GOVERNOR GREG ABBOTT

September 27, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW, 1101A
Washington, D.C. 20460

Re: **Request of the State of Texas Regarding County-Attainment Designations for the 2015 National Ambient Air Quality Standard for Ozone**

Dear Administrator Pruitt:

On October 1, 2015, the U.S. Environmental Protection Agency (EPA) revised the primary and secondary National Ambient Air Quality Standard (NAAQS) for ozone from 75 parts per billion (ppb) to 70 ppb. The State of Texas, along with numerous other states and private entities, filed a petition for review in the D.C. Circuit, alleging that the ozone rule is unlawful and should be set aside in its entirety. *See Murray Energy Corp. et al. v. EPA*, D.C. Cir. Dkt. No. 15-1385 (consolidated with 15-1392, 15-1490, 15-1491 & 15-1494). Our petition remains pending in the D.C. Circuit, and I reiterate Texas' view that the ozone rule violates the Clean Air Act and the Administrative Procedure Act. Given those legal infirmities, it would be inappropriate to designate any county in Texas as "nonattainment" under the unlawful ozone rule.

Even under the unlawful ozone rule, however, some of Texas' counties can and should be designated as "attainment" now. On September 30, 2016, I provided a list of 17 Texas counties that should be designated as "attainment" even using the unlawfully low 70 ppb standard. That recommendation was based on certified monitoring data for the years 2013–2015. Then on August 23, 2017, the Texas Commission on Environmental Quality (TCEQ) submitted to EPA a revised set of recommendations, based on more recent data. Certified monitoring data for the period of 2014–2016, in conjunction with an exceptional-event demonstration for El Paso, establish that El Paso County and Hood County also are in attainment of the 2015 ozone NAAQS. EPA has no basis for refusing to accept these data at this time. Under Section 107(d)(1)(A) of the Clean Air Act, I therefore urge EPA to designate all 19 of these counties as "attainment" by October 1, 2017.

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As to the remainder of Texas' counties, I urge EPA to provide a pathway for designating as many counties as possible as "attainment" at a later date. For areas that previously were designated as "nonattainment" under the 2008 ozone NAAQS, that pathway should include additional guidance for transitioning to the new NAAQS and ameliorating or altogether eliminating the "nonattainment" designation.

For areas that were not previously designated as "nonattainment," such as the San Antonio area in Bexar County, I urge you not to make "nonattainment" designations now and instead to allow the state more time to show that additional data and considerations — such as international transport — warrant an "attainment" or "unclassifiable/attainment" designation. According to a recent study for the Alamo Area Council of Governments, a "nonattainment" designation would cost the San Antonio area alone somewhere between $3.2 billion and $36.2 billion. These are staggering costs by any measure, especially given the unlawfulness of the rule under which they would be imposed. In addition, a new nonattainment designation could have serious national security implications for the military and Department of Defense operations in the San Antonio area. I therefore urge EPA not to make any new "nonattainment" designations under the 2015 ozone rule.

Sincerely,

Greg Abbott
Governor

cc: Senator John Cornyn
Senator Ted Cruz
Congressman Will Hurd
Congressman Beto O'Rourke
Congressman Joaquin Castro
Congressman Henry Cuellar
Congressman Lloyd Doggett
Congressman Lamar Smith
Congressman Mike Conaway
Congressman Roger Williams
Sam Coleman, Acting EPA Administrator for Region 6
Bryan W. Shaw, Chairman of TCEQ
Richard Hyde, Executive Director of TCEQ