20	51
Warrick (MSA)	Warrick	276	Evansville	23	6	20	51
Hamilton (MSA)	Noblesville	286	Indianapolis	59	0	3	38
Jefferson	Clifty Creek	289	Louisville	93	0	0	7
<b>Ohio</b>							
Ashtabula (MSA)	First Energy	310	Cleveland	42	11	13	34
Coshocton	Conesville	311	Columbus-Dayton	73	0	0	27
Adams	Killen and Stuart	318	Charleston, Parkersburg, Huntington	84	0	10	6
Gallia	Gavin and Kyger Creek	318	Charleston, Parkersburg, Huntington	84	0	10	6
Belmont (MSA)	Burger	331	Wheeling, Pittsburgh, Marion, Johnstown	46	3	27	24